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FILED  
APR 15 2019  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

10 STATE BAR COURT  
11 HEARING DEPARTMENT - LOS ANGELES

12 In the Matter of: ) Case No. 17-O-06606-CV  
13 )  
14 ANTHONY JAMES DUNNE, ) PETITION FOR DISBARMENT AFTER  
15 ) DEFAULT FOR FAILURE TO APPEAR AT  
16 ) TRIAL; AND SUPPORTING  
17 ) DECLARATION OF ELI D.  
18 ) MORGENSTERN  
19 )  
20 ) [Rules Proc. of the State Bar, Rule 5.85]

17 TO THE HONORABLE CYNTHIA VALENZUELA, HEARING JUDGE OF THE

18 STATE BAR COURT:

19 The Office of Chief Trial Counsel of the State Bar ("State Bar"), by and through Senior  
20 Trial Counsel Eli D. Morgenstern, hereby petitions the State Bar Court for an order  
21 recommending respondent Anthony James Dunne 's ("respondent") disbarment after default  
22 pursuant to rule 5.85 of the Rules of Procedure of the State Bar of California<sup>1</sup> based upon  
23 respondent's failure to appear at trial and failure to have the default set aside or vacated within  
24 the time period prescribed.

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27 <sup>1</sup> Unless otherwise indicated, all references to "rules" refers to the Rules of Procedure of the  
28 State Bar of California.

1 I. PROCEDURAL HISTORY

2 A. Proper Service of the Notice of Disciplinary Charges on Respondent and

3 Advisement of the Effects of Default.

4 On October 29, 2018, the State Bar filed and served the Notice of Disciplinary Charges  
5 (“NDC”) on respondent. (See Declaration of Service by Certified Mail, Return Receipt  
6 Requested, attached to the Notice of Disciplinary Charges, filed on October 29, 2018, in the  
7 court file in this matter. See also Declaration of Eli D. Morgenstern, hereinafter, “Morgenstern  
8 Declaration, which is attached hereto.) The NDC sets forth the required language in capital  
9 letters required by rule 5.41(B)(5), advising respondent that failure to file a written answer would  
10 subject the member to entry of default, inactive enrollment, and specifically, that failure to  
11 timely move to set aside or vacate a default would result in an order recommending disbarment  
12 without further hearing or proceeding. The NDC was mailed to respondent’s address in the State  
13 Bar’s membership records by certified mail, return receipt requested, as required by rule 5.25 for  
14 service of an initial pleading. The return receipt was returned to the State Bar signed by Judith  
15 Valencia on November 6, 2018. (See Morgenstern Declaration.)

16 B. The Court Entered Respondent’s Default for Failure to Appear at Trial.

17 On December 11, 2018, the Court conducted the initial status conference for this matter.  
18 Respondent appeared in-person for the initial status conference; respondent’s counsel appeared  
19 by telephone. Trial was set for February 21-22, 2019, at 10:00 a.m. in the Hearing Department  
20 in Los Angeles. (See Order RE: Trial Date, Pretrial Conference, Trial Preparation Requirements,  
21 Settlement Conference, filed on December 11, 2018, in the court file for this matter. See also  
22 Morgenstern Declaration.) On December 11, 2018, the Court served notice of trial on  
23 respondent’s counsel by first class mail in the manner prescribed by rule 5.81(A)(2). (See  
24 Certificate of Service attached to the Order RE: Trial Date, Pretrial Conference, Trial Preparation  
25 Requirements, Settlement Conference, filed on December 11, 2018, in the court file for this  
26 matter.)



1 On February 20, 2019, respondent sent an email to the Court and the undersigned stating  
2 that he would be unable to appear at trial for this matter on February 21, 2019, because he lives  
3 in Wisconsin and there were no flights out of Wisconsin to California due to the weather.  
4 (Morgenstern Declaration.)

5 On February 20, 2019, the State Bar filed a Notice of Intent To Request An Order of  
6 Entry of Default In The Event That Respondent Fails To Appear For Trial. (See Notice of Intent  
7 To Request An Order of Entry of Default In The Event That Respondent Fails To Appear For  
8 Trial, filed on February 20, 2019, in the court file for this matter.)

9 On February 21, 2019, Trial Counsel for the State Bar appeared, ready for trial.  
10 Respondent did not appear for trial. (See Morgenstern Declaration.)

11 On February 21, 2019, the Court issued an order entering respondent's default ("Default  
12 Order"), which included language regarding the effects of default in prominent type required by  
13 rule 5.81(B) and served the order on respondent in the manner prescribed by rule 5.25. (See  
14 Order Entering Default and Order Enrolling Inactive (Rule 5.81-Failure To Appear, filed on  
15 February 21, 2019, in the court file for this matter. See also Morgenstern Declaration.) The  
16 Default Order advised respondent of the effects of entry of default, specifically, deeming the  
17 facts alleged in the NDC admitted, prohibiting participating unless the default is set aside, and if  
18 there is no timely motion to set aside, recommending disbarment without further hearing or  
19 proceeding in compliance with rule 5.81(B).

