

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-12380-LMA
)	
TIMOTHY DUNCAN NAEGELE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 39297,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

In this matter, respondent Timothy Duncan Naegele was charged with three 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.¹

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 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² 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(F)(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 23, 1966, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 31, 2014, 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 returned to the State Bar by the U.S. Postal Service as undeliverable.

In addition, reasonable diligence was also used to notify respondent of this proceeding. Prior to the filing of the NDC, the State Bar had communicated extensively with respondent by email, at his membership records email address. During this time period, the State Bar advised respondent on multiple occasions to update his membership records address. After filing the NDC, the State Bar made additional attempts to contact respondent without success. These efforts included calling him at his membership records telephone number and emailing a letter to respondent at his membership records email address.

Respondent failed to file a response to the NDC. On September 17, 2014, the State Bar filed a motion for entry of respondent's default.³ 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

³ This motion was properly served on September 15, 2014.

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 October 1, 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 90 days to file motion to set aside default].) Instead, on December 2, 2014, respondent filed a Petition for Review directly with the California Supreme Court.⁴ On December 23, 2014, the State Bar filed an answer to respondent's petition stating that respondent had not filed a required request for relief in the State Bar Court and was attempting to circumvent the established regulatory process. On January 5, 2015, the State Bar emailed another letter to respondent at his membership records email address, urging him to file a motion to set aside his default in the Hearing Department. On January 14, 2015, the California Supreme Court issued an order denying respondent's petition.

On January 23, 2015, the State Bar emailed respondent a letter enclosing a copy of the returned envelope containing the State Bar's January 5, 2015 letter. Shortly thereafter respondent replied, via email, requesting a PDF of the contents of the January 5, 2015 letter. That same day, the State Bar emailed a letter to respondent producing a copy of the January 5, 2015 letter.

As respondent did not seek to have his default set aside or vacated the State Bar filed the petition for disbarment on March 9, 2015. As required by rule 5.85(A), the State Bar reported in

⁴ On the first page of his petition, respondent provided the same contact information that was listed in his official membership records.

the petition that: (1) after the entry of default, it has had contact with respondent in connection with the California Supreme Court petition matter; (2) respondent has no other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not properly file a response to the petition for disbarment or a motion to set aside or vacate the default. The case was submitted for decision on April 2, 2015.

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).)

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Count One – respondent willfully violated Rules of Professional Conduct, rule 4-200(A) (unconscionable fee) by charging and collecting \$735,481.25 in fees where: (1) the amount of the fee was not in proportion to the value of the services performed; (2) the clients were not sophisticated and relied on respondent's expertise to guide them in the failed litigation he pursued on their behalf; (3) the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly did not warrant the amount of the fees charged and collected by respondent; (4) the amount involved as potential damages did not support the amount of fees charged and collected by respondent; (5) the nature and length of the professional relationship with the clients did not warrant the amount of attorney fees charged and collected by respondent; (6) the time and labor involved did not warrant the amount of attorney fees respondent charged and collected from the clients; and (7) respondent did not properly inform

the clients of the prospects for recovery in the litigation or recoupment of the attorney fees he collected from the clients.

Count Two – the court does not find respondent culpable of willfully violating Rules of Professional Conduct, rule 3-700(D)(2) (failing to refund unearned fees), as alleged. The facts supporting Count Two, i.e., that respondent did not earn “any part” of the fees received from his clients, are inconsistent with the facts found in Count One which imply that respondent committed some degree of time and labor, but not to the extent warranting the amount of attorney fees charged and collected. While the State Bar alleged that respondent obtained “dismal results,” it has not been shown by clear and convincing evidence that he failed to perform legal services with competence. Based on the conflicting evidence, it has not been established that respondent did not earn any part of the fees received from his clients, as alleged in Count Two. Accordingly, Count Two is dismissed with prejudice.⁵

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (j) (failure to update membership address), by failing to notify the State Bar of the change in respondent’s address within 30 days, as required by Business and Professions Code section 6002.1.

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 properly served him with the NDC and made various efforts

⁵ The court lacks the information necessary to determine what portion of respondent’s attorney fees was earned.

to locate respondent, including calling him at his membership records telephone number and emailing a letter to respondent at his membership records email address;⁶

(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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Timothy Duncan Naegele 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.

⁶ As noted above, the State Bar had communicated extensively with respondent at this email address prior to the filing of the NDC.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Timothy Duncan Naegele, State Bar number 39297, 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 _____, 2015

LUCY ARMENDARIZ
Judge of the State Bar Court