

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-O-16525;
)	12-H-11071 (Cons.)-DFM
RONALD GREGORY PEAKE,)	
)	DECISION AND ORDER OF
Member No. 193868,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent Ronald Gregory Peake (Respondent) was charged with seven counts of violations of the Rules of Professional Conduct or the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC)

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to practice law in this state on December 7, 1997, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 9, 2012, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. As of May 8, 2012,⁴ the State Bar had received neither the signature card nor the mailing itself by return mail. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, on two different dates, copies of the NDC and the notice of assignment and initial status conference were mailed to an alternate address for Respondent located through a public record search; email messages, including the NDC and the notice of assignment and initial status conference, were sent to Respondent at his membership records email address and to a private email address located during the State Bar's investigation; the State Bar called Respondent's membership records telephone number on three occasions and left voicemail

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

⁴ This is the date of the declaration of Deputy Trial Counsel William Todd.

messages and telephoned another possible number for Respondent obtained from directory assistance; and, on four occasions, the State Bar faxed copies of the NDC and the notice of assignment and initial status conference to Respondent's membership records facsimile number.

Respondent failed to file a response to the NDC. On May 8, 2012, the State Bar filed and properly served a motion for entry of Respondent's default on Respondent at his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on May 25, 2012. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 3, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent has not contacted the State Bar since the default was entered on May 25, 2012; (2) there is one other disciplinary matter pending; (3) Respondent has a prior record of discipline; and (4) there are two pending Client Security Fund claims arising from Respondent's misconduct in this matter. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on January 9, 2013.

Respondent has a prior record of discipline.⁵ On December 14, 2010, the State Bar Court filed an order imposing a private reproof on Respondent with conditions attached to the reproof for one year. Respondent stipulated in this matter that he willfully violated rules 3-310(C)(1) and 3-310(E) of the Rules of Professional Conduct.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

1. Case Number 11-O-16525 (Saenz Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to file a lawsuit on his client's behalf.

Count Two – Respondent willfully violated section 6068, subdivision (m) (duty to communicate) by failing to respond promptly to client telephone calls.

Count Three – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to return the client's file documents despite a request that Respondent do so.

Count Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to refund his client \$2,000 in unearned advanced fees.

⁵ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

Count Five – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by effectively abandoning representation of his client without notifying her that he would not file a lawsuit on her behalf or that she should seek new counsel, and without taking any other steps to avoid reasonably foreseeable prejudice to his client’s rights.

Count Six – Respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing the State Bar investigator with a written response to the allegations raised by his client’s matter or otherwise cooperating or participating in the investigation of the client’s matter.

2. Case No. 12-H-11071 (Reproval Conditions Matter)

Count Seven – Respondent willfully violated rule 1-110 of the Rules of Professional Conduct by failing to comply, as charged, with conditions attached to a private reproval.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent’s disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default, as the State Bar (1) filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address; (2) sent the NDC and the notice of assignment and initial status conference to an alternate address for Respondent;
- (3) sent email messages, which included the NDC and the notice of assignment and initial status conference, to Respondent at his membership records and private email address; called Respondent’s membership records telephone number and left voicemail messages; telephoned another possible number for Respondent obtained from directory assistance; and faxed copies of

the NDC and the notice of assignment and initial status conference to Respondent's membership records facsimile number;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent **Ronald Gregory Peake**, State Bar number 193868, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to make restitution to Socorro Saenz in the amount of \$2,000 plus 10 percent interest per year from June 1, 2008. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Ronald Gregory Peake**, State Bar number 193868, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: April _____, 2013

DONALD F. MILES
Judge of the State Bar Court