

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

FILED

OCT - 1 2018

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of) Case Nos. 16-O-16177
) (17-O-01852)-CV
STEPHEN ROBERT KILSTOFTE,)
)
A Member of the State Bar, No. 79493.) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE
_____) ENROLLMENT

Respondent Stephen Robert Kilstofte (Respondent) is charged with seven counts of misconduct. He failed to participate in these proceedings either in person or through counsel, and his default was entered. Thereafter, 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.¹

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 notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting that the court recommend the attorney's disbarment.²

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.

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).)

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 May 16, 1978, and has been a member since then.

On January 18, 2018, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's 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 U.S. Postal Service returned the NDC bearing the stamp, "Return to Sender Attempted-Not known Unable to Forward."

Thereafter, OCTC took additional steps to notify Respondent about these proceedings by: (1) attempting to contact Respondent in-person at his membership records address; (2) attempting to contact Respondent in-person at his home address; (3) sending a courtesy copy of the NDC by first class, regular mail to Respondent at four different alternate addresses; (4) emailing Respondent a letter at his membership records email address notifying him that the NDC was filed on January 18, 2018; and (5) attempting to contact Respondent by calling Respondent's membership records telephone number.

Respondent failed to file a response to the NDC. On February 21, 2018, OCTC properly filed and 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 OCTC 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 April 3, 2018. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar of California under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

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 July 13, 2018, OCTC properly filed and served the petition for disbarment on Respondent at his membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are other disciplinary matters pending against Respondent; (3) Respondent has two prior discipline records; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct. 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 September 6, 2018.

Prior Record of Discipline

Pursuant to a stipulation and order of the Hearing Department filed on August 8, 1996, Respondent received a public reproof with conditions. Respondent was culpable of five ethical violations in two client matters. Respondent stipulated to willfully violating rule 3-700(D)(1) of the Rules of Professional Conduct (failing to return client's file); rule 4-100(A) (failing to deposit client funds into a client trust account); rule 4-100(B)(4) (failing to promptly pay client funds); and rules 3-310(C)(1) and 3-310(C)(2) (accepting representation of clients with potential and actual conflicts without obtaining clients' written consent). Respondent's misconduct was

aggravated by client harm and indifference but tempered by the lack of a prior discipline record and good faith.

In his second prior, pursuant to an order of the Supreme Court filed on January 29, 2009, Respondent was suspended for one year, stayed, and placed on probation for three years subject to conditions. Respondent was culpable of misconduct in five matters. Respondent stipulated to failing to report judicial sanctions to the State Bar (§ 6068, subd. (o)(3)); failing to perform with competence (Rules Prof. Conduct, rule 3-110(A)); failing to respond to reasonable status inquiries (§ 6068, subd. (m)); failing to cooperate in a disciplinary proceeding (§ 6068, subd. (i)); and failing to return unearned fees (Rules Prof. Conduct, rule 3-700(D)(2)). Respondent's prior record, client harm, lack of cooperation, and multiple acts of misconduct were aggravating factors. Respondent's candor with OCTC during the disciplinary proceedings mitigated his misconduct.

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.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case No. 16-O-16177 (The Williams Matter)

Count One – The court does not find Respondent culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct as the facts deemed admitted as a result of the entry of Respondent's default do not support a finding by clear and convincing evidence that Respondent intentionally, repeatedly, or recklessly failed to perform legal services with competence.

Count Two - Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by constructively withdrawing from employment when he failed to take any action on his client's behalf after June 16, 2016, and failed to inform his client that he was withdrawing from employment.

Count Three - Respondent willfully violated section 6068, subdivision (m) (failure to respond to client status inquires), by failing to respond to his client's reasonable status inquiries.

Count Four - Respondent willfully violated section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform his client that a demand for production of documents had been served on June 20, 2016; that opposing counsel made a request for a response to the demand for production of documents; and that a motion to compel and request for sanctions was filed.

Count Five - Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 16-O-16177.

Case No. 17-O-01852 (The Franco Matter)

Count Six - Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release client's file) by failing to promptly return his client's file as requested, upon the termination of Respondent's employment.

Count Seven - Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 17-O-01852.

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 Respondent's disbarment.

RECOMMENDATIONS

Discipline - Disbarment

It is recommended that Stephen Robert Kilstofte, State Bar Number 79493, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended 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 imposing discipline in this matter.³ Failure to do so may result in disbarment or suspension.

³ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent

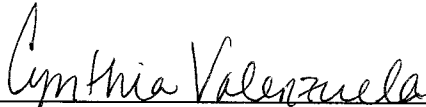
Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Stephen Robert Kilstofte, State Bar number 79493, 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: October 1, 2018


CYNTHIA VALENZUELA
Judge of the State Bar Court

has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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 October 1, 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:

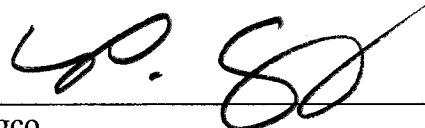
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

STEPHEN ROBERT KILSTOFTE
444 W OCEAN BLVD STE 800
LONG BEACH, CA 90802

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

SHATAKA A. SHORES-BROOKS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 1, 2018.



Paul Songco
Court Specialist
State Bar Court