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AUG 18 2015

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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of)	Case No.: 14-O-02142-DFM
)	
MITCHELL BERENSON,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 183166,)	ENROLLMENT
)	
A Member of the State Bar.)	

Respondent **Mitchell Berenson** (Respondent) was charged with failing to comply with probation conditions attached to his disciplinary probation. 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 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

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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

Jurisdiction

Respondent was admitted to the practice of law in California on June 11, 1996, and has been a member of the State Bar of California at all times since that date.

Procedural Requirements Have Been Satisfied

On September 2, 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.) The mailing containing the NDC was returned to the State Bar by the U.S. Postal Service, stamped "UNDELIVERABLE COMMERCIAL MAIL. NO AUTHORIZATION TO RECEIVE MAIL FOR THIS CUSTOMER." A courtesy copy of the NDC, which also had been sent to Respondent by regular first class mail on September 2nd, was returned by the postal service with the same stamped message as was on the returned September 2, 2014 certified mailing.

On September 2, 2014, another courtesy copy of the NDC was sent by the assigned DTC via email to Respondent at his official membership records email address. Thereafter, on September 22, 2014, Respondent sent an email to the DTC, stating that he had received "notification regarding [the State Bar's] application for additional sanctions against [Respondent]." The DTC replied to Respondent's email within an hour of when it had been sent to him. With that reply email, the DTC provided an additional courtesy copy of the NDC and

also advised Respondent that, pursuant to rule 5.43, Respondent was required to file and serve a written response to the NDC within 20 days after service of the NDC.

On September 30, 2014, the DTC again emailed Respondent at his membership records email address, informing Respondent that the State Bar had not received a written response to the NDC. The DTC further advised Respondent of the State Bar's intent to file a motion for entry of default pursuant to rule 5.80.

Also on September 30, 2014, the assigned DTC attempted to reach Respondent at his membership records telephone number. However, Respondent has not maintained a membership records telephone number, and his most recently reported telephone number proved not to be in service.

Despite the efforts of the DTC, Respondent failed to file a response to the NDC. On October 2, 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 DTC assigned to this matter. (Rule 5.80.) The motion notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent still did not file a response to the motion; and, consequently, his default was entered on October 31, 2014, and vacated due to a clerical error and re-entered on December 10, 2014. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e). The December 10th order was served on Respondent at his membership records address by certified mail, return receipt requested.

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 April 10, 2015, the State Bar filed and properly served a petition for disbarment on Respondent by certified mail, return receipt

requested, at his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) there is one investigation matter pending regarding Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of 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 May 29, 2015.

Prior Record of Discipline

Respondent has one prior record of discipline. Pursuant to Supreme Court order S207156 (State Bar Court case No. 12-O-13322), filed on February 14, 2013, Respondent was suspended for one year; the execution of which was stayed, and placed on probation for one year subject to probation conditions. Respondent stipulated in that matter to willfully failing to perform legal services with competence, willfully failing to respond promptly to reasonable status inquiries of a client, willfully failing to refund any part of an unearned fee; and willfully failing to cooperate in a disciplinary investigation pending against him.

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(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 No. 14-O-02142 – The Probation Matter

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to comply with

specified probation conditions imposed by the Supreme Court in its February 14, 2013 order. Specifically, Respondent failed to: (1) contact the Office of Probation of the State Bar of California (Office of Probation) and schedule a meeting by April 15, 2013; (2) timely submit to the Office of Probation satisfactory proof of payment of restitution; and (3) submit to the Office of Probation proof of attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session by March 16, 2014.

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 **Mitchell Berenson**, State Bar number 183166, 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 **Mitchell Berenson**, State Bar number 183166, 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 18, 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 August 18, 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:

**MITCHELL BERENSON
13428 MAXELLA AVE # 880
MARINA DEL REY, CA 90272**

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

SHANE MORRISON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 18, 2015.



Tammy Cleaver
Case Administrator
State Bar Court