

**FILED**

**FEB 21 2018**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No. 16-O-17839-DFM
	)	
DAVID PAUL HUTCHENS,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 188632.	)	ENROLLMENT
_____	)	

Respondent David Paul Hutchens (Respondent) was charged with seven counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> He failed to participate, either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>2</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



<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.

(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.<sup>3</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.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in California on June 3, 1997, and has been a member since then.

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

On July 25, 2017, the State Bar properly filed and served a notice of disciplinary charges (NDC) on Respondent by certified mail, return receipt requested, to 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 as undeliverable on August 29, 2017.

On August 9, 2017, a courtesy copy of the NDC was also sent to Respondent by regular first class mail to his membership records address as well as to three alternative addresses. The mailings to his membership records address and one of the alternative addresses were returned as undeliverable.

On August 9, 2017, the State Bar attempted to reach Respondent by telephone at his official membership records telephone number and by email, but was unsuccessful. The phone number is now the number for a travel agency.

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<sup>3</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).)

Respondent failed to file a response to the NDC. On September 6, 2017, the State Bar properly filed and served a motion for entry of Respondent's default by certified mail, return receipt requested. On September 15, 2017, the motion was returned as undeliverable. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar 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 September 25, 2017. 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 January 5, 2018, the State Bar properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are three non-public disciplinary matters pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has one pending claim which has not been paid as a result of Respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on January 31, 2018.

## **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).)

### **Case No. 16-O-17839 (Bailey Matter)**

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to appear at accounting hearings and failing to complete a probate matter on behalf of Robert Bailey in *In Re the Estate of Kathryn Jean Bennett*, case No. VP-013871, in Los Angeles County Superior Court (probate matter).

Count 2 – Respondent willfully violated section 6106 (moral turpitude, dishonesty, or corruption) by inducing his client to entrust him with \$18,423 based on false pretenses and thereafter failing to disgorge the funds.

Count 3 – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (charging and collecting an illegal fee) by charging and collecting a fee of \$18,423 from Robert Bailey without the required court order in the probate matter.

Count 4 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to inform his client that he was withdrawing from employment and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client when he constructively terminated his employment on April 3, 2013.

Count 5 – Respondent willfully violated section 6103 (failure to comply with court order) by failing to comply with three court orders (orders to show cause ordering Respondent to disgorge attorney fees) in the probate matter.

Count 6 – Respondent willfully violated section 6103 by failing to comply with three court orders to appear at orders to show cause hearings in the probate matter.

Count 7 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar’s January 9 and 24, 2017 letters.

**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 his disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent David Paul Hutchens, State Bar number 188632, 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.

### **Restitution**

The court also recommends that Respondent be ordered to make restitution to Robert Bailey in the amount of \$18,423 plus 10 percent interest per year from April 3, 2013.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **Costs**

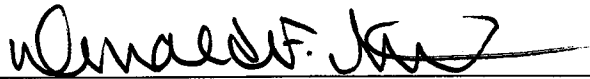
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders David Paul Hutchens, State Bar number 188632, 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 21, 2018

  
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 21, 2018, 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:

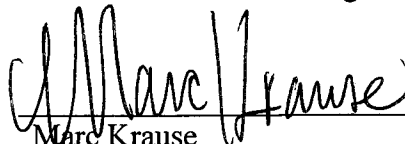
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID P. HUTCHENS  
DAVID P HUTCHENS  
21151 S WESTERN AVE #252  
TORRANCE, CA 90501

- 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 February 21, 2018.



Marc Krause  
Case Administrator  
State Bar Court