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**APR 18 2018** P.B.

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

# **PUBLIC MATTER**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 17-O-00648-CV
	)	(17-O-02270)
ALLEN M. PETROFF,	)	
	)	DECISION AND ORDER OF
A Member of the State Bar, No. 278382.	)	INVOLUNTARY INACTIVE
_____	)	ENROLLMENT

Respondent Allen M. Petroff (Respondent) was charged with violations of the Business and Professions Code<sup>1</sup> and the State Bar Rules of Professional Conduct. 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 (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 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 OCTC will file a petition requesting the court to recommend the attorney's disbarment.<sup>3</sup>



<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

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

<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).)

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 December 2, 2011, and has been a member since then.

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

On September 21, 2017, the OCTC filed and properly served the NDC in this matter on Respondent by certified mail, return receipt requested, at his membership records address. On that same date, the OCTC sent a copy of the NDC to Respondent, by certified mail, return receipt requested, to an address that the assigned OCTC senior trial counsel understood to be Respondent's home address. On September 27, 2017, the OCTC received the signed return receipt from the copy sent to Respondent's home address. The return receipt appeared to contain Respondent's signature. The OCTC also emailed a copy of the NDC to Respondent's membership records email address on September 21, 2017.<sup>4</sup> The email was not returned as undeliverable or for any other reason. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, the assigned OCTC senior trial counsel called Respondent at his membership records phone number. The senior trial counsel left a message with a receptionist introducing himself as an attorney with the OCTC, and requesting that Respondent return his call. Respondent did not respond to the message.

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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 9.9(a)(2).)

Respondent failed to file a response to the NDC. On October 17, 2017, the OCTC filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to his membership records address. On that same date, the OCTC emailed a copy of the motion for entry of default to Respondent's membership records email address and sent a courtesy copy by certified mail, return receipt requested, to his home address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the assigned senior trial counsel. (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 still did not file a response to the motion, and his default was entered on November 15, 2017. 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 a copy was sent to Respondent by United States first-class mail to his home address.

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 February 20, 2018, the OCTC filed and properly served a petition for disbarment on Respondent at his membership records address by certified mail, return receipt requested. On that same date, the OCTC sent a courtesy copy of the petition for disbarment by certified mail, return receipt requested, to Respondent's home address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent has not contacted the assigned senior trial counsel or the OCTC since the date the order entering Respondent's default was entered; (2) Respondent has five disciplinary matters pending; (3) Respondent does not have a prior record of discipline; and (4) the Client Security Fund has not

made any payments as a result of Respondent's conduct. 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 April 3, 2018.

### **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 17-O-00648**

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) in his representation of his client in a civil matter by (1) failing to file a response to a motion to dismiss, (2) failing to seek leave to amend the complaint in the civil matter as he represented to the court that he would do on or about June 16, 2015, and (3) failing to file an opposition to a motion for summary judgment after the court granted his request for an extension of time to do so.

Count Two – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in disciplinary investigation), by failing to provide a substantive response to two letters from the State Bar sent on February 21, 2017, and July 7, 2017, which he received, that requested his response to allegations of misconduct being investigated in case number 17-O-00648.

#### **Case Number 17-O-02270**

Count Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper termination from employment) by constructively terminating his

employment with his client when (1) he failed to communicate with his client after August 3, 2016, (2) he failed to take any action on behalf of his client after that date, and (3) he failed to inform his client that he was withdrawing from employment.

Count Four – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in disciplinary investigation), by failing to provide a substantive response to two letters from the State Bar sent on May 2, 2017, and July 7, 2017, which he received, that requested his response to allegations of misconduct being investigated in case number 17-O-02270.

**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 and Respondent had actual notice of these proceedings;

(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 actual and 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.

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## RECOMMENDATIONS

### Disbarment

The court recommends that Respondent Allen M. Petroff, State Bar number 278382, 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 Allen M. Petroff, State Bar number 278382, 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, 2018

  
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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 April 18, 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 Los Angeles, California, addressed as follows:

**ALLEN M. PETROFF  
BARE & PETROFF, LLP  
2276 TORRANCE BLVD  
TORRANCE, CA 90501 - 2518**

**ALLEN M PETROFF  
255 W. 7TH STREET, APT 13  
SAN PEDRO, CA 90731**

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

**ELI D. MORGENSTERN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 18, 2018.

*Paul Barona*

Paul Barona  
Court Specialist  
State Bar Court