

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: <b>11-O-17031 (11-O-18013)-LMA</b>
	)	
<b>ROBERT WARREN LOGAN,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 198922,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Robert Warren Logan (respondent) was charged with sixteen counts of violations of the State Bar Rules of Professional Conduct or the Business and Professions Code. Even though respondent had notice of the trial dates, he failed to appear at the trial, and his default was entered. Thereafter, the Office of the Chief Trial Counsel (State Bar) 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 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 if the attorney fails to have the default set aside or

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<sup>1</sup> Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that all of 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 the practice of law in California on December 10, 1998, and has been a member of the State Bar since then.

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

On March 29, 2012, the State Bar filed and properly served a notice of disciplinary charges (NDC) on respondent by certified mail, return receipt requested, and by regular mail, at his membership records address. The NDC was also sent to respondent via email. Respondent filed an answer to the NDC on June 12, 2012.<sup>3</sup>

Respondent participated in a status conference by telephone on May 7, 2012, at which time trial was set for July 23-25, 2012, at 9:30 a.m. A status conference order setting forth the trial dates was filed and properly served on respondent on May 7, 2012, by first-class mail, postage prepaid, at the address set forth in respondent's May 4, 2012 answer to the NDC.<sup>4</sup> (Rule 5.81(A).)

Respondent also participated in a status conference held on June 18, 2012. A status conference order was filed and properly served on respondent on June 19, 2012, by first-class

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<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(E)(2).)

<sup>3</sup> Respondent had filed an answer on May 4, 2012, but on May 30, 2012, the court ordered respondent to file an amended response to the NDC consistent with rule 5.43(C).

<sup>4</sup> This address was respondent's membership records address.

mail, postage prepaid, at the address set forth in respondent's May 4 and June 12, 2012 answers to the NDC.<sup>5</sup> This status conference order also set forth that this matter was set for trial on July 23-25, 2012, at 9:30 a.m.

On the morning of trial on July 23, 2012, the State Bar appeared for trial, but respondent did not. The court entered respondent's default in an order filed on July 23, 2012. The order was properly served on respondent by certified mail, return receipt requested, at respondent's membership records address. (Rule 5.81(B).) 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 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. The order was returned unclaimed to the State Bar Court by the United States Postal Service.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On November 29 and 30, 2012, the State Bar properly served, and filed, respectively, on respondent the petition for disbarment.<sup>6</sup> As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact with respondent since his default was entered; (2) there are four additional investigations pending against respondent; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's conduct; however, there are seven matters pending with the Client Security Fund. Respondent did not respond to the petition for disbarment or move to set aside or vacate his default. The case was submitted for decision on December 27, 2012.

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<sup>5</sup> This was respondent's membership records address.

<sup>6</sup> The petition for disbarment was served on respondent by both certified mail, return receipt requested, and by regular mail to respondent's membership records address.

Respondent has two prior records of discipline.<sup>7</sup> Pursuant to an order filed on June 6, 2011, respondent was suspended for one year, the execution of which was stayed, and respondent was placed on probation for three years subject to conditions, including that he be suspended for the first 90 days of probation. Respondent stipulated in this prior disciplinary matter that he failed to respond to numerous client status inquiries (two matters); failed to account for fees or funds/provide an accounting (two matters); failed to promptly refund unearned fees (four matters); failed to perform (two matters); failed to promptly return a file; failed to properly withdraw; failed to hold disputed funds in trust; and failed to maintain client funds in trust and failed to maintain records of client funds.

Pursuant to an order filed on August 28, 2012, respondent was suspended for two years, the execution of which was stayed, and respondent was placed on probation for three years subject to conditions, including that he be suspended for a minimum of the first nine months of probation and until he makes specified restitution. In this contested proceeding, the court found respondent culpable of using his trust account for personal use and commingling his personal funds in his client trust account; committing conduct involving dishonesty by issuing eight insufficiently funded checks; failing to cooperate and participate in a disciplinary investigation; and failing to promptly refund an unearned fee.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a 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

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<sup>7</sup> The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

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(E)(1)(d).)

**1. Case Number 11-O-17031 (Chavis/Lee 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 send a letter on his clients' behalf as he was hired to do and by failing to appear at a June 24, 2011 hearing at which he had agreed to represent his clients.

Count Two - respondent willfully violated section 6068, subdivision (m), of the Business and Professions Code (failure to communicate) by failing to timely inform his client of his suspension from the practice of law.

Count Three - respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to advise his clients of his imminent suspension prior to the effective date of his suspension from the practice of law.

