



PUBLIC MATTER

FILED

DEC 05 2017

STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 16-J-18215-DFM
)	
MARK LANE LOOMIS WELKER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 113037.)	ENROLLMENT
_____)	

On April 25, 2016, respondent Mark Lane Loomis Welker (Respondent) was ordered disciplined by the Evidentiary Panel of the State Bar of Texas District 1 Grievance Committee (Texas State Bar) upon findings that Respondent had committed professional misconduct. As a result, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding on May 2, 2017. (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 Texas 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 Texas; and (3) whether the Texas proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar and all statutory references or sections are to the Business and Professions Code.

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

Respondent failed to participate in the California State Bar Court proceeding, either in person or through counsel, and his default was entered. The State Bar filed a petition for disbarment under rule 5.85. Rule 5.85 provides the procedure to follow when an attorney fails to participate in a State Bar Court 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 notice of disciplinary charges (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

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 June 13, 1984, and has been a member since then.

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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).)

Procedural Requirements Have Been Satisfied

On May 2, 2017, the State Bar properly filed and served a NDC on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned by the United States Postal Service bearing the stamp "Return to Sender Insufficient Address Unable to Forward." However, the State Bar also mailed a courtesy copy of the NDC to an alternate mailing address for Respondent; this NDC was not returned. Also on May 2, 2017, the State Bar emailed a courtesy copy of the NDC to an email address the State Bar had previously used to contact Respondent.

On June 8, 2017, the State Bar contacted Respondent by telephone. Respondent confirmed his alternate mailing address and his email address. Thereafter, the State Bar emailed Respondent to tell him of its intention to file a motion to enter Respondent's default if he did not file a response to the NDC. The State Bar has not had any contact with Respondent since June 20, 2017.

Respondent did not file a response to the NDC. On June 20, 2017, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar senior trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also 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 July 11, 2017. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under section 6007, subdivision (e), effective three days after service of the order. Respondent has remained inactively enrolled since that time. The orders entering the default and

enrolling Respondent inactive were properly served on Respondent at his membership records address by certified mail, return receipt requested. A courtesy copy was also sent by first-class mail to Respondent's alternate mailing 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 October 20, 2017, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. To date, Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default and the time for him to do so has now expired.

The Admitted Factual Allegations Warrant the Imposition of Discipline

The court finds that Respondent's culpability in the Texas 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 Texas proceeding, as follows:

Case No. 16-J-18215 – The April 25, 2016 Texas Disciplinary Order

On April 25, 2016, the Texas State Bar ordered that Respondent be suspended from the practice of law for a period of nine months upon the finding that he had committed professional misconduct in that jurisdiction. Respondent agreed that he: (1) represented a client in the formation of a limited liability company and neglected the legal matter entrusted to him by failing to properly file documentation required for the formation of the limited liability company; (2) failed to keep the client reasonably informed about the status of her legal matter; (3) failed to promptly comply with reasonable requests for information from the client about her legal matter; (4) upon termination of representation, failed to refund advance payments of fees that had not

been earned; and (5) owes \$900 in restitution to the client. He agreed that he violated the following rules of the Texas Disciplinary Rules of Professional misconduct: 1.01(b)(1) [neglecting a legal matter entrusted to a lawyer], 1.03(a) [failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information], and 1.15(d) [failure to take steps to the extent reasonably practicable to protect a client's interests].

The NDC filed by the State Bar in the instant proceeding alleges that Respondent's misconduct in the Texas matter reflects violations of section 6068, subdivision (m), and rules 3-110(A) and 3-700(D)(2) of the California Rules of Professional Conduct. This court agrees. This allegation is deemed admitted upon the entry of Respondent's default in this proceeding and is supported by the agreed-upon facts giving rise to Respondent's discipline in Texas.

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 **Mark Lane Loomis Welker**, State Bar number 113037, 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.

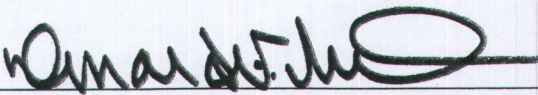
Costs

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 **Mark Lane Loomis Welker**, State Bar number 113037, 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 5, 2017


DONALD F. MILES
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 5, 2017, 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:

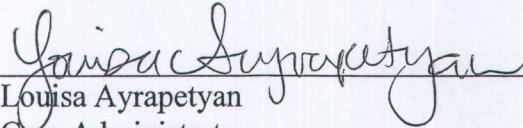
MARK LANE LOOMIS WELKER
RT 1 BOX 1596
QUITMAN, TX 75783

COURTESY COPY
MARK LANE LOOMIS WELKER
371 COUNTY ROAD 4
QUITMAN, TX 75783

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

ABRAHIM M. BAGHERI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 5, 2017.



Louisa Ayrapetyan
Case Administrator
State Bar Court