

# PUBLIC MATTER

## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

**FILED**  
**OCT 07 2013** *P.B.*  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of	)	Case No.: 12-O-12179-RAH
	)	
ALBERT MARK STERWERF,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
Member No. 175454,	)	ENROLLMENT
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Albert Mark Sterwerf (respondent) was charged with (1) failing to maintain client funds in a trust account; (2) moral turpitude; and failing to update his membership address. 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), 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>

<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 December 12, 1994, and has been a member since then.

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

On August 27, 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.) The NDC was returned by the U.S. Postal Service stamped ““attempted, not known.””<sup>3</sup>

Thereafter, the State Bar (1) sent a letter by certified mail to respondent at four alternate addresses located through a records search and to respondent’s membership records addresses; (2) attempted to reach respondent by telephone at respondent’s membership records telephone number; (3) sent a letter and the NDC to the facsimile number contained in respondent’s membership record; (4) attempted to reach respondent at his membership records email address;<sup>4</sup> and (5) called directory assistance for the area which includes respondent’s membership records address and asked for all telephone listings for respondent. In addition, as respondent is currently on probation, Deputy Trial Counsel William Todd (DTC Todd) contacted the assigned probation deputy to ascertain whether respondent’s profile contained any other address.

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<sup>3</sup> Declaration of William Todd attached to the State Bar’s motion for entry of respondent’s default.

<sup>4</sup> 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).)

Nevertheless, Respondent failed to file a response to the NDC. On October 11, 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 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 October 29, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.<sup>5</sup> 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 June 13, 2013, the State Bar filed the petition for disbarment.<sup>6</sup> As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since October 29, 2012, the date his default was entered and the order entering default was served; (2) there is another disciplinary matter pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's conduct. Respondent did

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<sup>5</sup> The order was returned to the State Bar Court by the U.S. Postal Service stamped "ATTEMPTED, NOT KNOWN."

<sup>6</sup> The petition was served on respondent on June 13, 2013, by certified mail, return receipt requested, to his membership records address.

not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on July 19, 2013.

Respondent has a prior record of discipline.<sup>7</sup> Pursuant to a Supreme Court order filed on January 24, 2012, respondent was suspended for one year, the execution of which was stayed, and respondent was placed on probation for two years subject to conditions. Respondent stipulated in this prior disciplinary matter to intentionally, recklessly, or repeatedly failing to perform legal services with competence; failing to keep a client reasonably informed of significant developments in a matter in which he agreed to provide legal services; and violating or disobeying a court order.

#### **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, except as otherwise noted, 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-12179 (Trust Account & Failing to Update Address Matters)**

Count One – the court does not find respondent culpable of willfully violating rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) as the facts fail to support a violation of this rule of professional conduct.

Count Two – the court does not find respondent culpable of willfully violating Business and Professions Code section 6106 (moral turpitude) as the facts fail to support a violation of this code section.

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<sup>7</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.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (j), by failing to maintain his current office address and telephone number or, if no office is maintained, the address to be used for State Bar purposes on the State Bar’s membership records.

**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 (a) filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address; (b) sent a letter to respondent at four alternate addresses and to his membership records addresses; (c) telephoned respondent’s membership records telephone number; (d) sent a letter and the NDC to the facsimile number contained in respondent’s membership record; (e) attempted to reach respondent at his membership records email address; (f) called directory assistance for the area which includes respondent’s membership records address; and (g) contacted the probation deputy assigned to respondent;
- (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 Albert Mark Sterwerf 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.

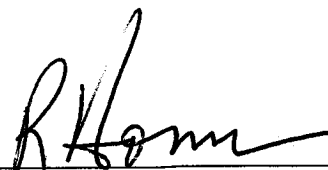
### Costs

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 Albert Mark Sterwerf, State Bar number 175454, 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 4, 2013

  
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RICHARD A. HONN  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 7, 2013, I deposited a true copy of the following document(s):

### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ALBERT M. STERWERF  
LAW OFC ALBERT M STERWERF  
1352 IRVINE BLVD  
TUSTIN, CA 92780**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**William S. Todd, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 7, 2013.



Paul Barona  
Case Administrator  
State Bar Court