

# PUBLIC MATTER

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APR 28 2017 P.B.  
STATE BAR COURT  
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LOS ANGELES

## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 16-O-11116-CV
	)	
EVAN G. ANDERSON,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 249319.	)	ENROLLMENT
_____	)	

In this matter, respondent Evan G. Anderson (respondent) was charged with six counts of misconduct stemming from a single client matter. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel (OCTC) of the State Bar of California 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 (NDC), and the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<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).)

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**

Respondent was admitted to practice law in this state on June 5, 2007, and has been a member since then.

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

On October 5, 2016, OCTC properly filed and served an 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 returned to OCTC by the U.S. Postal Service as undeliverable.

In addition, reasonable diligence was used to notify respondent of this proceeding. OCTC attempted to contact respondent without success. These efforts included conducting a Lexis/Nexis search for additional contact information for respondent; mailing copies of the NDC by regular first class mail to respondent at his membership records address and two alternative addresses identified in the Lexis/Nexis search; emailing respondent at his membership records email address and three alternative email addresses identified in the Lexis/Nexis search; calling and leaving a message for respondent at his membership records telephone number; and calling respondent at two possible alternative telephone numbers.

Respondent failed to file a response to the NDC. On November 2, 2016, this matter was reassigned to the undersigned judge. On November 29, 2016, OCTC 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 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 December 15, 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, 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 March 22, 2017, OCTC filed the petition for disbarment. As required by rule 5.85(A), OCTC reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from 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 April 25, 2017.

#### **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).)

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**Case No. 16-O-11116 – The Albert Bootesaz Matter**

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to prosecute his client's matter – which resulted in the court dismissing the matter for failure to prosecute.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments), by failing to inform his client that his lawsuit was dismissed for failure to prosecute.

Count Three – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment without notice to his client.

Count Four – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

Count Five – respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by concealing that his client's case had been dismissed.

Count Six – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over his client's papers and property upon request.

**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 Evan G. Anderson 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 of California 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 Evan G. Anderson, State Bar number 249319, 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: April 28, 2017

  
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CYNTHIA VALENZUELA  
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 28, 2017, 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:

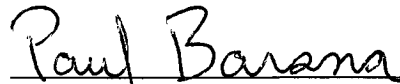
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**EVAN G. ANDERSON  
BRAND VENTURES INTELLECTUAL PROPERTY LAW  
7616 DUNFIELD AVE  
LOS ANGELES, CA 90045**

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

**KIMBERLY G. KASRELIOVICH, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 28, 2017.



Paul Barona  
Case Administrator  
State Bar Court