



PUBLIC MATTER

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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 15-AE-15283-WKM
)	
MICHAEL WILLIAM NEWCOMB,)	ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT
Member No. 188321,)	(Bus. & Prof Code, § 6203, subd. (d)(1).)
)	
<u>A Member of the State Bar.</u>)	

In this fee-arbitration-award-enforcement proceeding, the Presiding Arbitrator of the State Bar of California’s Mandatory Fee Arbitration Program, Kenneth E. Bacon, requests an order involuntarily enrolling Attorney **MICHAEL WILLIAM NEWCOMB**¹ as an inactive member of the State Bar of California because he failed to pay a \$4,300 fee arbitration award in favor of his former clients John and Kielle Horton (collectively the Hortons). (Bus. & Prof. Code, § 6203, subd. (d);² Rules Proc. of State Bar, rule 5.360 et seq.³) For the reasons set forth *post*, the court will grant the Presiding Arbitrator’s request and order that Attorney Newcomb be involuntarily enrolled inactive.⁴

¹ Attorney Newcomb was admitted to the practice of law in the State of California on June 5, 1997, and has been a member of the State Bar of California since that time.

² All further statutory references are to the Business and Professions Code.

³ All further references to rules are to the Rules of Procedure of the State Bar.

⁴ Of course, only active members of the State Bar of California may lawfully practice law in this state. (§ 6125.) It is a crime for an attorney who has been enrolled inactive to practice or

Relevant Procedural History

On November 2, 2015, the Presiding Arbitrator properly served an inactive enrollment motion on Attorney Newcomb at his latest address shown on the official membership records of the State Bar of California by certified mail, return receipt requested. (§ 6002.1, subd. (c); rules 5.25, 5.361(B).) That service was deemed complete when mailed even if Attorney Newcomb did not receive it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.) Thereafter, the Presiding Arbitrator filed the inactive enrollment motion in the State Bar Court on November 3, 2015.

Attorney Newcomb failed to timely file a response to the inactive enrollment motion. (Rules 5.28(A), 5.362(A).) Furthermore, Attorney Newcomb did not otherwise appear or participate in this proceeding. By failing to timely file a response to the motion and to request a hearing, Attorney Newcomb waived his right to a hearing on his inactive enrollment. (Rule 5.364.) On November 20, 2015, the court took the inactive enrollment motion under submission for decision without a hearing.

Findings

In light of the inactive enrollment motion and its supporting documents, the court makes the following findings of fact. On April 8, 2013, an arbitrator from the Riverside County Bar Association Fee Arbitration Program signed a fee arbitration award, which requires that Attorney Newcomb refund to the Hortons \$4,300 (i.e., \$4,100 in previously paid, but unearned, attorney's fees and \$200 in arbitration filing fees the Hortons paid to the Riverside County Bar Association). (§ 6203, subd. (d)(1).) The award, which was properly served on Attorney

to even attempt to practice law or to advertise or hold himself or herself out to be an attorney or lawyer or counselor at law or otherwise entitled to practice law in this state. (§ 6126, subd. (b).) Moreover, an attorney who has been involuntarily enrolled inactive may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

Newcomb by mail on April 30, 2013, is binding under a written agreement between Attorney Newcomb and the Hortons. (§ 6204, subd. (a).) However, Attorney Newcomb has not paid any portion of the \$4,300 award.⁵ (§ 6203, subd. (d)(2)(A).) The inactive enrollment motion was filed more than 100 days after the award was served on Attorney Newcomb by mail and within four years after the award was served on Attorney Newcomb by mail. (§ 6203, subd. (d)(5).) Attorney Newcomb has not proposed any payment plan to the Hortons or to the State Bar. (§ 6203, subd. (d)(2)(B).)

Furthermore, Attorney Newcomb has not demonstrated that he is not personally responsible for making or ensuring payment of the refund or that he is unable to pay the refund award. (§ 6203, subd. (d)(2).) In sum, the court finds that the statutory requirements for involuntary inactive enrollment under section 6203, subdivision (d)(1) are satisfied. Accordingly, the court will grant the Presiding Arbitrator's inactive enrollment motion and order Attorney Newcomb's inactive enrollment.

Order of Involuntary Inactive Enrollment

The Presiding Arbitrator's November 3, 2015, inactive enrollment motion is GRANTED. In accordance with California Business and Professions Code section 6203, subdivision (d)(1), the court orders that **MICHAEL WILLIAM NEWCOMB, State Bar number 188321**, be involuntarily enrolled as an inactive member of the State Bar of California effective five calendar days after the service of this order by mail (Rules Proc. of State Bar, rule 5.368(B)(1)).

Michael William Newcomb will remain enrolled inactive under this order until: (1) he pays the \$4,300 arbitration award to John and Kielle Horton;⁶ (2) he pays the reasonable costs

⁵ Attorney Newcomb, however, paid in full \$860 in administrative penalties that the Presiding Arbitrator imposed on him under section 6203, subdivision (d)(3) for failing to comply with the arbitration award.

⁶ The Presiding Arbitrator's request that Attorney Newcomb's inactive enrollment continue until he pays 10 percent interest per annum on the \$4,300 award from April 30, 2013,

awarded to the State Bar *post*; and (3) he makes and the State Bar Court grants a motion to terminate his involuntary inactive enrollment. (Bus. & Prof. Code, § 6203, subd. (d)(4); Rules Proc. of State Bar, rule 5.370.)

Reasonable Costs

Upon the Presiding Arbitrator's *prompt* submission of a bill of costs, reasonable costs are awarded to the State Bar under Business and Professions Code section § 6203, subdivision (d)(3). (Rules Proc. of State Bar, rule 5.368(B)(2).) Any costs not paid are to be added to Michael William Newcomb's State Bar membership fee for the year 2017 in accordance with Business and Professions Code section § 6203, subdivision (d)(3).

Dated: December 17, 2015.



W. KEARSE MCGILL
Judge of the State Bar Court

until paid is denied. Notwithstanding paragraph 16(c) of the Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs, which is reprinted in volume 25, part 5 of West's Annotated Court Rules -- State Bar (2015 supp.) at page 117, the arbitration award does not provide for the payment of interest.

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 December 17, 2015, I deposited a true copy of the following document(s):

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT (Bus. & Prof Code, § 6203, subd. (d)(1).)

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:

**MICHAEL W. NEWCOMB
MICHAEL W NEWCOMB, ATTORNEY AT LAW
32823 TEMECULA PKWY
TEMECULA, CA 92592**

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

KENNETH ERIC BACON, Fee Arbitration, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 17, 2015.



Paul Barona
Case Administrator
State Bar Court