

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-10825-DFM
)	
FRANCIS ARTHUR JONES,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 204596,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Francis Arthur Jones (Respondent) was charged with (1) failing to perform with competence; (2) failing to refund unearned fees; (3) failing to release a file; and (4) failing to cooperate in a State Bar investigation. 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.¹

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), 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.²

¹ Unless otherwise indicated, all references to rules are to this source.

² 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).)

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 was admitted to practice law in this state on December 6, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 25, 2012, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, the State Bar (1) emailed the NDC to Respondent's email address as reflected on the State Bar's website;³ and (2) telephoned Respondent's telephone number as reflected on the State Bar's website.

Nevertheless, Respondent failed to file a response to the NDC. On May 30, 2012, the State Bar filed and properly served on Respondent by certified mail, return receipt requested, a motion for entry of Respondent's default at his membership records address. The motion was also served on Respondent by first-class mail to Respondent's membership records address and emailed to his membership records email address.⁴ 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

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).) The State Bar had received an email from Respondent's email address on March 1, 2012.

⁴ Pursuant to Evidence Code section 452(h), the court takes judicial notice of Respondent's membership records email address.

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,⁵ and his default was entered on June 15, 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 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 21, 2012, the State Bar filed the petition for disbarment.⁶ As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since his default was entered; (2) there are three investigations pending against Respondent; (3) Respondent does not have 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 February 28, 2013.

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

⁵ On June 5, 2012, after the NDC served on Respondent on April 25, 2012, at his membership records address by certified mail, return receipt requested, was returned to the State Bar by the United States Postal Service as unclaimed, the State Bar served the NDC on Respondent at his membership records address by first-class mail.

⁶ The petition was served on respondent on December 21, 2012, by certified mail, return receipt requested, and by first-class mail, at his membership records address.

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-O-10825 (Contreras/Kukiela Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by not sending written notice of the lease termination as he was employed to do, and by not returning the \$2,000 check to the drafter as he informed his client he would do.

Count Two – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to refund to his client the \$250 advance fee that was not earned.

Count Three - Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by not releasing to his client or the client's new counsel, upon the client's request, the client file upon termination of employment.

Count Four – Respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing a written response to the allegations raised in the complaint filed with the State Bar against Respondent.

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) emailed the NDC to Respondent's email address; (3) telephoned Respondent's telephone number as reflected on

the State Bar's website; and (4) served the NDC on Respondent at his membership address by first-class mail;

(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 Francis Arthur Jones 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 Mary Contreras in the amount of \$250 plus 10 percent interest per year from November 11, 2010. 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.

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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 Francis Arthur Jones, State Bar number 204596, 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: May _____, 2013

DONALD F. MILES
Judge of the State Bar Court