

FILED

APR 21 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of

RICHARD ROGER HURLEY,

Member No. 183440,

A Member of the State Bar.

Case No. 16-AE-10509

**AMENDED ORDER GRANTING MOTION
FOR INVOLUNTARY INACTIVE
ENROLLMENT [Bus. & Prof. Code,
§ 6203, subd. (d); Rules Proc. of State Bar,
rule 5.360, et seq.]**

INTRODUCTION

This matter is before the court on motion filed by Kenneth E. Bacon, Presiding Arbitrator of the Mandatory Fee Arbitration Program of the State Bar of California ("State Bar"), seeking the involuntary inactive enrollment of Award Debtor **Richard Roger Hurley** ("Award Debtor"), pursuant to Business and Professions Code section 6203, subdivision (d), and rule 5.360, et seq., of the Rules of Procedure of the State Bar of California ("Rules of Procedure") due to his failure to pay an arbitration award in full. Based on the State Bar's motion and supporting documents, the court finds that Award Debtor has agreed to a payment plan and has failed to make one or more payments required by the payment plan.¹

SIGNIFICANT PROCEDURAL HISTORY

On February 1, 2016, the State Bar filed a motion seeking the involuntary inactive enrollment of Award Debtor. (Bus. & Prof. Code, section 6203, subd. (d), Rules of Procedure, rule 5.360, et seq.) A copy of this motion was properly served at Award Debtor's official

¹ This amended order is filed to correct the date set forth in the original order, filed March 22, 2016.

membership records address, by certified mail, return receipt requested, and by regular mail. Award Debtor failed to respond to the State Bar's motion or request a hearing (Rules of Procedure, rule 5.362).

On February 3, 2016, the court filed a Notice of Assignment. That same day, a copy of said notice was properly served on Award Debtor by first-class mail, postage fully prepaid at his official membership records address. The copy of said notice was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

This matter was submitted for decision on February 22, 2016. That same day, a copy of the Submission Order was properly served on Award Debtor at his official address and has not since been returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Award Debtor was admitted to the practice of law in California on July 29, 1996 and has been a member of the State Bar at all times since.

Facts

On December 28, 2012, David Schwanke ("Schwanke" or "Client") requested mandatory fee arbitration with the Orange County Bar Association to resolve a fee dispute. On March 25, 2013, the parties executed a fee dispute settlement agreement ("Settlement Agreement") which the Orange County Bar Association caused to be served on the parties that day. The Settlement Agreement awarded Schwanke a refund in the amount of \$3,500 in attorneys' fees to be paid by Award Debtor to Schwanke in two payments: \$2,000 to be received by Schwanke by April 30, 2013, and the balance due to be paid by May 23, 2013.

When Schwanke had not received Award Debtor's initial \$2,000 payment by May 5, 2013, he emailed Hurley and advised him that he intended to seek the State Bar's assistance in pursuing the appropriate remedy to obtain payment. Hurley responded that he intended to honor the terms of the Settlement Agreement but did not forward payment. On November 27, 2013,

the State Bar served a copy of Schwanke's request for enforcement. (See Business and Professions Code section 6203, subdivision (d).)

In reply, Hurley submitted a proposed payment plan which Schwanke accepted on January 20, 2014. The payment plan provided that Hurley would pay Schwanke \$350 per month for ten months with interest at ten percent per annum, until the Settlement Agreement was paid in full. By letter dated January 24, 2014, the State Bar advised Hurley that Schwanke had accepted his payment proposal. The January 24th letter also stated "[P]lease be advised that your default on the approved payment plan in this case constitutes sufficient grounds for this office to seek your involuntary enrollment as an inactive member of the State Bar."

Award Debtor forwarded one \$350 payment to Schwanke which Schwanke received February 18, 2014. When Hurley failed to send the following two payments, Schwanke forwarded a letter to the State Bar on March 26, 2014, which stated that Hurley's payments were delinquent. The State Bar wrote Hurley regarding the delinquency by letter dated April 4, 2014. Award Debtor then paid Schwanke the March, April and May 2014 payments. However, Award Debtor failed to make any payments after May 2014. The State Bar forwarded a letter to Award Debtor on July 22, 2014, advising him that if he did not become current in accordance with the payment plan, the State Bar would file the motion for involuntary enrollment.

Conclusions of Law

The court finds that the Presiding Arbitrator has met the burden of demonstrating by clear and convincing evidence that Award Debtor has agreed to a payment plan and has failed to make one or more payments required by the payment plan. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Procedure, rule 5.365(A)(2).)

Since Award Debtor did not participate in this proceeding, the court finds he has not met his burden of demonstrating by clear and convincing evidence that he is not personally responsible for making or ensuring payment of the award; that he is unable to pay it; or that he has proposed and agrees to comply with a payment plan which the State Bar has unreasonably

rejected as unsatisfactory. (Bus. & Prof. Code, § 6203, subd. (d)(2); Rules of Procedure, rule 5.365(B).)

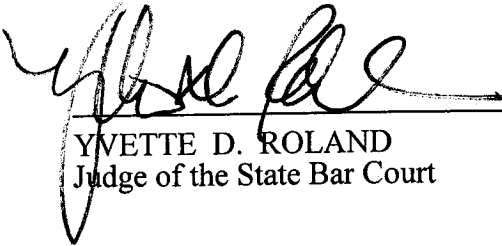
ORDER

IT IS ORDERED that Award Debtor **RICHARD ROGER HURLEY**, be enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6203, subdivision (d)(1), effective five days after the date of service of this order. (Rules of Procedure, rule 5.368(B)(1).)

IT IS FURTHER ORDERED that Award Debtor **RICHARD ROGER HURLEY** must remain involuntarily enrolled as an inactive member of the State Bar until: (1) he has paid the remainder of the arbitration award to David Schwanke in the amount of \$2,100 plus interest at the rate of ten percent per annum from June 1, 2014, the date of the next payment due to Schwanke from Award Debtor; (2) he has paid reasonable costs, if any; and (3) the court grants a motion to terminate the inactive enrollment pursuant to rule 5.370(A) of the Rules of Procedure of the State Bar of California.

Reasonable costs are awarded to the State Bar upon the Presiding Arbitrator's submission of a bill of costs. (Bus. & Prof. Code, § 6203, subd. (d)(3); Rules Proc. of State Bar, rule 5.368(B)(2).)

Dated: April 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 April 21, 2016, I deposited a true copy of the following document(s):

AMENDED ORDER GRANTING MOTION FOR INVOLUNTARY INACTIVE
ENROLLMENT [Bus. & Prof. Code, § 6203, subd. (d); Rules Proc. of State Bar, rule
5.360, et seq.]

in a sealed envelope for collection and mailing on that date as follows:

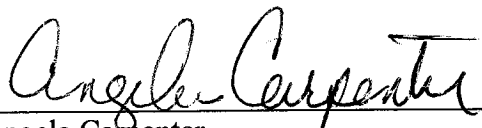
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD R. HURLEY
LAW OFFICES OF RICHARD R. HURLEY
611 W CIVIC CENTER DR STE 206
SANTA ANA, CA 92701

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

Kenneth Eric Bacon, Fee Arbitration, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 21, 2016.



Angela Carpenter
Case Administrator
State Bar Court