

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>12-H-17088-YDR</b>
	)	
<b>CHARLES WAYNE BROWER,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 242460,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Charles Wayne Brower (“Respondent”) was charged with failing to comply with conditions attached to a prior public reproof. 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.<sup>1</sup>

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),

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<sup>1</sup> Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as Respondent’s default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

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.<sup>2</sup>

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**

Respondent has been a member of the California State Bar since he was admitted to practice law in this state on June 1, 2006.

#### **Procedural Requirements Have Been Satisfied**

On February 26, 2013, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, to his membership records address. A courtesy copy of the NDC was served on Respondent by first-class mail at an alternate address in Lake Forest, California. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return card was returned to the State Bar signed by "Diana Corona." The NDC served by first-class mail was not returned by the U.S. Postal Service.

Respondent had actual notice of the NDC proceeding. Prior to the filing of the NDC, Respondent participated in an early neutral evaluation conference and reached a tentative settlement with the State Bar. However, after Respondent received the settlement documents, Respondent failed to contact the State Bar. On April 22, 2013, the deputy trial counsel attempted to contact Respondent by calling his official membership telephone number, and by conducting an online public records search for a new or different address or telephone number for

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<sup>2</sup> 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))

Respondent. The deputy trial counsel called a telephone number discovered through the public records search and left a voice message. Respondent returned the deputy trial counsel's voice message and confirmed that he had received a copy of the NDC. Nevertheless, Respondent failed to file a response to the NDC.

*State Bar's First Attempt to Enter Respondent's Default for Failure to File Response*

On April 22, 2013, the State Bar filed a motion for entry of default against Respondent. However, service of the motion for entry of Respondent's default did not comport with rule 5.80(C). Rule 5.80(C) requires that service of the motion for entry of default comply with rule 5.25 [address the service to the member's address in the State Bar's membership records.] In this matter, the Declaration of Service to the motion for entry of default listed the wrong street address as Respondent's State Bar membership records address. Instead of "Latham St.," the street listed in Respondent's State Bar membership records, the declaration listed the street address as "Lantham St."

A courtesy copy of the motion was also sent by regular mail to Respondent at the Lake Forest, California address. Respondent did not file a response to the motion. His default was entered on May 10, 2013, and the court ordered his involuntary inactive enrollment.

On December 18, 2013, the State Bar filed and served the petition for disbarment on Respondent. 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 15, 2014.

However, on January 29, 2014, the court on its own motion issued an order denying the motion for entry of default, vacating the order entering Respondent's default and enrolling him inactive, ruling the petition for disbarment moot and, vacating the submission order.

*State Bar's Successful Attempt to Enter Respondent's Default for Failure to File Response*

Thereafter, the State Bar filed and properly re-served the motion for entry of default on Respondent on February 6, 2014. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar senior 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 February 24, 2014. 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. He has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated within the 180 day time frame required pursuant to Rule 5.83(C)(1).

On August 29, 2014, the State Bar filed and properly served the petition for disbarment on Respondent at his official membership records address. As required by Rule 5.85(A), the State Bar reported in the petition that (1) Respondent has not contacted the State Bar since April 22, 2013, before his default was entered on February 24, 2014; (2) there are no other matters pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of Respondent's conduct. 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 September 25, 2014.

Respondent has one prior record of discipline.<sup>3</sup> Pursuant to an order of the State Bar Court filed on April 4, 2012, Respondent was publicly reprovved with conditions for failing to take reasonable steps to avoid reasonably foreseeable prejudice to his clients. Respondent entered into a stipulation in this prior disciplinary matter.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of 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).)

### **Case Number 12-H-17088 (Reproval Matter)**

Respondent willfully violated rule 1-110 of the Rules of Professional Conduct (failure to comply with conditions of reproval), by failing to comply with specified conditions of his public reproval effective on April 25, 2012.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of Rules of Professional Conduct, 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) Respondent had actual notice of this proceeding since he participated in an early neutral evaluation conference relating to this matter and spoke with the assigned deputy trial counsel, confirming his receipt of the NDC;

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<sup>3</sup> The court admits into evidence the certified copy of Respondent's prior record of discipline that was attached to the State Bar's August 29, 2014, petition for disbarment after default.

(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 Charles Wayne Brower be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **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 Charles Wayne Brower, State Bar number 242460, 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: December 17, 2014

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Yvette D. Roland  
Judge of the State Bar Court