

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 12-O-15054-PEM (12-O-15612);
)	13-O-11200 (13-O-11586;
STEVEN CHARLES LYNES,)	13-O-11998) (Cons.)
)	
Member No. 174020,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
_____)	

Respondent Steven Charles Lynes (respondent) was charged with 24 counts of violations of the Rules of Professional Conduct and the Business and Professions Code¹ involving five different clients. 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.²

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

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent’s default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

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 7, 1994, and has been a member since then.

Procedural Requirements Have Been Satisfied

Case Nos. 12-O-15054 (12-O-15612)

On December 7, 2012, the State Bar filed and properly served on respondent a notice of disciplinary charges (first NDC) in case Nos. 12-O-15054 (12-O-15612). The first NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed his response to the first NDC in pro per.

On August 26, 2013, the parties filed a Stipulation Re Facts and Conclusions of Law (stipulation), wherein respondent stipulated to culpability on all eight counts of misconduct involving two client matters. At the time, attorney Scott J. Drexel represented respondent in the stipulation. On the same day, respondent was accepted into the Alternative Discipline Program (ADP). But on November 12, 2013, he was released from the ADP; and this matter was assigned as a standard disciplinary proceeding. The stipulation remained binding on the parties.

³ 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).)

Case Nos. 13-O-11200 (13-O-11586; 13-O-11998)

On October 29, 2013, the State Bar filed and properly served on respondent a second notice of disciplinary charges (second NDC)⁴ in case Nos. 13-O-11200 (13-O-11586; 13-O-11998). The second NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed his response to the second NDC in pro per.

On November 12, 2013, this matter was consolidated with case Nos. 12-O-15054 (12-O-15612).

Both respondent and his counsel Drexel appeared at the December 2, 2013 status conference. By order filed December 2, 2013, the trial was set to start on March 18, 2014, and attorney Drexel was relieved as counsel of record. The order setting the trial date was served on respondent's membership records address and on attorney Drexel by first-class mail, postage paid. (Rule 5.81(A).)

On March 18, 2014, the State Bar appeared for trial 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 18, 2014. 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), and he has remained inactive 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 11, 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 had two contacts with respondent since his

⁴ On March 18, 2014, the State Bar filed amendments to the NDC.

default was entered. Respondent called the State Bar on March 18, 2014, after default had been entered for his failure to appear at trial and requested the status of the trial. The State Bar informed him that default had been entered. On July 2, 2014, respondent emailed the State Bar, requesting a copy of the July 2, 2014 court order re default procedures. The State Bar forwarded the order to respondent on July 9, 2014; (2) there is one other investigation or disciplinary matter pending against respondent; (3) respondent has two records of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct. 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 6, 2014.

Respondent has been disciplined on two prior occasions.⁵ Pursuant to a Supreme Court order filed on December 10, 2012, respondent was suspended for two years, the execution of which was stayed, and placed on probation for two years subject to conditions including that he be suspended from the practice of law for the first 90 days of probation. The misconduct involved three client matters. Respondent failed to return client files, failed to refund unearned fees, failed to communicate, failed to cooperate, and failed to provide an accounting.⁶

Pursuant to a Supreme Court order filed on January 9, 2013, respondent was suspended for two years, the execution of which was stayed, and placed on probation for two years. The misconduct involved one client matter. Respondent failed to perform, failed to communicate,

⁵ Evidence of respondent's prior records of discipline was not submitted. (Rule 5.106.) Thus, the court takes judicial notice of the Supreme Court order Nos. S205810 filed December 10, 2012, and S206240 filed January 9, 2013, and the relevant prior records. The new rule 5.85(B) applies to default matters entered on or after July 1, 2014, which requires that all documents referenced in a petition, including prior records of discipline, must be filed with the petition and supported by declaration.

⁶ The State Bar's petition for disbarment was incorrect in that respondent was not found culpable of rule 3-110(A) or rule 4-100(B)(4) in his first prior record of discipline (p. 4 of the petition).

failed to cooperate with the State Bar, and failed to refund unearned fees. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

The Admitted Factual Allegations Warrant the Imposition of Discipline

The stipulated facts and conclusions of law in case Nos. 12-O-15054 (12-O-15612) are binding, as set forth below.

