

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **12-O-11298-LMA**  
) (12-O-17985)  
**LOYD LEE BROWN, JR.,** )  
) **DECISION AND ORDER OF**  
**Member No. 195240,** ) **INVOLUNTARY INACTIVE**  
) **ENROLLMENT**  
A Member of the State Bar. )

In this matter, respondent Loyd Lee Brown, Jr., was charged with five counts of misconduct stemming from two matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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), 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>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<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).)

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 June 1, 1998, and has been a member since then.

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

On October 30, 2013, the State Bar properly filed and served an 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.) The State Bar did not receive a return card from the U.S. Postal Service.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included calling him and leaving a message at his membership records telephone number, checking with the Office of Probation of the State Bar of California (Office of Probation) for alternative contact information for respondent, and sending an email to respondent at an email address provided by the Office of Probation.<sup>3</sup>

Respondent failed to file a response to the NDC. On December 4, 2013, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the 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

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<sup>3</sup> The State Bar learned that the Office of Probation's last contact with respondent was an email he sent on or around November 15, 2012.

default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on December 20, 2013. 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 June 25, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has other disciplinary matters pending; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from 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 July 22, 2014.

Respondent has been disciplined on one prior occasion.<sup>4</sup> Pursuant to a Supreme Court order filed on May 17, 2012, in case no. S198742, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years. In this matter, respondent stipulated to three counts of misconduct, including splitting fees with a non-attorney, failing to competently perform legal services, and failing to refund an unearned fee.

### **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

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<sup>4</sup> 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.

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 No. 12-O-17985 – The Disciplinary Probation Matter**

Count One – respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to: (1) timely contact the Office of Probation to schedule a meeting; (2) meet with the probation deputy; (3) submit four quarterly reports; and (4) provide the Office of Probation with proof of completion of Ethic School.

**Case No. 12-O-11298 – The Wall Matter**

Count Two – respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform) by failing to oppose demurrers and motions to strike, and failing to amend a complaint.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate), by failing to respond to four emails and five telephonic status inquiries reasonably made by respondent's client.

Count Four – respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2) (improper withdrawal) by constructively terminating his employment by failing to take any action on his client's behalf for nearly three months prior to executing a substitution of counsel.

Count Five – respondent willfully violated Rules of Professional Conduct, rule 3-310(B)(3) (conflict) by failing to advise his client, in writing, that respondent had a business relationship with another entity that respondent knew or reasonably should have known would be negatively affected by the resolution of his client's matter.

## **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 properly served him with the NDC and made various efforts to locate respondent, including calling him and leaving a message at his membership records telephone number, checking with the Office of Probation for alternative contact information for respondent, and sending an email to respondent at an email address provided by the Office of Probation;

(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.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Loyd Lee Brown, Jr., 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 Loyd Lee Brown, Jr., State Bar number 195240, 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: October \_\_\_\_\_, 2014

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LUCY ARMENDARIZ  
Judge of the State Bar Court