

FEB 25 2016

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-14986-LMA
)	14-O-00699 (14-O-01941) Cons.
DANIEL ALAN BERNATH,)	
)	DECISION AND ORDER OF
Member No. 116636,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
_____)	

In this matter, respondent Daniel Alan Bernath was charged with nine counts of misconduct stemming from three consolidated matters. In the midst of a lengthy trial, Respondent failed to appear 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

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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 3, 1984, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 19, 2015, the State Bar filed and properly served a notice of disciplinary charges (NDC), in case nos. 14-O-00699 (14-O-01941), on Respondent at his membership records address by certified mail, return receipt requested. The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On April 15, 2015, Respondent filed his response to the NDC.

On June 8, 2015, the State Bar filed and properly served a second NDC, in case no. 13-O-14986, on Respondent at his membership records address by certified mail, return receipt requested. The second NDC again notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. On June 22, 2015, Respondent filed his response to the second NDC. The two NDCs were later consolidated.

Respondent participated in multiple status conferences in this matter and filed over 30 motions. Following the granting of a motion to continue, trial dates were set to commence on August 25, 2015. A copy of the order setting trial dates was properly served on Respondent at his membership records address. (Rule 5.81(A).)

Trial began, as scheduled, on August 25, 2015. Respondent appeared at trial on August 25-28, 2015, and September 23, 2015. On September 24, 2015, Respondent willfully failed to appear for the sixth day of trial. His non-appearance occurred without consent of the

court. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering Respondent's default that same day. The order notified Respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent subsequently filed multiple motions seeking, among other things, to have his default set aside. On October 29, 2015, the court issued an order denying Respondent's motions to set aside default, no good cause having been shown. Respondent then sought interlocutory review, which was subsequently dismissed by the Review Department.

On December 29, 2015, the State Bar filed the petition for disbarment. In its petition, the State Bar noted under penalty of perjury that on September 24, 2015, Respondent came early to the courtroom, collected his effects, and failed to appear for trial that day. The State Bar also declared that the court waited 45 minutes before entering Respondent's default.

As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent has filed multiple motions since the entry of his default; (2) Respondent has other disciplinary matters pending in investigation; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's misconduct. Respondent has not responded to the petition for disbarment. The case was submitted for decision on January 29, 2016.

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(F)(1)(d).)

Case Number 14-O-00699

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – unauthorized practice) by holding himself out as entitled to practice law when he was not an active member of the State Bar, in willful violation of Business and Professions Code sections 6125 and 6126.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by repeatedly holding himself out as entitled to practice law when he was not an active member of the State Bar.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by making a statement to the State Bar when Respondent knew or was grossly negligent in not knowing the statement was false.

Case Number 14-O-01941

Count Four – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct (unauthorized practice of law in another jurisdiction) by holding himself out as entitled to practice law in the State of Oregon, where doing so was a violation of the regulations of the profession in that jurisdiction.

Count Five – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by repeatedly holding himself out as entitled to practice law in the State of Oregon and actually practicing law when he was not an active member of that state.

Count Six – Respondent willfully violated Business and Professions Code section 6068, subdivision (o)(6) (failure to report the imposition of discipline by a professional or occupational

disciplinary agency or licensing board) by failing to report to the State Bar the order permanently disqualifying Respondent from practicing before the Social Security Administration.

Count Seven – Respondent willfully violated rule 1-400(D)(4) of the Rules of Professional Conduct (undesignated advertisement) by sending letters to prospective clients that did not bear the word “Advertisement,” or other words of similar import, on their face. (See also standard (5) of the presumptive standards to rule 1-400(E) of the Rules of Professional Conduct.)

Case Number 13-O-14986

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – unauthorized practice) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar, in willful violation of Business and Professions Code sections 6125 and 6126.³

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar.

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 NDCs were 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 filed a response to both NDCs, appeared for several hearings, filed numerous motions with the court, and appeared for part of the trial;

³ While much of the misconduct in case no. 14-O-00699 is related to the misconduct alleged in case no. 13-O-14986, the specific acts of unauthorized practice of law alleged in case no. 13-O-14986 are different and distinct from those identified in case no. 14-O-00699.

(3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the NDCs deemed admitted by the entry of 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 appear for the trial 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 Daniel Alan Bernath 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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Daniel Alan Bernath, State Bar number 116636, 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: February 25, 2016



LUCY ARMENDARIZ
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 San Francisco, on February 25, 2016, 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 San Francisco, California, addressed as follows:

DANIEL ALAN BERNATH
1319 KINGSWOOD CT
FORT MYERS, FL 33919

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

ERIN M. JOYCE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 25, 2016.



Bernadette Molina
Case Administrator
State Bar Court