

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: <b>13-N-12034-LMA</b>
	)	13-O-10230 (Cons.)
<b>JAMES ALLAN NATIONS,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 229219,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

In this matter, respondent James Allan Nations was charged with seven counts of misconduct stemming from two consolidated matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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>

---

<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 12, 2003, and has been a member since then.

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

On June 10, 2013, the State Bar properly filed and served an NDC on respondent (case no. 13-N-12034) 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 was subsequently returned to the State Bar by the U.S. Postal Service as undeliverable.

On July 2, 2013, the State Bar properly filed and served a second NDC on respondent (case no. 13-O-10230) 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 was subsequently returned to the State Bar by the U.S. Postal Service as undeliverable.<sup>3</sup>

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included calling him at his membership records telephone number, calling him at a private telephone number contained within his membership records, sending an email to him at his official State Bar email address, sending another email to him at an alternative email address,

---

<sup>3</sup> Case numbers 13-N-12034 and 13-O-10230 were consolidated on July 15, 2013.

checking for alternative contact information with his State Bar probation deputy, and sending copies of both NDCs by first class mail to his official State Bar membership records address.

Respondent failed to file a response to either NDC. On August 1, 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 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 August 19, 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 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 February 25, 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 has had no contact with respondent since the default was entered; (2) respondent has two other disciplinary matters pending; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments 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 March 25, 2014.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on December 31, 2012, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for one year, including a three-month

minimum period of actual suspension and until he provides proof to the State Bar Court of restitution. In this matter, respondent stipulated to four counts of misconduct in a single client matter, including failing to perform legal services with competence, failing to refund unearned fees, failing to account, and failing to cooperate in a State Bar investigation.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDCs 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 NDCs 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 13-N-12034 – The Rule 9.20 Matter**

Count One – respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned, or suspended attorneys), by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

#### **Case Number 13-O-10230 – The Fisher Matter**

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to perform the legal services for which he was retained.

Count Two – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Three – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over his client’s papers and property upon termination of employment.

Count Four – respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (accepting fees from non-client) by accepting compensation for representing a client from one other than the client without obtaining the client’s informed written consent.

Count Five – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide his client with an accounting.

**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 NDCs were 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 properly served him with the NDCs and made various efforts to locate respondent, including: calling him at his membership records telephone number, calling him at a private telephone number contained within his membership records, sending an email to him at his official State Bar email address, sending another email to him at an alternative email address, checking for alternative contact information with his State Bar probation deputy, and sending copies of both NDCs by first class mail to his official State Bar membership records address;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDCs 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.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent James Allan Nations 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 David Underwood in the amount of \$2,500 plus 10 percent interest per year from October 1, 2012. 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 James Allan Nations, State Bar number 229219, 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: April \_\_\_\_\_, 2014

---

LUCY ARMENDARIZ  
Judge of the State Bar Court