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STATE BAR COURT  
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# PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 13-O-12693-YDR
	)	
<b>BRIAN LEE CORBER,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 89173,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent **Brian Lee Corber** (Respondent) was charged with four counts of misconduct. He failed to participate either in person or through counsel, and his default was entered. Thereafter, 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 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.<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(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**

### **Jurisdiction**

Respondent was admitted to practice law in this state on November 29, 1979, and has been a member since that date.

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

On December 5, 2013, 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.) On December 12, 2013, the State Bar received the return receipt card signed by Linda Frobos.

Thereafter, the State Bar took additional steps to notify Respondent of these proceedings. The Deputy Trial Counsel (DTC) assigned to this matter has: (1) called Respondent at his membership records address and left a voicemail message on January 21, 2014; (2) sent a letter and courtesy copy of the NDC on February 6, 2014, via U.S. first-class mail to Respondent's membership records address; and (3) sent an email to Respondent at his membership record email address, attaching the February 6, 2014 letter and the NDC.<sup>3</sup> Subsequently, on February 19, 2014, the DTC called Respondent at an alternate telephone number. An individual answered,

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<sup>3</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

“Four Seasons Health Care” and transferred the call to Respondent as requested. During the brief conversation, Respondent indicated he had not received the NDC and then ended the call.<sup>4</sup>

On January 27, 2015, the DTC called Respondent at his official membership records telephone number and left a voicemail message. On the same date, the DTC called Respondent at the Four Seasons Health Care alternate telephone number. The call was transferred to a nurse named “April.” After consulting with Respondent, April indicated Respondent did not want to speak to anyone at the State Bar.

On February 18, 2015, the DTC mailed two letters to Respondent – the first to Respondent’s membership records address and the other addressed to Respondent at a Four Seasons Health Care address. The mailing addresses were identical, and each letter included a copy of the NDC. Neither letter was returned. On the same date, the DTC also sent an email to Respondent at his membership records email address and attached a copy of the NDC.

Despite the State Bar’s efforts, Respondent failed to file a response to the NDC. On March 2, 2015, the State Bar filed and properly served a motion for entry of Respondent’s default on Respondent at his membership records address. The motion complied with all of 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 March 18, 2015. The order entering the

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<sup>4</sup> At this point, the State Bar filed and the court granted the State Bar’s motion for entry of default. Respondent’s default was entered on March 13, 2014. The matter was submitted for decision on October 15, 2014. After the matter was reassigned, the court vacated the default on December 16, 2014, because there was no evidence that the DTC made any efforts to send a copy of the NDC to Respondent at Four Seasons Health Care or take additional steps to contact him by telephone. The court concluded the DTC failed to show she “took those additional steps a reasonable person would have taken under the circumstances to provide notice.”

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. 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 90 days to file motion to set aside default].)

On June 26, 2015, 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) there are no other investigative matters pending against Respondent; (3) Respondent has no prior disciplinary record; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.

### **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(F)(1)(d).)

#### **Case No. 13-O-12693 (The Olvera 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>5</sup>

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to inquiries), by failing to promptly respond to his client’s telephonic and written status inquiries.

Count Three – Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2) (failure to refund unearned fees) by performing no legal services of value, thereby earning none of the \$2,025 in advanced fees paid by his client, and thereafter failing to promptly refund his client’s unearned advanced fees upon termination of his employment.

Count Four – Respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1) (failure to release client’s file) by failing to promptly return his client’s file as requested, upon the client’s termination of Respondent’s employment.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(F) 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;
- (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.

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<sup>5</sup> The State Bar merely alleged that Respondent violated the rule by “performing no legal services of value on behalf of the client.” This allegation is vague and arbitrary and does not establish clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

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.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that Respondent **Brian Lee Corber**, State Bar number 89173, 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 Robert Olvera in the amount of \$2,025 plus 10 percent interest per year from July 16, 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 **Brian Lee Corber**, State Bar number 89173, 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: October 8, 2015



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YVETTE D. ROLAND  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 9, 2015, I deposited a true copy of the following document(s):

### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

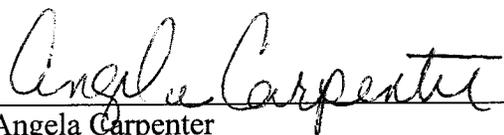
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BRIAN LEE CORBER  
CORBERLAW  
5335 LAUREL CANYON BLVD RM 11C  
VALLEY VILLAGE, CA 91607

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Sue K. Hong, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 9, 2015.

  
\_\_\_\_\_  
Angela Carpenter  
Case Administrator  
State Bar Court