

PUBLIC MATTER

FILED

DEC 26 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES



STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case No. 16-J-14252-YDR |
| |) | |
| WILLIAM ORVAL GUFFEY, |) | DECISION INCLUDING DISBARMENT |
| |) | RECOMMENDATION AND ORDER OF |
| A Member of the State Bar, No. 132965. |) | INVOLUNTARY INACTIVE |
| _____ |) | ENROLLMENT |

On March 11, 2011, Respondent William Orval Guffey was ordered by the Supreme Court of Washington to be disciplined upon findings that he had committed professional misconduct in that jurisdiction. As a result, the Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding on December 28, 2016. (Bus. & Prof. Code, § 6049.1; Rules Proc. of State Bar, rules 5.350-5.354.)¹

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the Washington proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of Respondent's misconduct in Washington; and (3) whether the Washington proceeding lacked fundamental constitutional protection. (§ 6049.1, subd. (b).)

¹ Unless otherwise indicated, all references to rules are to this source. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Respondent bears the burden of establishing that the conduct for which he was disciplined by Washington would not warrant the imposition of discipline in California and/or that the Washington proceedings lacked fundamental constitutional protection. Unless Respondent establishes one or both of these, the record of discipline in the Washington proceeding is conclusive evidence of Respondent's culpability of misconduct in California. (§ 6049.1, subs. (a) and (b).)

Respondent failed to appear at the trial of this case and his default was entered. The 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

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 December 22, 1987, and has been a member since then.

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).)

Procedural Requirements Have Been Satisfied

On December 28, 2016, the State Bar properly filed and served an NDC on Respondent by certified mail, return receipt requested, at his membership records address⁴ (official address). The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Respondent filed a response to the NDC on January 18, 2017.

At an in-person status conference on February 8, 2017, the trial was set to start on March 8, 2017. Respondent participated in the status conference. The February 10, 2017 order setting the trial date was served on Respondent at his official address by first-class mail, postage paid.

On March 8, 2017, the State Bar appeared for trial but Respondent did not. The court then entered Respondent's default. The matter was submitted for decision on June 5, 2017. However, on June 21, 2017, the court vacated Respondent's default and the submission order because the February 10, 2017 notice of trial was not properly served on Respondent at the address provided in his response to the NDC (response address).⁵ (Rule 5.81(A)(2)(b).)

Thereafter, at a status conference on July 10, 2017, the trial was set to start on August 25, 2017. The July 13, 2017 order setting the trial date was properly served on Respondent at his official address by first-class mail, postage paid, and at the response address.

On August 25, 2017, the State Bar appeared for trial but Respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered Respondent's default by order filed August 25, 2017. The order notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The

⁴ Respondent's official address is 470 3rd Ave., Ste 9, Chula Vista, CA 91910.

⁵ Respondent's address provided in the response to the NDC is 470 Third Avenue, Suite 2, Chula Vista, CA 91910-4613.

order also placed Respondent on involuntary inactive status under section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On November 7, 2017, the State Bar properly filed and served the petition for disbarment on Respondent at his official address and the response address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are no investigations or disciplinary charges pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not paid out claims as a result of Respondent's conduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on December 5, 2017.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of 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.) Section 6049.1(a) provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that, subject to limited exceptions, the member is culpable of professional conduct in this state.

The court finds, as a matter of law, that Respondent's culpability, pursuant to Washington Rules of Professional Conduct, rules 1.15A(b), 1.15A(e), 1.15A(h)(5), 1.15A(h)(9), 5.3(b), 8.4(b), 8.4(c), and 8.4(i), in the Washington proceeding, would warrant the imposition of

discipline in California under the laws or rules applicable in this State at the time of

Respondent's misconduct in the Washington proceeding, as follows:

Daniel and Stewart Rawson Matter

Respondent willfully violated section 6106 (moral turpitude, dishonesty, or corruption) by misappropriating client funds of \$24,995 for his own use and by misrepresenting in his resignation letter to the Washington Bar Association that he had no knowledge of any pending client complaint.

Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to maintain a balance of \$25,000 in a client trust account on behalf of his client.

Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide an accounting regarding the client's funds.

Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay funds to client) by failing, upon the client's multiple requests, to promptly refund any portion of the \$25,000 for costs in Respondent's possession.

In its pretrial statement, the State Bar amended the NDC to dismiss violation charges of Business and Professions Code section 6068, subdivisions (a) and (d). Accordingly, those two counts are hereby dismissed.

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) Respondent had actual notice of this proceeding and had adequate notice of the trial date prior to the entry of his default.

(3) The default was properly entered under rule 5.81.

(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.

(5) Despite adequate notice and opportunity, Respondent failed to appear for the trial of this disciplinary proceeding.

As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that Respondent William Orval Guffey 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 Stewart Rawson in the amount of \$25,000.

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.

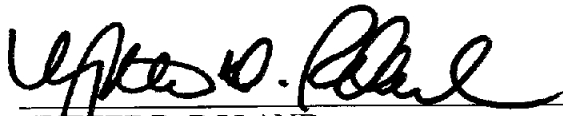
Costs

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 William Orval Guffey, State Bar number 132965, 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: December 21, 2017



YVETTE D. ROLAND
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 December 26, 2017, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION 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:

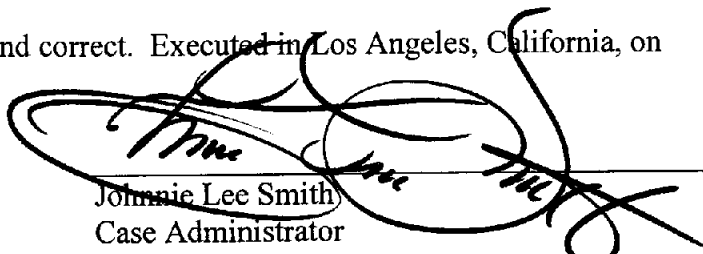
**WILLIAM O. GUFFEY
LAW OFFICE OF WILLIAM O. GUFFEY
470 3RD AVE STE 9
CHULA VISTA, CA 91910**

**WILLIAM O. GUFFEY
470 THIRD AVENUE, SUITE 2
CHULA VISTA, CA 91910-4613**

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

ESTHER FALLAS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 26, 2017.


Johnnie Lee Smith
Case Administrator
State Bar Court