



**PUBLIC MATTER
FILED**

MAR 12 2018

**STATE BAR COURT CLERK'S OFFICE
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 16-O-17596-LMA
)	
DAVID ALLEN HUGHES,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 201264.)	ENROLLMENT
_____)		

Respondent David Allen Hughes (Respondent) was charged with willfully violating rule 3-700(D)(2) of the Rules of Professional Conduct and Business and Professions Code section 6068, subdivision (j). He failed to file a response to the Notice of Disciplinary Charges (NDC) in this matter, 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.¹

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 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.²

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¹ Unless otherwise indicated, all references to rules are to this source.

² 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

Respondent was admitted to practice law in this state on June 7, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 25, 2017, the State Bar filed and properly served the NDC in this matter on Respondent by both certified mail, return receipt requested, and United States first-class mail to his membership records address.³ The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar did not receive a return receipt for the certified mail.

Thereafter, on September 26, 2017, the State Bar attempted to reach Respondent by telephone at his official membership records telephone number and discovered that the number no longer belonged to Respondent. The person who answered the number indicated that Respondent was the previous tenant in the leased space and had not been a tenant for at least three years.

Respondent failed to file a response to the NDC. On September 27, 2017, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, and United States first-class mail to his membership records address.⁴ The motion complied with all the requirements for a default, including a supporting declaration of

³ The State Bar also served the NDC on Respondent at two alternate addresses by both certified mail, return receipt requested, and United States first-class mail.

⁴ The State Bar also served the motion for entry of default on Respondent at two alternate addresses by both certified mail, return receipt requested, and United States first-class mail.

reasonable diligence by the State Bar senior trial counsel declaring the additional steps taken to provide notice to Respondent. (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 October 13, 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 25, 2018, the State Bar filed and properly served the petition for disbarment on Respondent at his membership records address by both certified mail, return receipt requested, and United States first-class mail.⁵ 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 no other disciplinary matters pending against Respondent; (3) Respondent has a record of prior 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 the default. The case was submitted for decision on February 21, 2018.

Prior Record

Respondent has one prior record of discipline. Pursuant to a Supreme Court order filed on May 23, 2003, Respondent was suspended for two years and until he established his rehabilitation, fitness to practice, and learning and ability in the general law, the execution of

⁵ The State Bar also served the petition for disbarment on Respondent at two alternate addresses by both certified mail, return receipt requested, and United States first-class mail.

which was stayed, and he was placed on probation for five years with conditions. Respondent entered into a stipulation as to facts, conclusions of law and disposition in this prior disciplinary matter. Respondent stipulated that he willfully violated Business and Professions Code section 6068, subdivision (a) due to his misdemeanor conviction for violating Vehicle Code section 23152, subdivision (b).

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 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 16-O-17596

Count One – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund promptly upon his termination of employment any part of the unearned fees he had received from his clients.

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (j) by failing to notify the State Bar of his change in address within 30 days as required by Business and Professions Code section 6002.1.

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 David Allen Hughes, State Bar number 201264, 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 Mr. and Mrs. Sterba in connection to *People v. Sterba* (Sacramento County Superior Court case number 12F06838) in the amount \$10,000 plus 10 percent interest per year from November 8, 2012.⁶ 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.

⁶ The facts in the NDC deemed admitted do not include the first names for Mr. or Mrs. Sterba.


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 David Allen Hughes, State Bar number 201264, 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 17, 2018



LUCY ARMENDARIZ
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 San Francisco, on March 12, 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:

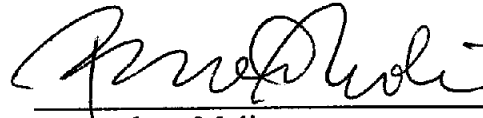
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

DAVID A. HUGHES
LAW OFC DAVID A HUGHES
PO BOX 5804
VACAVILLE, CA 95696

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

MARIA J. OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 12, 2018.



Bernadette Molina
Court Specialist
State Bar Court