

**PUBLIC MATTER**

**FILED** *wjs*

**STATE BAR COURT OF CALIFORNIA**

**JUN - 5 2019**

**HEARING DEPARTMENT – LOS ANGELES**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of	)	Case No. 17-O-06606-CV
	)	
	)	
ANTHONY JAMES DUNNE,	)	DECISION AND ORDER OF INVOLUNTARY
	)	INACTIVE ENROLLMENT
	)	
<u>State Bar No. 146642.</u>	)	

In this original disciplinary proceeding, respondent Anthony James Dunne (Respondent) is charged with five counts of serious misconduct, including the misappropriation of more than \$50,000 in trust funds. Even though Respondent had actual notice of the February 21, 2019, trial date in this proceeding, Respondent failed to appear at the trial, and his default was entered under rule 5.81 of the Rules of Procedure of the State Bar.<sup>1</sup> Thereafter, the State Bar's Office of Chief Trial Counsel (OCTC) filed a petition for disbarment under rule 5.85.

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 if the attorney fails to have the default set aside or vacated within 45 days, OCTC will file a petition requesting that the State Bar Court recommend the attorney's disbarment to the Supreme Court. In the instant case, the court concludes that all

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<sup>1</sup> Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

of 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.<sup>2</sup>

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in California on June 11, 1990, and has been licensed to practice law in this state since that time.

#### **Procedural Requirements Have Been Satisfied**

On October 29, 2018, OCTC filed the notice of disciplinary charges (NDC) in this proceeding and properly served it on Respondent at his official State Bar record 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 November 16, 2018, Attorney Anthony Radogna filed a response to the NDC for Respondent.

At a status conference on December 11, 2018, the court set this matter for trial beginning on February 21, 2019. Attorney Radogna participated in the status conference by telephone. Respondent was physically present in court during the status conference.

On December 11, 2018, the court also filed an order regarding trial date, pretrial conference, trial preparation requirements, and settlement conference and properly served that order on Respondent's counsel, Attorney Radogna, by first class mail, postage paid (rule 5.81(A)(2)(a)). That December 11, 2018, order clearly notified Respondent and his counsel that the trial in this proceeding was set to begin on February 21, 2019, at 10:00 a.m.

On February 13, 2019, Respondent and Attorney Radogna filed a substitution of attorney in which Respondent substituted himself in propria persona in place of Attorney Radogna. (Rule 5.31.)

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<sup>2</sup> If the court determines that any due process requirement is 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).)

On February 21, 2019, OCTC appeared for trial, but Respondent did not. On that same day, after finding that all of the requirements of rule 5.81(A) were satisfied, the court filed an order entering Respondent's default and properly served that order on Respondent at his official State Bar record address (which is the address that Respondent listed on the February 13, 2019, substitution of attorney) by certified mail, return receipt requested. (Rules 5.25(B), 5.81(B).) The order notified Respondent that, if he did not timely move to set aside or vacate his default, the court would recommend his disbarment.

In its February 21, 2019, default order, the court also ordered that Respondent be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (e),<sup>3</sup> effective three days after service of that order by mail.<sup>4</sup> Accordingly, Respondent was involuntarily enrolled inactive on February 24, 2019, and Respondent has continuously been enrolled inactive under section 6007, subdivision (e) 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 April 15, 2019, OCTC timely filed a petition for disbarment after default and served that petition on Respondent at his official State Bar record address by certified mail, return receipt requested (rules 5.25(B), 5.85(D)). As required by rule 5.85(A), OCTC reported in the petition that: (1) since the entry of default, Respondent has failed to contact OCTC; (2) there are no public disciplinary matters pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) the Client Security Fund has not paid out any claims resulting from Respondent's misconduct.

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<sup>3</sup> All further statutory references are to the Business and Professions Code.

<sup>4</sup> An Attorney who has been enrolled inactive cannot lawfully practice law. (§§ 6125, 6126.)

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The court took the petition for disbarment under submission for decision on May 14, 2019.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of Respondent's default, the factual allegations, but not the conclusions or the charges, in the NDC were deemed admitted and no further proof is required to establish the truth of those facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC deemed admitted by the entry of Respondent's default support the findings that Respondent is culpable on all of the five counts of misconduct charged in the NDC and that Respondent, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

#### **Case Number 17-O-06606**

Count One — Respondent willfully violated former rule 4-100(A) of the Rules of Professional Conduct (commingling personal funds with client funds) (now Rules Prof. Conduct, rule 1.15(c)).<sup>5</sup> Over a period of more than nine months from June 2017 through March 2018, Respondent improperly deposited his own funds into his client trust account (CTA) 42 times. Those 42 deposits totaled more than \$419,000.

Count Two — Respondent willfully violated former rule 4-100(A) of the Rules of Professional Conduct (improper use of a trust account) (now Rules Prof. Conduct, rule 1.15). Over a period of six months from October 2017 through March 2018, Respondent improperly paid personal expenses from his CTA 77 times. Those 77 payments totaled more than \$100,000.

Counts Three and Four — Respondent willfully violated former rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client/trust funds in a trust account) (now

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<sup>5</sup> The new Rules of Professional Conduct became effective on November 1, 2018.

Rules Prof. Conduct, rule 1.15) and section 6106 (moral turpitude) by willfully and intentionally misappropriating \$54,007.48 that he held in trust for his client and his client's wife.

Count Five — Respondent willfully violated section 6103 (obey court orders) by failing to maintain \$54,007.48 in trust as ordered by a superior court.

### **Disbarment is Recommended**

In light of the foregoing, the court finds that the requirements of rule 5.85(F)(1) have been satisfied and that it is appropriate to recommend Respondent's disbarment. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual knowledge of this proceeding and of the trial date before the entry of his default;
- (3) Respondent's default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of Respondent's 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 appear at trial in this proceeding. As set forth in the Rules of Procedure of the State Bar, the court will recommend disbarment.

## **RECOMMENDATIONS**

### **Discipline – Disbarment and Restitution**

The court recommends that respondent Anthony James Dunne (Respondent) be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

The court further recommends that Respondent be ordered to make restitution in the amount of \$54,007.48 plus 10 percent interest per year from January 2, 2018, to Terrale B.

Brown and Marie W. Brown, or such other recipient or recipients as may be designated by the Office of Probation or the State Bar Court (or to reimburse the Client Security Fund to the extent of any payment from the Fund to such payee or payees in accordance with Business and Professions Code section 6140.5).

### **California Rules of Court, Rule 9.20**

The court further 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 imposing discipline in this matter.<sup>6</sup>

### **Costs**

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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 an attorney who is actually suspended or disbarred must be paid as a condition of return to active status or reinstatement.


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<sup>6</sup> 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 Anthony James Dunne, State Bar number 146642, be involuntarily enrolled inactive, effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)).

Dated: June 5, 2019.

  
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**CYNTHIA VALENZUELA**  
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 June 5, 2019, 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:

Anthony Dunne  
Dunne & Dunne LLP  
701 B St Ste 955  
San Diego, CA 92101-8138

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

Eli Morgenstern, Enforcement Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 5, 2019.



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Paul Songco  
Court Specialist  
State Bar Court