



PUBLIC MATTER

FILED

AUG 21 2018

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 16-O-16334 (16-O-16438;
)	16-O-16896)–DFM
JEFFREY ANTHONY MILLER,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 144120.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
_____)	

In this matter, respondent Jeffrey Anthony Miller (Respondent) was charged with thirteen counts of misconduct. He failed to appear at trial and his default was entered. 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 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, OCTC 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.

¹ Unless otherwise indicated, all references to rules are to this source.

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).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 11, 1989, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 30, 2017, OCTC filed and properly served a notice of disciplinary charges (NDC) on Respondent at his membership records address by certified mail, return receipt requested. The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On August 7, 2017, Respondent personally appeared for a status conference. On August 11, 2017, Respondent filed his response to the NDC.

On August 22, 2017, attorney Ellen Pansky filed a Notice of Representation indicating that her firm would be representing Respondent. However, Ms. Pansky's representation of Respondent was short-lived. On October 6, 2017, Respondent filed a Substitution of Attorney stating that he would be representing himself in pro per.

On December 5, 2017, OCTC appeared for trial but Respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering Respondent's default that same day.

On January 19, 2018, Respondent filed a motion to set aside his default. That motion was ultimately granted on February 21, 2018. On March 12, 2018, Respondent participated in a status conference in which the parties discussed their readiness for trial. Based on that discussion, the court set trial dates to commence on April 17, 2018, at 9:30 a.m.

On April 17, 2018, OCTC appeared for trial but Respondent again did not.³ Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering Respondent's default that same day. The order notified Respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his April 17, 2018 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 June 22, 2018, OCTC filed the petition for disbarment. As required by rule 5.85(A), OCTC reported in the petition that: (1) since default was entered, OCTC has had no contact with Respondent; (2) Respondent has other disciplinary investigations pending; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's misconduct.⁴ 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 July 18, 2018.

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 and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

³ Approximately one hour prior to trial, Respondent sent an email to the court and OCTC stating that he would not be appearing for trial.

⁴ The disbarment petition also contained conflicting language stating that the Client Security Fund has paid out claims resulting from Respondent's misconduct. The inclusion of this language appears to be a typographical error.

Case No. 16-O-16438 – The Donely & Golshani Matter

Count One – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$67,800.

Count Two – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to deposit funds received for the benefit of his clients into a trust account.

Count Three – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – breach of fiduciary duty) by failing to place client funds in trust and thereafter misappropriating the funds from his general account, in willful violation of his fiduciary duties as stated under *Worth v. State Bar* (1976) 17 Cal.3d 337, 341.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

Case No. 16-O-16334 – The Gish Matter

Count Five – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$24,997.65.⁵

Count Six – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain funds received for the benefit of a client in a trust account.

⁵ The allegation in the NDC that Respondent misappropriated \$24,977.65 appears to be a typographical error. The NDC alleges that Respondent deposited \$25,000 of his client funds into his client trust account and that the balance of that account dipped to \$2.35. This reflects a misappropriation of \$24,997.65, rather than \$24,977.35.

Count Seven – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – breach of fiduciary duty) by failing to maintain client funds in trust and thereafter misappropriating the funds, in willful violation of his fiduciary duties as stated under *Worth v. State Bar* (1976) 17 Cal.3d 337, 341.

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

Case No. 16-O-16896 – The Hernandez, Renteria, & Bueno Matter

Count Nine – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$140,894.84.

Count Ten – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain funds received for the benefit of his clients in a trust account.

Count Eleven⁶ – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – breach of fiduciary duty) by failing to timely pay medical liens, in willful violation of his fiduciary duties as stated under *Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156.

Count Twelve – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – NSF checks) by issuing nine checks when he knew – or was grossly negligent in not knowing – there were insufficient funds in his client trust account to pay the checks.

⁶ The heading of Count Eleven mistakenly lists case No. 15-O-13859 rather than case No. 16-O-16896.

Count Thirteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

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 the proceedings prior to the entry of his default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of default support a finding that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, Respondent failed to appear for the trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Discipline - Disbarment

It is recommended that Jeffrey Anthony Miller, State Bar Number 144120, be disbarred from the practice of law in 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 the following payees:

- (1) Peggy Donely and Reza Golshani, collectively, in the amount of \$67,800 plus 10 percent interest per year from September 15, 2015;

- (2) Tanner Gish in the amount of \$24,997.65 plus 10 percent interest per year from September 14, 2015; and
- (3) Laura Hernandez, Salvador Hernandez, Ricardo Hernandez, Maurilia Renteria, Francisco Hernandez, Narcisco Hernandez, Arturo Hernandez, Maria Hernandez, and Maria Bueno, collectively, in the amount of \$140,894.84 plus 10 percent interest per year from January 25, 2016.

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

It is also 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.⁷

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.

⁷ 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 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).)

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Jeffrey Anthony Miller, State Bar number 144120, 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: August 21, 2018


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 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 August 21, 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:

JEFFREY A. MILLER
1304 E DEXTER ST
COVINA, CA 91724 - 3226

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

AKILI P. NICKSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 21, 2018.



Mazie Yip
Court Specialist
State Bar Court