20 As stated in the Default Order, respondent was enrolled on inactive status and the facts in  
21 the NDC were deemed admitted in accordance with rule 5.82.

22 **C. Respondent's Default has not been Set Aside or Vacated.**

23 Rule 5.83 provides for stipulation by the parties to vacate default or a motion to vacate or  
24 set aside a default. A motion to vacate may be filed at any time that the Court has jurisdiction  
25 over the matter. A motion to set aside the default must be based on grounds of mistake,  
26 inadvertence, surprise or excusable neglect and filed within 90 days after service of the order  
27 entering default if default was ordered for failure to file an answer or 45 days if default was

1 ordered for failure to appear at trial. Here, respondent had 50 days from February 21, 2019 to  
2 file a motion to set aside the default.

3 To date, respondent has not filed a motion to set aside or vacate the default. (See  
4 Morgenstern Declaration.)

5 **II. THE REQUIREMENTS FOR A MANDATORY DISBARMENT**  
6 **RECOMMENDATION AFTER DEFAULT HAVE BEEN SATISFIED.**

7 **A. The State Bar has completed the Record required for a Petition for Disbarment**  
8 **after Default.**

9 If the member fails to have the default set aside or vacated, under rule 5.85, the State Bar  
10 must file a petition requesting the Court to recommend disbarment, supported by one or more  
11 declarations addressing the factors set forth in subdivision (A) of the rule. Trial Counsel's  
12 declaration addresses the required factors as follows:

- 13 1. Lack of contact by respondent. Respondent has failed to contact the State Bar  
14 since the default was entered on February 21, 2019. (See Morgenstern  
15 Declaration.)
- 16 2. Pending disciplinary matters. Non-public disciplinary matters exist against  
17 respondent involving performance and communication issues. Some of the  
18 matters also involve allegations that respondent has mishandled client funds. (See  
19 Morgenstern Declaration.)
- 20 3. Prior disciplinary record. Respondent does not have a prior record of discipline.  
21 (See Morgenstern Declaration.)
- 22 4. Payments by the Client Security Fund due to respondent's conduct. The Client  
23 Security Funds has not paid out claims resulting from respondent's conduct. (See  
24 Morgenstern Declaration.)

25 **B. Having Satisfied the Requirements for a Mandatory Disbarment**

26 **Recommendation, the Court must Recommend that Respondent be disbarred.**

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1 If the member fails to file a response, as stated in rule 5.85, the Court must recommend  
2 the member's disbarment if the evidence shows the following:

- 3 (a) The notice of disciplinary charges was served on the member properly;  
4 (b) The member had actual notice or reasonable diligence was used to notify the  
5 member of the proceedings prior to the entry of default;  
6 (c) The default was properly entered; and  
7 (d) The factual allegations deemed admitted in the notice of disciplinary charges  
8 support a finding that the member violated a statute, rule or court order that would  
9 warrant the imposition of discipline. (Rules Proc. of the State Bar, Rule 5.80(B),  
10 Rules of Proc.)

11 1. Proof of Service and Receipt of NDC by Respondent.  
12 Entry of default requires the State Bar to establish proper service of the notice of  
13 disciplinary charges and either respondent's receipt of the notice or exercise of reasonable  
14 diligence to notify the member. (Rules Proc. of the State Bar, Rule 5.80(B).) In this matter, the  
15 Court's Default Order was based upon proof satisfactory to the Court that the NDC was served  
16 properly on respondent and that respondent actually received notice of the NDC. The  
17 evidentiary support for the Court's findings is included in the record in this matter, including that  
18 respondent filed a Response to the NDC on November 16, 2018. (See Response: Notice of  
19 Disciplinary Charges, filed on November 16, 2018, in the court file for this matter.)

20 2. Respondent's Default was Properly Entered.  
21 The Court's Default Order was properly entered, included the required advisement of the  
22 effects of default, and was served on respondent in compliance with rule 5.25. The Default  
23 Order has not been vacated or set aside. This petition has not been filed earlier than 45 days of  
24 the date of service of the default order.

