

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>12-O-16002-DFM</b>
	)	
<b>FREDERICK TAYTON DENCER,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 98956,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Frederick Tayton Dencer (Respondent) was charged with two counts of misconduct. 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>

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<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 1, 1981, and has been a member since then.

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

On August 27, 2013, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, to 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 not subsequently returned by the United States Postal Service.

Thereafter, the State Bar learned that Respondent was being held in custody in Montgomery County, Alabama. The State Bar subsequently (1) sent a courtesy copy of the NDC to Respondent at the Mac Sim Butler Detention Facility in Montgomery, Alabama; (2) received a telephone call from an individual who identified himself as Respondent's son, Luke;<sup>3</sup> (3) emailed a copy of the NDC to Luke; (4) sent a follow-up email to Luke to see if Respondent had hired an attorney; (5) received a telephone call from Luke advising that he was still seeking counsel for Respondent; and (6) calling Luke and informing him that no one had appeared on Respondent's behalf at the initial status conference.

Respondent failed to file a response to the NDC. On October 24, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return

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<sup>3</sup> Luke advised the State Bar that Respondent received the courtesy copy of the NDC sent to the Mac Sim Butler Detention Facility.

receipt requested, at his membership records address.<sup>4</sup> 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 November 14, 2013. The order entering the default was properly 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. He has remained inactively enrolled since that time.

Respondent also 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 July 14, 2014, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address.<sup>6</sup> As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent has not contacted the State Bar after his default was entered on November 14, 2013; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payment resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on September 10, 2014.

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<sup>4</sup> A courtesy copy was also sent to Respondent at the Mac Sim Butler Detention Facility.

<sup>5</sup> A copy of this order was also served on Respondent at the Mac Sim Butler Detention Facility.

<sup>6</sup> A courtesy copy was again sent to Respondent at the Mac Sim Butler Detention Facility.

## **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-16002**

Count One - Respondent willfully violated Business and Professions Code section 6106, (moral turpitude – NSF checks) by issuing five checks totaling \$65,000 when he knew or should have known there were insufficient funds to pay the checks.

Count Two - Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a written response to the allegations in a disciplinary investigation or otherwise cooperate in the investigation of this matter after being contacted by the State Bar.

### **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 courtesy copy of the NDC to Respondent at the Mac Sim Butler Detention Facility in Montgomery, Alabama; (c) confirmed with Respondent's son that Respondent had received a copy of the NDC; (d) emailed a copy of the NDC to Respondent's son; (e) sent a follow-up email to

Respondent's son to see if Respondent had hired an attorney; and (f) called Respondent's son and informed him that no one had appeared on Respondent's behalf at the initial status conference;

(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 Frederick Tayton Dencer 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 Frederick Tayton Dencer, State Bar number 98956, 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 \_\_\_\_\_, 2014

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DONALD F. MILES  
Judge of the State Bar Court