

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| In the Matter of                  | ) | Case No.: 13-O-11123-LMA     |
|                                   | ) |                              |
| <b>JAMES LYNN BAUCHERT,</b>       | ) | <b>DECISION AND ORDER OF</b> |
|                                   | ) | <b>INVOLUNTARY INACTIVE</b>  |
| <b>Member No. 170174,</b>         | ) | <b>ENROLLMENT</b>            |
|                                   | ) |                              |
| <u>A Member of the State Bar.</u> | ) |                              |

In this matter, respondent James Lynn Bauchert (respondent) was charged with four counts of misconduct stemming from a single client matter. 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>

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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 June 2, 1994, and has been a member since then.

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

On November 8, 2013, the State Bar properly filed and served an 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 was not returned to the State Bar as undeliverable or for any other reason.

In addition, respondent had actual notice of this proceeding. In December 2013 and January 2014, the State Bar made numerous attempts to contact respondent. These attempts included calling and leaving a message for respondent at his official membership records telephone number, mailing a letter to him at his official membership records address, and emailing him at his official membership records email address.

On February 5, 2014, the State Bar received an email from respondent requesting additional time to file his response. On February 6, 2014, the State Bar sent an email response to respondent, advising that the State Bar would file a motion for default if his response was not filed by February 14, 2014.

Respondent failed to file a response to the NDC. On March 18, 2014, 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 April 2, 2014. 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 October 9, 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 no other disciplinary matters pending; (3) respondent has two prior records 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 November 4, 2014.

Respondent has been disciplined on two prior occasions. Pursuant to a Supreme Court order filed on May 8, 2013, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for one year. In this matter, respondent stipulated to six counts of misconduct stemming from two client matters, including failing to perform legal services with competence (two counts), failing to promptly refund unearned fees (two counts), failing to promptly release a client's file, and failing to cooperate with a disciplinary investigation.

Pursuant to a Supreme Court order filed on September 4, 2014, respondent's probation was revoked and he was suspended for a minimum of one year and until payment of restitution. In this matter, respondent was found culpable of failing to comply with the terms of his disciplinary probation. Respondent did not participate in the proceedings.

### **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, except as otherwise noted, 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-O-11123 – The Hernandez Matter**

Count One – the court does not find respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as there is no clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.<sup>3</sup>

Count Two – respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2) (failure to refund unearned fees) by performing no legal services of value and failing to promptly refund his client's unearned advanced fees.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries), by failing to promptly respond to his client's telephone calls and emails seeking a status inquiry.

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<sup>3</sup> The State Bar merely alleged that respondent "performed no legal services of value." This allegation is vague and arbitrary and does not establish, by clear and convincing evidence, that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count Four – 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 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) respondent had actual notice of the proceedings prior to the entry of his default, as he was properly served with a copy of the NDC and he emailed the State Bar requesting additional time to file a response;

(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 actual 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 Lynn Bauchert 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 Anita Hernandez in the amount of \$1,500 plus 10 percent interest per year from January 30, 2013. 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 Lynn Bauchert, State Bar number 170174, 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 \_\_\_\_\_, 2014

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LUCY ARMENDARIZ  
Judge of the State Bar Court