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STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

# PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of

[REDACTED]

[REDACTED]

A Member of the State Bar.

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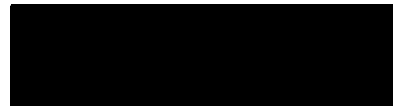
Case No.: [REDACTED]

**DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT**

Respondent [REDACTED] (Respondent) was convicted of violating Penal Code section 166, subdivision (c)(1) (violation of a protective order), a misdemeanor which may or may not involve moral turpitude. Upon finality of the conviction, the review department issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violation involved moral turpitude or other misconduct warranting discipline. Respondent failed to participate either in person or through counsel, and his default was entered. The 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 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 hearing on conviction

<sup>1</sup> Unless otherwise indicated, all references to rules are to this source. Rule 5.346(A) makes the default procedures in rules 5.80-5.86, with certain modifications, applicable in conviction proceedings.



(NOH), 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>2</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

### Jurisdiction

Respondent was admitted to practice law in this state on [REDACTED] and has been a member since that date.

### Procedural Requirements Have Been Satisfied

On [REDACTED] the State Bar Court filed and properly served the NOH on Respondent by certified mail, return receipt requested, at his membership records address.<sup>3</sup> The NOH notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.)

Thereafter, the State Bar (1) left a voice message for Respondent at his membership records telephone number; (2) mailed a Notice of Intent to File Motion for Default, along with a copy of the NOH, to Respondent at his membership records address, as well as at alternative mailing addresses in Los Angeles, Santa Monica, and [REDACTED] which were generated by LexisNexis; (3) emailed a copy of the Notice of Intent to File Motion for Default to

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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(F)(2).)

<sup>3</sup> The NOH was returned to the State Bar Court on February 12, 2016, by the U.S. Postal Service with a label stating "ATTEMPTED – NOT KNOWN" and "UNABLE TO FORWARD." However, the return receipt for the certified mailing was returned to the State Bar Court reflecting that it was received by agent [REDACTED] and the date of delivery was [REDACTED].

Respondent at his membership records email addresses;<sup>4</sup> and (4) attempted to contact Respondent by telephone at two telephone numbers which were generated by LexisNexis as associated with Respondent.<sup>5</sup>

Respondent failed to file a response to the NOH. On [REDACTED] the State Bar 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 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 [REDACTED] 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 also 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 [REDACTED] State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has not had any contact with Respondent since the default was served;<sup>6</sup> (2) there are two conviction referral matters pending against Respondent which are presently abated: case [REDACTED] conviction of violating Penal Code section 415, subdivision (2) [disturbing the

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<sup>4</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

<sup>5</sup> These were different telephone numbers from Respondent's membership records telephone number.

<sup>6</sup> This is the same day that Respondent's default was entered.

peace]) and case [REDACTED] conviction of violating Penal Code sections 242-243, subdivision (e)(1) [domestic battery];<sup>7</sup> (3) Respondent does not have a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's misconduct. 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 [REDACTED]

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

Upon entry of Respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding Respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rules 5.346(D) & 5.82.) As set forth below in greater detail, Respondent's conviction for violating a protective order supports the conclusion that Respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (F)(1)(d).)

#### **Case Number [REDACTED] (Conviction Matter)**

Respondent was convicted of violating Penal Code section 166, subdivision (c)(1) (violation of a protective order) as a result of an incident at the home of his ex-wife on the evening of [REDACTED]. Respondent's ex-wife informed law enforcement officers who were dispatched to the home that Respondent was subject to a restraining order requiring him to stay 100 feet away from his ex-wife. However, despite the restraining order, Respondent entered the residence of his ex-wife with a key to pick up personal effects. Respondent's ex-wife asked Respondent to leave, but he refused. She informed law enforcement officers that this had happened four to six times in the few weeks prior to the [REDACTED] dent.

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<sup>7</sup> In addition to these abated matters, case No. [REDACTED] is also currently pending against Respondent. However, after the filing of this Decision and Order of Involuntary Inactive Enrollment, the court will file a notice of its intent to abate case No. [REDACTED], a conviction referral matter resulting from Respondent's conviction of Vehicle Code section 14601.2, subdivision (a) (driving when privilege suspended for driving under the influence), in light of the disbarment recommendation in this matter.

Respondent was located by the officers on a hill approximately 80 feet from the back door of the house. Respondent was ordered by the officers to come down from the hill, and Respondent was taken into custody. Officers noticed the smell of alcohol on Respondent's breath and asked him whether he had been drinking. Respondent replied that he had consumed alcohol.

Respondent was asked by the officers if he was aware of the restraining order. Respondent replied that he was aware of the restraining order but stated that it applied to a different address. Respondent was advised by the officers that pursuant to the restraining order, he was required to stay 100 feet from his ex-wife, regardless of the address, as it applies to wherever she is. Respondent replied that he had believed that the restraining order would not be valid at a different address. Officers, however, noted that the restraining order had a handwritten note specifying that Respondent was not permitted to pick up personal effects or clothing without a police escort. Respondent was placed under arrest for violating a protective order pursuant to California Penal Code section 166, subdivision (c).

Respondent was thereafter charged with, and pleaded nolo contendere to, one count of violating Penal Code section 166, subdivision (c)(1). He was found guilty by the court. The imposition of sentence was suspended, and he was placed on summary probation for 36 months and ordered to obey the protective order which he was served in open court. He was also ordered to enroll in and complete a domestic violence program and attend at least 25 AA meetings two times per weeks. Respondent was ordered to serve eight days in county jail, but he received four days' credit for actual custody and four days' credit for good time/work time.

Respondent did not appear for a court hearing on [REDACTED] and a bench warrant was ordered to be held until [REDACTED]. On [REDACTED] Respondent failed to

appear for a court hearing and a bench warrant was issued for his arrest and his probation was revoked.

Respondent appeared in court on [REDACTED] and his probation was reinstated and ordered to continue on the same terms and conditions, but with the modification that Respondent serve 330 days in county jail, which was stayed pending further orders of the court.

Violating a protective order is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding Respondent's conviction do not involve moral turpitude but do constitute other misconduct warranting discipline. Conviction of a crime involving other misconduct warranting discipline is grounds for discipline. (*In re Kelley* (1990) 52 Cal.3d 487, 494.)

#### **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 NOH 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 statement of facts and circumstances surrounding Respondent's conviction 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.

## RECOMMENDATION

### Disbarment

The court recommends that re [REDACTED] disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### 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, 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 t [REDACTED] state Bar nu [REDACTED] 4, 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. (Rules Proc. of State Bar, rule 5.111(D).)

[REDACTED]

[REDACTED]

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 [REDACTED] 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:

[REDACTED]  
[REDACTED]

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

[REDACTED]

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

[REDACTED]

[REDACTED]

Case Administrator  
State Bar Court