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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-14794-DFM
)	
RODERICK KEVIN BICKERSTAFF,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 153180,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Roderick Kevin Bickerstaff (Respondent) is charged with four counts of misconduct stemming from one client matter, including allegations that he misappropriated more than \$39,000 of client funds. Although Respondent was aware of this disciplinary action and filed a response to it, when the case was called for trial, he failed to appear, and his default was entered pursuant to rule 5.81 of the Rules of Procedure of the State Bar.¹ When Respondent did not move to set the default aside for 90 days after it was entered, the Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85.

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

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



disbarment.² The court concludes that all of the requirements of rule 5.85 have been satisfied in the instant case, and it 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 June 13, 1991,³ and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On December 18, 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 February 11, 2013, Respondent filed his response to the NDC.

By order filed February 13, 2013, trial was set to commence on April 16, 2013, at 9:30 a.m., with a two-day trial estimate. The order setting the trial date was served on Respondent at the address in his response to the NDC⁴ by first-class mail, postage paid, on February 13, 2013. (Rule 5.81(A).)

The State Bar appeared for trial on April 16, 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 April 16, 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, served on Respondent at his membership records address, was returned to the State Bar Court by the U.S. Postal Service as "UNCLAIMED" and "UNABLE TO FORWARD." The order also placed

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).)

³ The notice of disciplinary charges alleges an incorrect date as Respondent's date of admission. The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), that Respondent was admitted to practice law in California on June 13, 1991.

⁴ This is Respondent's membership records address.

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 23, 2013, the State Bar served the petition for disbarment.⁵ 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 16, 2013, the date his default was entered; (2) there are two other matters pending against Respondent which have not yet been filed; (3) Respondent has no record of prior discipline;⁶ and (4) the Client Security Fund (CSF) has not yet considered a pending claim against Respondent. 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 two prior occasions. In the first matter, pursuant to an order of the State Bar Court filed on October 15, 2001, Respondent was privately reproved with conditions for failing to respond promptly to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services. Respondent entered into a stipulation in that prior disciplinary matter. In the second matter, pursuant to an order of the State Bar Court filed on March 17, 2005, Respondent was privately reproved with conditions for

⁵ The disbarment petition was filed and served on July 19, 2013, but properly re-served on Respondent on July 23, 2013, by certified mail, return receipt requested, to his membership records address.

⁶ Although the declaration of the assigned deputy trial counsel does not address this issue as required by rule 5.85, the petition itself inaccurately sets forth that Respondent has no record of prior discipline. However, the court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), that Respondent has two prior records of discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

failing to refund unearned fees. Respondent also entered into a stipulation in that disciplinary 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).)

Case Number 12-O-14794 (Crisp Matter)

Count One - Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account), by failing to maintain at least \$39,394.04 of the settlement funds received by him for the benefit of his client and deposited in his client trust account.

Count Five⁷ - Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (promptly pay/deliver client funds), by failing to pay promptly, as requested by the client, any of the funds in his possession which the client was entitled to receive.

Count Six - Respondent willfully violated section 6106 of the Business and Professions Code (commission of act of moral turpitude, dishonesty or corruption), by failing to pay any of the settlement to the client and misappropriating at least \$39,394.04 of the client's settlement funds.

Count Seven - Respondent willfully violated section 6068, subdivision (i) of the Business and Professions Code (failing to cooperate/participate in a disciplinary investigation), by failing to respond to the State Bar investigator's July 19, 2012, letter regarding one client matter, despite

⁷ The NDC does not include "Count 2," "Count 3," and "Count 4." The error appears to be typographical.

being granted an extension to respond to August 17, 2012, or providing any information regarding the investigation 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) Respondent had actual notice of this proceeding and adequate notice of the trial date prior to entry of the 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 adequate 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 Roderick Kevin Bickerstaff 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 Leah Crisp in the amount of \$39,394.04, plus 10 percent interest per year from May 31, 2011 (or to the Client Security Fund to the extent of any payment from the fund to Crisp, plus interest and costs, in

accordance with Business and Professions Code section 6140.5). 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 **Roderick Kevin Bickerstaff**, State Bar Number 153180, 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: November 18, 2013



DONALD F. MILES
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 November 19, 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:

**RODERICK K. BICKERSTAFF
6820 LA TIJERA BLVD #202
LOS ANGELES, CA 90045**

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

ADRIANA BURGER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 19, 2013.



Tammy Cleaver
Case Administrator
State Bar Court