

# PUBLIC MATTER

**FILED**  
**JUN 18 2019** P.B.  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

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

In the Matter of	)	Case No. 17-O-05707-CV
	)	
NICHOLAS BASIL SPIRTOS,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
State Bar No. 195430.	)	ENROLLMENT
	)	
_____	)	

Respondent Nicholas Basil Spirtos (Respondent) was charged with six counts of violations of the Rules of Professional Conduct<sup>1</sup> and the Business and Professions Code. He failed to appear at the trial of this case and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

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<sup>1</sup> All references to the Rules of Professional Conduct refer to the former rules that were operative through October 31, 2018.

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

within 45 days, OCTC 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 2, 1998, and has been licensed by the State Bar of California since that time.

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

On November 13, 2018, OCTC properly filed and served a Notice of Disciplinary Charges (NDC) on Respondent. The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation.

Respondent filed a response to the NDC on December 14, 2018.

At a status conference on December 10, 2018, the trial was set to start on March 15, 2019. The December 10, 2018 order setting the trial date was served on Respondent at his official State Bar record address by first-class mail, postage paid. (Rule 5.81(A).)

On March 15, 2019, OCTC appeared for trial, but Respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered Respondent's default by order filed March 15, 2019. The order notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under section 6007, subdivision (e),

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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).)

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)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On May 7, 2019, OCTC properly filed and served the petition for disbarment on Respondent at his official State Bar record 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 is one investigation pending against Respondent; (3) Respondent has no record of prior discipline; and (4) the Client Security Fund has not paid any claims 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 June 5, 2019.

### **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. 17-O-05707 (Representation of Two Clients in Collections Action)**

Count 1 – Respondent willfully violated former rule 3-110(A) of the Rules of Professional Conduct (failure to perform with competence) by failing to respond to discovery requests on behalf of his two clients, failing to oppose a motion to compel and requests for sanctions against his clients, and failing to appear at a hearing.

Count 2 – Respondent willfully violated former rule 3-700(A)(1) of the Rules of Professional Conduct (failure to obtain court permission to withdraw) by withdrawing from representation without obtaining the court’s permission as required by the court rules.

Count 3 – Respondent willfully violated former rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by constructively terminating his employment on November 8, 2016, and failing to inform his clients that he was withdrawing from employment.

Count 4 – Respondent willfully violated former rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to release the clients’ file following the clients’ request for the file on September 8, 2017.

Count 5 – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments), by failing to inform his clients that their depositions had been scheduled, failing to inform his clients that the court ordered the clients’ attendance for deposition, and failing to inform his clients that the court granted a motion for terminating sanctions against them.

Count 6 – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate in a State Bar investigation), by failing to respond to the State Bar’s correspondence on four occasions between June 13, 2018, and September 25, 2018.

**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) Respondent had actual notice of this proceeding and had adequate notice of the trial date prior to the entry of his default.

(3) The default was properly entered under rule 5.81.

(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.

(5) Despite adequate notice and opportunity, Respondent failed to appear for the trial of this disciplinary proceeding.

As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

It is recommended that **Nicholas Basil Spirtos**, State Bar number 195430, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

### **California Rules of Court, Rule 9.20**

It is further recommended 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**

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to section 6086.10, subdivision (c), costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders **Nicholas Basil Spirtos**, State Bar number 195430, be involuntarily enrolled as an inactive attorney of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: June 18, 2019

  
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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 Court Specialist 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 June 18, 2019, 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:

NICHOLAS BASIL SPIRTOS  
LAW OFFICES OF NICHOLAS B SPIRTOS  
166 SAN LORENZO ST  
POMONA, CA 91766-2334

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

DREW D. MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 18, 2019.



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Paul Barona  
Court Specialist  
State Bar Court