

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>12-O-16479-LMA</b>
	)	
<b>SEAN PATRICK GJERDE,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 217467,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Sean Patrick Gjerde (respondent) was charged with willfully violating Business and Professions Code section 6103 by willfully disobeying or violating a 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.<sup>1</sup>

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.<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 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 December 11, 2001, and has been a member of the State Bar since then.

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

On October 17, 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, and by regular mail, to his membership records address. On November 30, 2012, respondent filed his response to the NDC.

By order filed February 25, 2013, trial was set to commence on May 7, 2013, at 9:30 a.m., for two days. The order setting the trial date was served on respondent at the address in his response to the NDC<sup>3</sup> by first-class mail, postage paid, on February 25, 2013. (Rule 5.81(A).)

The State Bar appeared for trial on May 7, 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 May 7, 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 properly 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 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.

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<sup>3</sup> This is respondent's membership records address.

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 August 13, 2013, the State Bar properly filed and served the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since May 7, 2013, the date his default was entered and the order entering his default was served; (2) there are other investigations and disciplinary matters pending against respondent; (3) respondent has one record of prior discipline;<sup>4</sup> and (4) the Client Security Fund (CSF) has not yet made any payments, but there are 36 applications pending 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 September 10, 2013.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on November 16, 2011, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions, including that he be suspended for the first 60 days of probation. Respondent stipulated in the prior disciplinary matter to culpability and discipline for (1) committing acts involving moral turpitude and dishonesty; (2) failing to promptly pay to the client, as requested by the client, funds in his possession which his client was entitled to receive; (3) failing to refund promptly an unearned advanced fee upon termination of his employment; and (4) failing to obey a court order in the course of his profession which he ought in good faith to have obeyed.

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<sup>4</sup> Although the declaration of the assigned deputy trial counsel does not address this issue as required by rule 5.85, the disbarment petition itself sets forth that respondent has one prior record of discipline. The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), that respondent has one prior record of discipline, admits the relevant records into evidence, and directs the Clerk to include copies in the record of this case.

### **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-16479 (Failure to obey a court order)**

Respondent willfully violated Business and Professions Code section 6103 [duty to obey court order], by failing to file with the Clerk of the State Bar Court a declaration of compliance with the specified provisions of the Hearing Department's April 18, 2012, decision and order, and file copies of all documents sent to clients pursuant to the 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 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 Sean Patrick Gjerde 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 Sean Patrick Gjerde, State Bar Number 217467, 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

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LUCY ARMENDARIZ  
Judge of the State Bar Court