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STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 14-O-05168-DFM
)	
DAVID JAMES LOLA,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 231190,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

Respondent **David James Lola** (Respondent) was charged with violating Business and Professions Code¹ section 6068, subdivision (i) by failing to cooperate with a State Bar investigation. He then 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) has now 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

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.

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).)

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to practice law in this state on June 3, 2004, and has been admitted at all times since then.

Procedural Requirements Have Been Satisfied

On July 1, 2015, the State Bar properly filed and served the NDC on Respondent by certified mail, return receipt requested, at his official membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) It is unclear whether the State Bar received a return receipt card from the U.S. Postal Service.⁴

However, reasonable diligence was used to notify Respondent of this proceeding.⁵ The State Bar made numerous attempts to contact Respondent without success. These efforts included attempts made by both the deputy trial counsel (DTC) and the State Bar investigator assigned to the matter. As stated in his declaration of reasonable diligence, the DTC attempted to contact Respondent following Respondent's non-appearance at the August 3, 2015 initial status conference by: (1) having the assigned State Bar investigator search for additional contact information for Respondent;⁶ (2) calling Respondent at his membership records telephone number;⁷ (3) calling a telephone number that the DTC found through a Google search;⁸ (4) calling a "Google voice" number, which was answered with an outgoing message indicating

⁴ Rule 5.80(B)(1) requires that a motion for entry of default be supported by a declaration stating whether the signed return receipt for the notice of disciplinary charges was received from the member. While the State Bar filed a declaration, it did not satisfy this requirement. The court concludes from the silence on this issue that no such receipt was returned.

⁵ Rule 5.80(B)(2) requires that, if a signed return receipt is not received from the member, the declaration supporting the motion for entry of default must show that the State Bar took "additional steps a reasonable person would have taken under the circumstances to provide notice."

⁶ The results of the search conducted by the State Bar investigator are attached as Exhibit Six to the DTC's declaration, which was filed in support of the motion for entry of default.

⁷ Respondent's membership records telephone number provided a message saying that the voice mailbox at that number had not yet been set up.

that it was Respondent's number;⁹ and (5) sending a PDF copy of the NDC to Respondent at his official membership records email address.

In addition to the above, on August 10, 2015, the DTC mailed letters and a copy of the NDC, via overnight mail, to two other possible addresses that the State Bar investigator had found in her investigation. This letter advised Respondent of the pending default and requested that he contact the DTC. On August 12, 2015, one of these mailings was returned to the DTC, marked "REFUSED" and "REASON FOR RETURN: RECEIVER DID NOT ORDER, REFUSED." The other letter was not returned.

Respondent failed to file a response to the NDC. On August 17, 2015, the State Bar filed and properly served a motion for entry of Respondent's default. The motion 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 September 11, 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. Respondent 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 December 22, 2015, the State Bar filed and properly served a petition for disbarment. 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 on September 11, 2015; (2) there are no other disciplinary matters pending against

⁸ The telephone number obtained through the Google search was answered by a receptionist at a San Diego law firm, who informed the DTC that Respondent had not been working there for the last several years

⁹ The DTC left a message at the number identified as Respondent's, which message advised Respondent of the pending charges and default, and also requested that Respondent return the DTC's call at his State Bar phone number.

Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct.

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 8, 2016.

Prior Record of Discipline

Respondent has been disciplined on one prior occasion.¹⁰

Effective July 13, 2012, Respondent was ordered publicly reprovved with conditions in State Bar Court case No. 12-C-10899. On December 10, 2011, Respondent pled guilty to a misdemeanor violation of California Penal Code section 12025(a)(2), carrying a concealed weapon, arising from a November 27, 2011 fight in which Respondent was involved. On January 25, 2012, the superior court imposed sentence on Respondent, including a one-year probation with conditions. In the State Bar Court case, the parties stipulated and the Hearing Department of the State Bar Court concluded that the facts and circumstances surrounding Respondent's conviction for violating Penal Code section 12025(a)(2) did not constitute moral turpitude but did constitute other misconduct warranting discipline.

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 in greater detail below, 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).)

¹⁰ The court admits into evidence the certified copy of Respondent's prior record of discipline, which is attached to the December 22, 2015 petition for disbarment.

Case No. 14-O-05168 (State Bar Investigation Matter)

Count One – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to State Bar’s letters, dated October 10, 2014, December 15, 2014, and April 13, 2015, which he received and which requested his response to allegations of misconduct being investigated in case No. 14-O-05168.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and that 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 **David James Lola**, State Bar number 231190, 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 **David James Lola**, State Bar number 231190, 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 23, 2016


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 February 23, 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 Los Angeles, California, addressed as follows:

**DAVID J. LOLA
DAVID JAMES LOLA, ESQ.
4424 PINOAK DR
WINSTON-SALEM, NC 27104**

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 23, 2016.



Tammy Cleaver
Case Administrator
State Bar Court