FILED

APR 17 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of S. BENJAMIN ROZWOOD, A Member of the State Bar, No. 181474.	Case No. 15-O-14467-DFM DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Respondent S. Benjamin Rozwood (Respondent) was charged with committing an act involving moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code[1] section 6106. He failed to participate in this matter, either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.[2]

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, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.[3]

[1] Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

[2] Unless otherwise indicated, all references to rules are to this source.

[3] 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

Jurisdiction

Respondent was admitted to practice law in this state on January 10, 1996, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 29, 2016, the State Bar filed and properly served the Notice of Disciplinary Charges (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 the State Bar on October 12, 2016. However, the return receipt card that had been affixed to the envelope in which the NDC was mailed was detached from the returned mailing.

On September 16, 2016, Deputy Trial Counsel Alex Hackert (the DTC) sent another letter to Respondent's official membership records address and an email to Respondent's membership records email address, in which he informed Respondent that the response to the NDC in this matter was overdue and further warned that, if Respondent failed to file a response, the State Bar would file a motion for entry of Respondent's default, which could result in Respondent's disbarment. The DTC's letter also notified Respondent of the September 26, 2016, status conference scheduled by the State Bar Court.

The DTC also called Respondent on September 16, 2016, at his official membership telephone number. The call went to voicemail, which played a recorded greeting by an individual identifying himself by name as Respondent. The DTC left a message identifying himself. The DTC's message stated that Respondent's response to the NDC was outstanding and that a status conference in the matter was scheduled to take place in the State Bar Court on September 26, 2016. Additionally, the DTC provided his callback number in the message he left. Respondent did not return the call or appear at the September 26th status conference.

Thereafter, the DTC instructed a State Bar investigator to conduct a LexisNexis search for Respondent. This search results suggested that Respondent's official membership records address also was his home address. Additionally, the search yielded a second potential address for Respondent, located on Linden Drive in Beverly Hills. Consequently, on September 26, 2016, the DTC sent, via certified mail, a letter to Respondent at the Linden Drive address and a courtesy copy of the NDC as an enclosure.[4]

On September 26, 2016, the DTC made telephone calls to three different numbers and sent messages to two potential email addresses found during the Lexis/Nexus search. One of the telephone numbers was answered by a voicemail greeting of a person identifying himself by name as Respondent. The DTC left a message, indicating who he is, warning Respondent that the response to the NDC was overdue, and that, if Respondent did not file his response, the State Bar would be filing a motion for entry of Respondent's default, which could lead to disbarment. The DTC then called Respondent's official membership records phone number and left a substantively similar message to the one he had left on the number generated through the LexisNexis search. Comparable messages were include in the emails sent by the DTC to the possible alternative email addresses located for Respondent. While one of those emails was returned as undeliverable, the other was not.

[4] On October 17, 2016, the return receipt card for the September 26, 2016 mailing was returned to the State Bar. The date of delivery for the September 26th letter was marked as ""10-13-16;" and, the receipt card was returned with an illegible name and signature. Thereafter, the actual mailing was returned to the State Bar, marked as unable to forward.

Despite the State Bar's extensive efforts to notify Respondent of the need to file a response to the NDC, Respondent did not do so. Consequently, on October 5, 2016, 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 DTC. (Rule 5.80.) The motion 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 November 7, 2016. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served on Respondent at his membership records address by certified mail, return receipt requested, and by first-class mail, postage prepaid.

Respondent has not sought 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 February 14, 2017, the State Bar filed and properly served a 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) the State Bar has not received any contact from Respondent since his default was entered; (2) Respondent has no other disciplinary matters or investigations pending against him; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct. 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 March 14, 2017.

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(2).) 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 Number 15-O-14467 (MCLE Matter)

Count One – Respondent willfully violated section 6106 (moral turpitude, dishonesty or corruption) by falsely reporting to the State Bar, under penalty of perjury, that he had fully complied with his minimum continuing legal education (MCLE) requirements for the period of February 1, 2011 to January 31, 2014, when Respondent knew or was grossly negligent in not knowing that he had failed to complete the MCLE requirements for that period.

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 **S. Benjamin Rozwood**, State Bar number 181474, 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 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 **S. Benjamin Rozwood**, State Bar number 181474, 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 17, 2017

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 April 17, 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:

S. BENJAMIN ROZWOOD
ROZWOOD & CO., APC
491 S SPALDING DR
BEVERLY HILLS, CA 90212 - 4103

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

ALEX HACKERT, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 17, 2017.

Rosell M. Luthi

Rose M. Luthi
Case Administrator
State Bar Court