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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-16755-DFM
)	
ROBERT MICHAEL DYKES,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 166052,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent **Robert Michael Dykes** (Respondent) was charged with five counts of misconduct stemming from a single client matter. He 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

Jurisdiction

Respondent was admitted to practice law in this state on December 1, 1993, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 30, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (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 May 2, 2014, the return receipt/signature card was received by the State Bar, signed by "Cheri Collier."

In addition, reasonable diligence was also used to notify Respondent of this proceeding. The State Bar made several attempts to contact Respondent without success. On June 16, 2014, the State Bar Deputy Trial Counsel (DTC) assigned to this matter called Respondent's membership records telephone number. A person, who identified herself as "Cheri," answered the phone and informed the DTC that Respondent's office was one of several offices in the building for which she answers phones. Cheri also confirmed that Respondent's office address is the same address as that listed as his official membership records address and that his email address is the same as his official membership records email address.

Since Respondent had not answered his phone, the assigned DTC left him a voicemail message and sent an email to him on June 16, 2014. That email message, which included a courtesy copy of the NDC, also notified Respondent that the DTC had left a voicemail message.

Thereafter, on June 26, 2014, the DTC sent an additional email to Respondent's private email address, which was listed in his membership records email history. Respondent did not respond.

Respondent failed to file a response to the NDC. On June 27, 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 July 24, 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 Respondent 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].) On January 26, 2015, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent has not contacted the State Bar since his default was entered; (2) there are investigations and disciplinary matters pending against Respondent; (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 respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on February 27, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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(2).) As set forth below in greater detail, the factual allegations in the NDC 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 13-O-16755 (The Pollick Matter)

Count One – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) when, between September 1 and October 30, 2011, he dishonestly or with gross negligence misappropriated from his client trust account and for his own purposes \$16,253.78, which funds he had received on behalf of his client, Edward Pollick.

Count Two – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust account) by failing to maintain in his trust account the balance of \$22,027.80, which funds had been received by Respondent and deposited into his client trust account, and which were to be held there on the client's behalf

Count Three – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate account of client funds) by failing upon termination of his employment to render an appropriate accounting of \$5,500 in advanced fees, which he had received from the client.

Count Four – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to turn over his client's papers and property upon termination of employment promptly after having been requested by his client to do.

Count Five – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's two letters, which he received and which

requested that he provide a response to the allegations of misconduct being investigated in case No. 13-O-16755.

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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Robert Michael Dykes**, State Bar number 166052, 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 further recommends that Respondent be ordered to make restitution to Edward Pollick in the amount of \$16,253.78 plus 10 percent interest per year from October 30, 2011, (or to the Client Security Fund to the extent of any payment from the fund to Edward Pollick, plus interest and costs, in accordance with Business and Professions Code section 6140.5). 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 **Robert Michael Dykes**, State Bar number 166052, 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: May 13, 2015


DONALD F. MILES
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 May 13, 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:

**ROBERT MICHAEL DYKES
2914 E KATELLA AVE STE 204
ORANGE, CA 92867**

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

ROSS VISLEMAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 13, 2015.



Tammy Cleaver
Case Administrator
State Bar Court