

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-15713-DFM
)	
ROBERT CHARLES KASENOW, II,)	
)	DECISION AND ORDER OF
Member No. 205120,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent Robert Charles Kasenow II (Respondent) was charged with four counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ 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 this source.

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 California on December 10, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 20, 2013, the State Bar filed a notice of disciplinary charges (NDC). The State Bar served it on Respondent by certified mail, return receipt requested, at his membership records address and at other alternate addresses on several occasions, including February 26, March 25, and May 23, 2013. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC sent to his official address was returned by the U.S. Postal Service as undeliverable. A copy of the NDC, sent to an alternative address (28027 Cero Drive, Santa Clarita, California 91350), was not returned by the U.S. Postal Service. Respondent, however, did not file a response to the NDC.

The State Bar also attempted to contact Respondent at his official membership records telephone number and at his parents' telephone number. The State Bar left message at his official membership records telephone number but had no response. When the State Bar spoke with his parents, they indicated that they had not had any contact with Respondent in years and

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).)

were unaware of his whereabouts. The State Bar also attempted to reach Respondent at his membership records email address but to no avail.

By order filed March 28, 2013, trial was set to start on June 25, 2013. The order setting the trial date was served on Respondent. (Rule 5.81(A).) The State Bar appeared for trial. 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 June 25, 2013. The order entering the default was served on Respondent at his membership records address and at the Santa Clarita address by certified mail, return receipt requested. 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 November 21, 2013, the State Bar properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) Respondent does not have other disciplinary charges pending; (3) Respondent has no record 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 February 3, 2014.

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 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-15713 (Cramer 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 writ of habeas corpus or perform services of any value on behalf of his client (Cramer).

Count Two – 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 meet with his client regarding the writ or inform him as to the status of the writ.

Count Three – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return the \$3,500 in unearned advanced attorney fees paid by his client.

Count Four – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to inform Cramer that he was withdrawing from employment and failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client from the termination of his employment.

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, as the NDC was served on Respondent at his membership records address and other alternative addresses and the State Bar attempted to reach Respondent by telephone at two telephone numbers and by email. In addition, Respondent had adequate notice of the trial date prior to the entry of his default.

(3) The default was properly entered under rule 5.81.

(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 his disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent **Robert Charles Kasenow, II**, State Bar number 205120, 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 Chris Cramer in the amount of \$3,500 plus 10 percent interest per year from February 17, 2011.

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 **Robert Charles Kasenow, II**, State Bar number 205120, 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:

DONALD F. MILES
Judge of the State Bar Court