Count Four – respondent willfully violated rule 3-700(A)(2) and 3-700(D)(2) of the Rules of Professional Conduct (improper withdrawal from employment and failing to promptly refund unearned fees) by failing, upon termination of employment, to refund \$2,300 in unearned fees to his client.

Count Five – respondent willfully violated section 6103 of the Business and Professions Code (violation of court order) by filing his rule 9.20 affidavit late in violation of a June 6, 2011 Supreme Court Order.

Count Six - respondent willfully violated section 6106 of the Business and Professions Code (commission of act of moral turpitude, dishonesty or corruption) by misrepresenting matters on his rule 9.20 affidavit.

Count Seven - respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (preserving identity of funds and property of a client) by failing to maintain at least \$1,800 of the advanced fee given to him by his client and deposited in his client trust account in such account until such time as he had earned the fee and accounted to the client for his earnings.

Count Eight – respondent willfully violated section 6106 of the Business and Professions Code by expending at least \$1,800 of the advanced fees in his client trust account on matters unrelated to his client, without accounting for the advanced fee to his client or obtaining his client’s approval of the expenditure of the advanced fee.

## **2. Case Number 11-O-18013 (Batterton Matter)**

Count Nine – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by taking no further action on his client’s Penal Code section 290 issue after November 8, 2008, and by not filing his client’s harassment/TRO matter.

Count Ten – respondent willfully violated section 6106 of the Business and Professions Code by misrepresenting through his secretary to his client, that a lawsuit had been filed against the client’s neighbor in the harassment/TRO matter and by misrepresenting to his client that court appearances in the Penal Code section 290 matter had been scheduled on December 28, 2010, and April 17, 2011, when, in fact, no lawsuit had been filed against the client’s neighbor and there were no court appearances scheduled in the Penal Code section 290 matter.

Count Eleven – respondent willfully violated section 6068, subdivision (m), of the Business and Professions Code by failing to advise his client of respondent’s suspension.

Count Twelve – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund to his client unearned fees of \$1,200 in the harassment/TRO matter and \$2,500 in the Penal Code section 290 matter upon termination of his services.

Count Thirteen – respondent was charged with willfully violating section 6103 of the Business and Professions Code by filing his rule 9.20 affidavit late and by falsely reporting to the court that he had no client matters when he still represented a client and had not advised the client of his suspension on or before July 6, 2011. The court declines to find respondent culpable of willfully violating section 6103 of the Business and Professions Code as charged in this count because (1) respondent has already been found culpable in court five of willfully violating section 6103 of the Business and Professions Code for filing his rule 9.20 affidavit late; and (2) the fact that respondent falsely reported in his rule 9.20 affidavit that he had no client matters when he still represented a client and had not advised his client of his suspension on or before July 6, 2011,<sup>8</sup> is a violation of section 6106 rather than 6103. This count is therefore dismissed with prejudice.

Count Fourteen – respondent willfully violated section 6090.5(a)(2) of the Business and Professions Code (agreeing/seeking agreement to withdraw a State Bar complaint or not cooperate with State Bar) by offering to refund his client \$1,500 if his client dropped the client's State Bar complaint against respondent.

### **3. Case Numbers 11-O-17031; 11-O-18013 (Other Matters)**

Count Fifteen – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation), by failing to respond to the State Bar investigator's October, 2011 and December 9, 2011 letters regarding two separate client matters.

Count Sixteen - respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with the probation condition requiring respondent to comply with the provisions of the State Bar Act and

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<sup>8</sup> The court notes that pursuant to the Supreme Court's order, respondent had until August 5, 2011 to notify his client. The evidence is not clear and convincing that respondent failed to notify his client by this date.

the Rules of Professional Conduct during his period of probation as sets forth above in counts two, four, five, six, ten, eleven, twelve, fourteen and fifteen.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) 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 adequate notice of the trial dates prior to entry of the default;
- (3) the default was properly entered under rule 5.81; 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 appear for trial 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 respondent Robert Warren Logan be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **Restitution**

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Dimitri Chavis and Felisha Lee, jointly, in the amount of \$300 plus 10 percent interest per year from June 8, 2011;



(2) Dimitri Chavis in the amount of \$2,000 plus 10 percent interest per year from June 19, 2011; and

(3) Earl Edward Batterton in the amount of \$3,700<sup>9</sup> plus 10 percent interest per year from August 19, 2008.

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 and that the costs be 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 Robert Warren Logan, State Bar Number 198922, 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: March \_\_\_\_, 2013

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LUCY ARMENDARIZ  
Judge of the State Bar Court

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<sup>9</sup> This figure represents the \$1,200 paid by Batterton in the harassment/TRO matter and the \$2,500 paid by Batterson in the Penal Code section 290 matter.