



**PUBLIC MATTER**

**FILED**

**AUG 3 1 2015**

**STATE BAR COURT OF CALIFORNIA** STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO  
**HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case Nos.: 14-O-03899-LMA (14-O-03900)
	)	
<b>JEFFREY ALAN AGNEW,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 105268,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Jeffrey Alan Agnew (respondent) was charged with two counts of misconduct. 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.<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 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>

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.

<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).)

## **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in this state on December 3, 1982, and has been a member since then.

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

On December 1, 2014, the State Bar properly filed and served a 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 NDC was not returned to the State Bar by the U.S. Postal Service. Nor was the return receipt for the December 1<sup>st</sup> certified mailing received by the State Bar.

As respondent was on disciplinary probation relating to another State Bar matter, the State Bar contacted respondent's assigned probation deputy to ascertain whether respondent's profile contained an address for respondent other than his membership records address. Respondent's probation deputy informed the State Bar that other than the information comprising respondent's official membership records, there was no additional information on file for him.

Thereafter, on January 5, 2015, the State Bar attempted to reach respondent by telephone at his membership records telephone number. The deputy trial counsel assigned to respondent's matter (the assigned DTC), who placed the call, left a voicemail message identifying herself as a deputy trial counsel with the State Bar of California and requesting a return call regarding "an urgent matter." Respondent did not return the phone call. Shortly after leaving a voicemail message at respondent's membership records telephone number, the assigned DTC also attempted to reach respondent at a private telephone number listed in his State Bar membership record profile. The outgoing message at that number stated, "You've called Jeff and Lins." The

assigned DTC left a voice mail in which she identified herself as a deputy trial counsel with the State Bar of California and requested that respondent return her call as soon as possible regarding an urgent open matter. Respondent did not return either of the DTC's January 5<sup>th</sup> phone calls.

On January 5, 2015, the assigned DTC placed a third telephone call to a number generated by LexisNexis as a number associated with respondent. The individual, who answered the telephone, stated that he was not respondent and not related to respondent.

On January 5, 2015, the assigned DTC also sent a letter with a copy of the NDC by regular first class mail to an address generated by LexisNexis as an address associated with respondent. The letter advised respondent that his response to the NDC was overdue and he needed to file his response immediately in order to avoid entry of his default. The letter was not returned by the U.S. Postal Service. On January 6, 2015, the DTC also sent an email with a copy of the NDC to respondent's membership records email address. The email advised respondent that his response to the NDC was overdue and he needed to file his response immediately in order to avoid entry of his default. Respondent did not respond to the email.

On January 13, 2015, the assigned DTC sent an email to respondent at his membership records email address, informing respondent that an Initial Status Conference had taken place on January 12<sup>th</sup> and that the court had ordered the State Bar to file a motion for entry of default due to respondent's failure to file an answer to the NDC. In her email, the assigned DTC directed respondent to file his answer immediately and to contact her as soon as possible.

Respondent failed to file a response to the NDC. On January 15, 2015, 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. (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 his default was entered on January 30, 2015. 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 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 12, 2015, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the assigned DTC reported in the petition that: (1) she received an email from respondent on February 19, 2015, asking whether the State Bar would be amenable to accepting respondent's resignation with disciplinary charges pending;<sup>3</sup> (2) there are no investigations or disciplinary charges pending against respondent; (3) respondent has prior records of discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's conduct.<sup>4</sup> 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 9, 2015.

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<sup>3</sup> On February 20, 2015, the assigned DTC replied to respondent's email explaining that the State Bar would not recommend acceptance of a resignation with charges pending and informed respondent that, because his default had already been entered, the State Bar would file a petition for his disbarment unless respondent served the State Bar with a motion to set aside his default within the period set forth in rule 5.83.

<sup>4</sup> Although the declaration submitted by the State Bar reported that the Client Security Fund has made no payments as a result of respondent's conduct, under Evidence Code section 452(h), the court takes judicial notice of State Bar records, which reflect that as of June 29, 2012, the Client Security Fund has paid claim(s) against respondent.

### **Prior Record of Discipline**

Respondent has three prior records of discipline.<sup>5</sup> Pursuant to an order of the Supreme Court, filed on December 30, 2010, in case No. S187453 (State Bar Court case Nos. 07-O-14909 et al.), respondent was suspended for two years, the execution of which was stayed, and placed on probation for three years subject to probation conditions, including that he be suspended from the practice of law for the first 90 days of probation. Respondent stipulated in that matter that he failed to competently perform legal services; failed to return unearned fees; commingled his personal funds in a trust account without withdrawing them when they were earned; and failed to report a judgment/sanctions to the State Bar within 30 days of his receipt of the court order imposing the sanctions.

Pursuant to an order of the State Bar Court, filed on May 4, 2011, following respondent's successful completion of the State Bar Court Alternative Discipline Program, the State Bar Court publicly reproved respondent. The discipline resulted from respondent's misconduct in State Bar Court consolidated case Nos. 07-O-10024 and 08-O-10270. Respondent stipulated to failing to competently perform legal services; failing to return unearned fees; committing acts of moral turpitude by making repeated misrepresentations to a client; and failing to cooperate with a State Bar investigation.

Pursuant to a Supreme Court order filed on October 29, 2013, in case No. S212642 (State Bar Court case Nos. 12-O-15788; 12-H-15644 (Cons.)), respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for three years, subject to probation conditions, including that he be suspended from the practice of law for a minimum

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<sup>5</sup> The court takes judicial notice of the pertinent State Bar Court records regarding respondent's prior discipline and admits into evidence the certified copies of respondent's three prior records of discipline that were attached to the State Bar's May 12, 2015 petition for disbarment after default.

of two years and that he remain suspended until he: (1) shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law and (2) pays specified restitution. In this matter, respondent stipulated to two counts of misconduct, involving his willful failure to comply with all conditions attached to his disciplinary probation, imposed by the Supreme Court in his first prior disciplinary matter, i.e., case No. S187453 (State Bar Court case Nos. 07-O-14909 et al.) and his willful failure to comply with numerous of the specified reproof conditions imposed by the Hearing Department of the State Bar Court in his second disciplinary matter i.e., State Bar Court case Nos. 07-O-10024; 08-O-10270 (Cons.).

### **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).)

#### **1. Case No. 14-O-03899 (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: (1) submit to the Office of Probation three quarterly reports that were due on April 10, July 10, and October 10, 2014, and (2) contact the Office of Probation by December 28, 2013, to schedule a meeting.

#### **2. Case No. 14-O-03900 (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 submit to the Office of Probation his final report that was due on January 29, 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 Jeffrey Alan Agnew 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.

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**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 Jeffrey Alan Agnew, State Bar number 105268, 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 31, 2015

  
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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 31, 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:

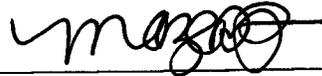
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JEFFREY ALAN AGNEW  
1485 H ST  
RAMONA, CA 92065

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

JAMIE J. KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 31, 2015.



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Mazie Yip  
Case Administrator  
State Bar Court