

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-16921-DFM
)	
BRYAN CHARLES BECKER,)	
)	DECISION AND ORDER OF
Member No. 241956,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent Bryan Charles Becker (Respondent) was charged with four counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ 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.²

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

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.

(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.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 March 29, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 18, 2012, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at 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 sent to his official address was returned by the U.S. Postal Service as undeliverable. Someone had written on the envelope "Return to Sender – moved."

The State Bar also attempted to contact Respondent at his official membership records telephone number and at another telephone number provided in the membership records. A recording answered in each of the two numbers acknowledging by name that the number was that of Respondent. The State Bar left messages at both of those numbers. The State Bar also attempted to reach Respondent at an email address contained in Respondent's case file. An automated response was returned, advising that Respondent would be out of the office the week of December 10 due to a family health emergency.

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).)

On January 16, 2013, a State Bar investigator traveled to Respondent's home and spoke with him. Respondent claimed that he did not know of the proceedings against him. The State Bar investigator advised Respondent to contact the Office of the Chief Trial Counsel to discuss the actions pending against him. On the same day, Deputy Trial Counsel R. Kevin Bucher sent Respondent a copy of the NDC at the home address provided by the investigator.

To date, Respondent has not yet contacted the State Bar. He has also failed to file a response to the NDC. On January 25, 2013, the State Bar filed and properly served a motion for entry of Respondent's default. 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 February 21, 2013. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. 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, 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)(1) [attorney has 180 days to file motion to set aside default].)

On September 4, 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 has other disciplinary investigations 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 did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on October 11, 2013.

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-16921 (Greco 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 timely substitute in as counsel on behalf of his client (Greco), failing to make necessary court appearances, and failing to file any court documents on Greco's behalf.

Count Two – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to take any action on behalf of Greco to avoid her answer being stricken and default and judgment being entered and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client.

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 any portion of the \$2,529 unearned attorney fees to his client.

Count Four – 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 return the client's phone calls and emails.

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 NDC was served on Respondent at his membership records address and the State Bar attempted to reach Respondent by telephone at two telephone numbers and by email;
- (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. The court recommends his disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent **Bryan Charles Becker**, State Bar number 241956, 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 Carla Greco in the amount of \$2,529 plus 10 percent interest per year from August 18, 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).

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 **Bryan Charles Becker**, State Bar number 241956, 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: January _____, 2014

DONALD F. MILES
Judge of the State Bar Court