

FILED

OCT 25 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 15-O-13056 (15-O-13443;
)	15-O-13755)-YDR
DARYL LYNN BINKLEY,)	
)	DECISION AND ORDER OF
Member No. 254326,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Daryl Lynn Binkley (Respondent) was charged with 14 counts of misconduct. He failed to participate in these proceedings either in person or through counsel, and his default was entered. Thereafter, the Office of Chief Trial Counsel (OCTC) 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, OCTC will file a petition requesting that the court recommend the attorney's disbarment.²



¹ Unless otherwise indicated, all references to rules are to this source. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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 California on December 4, 2007, and has been a member since that date.

Procedural Requirements Have Been Satisfied

On January 25, 2016, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's 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 United States Postal Service (USPS) returned the NDC to OCTC, bearing the stamp "RETURN TO SENDER – UNCLAIMED – UNABLE TO FORWARD."

Reasonable diligence was used to notify Respondent of this proceeding. From February 16, 2016, through February 26, 2016, OCTC: (1) sent an email attaching a copy of the NDC to Respondent at Respondent's membership records email address; (2) attempted to contact Respondent at Respondent's membership records telephone number, which was no longer in service; (3) conducted a LexisNexis people search to obtain alternate addresses for Respondent; (4) sent a letter and courtesy copy of the NDC by regular first-class mail to Respondent at his membership records address; and (5) sent a letter and courtesy copy of the NDC to Respondent at two potential alternate addresses obtained by the LexisNexis search.

Respondent failed to file a response to the NDC. On March 10, 2016, OCTC filed and properly served a motion for entry of Respondent's default on Respondent at his membership records address. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by OCTC 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 March 29, 2016. 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. 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 July 26, 2016, OCTC properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are other matters pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct. Respondent did not respond to the petition for disbarment. The case was submitted for decision on August 24, 2016.

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, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case No. 15-O-13056 (The Sabens and Medore Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to file a status report or accounting on his clients' behalf on three separate occasions, failing to appear at three different court hearings and, by failing to sign and return a substitution of attorney form substituting in a subsequent attorney as counsel.

Count Two – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment without adequate notice.

Count Three – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release client's file) by failing to promptly return his client's file as requested, upon the constructive termination of Respondent's employment.

Count Four – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

Count Five – Respondent willfully violated section 6068, subdivision (m) (failure to communicate), by failing to respond to his client's reasonable status inquiries.

Count Six – Respondent willfully violated section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform his client that Respondent failed to appear at an order to show cause hearing and that the court imposed \$250 in sanctions against Respondent and his clients.

Count Seven – Respondent willfully violated section 6103 (duty to obey court order) by failing to comply with the superior court’s order directing Respondent to pay \$250 in sanctions.

Case No. 15-O-13443 (The Wells Matter)

Count Eight – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services for his client for which he was retained.

Count Nine – Respondent willfully violated rule 3-700(D)(2) (failure to refund unearned fees) by failing to promptly refund, upon termination of his employment, any part of the unearned \$750 advanced fee paid by his client, as Respondent performed no services on behalf of his client for which he was retained.

Count Ten – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render an accounting) by failing to provide his client with an accounting of the \$750 advanced fee that Respondent received from his client.

Count Eleven – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

Case No. 15-O-13755 (The Sanctions Matter)

Count Twelve – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

Count Thirteen – Respondent willfully violated section 6068, subdivision (o)(3) (failure to report judicial sanctions), by failing to report \$1,500 in judicial sanctions to the State Bar.

Count Fourteen – Respondent willfully violated section 6103 by failing to comply with the superior court’s order directing Respondent to pay \$1,500 in sanctions.

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.

RECOMMENDATION

Disbarment

The court recommends that Daryl Lynn Binkley, State Bar number 254326, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

The court also recommends that Respondent be ordered to make restitution to Yon Wells in the amount of \$750 plus 10 percent interest per year from April 17, 2015. 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 Daryl Lynn Binkley, State Bar number 254326, 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: October 21, 2016



YVETTE D. ROLAND
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 October 25, 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:

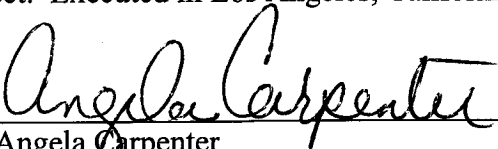
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DARYL L. BINKLEY
DARYL L BINKLEY, ESQ
77564 COUNTRY CLUB DR STE 246
PALM DESERT, CA 92211

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

Sherell N. McFarlane, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 25, 2016.



Angela Carpenter
Case Administrator
State Bar Court