

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-14532-DFM
)	
JOHN A. HURLEY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 145907,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent John A. Hurley (Respondent) was charged with failing to comply with probation conditions imposed pursuant to a Supreme Court order. He failed to appear at the trial of this case 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney’s default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 90 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 all of 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 the practice of law in California on February 27, 1990, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On November 29, 2012, the State Bar filed and properly served the notice of disciplinary charges (NDC) in this matter on Respondent by certified mail, return receipt requested, to his membership records address. On January 8, 2013, Respondent filed his response to the NDC.

Respondent participated in a status conference held on January 8, 2013, at which time the court set trial to commence in this matter on March 28, 2013. On January 22, 2013, the court filed and served on Respondent at his membership records address by first-class mail, postage paid, an order setting forth that trial was set to start on March 28, 2013.³

On March 27, 2013, Respondent sent an unsigned letter attached to an e-mail to the undersigned's case administrator, with a copy to the assigned deputy trial counsel. Respondent's letter, which was directed to the undersigned, stated in relevant part: "[u]nder the circumstances I have not been able to prepare adequately to be ready to begin the trial scheduled to commence tomorrow. Consequently, please accept this letter as my consent to have you enter a default against me tomorrow. I am sending this notice to you today so as to avoid any additional costs or inconvenience to the Court, which would otherwise be necessitated by going forward with trial tomorrow."

³ Respondent filed a motion to continue the trial date on March 18, 2013. The court denied this motion by order filed on March 20, 2013. The order was properly served by first-class mail, postage prepaid, on Respondent at his membership records address and by email.

The State Bar appeared for trial on March 28, 2013, but Respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered Respondent's default by order filed March 28, 2013. The order notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status 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)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On July 19, 2013, the State Bar filed the petition for disbarment.⁴ As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent has not contacted the State Bar since March 28, 2013, the date his default was entered; (2) there are no other matters pending against Respondent which have not yet been filed; (3) Respondent has five records of prior discipline;⁵ and (4) the Client Security Fund (CSF) has not yet considered a pending claim against Respondent. However, the court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), that the Client Security Fund paid claims against Respondent in 2010. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on August 26, 2013.

Respondent has been disciplined on five prior occasions. Pursuant to an order of the State Bar Court filed on January 13, 1997, Respondent was privately reprovved with conditions for (1) failing to respond to reasonable client requests for information and failing to inform his

⁴ The disbarment petition was properly served on Respondent by certified mail, return receipt requested, to his membership records address.

⁵ Although the declaration of the assigned deputy trial counsel does not address this issue as required by rule 5.85, the petition itself sets forth that Respondent has five records of prior disciplines, and the records of these prior disciplines have been admitted into evidence.

client of significant developments in her matter; (2) failing to return the client's papers and property upon the client's demand; (3) failing to deliver to the client, as requested by the client, funds in his possession which his client was entitled to receive; (4) failing to cooperate with the State Bar's investigation; and (5) failing to report sanctions in the amount of \$1,000 to the State Bar. Respondent entered into a stipulation in this prior disciplinary matter.

Pursuant to an order of the State Bar Court filed on February 18, 1998, Respondent was privately reprovved with conditions for (1) failing to perform competently, (2) failing to return unearned fees, and (3) failing to release client papers. Respondent entered into a stipulation in this prior disciplinary matter.

Pursuant to an order of the State Bar Court filed on October 5, 2000, Respondent was publicly reprovved with conditions for (1) accepting representation of more than one client in a matter in which the interests of the clients potentially conflict, and without the informed written consent of each client, and (2) violating his duty to support the Constitution and the laws of the United States and of this state. Respondent entered into a stipulation in this matter.

Pursuant to a Supreme Court order filed on March 18, 2003, Respondent was suspended for two years and until he shows proof of his rehabilitation, fitness to practice and learning and ability in the general law, the execution of which was stayed, and Respondent was placed on probation for three years on the condition that he be actually suspended for 60 days. Respondent stipulated to a failure to comply with conditions of a public reprovval and disobeying or violating a court order.

Pursuant to a Supreme Court order filed on February 9, 2011, Respondent was suspended for four years, the execution of which was stayed, and he was placed on probation for four years subject to certain conditions, including a minimum three-year suspension and until he makes restitution and provides proof of his rehabilitation, fitness to practice and learning and ability in

the general law. Respondent stipulated in this matter to the (1) failure to (promptly) refund unearned fees in eleven matters; (2) failure to perform legal services with competence in ten matters; (3) failure to maintain action, proceedings or defenses only as appear legal or just in one matter; (4) improper withdrawal from employment or abandonment in seven matters; (5) failure to maintain complete records/render appropriate accounts in two matters; (6) failure upon termination to promptly release client papers/property upon request in five matters; (7) failure to keep client informed of significant development(s)/failure to promptly respond to reasonable client status inquiries in seven matters; (8) failure to cooperate/participate in State Bar disciplinary investigation in seven matters; (9) disobedience/violation of a court order in two matters; (10) failure to report imposition of sanctions to the State Bar in one matter; (11) failure to timely report malpractice judgment to the State Bar in one matter; and (12) unauthorized practice of law in one matter.

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).)

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Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by failing to: (1) timely submit specified quarterly reports; (2) provide proof of restitution payments; (3) comply with LAP conditions; and (4) provide proof of attendance and completion of State Bar Ethics School as ordered by the Supreme Court in its February 9, 2011, Order.

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) Respondent had actual notice of this proceeding and of the trial date prior to entry of the default and had sent a letter attached to an email to the Judge's case administrator, consenting to the entry of his default;
- (3) the default was properly entered under rule 5.81; 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 actual notice and opportunity, Respondent failed to appear for the trial of 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 John A. Hurley 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 recommends that Respondent be ordered to make restitution to Pontea Davoud in the amount of \$13,000, plus interest, if any, according to the settlement agreement entered into between Respondent and Pontea Davoud. 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 John A. Hurley, State Bar Number 145907, 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 _____, 2013

DONALD F. MILES
Judge of the State Bar Court