Upon entry of a respondent's default, the factual allegations in the second 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 second NDC here support the conclusion that respondent is culpable of violating a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-O-15054 (Youmans Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to file a bankruptcy petition on behalf of Lynda Youmans.

Count Two – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund any part of the \$1,300 in unearned fees.

Count Three – respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to respond to his client's status inquiries.

Count Four – respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a written response as requested by the State Bar investigator.

Case Number 12-O-15612 (Pringle Matter)

Case Five – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform legal services with competence including, but not limited to, failing to file an answer to a complaint, failing to appear in court, and failing to file an opening brief on appeal and allowing the appeal to be dismissed.

Count Six – respondent willfully violated section 6068, subdivision (m), by failing to respond to his client Phyllis Pringle's status inquiries.

Count Seven – respondent willfully violated section 6068, subdivision (m), by failing to keep his client informed of significant developments in the real property dispute, such as opposing party's intent to block access to Pringle's driveway and begin construction.

Count Eight – respondent willfully violated section 6068, subdivision (i), by failing to provide a written response as requested by the State Bar investigator.

Case Number 13-O-11200 (Williams 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 deposit the \$2,500 received for the benefit of his client, Yolanda Williams, in a client trust account.

Count Two – respondent willfully violated section 6106 (moral turpitude) by misappropriating \$2,500 of client funds.

Count Three – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to file a bankruptcy petition and obtaining a loan modification on the client's behalf.

Count Four – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund any part of the \$2,000 in unearned fees upon his termination of employment in August 2012.

Count Five – respondent willfully violated section 6103 by failing to obey a court order requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear by failing to comply with the February 14, 2012 U.S. Bankruptcy Court Order.

Count Six – respondent willfully violated section 6106.3, by violating Civil Code section 2944.6 or 2944.7. Section 6106.3, subdivision (a), provides that an attorney’s conduct in violation of Civil Code section 2944.6 or 2944.7 constitutes cause for the imposition of discipline.

By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving \$2,000 from the client prior to fully performing each and every service he had been contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, subdivision (a)(1), respondent willfully violated section 6106.3, subdivision (a).

Count Seven – respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response as requested by the State Bar investigator.

Case Number 13-O-11586 (Duncan Matter)

Count Eight – respondent willfully violated section 6106 (misrepresentation) by stating to his employer, Duncan Law/Duncan Tax, between January 9 and January 16, 2013, that he was an active member of the State Bar and able to practice law in California when he knew or was grossly not knowing that the statements were false. At the time he was actually suspended from the practice of law.

Count Nine – respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response as requested by the State Bar investigator.

Case Number 13-O-11998 (Prater Matter)

Count 10 – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform services competently, including, but not limited to, representing them in a real estate matter and a bankruptcy matter.

Count 11 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund any part of the \$2,600 in unearned fees upon his termination of employment in January 2013.

Count 12 – respondent willfully violated section 6106 (misrepresentation) by making misrepresentations on his rule 9.20 compliance declaration filed February 18, 2013.

Count 13 – respondent willfully violated section 6103 by failing to comply with the November 28, 2011 U.S. Bankruptcy Court Order.

Count 14 – respondent willfully violated section 6106 (misrepresentation) by making misrepresentations to the U.S. Bankruptcy Court on December 12, 2011.

Count 15 – respondent willfully violated section 6106 (misrepresentation) by making misrepresentations to the U.S. Bankruptcy Court on March 9, 2012.

Count 16 – respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response as requested by the State Bar investigator.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment must be recommended. In particular:

- (1) the first and second NDCs were 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;
- (3) the default was properly entered under rule 5.81; and

(4) the stipulation and the factual allegations in the second 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 must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Steven Charles Lynes 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 the following payees:

- (1) Lynda Youmans in the amount of \$1,300 plus 10 percent interest per year from May 21, 2012;
- (2) Yolanda Williams in the amount of \$2,000 plus 10 percent interest per year from August 1, 2012; and
- (3) Donald and Lillian Prater in the amount of \$2,600 plus 10 percent interest per year from January 9, 2013.

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 Steven Charles Lynes, State Bar number 174020, 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 _____, 2014

PAT McELROY
Judge of the State Bar Court