



PUBLIC MATTER

FILED

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AUG 14 2015

STATE BAR COURT OF CALIFORNIA

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 14-O-01387-LMA
)	
BRUCE NICKEL,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 177824,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Bruce Nickel (respondent) was charged with five counts of misconduct involving violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. 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.²

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.³

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

³ 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 November 7, 1995, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 6, 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, bearing a stamp with the words "RETURN TO SENDER NO SUCH STREET UNABLE TO FORWARD RETURN TO SENDER" was returned to the State Bar by the United States Postal Service.

In addition, reasonable diligence was also used to notify respondent of this proceeding. On November 10, 2014, the deputy trial counsel assigned to this matter (the DTC) requested of a State Bar investigator that he perform a Lexis/Nexis People Search regarding respondent and report back to her in writing. Upon receiving the written report from the investigator on November 12, 2014, the DTC reviewed the report results, which identified four addresses that might belong to respondent as of 2012.

On November 12, 2014, the DTC sent a courtesy copy of the NDC to respondent at his membership records address by regular first class mail. That mailing was not returned to the State Bar.

Additionally, the DTC sent a courtesy copy of the NDC to respondent at each of the four addresses identified in the Lexis/Nexis People Search report as an address possibly belonging to

respondent as of 2012. Those mailings were sent to respondent via regular first class mail. One of the mailings was returned to the State Bar bearing a stamp with the words, "RETURN TO SENDER ATTEMPTED – NOT KNOWN UNABLE TO FORWARD." None of the other three mailings, which were sent to the remaining addresses that had been identified in the Lexis/Nexis People Search report, were returned to the State Bar.

On November 21, 2014, the DTC attempted to reach respondent by telephone at respondent's membership records telephone number. However, that number was no longer in service and the telephone call did not go through.

Respondent failed to file a response to the NDC. On November 26, 2014 and December 1, 2014, respectively, the State Bar properly served and filed the 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 assigned deputy trial counsel, declaring the additional steps she had 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 December 12, 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].) On May 4, 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 had no contact with the State Bar since his default was entered; (2) respondent has another disciplinary matter 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 respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on June 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 and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case No. 14-O-01387 – The Yip Matter

Count One – respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(2) (improper withdrawal) by constructively terminating his employment without notice by failing: (1) to take any action on behalf of his client Meily Yip (Yip) in September 2013, after the United States Trustee filed a Notice of Default and Intent to Dismiss *In the Matter of Meily Yip*, United States Bankruptcy Court, Eastern District of California, case No. 10-60938-B-13-F (*In the Matter of Meiley Yip*) on September 12, 2013; (2) to notify his client, Yip, that he had shut down his law office in October 2013; and (3) thereafter, failed to inform the client that he was withdrawing from employment.

Count Two - respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with the November 8, 2013 order in *In the Matter of Meily Yip*, which required respondent to account for and disgorge all monies received from Yip or the Chapter 13 Trustee, and file proof of compliance no later than November 30,

2013, or, in the alternative, appear before the bankruptcy court on November 27, 2013, to show cause why he should not be removed as Yip's counsel and/or ordered to account for and disgorge the monies received.

Count Three - respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with the December 2, 2013 court order issued in *In the Matter of Meily Yip* that he account for and disgorge all fees paid to him by Yip and the Chapter 13 Trustee to Yip's new counsel and file proof of payment to the bankruptcy court within 10 days of the December 2, 2013 order.

Count Four –respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with the December 19, 2013 order in *In the Matter of Meily Yip* that he appear and show cause on January 30, 2014, as to why he should not: (1) be held in contempt of court for failing to properly represent Yip and failing to comply with the prior orders of the bankruptcy court in *In the Matter of Meily Yip* and (2) be barred from filing further bankruptcy petitions in the United States Bankruptcy Court, Eastern District of California.

Count Five – respondent willfully violated Business and Professions Code section 6068, subdivision (j) (failure to update membership address) by vacating his office at the address maintained on the official membership records of the State Bar and failing to update his State Bar official membership records address within 30 days thereafter.

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.

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 Bruce Nickel 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.

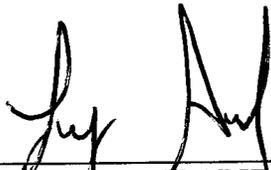
Costs

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 Bruce Nickel, State Bar number 177824, 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: August 14, 2015



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 August 14, 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 San Francisco, California, addressed as follows:

BRUCE NICKEL
4 METOKNOW
DEADHEAD CITY, OR 97268

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

LARA BAIRAMIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 14, 2015.



Mazie Yip
Case Administrator
State Bar Court