25 3. Culpability Warranting Discipline.  
26 As reflected in the Court's Default Order, the factual allegations in the NDC were  
27 deemed admitted. (See Order Entering Default and Order Enrolling Inactive (Rule 5.81-Failure

1 To Appear, filed on February 21, 2019, in the court file for this matter; see also Rules Proc. of  
2 the State Bar, Rule 5.82(2).) The NDC alleged violations of: (i) the Rules of Professional  
3 Conduct, which is cause for the imposition of discipline pursuant to Business and Professions  
4 Code section 6077; (ii) Business and Professions Code, section 6103, which is cause for the  
5 imposition of discipline pursuant to the Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions  
6 for Prof. Misconduct, std. 2.12(a); and (iii) Business and Professions Code section 6106, which  
7 is cause for the imposition of discipline pursuant to Rules Proc. of State Bar, tit. IV, Stds. for  
8 Atty. Sanctions for Prof. Misconduct, std. 2.11.

9 When a member's default has been entered properly and not set aside or vacated within  
10 the time prescribed, the Rules of Procedure of the State Bar adopted January 1, 2011 dispense  
11 with the analysis traditionally undertaken to determine the appropriate level of discipline. The  
12 evidentiary requirements of rule 5.85, subdivision (F)(1)(a) through (d) compelling a disbarment  
13 recommendation after default have been satisfied.

### 14 III. CONCLUSION

15 Having satisfied all the required elements for a disbarment recommendation after default  
16 required by rule 5.85, the Court must recommend respondent's disbarment.

17 Respectfully submitted,

18 THE STATE BAR OF CALIFORNIA  
19 OFFICE OF CHIEF TRIAL COUNSEL



20 DATED: April 15, 2019 By: Eli D. Morgenstern  
21 Senior Trial Counsel



DECLARATION OF ELI D. MORGENSTERN

I, Eli D. Morgenstern , declare:

1. All statements made herein are based on my personal knowledge, except for those stated to be under information and belief.
2. I am an attorney licensed to practice law in the State of California. I am employed as a Senior Trial Counsel in the Office of Chief Trial Counsel of the State Bar of California.
3. This matter was assigned to me for prosecution of disciplinary charges against respondent.
4. On October 29, 2018, the State Bar filed and served the Notice of Disciplinary Charges (“NDC”) on respondent. The NDC was mailed to respondent’s address in the State Bar’s membership records by certified mail, return receipt requested, as required by rule 5.25 for service of an initial pleading. The return receipt was returned to the State Bar signed by Judith Valencia on November 6, 2018.
5. On December 11, 2018, the Court conducted the initial status conference for this matter. Respondent appeared in-person for the initial status conference; respondent’s counsel appeared by telephone. Trial was set for February 21-22, 2019, at 10:00 a.m. in the Hearing Department in Los Angeles.
6. On February 20, 2019, respondent sent an email to the Court and me stating that he would be unable to appear at trial for this matter on February 21, 2019, because he lives in Wisconsin and there were no flights out of Wisconsin to California due to the weather. (Morgenstern Declaration.)
7. On February 20, 2019, the State Bar filed a Notice of Intent To Request An Order of Entry of Default In The Event That Respondent Fails To Appear For Trial.
8. On February 21, 2019, I appeared on behalf of the State Bar, ready for trial. Respondent did not appear for trial.
9. On February 21, 2019, the Court issued an order entering respondent’s default

1 10. As of today's date, to my personal knowledge and upon information and belief,  
2 respondent has not contacted me or the Office of Chief Trial Counsel-including by telephone,  
3 email, facsimile, or regular mail, since February 21, 2019, the date the order entering his default  
4 was entered.

5 11. Non-public disciplinary matters exist against respondent involving performance and  
6 communication issues. Some of the matters also involve allegations that respondent has  
7 mishandled client funds.

8 12. Respondent has no prior record of discipline.

9 13. The Client Security Fund has not made payments resulting from respondent's  
10 conduct.

11 14. To date, respondent has not filed a motion to set aside or vacate the default.

12 I declare under penalty of perjury under the laws of the State of California that the  
13 foregoing is true and correct.

14 Executed on this 15<sup>th</sup> day of April, 2019 at Los Angeles, California.



16 Eli D. Morgenstern  
17 Declarant



DECLARATION OF SERVICE

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 17-O-06606 - CV

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017-2515, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

PETITION FOR DISBARMENT AFTER DEFAULT FOR FAILURE TO APPEAR AT TRIAL; AND SUPPORTING DECLARATION OF ELI D. MORGENSTERN

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414-7266-9904-2111-0159-47 at Los Angeles, addressed to: (see below)

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, addressed to: (see below) Tracking No.:

Table with 3 columns: Person Served, Business-Residential Address, Fax Number/Courtesy Electronic Copies To. Row 1: Anthony James Dunne & Dunne LLP, 701 B Street, Suite 955 San Diego, CA 92101, mail@dunnefamilylaw.com, aiddunne@aol.com

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: April 15, 2019

SIGNED: Kathi Palacios, Kathi Palacios Declarant