



PUBLIC MATTER

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JAN 03 2019

P.B.

STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 17-O-07313-CV
)	
WILLIAM BUCKNER MENN II,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 250462.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
_____)	

Respondent William Buckner Menn II (Respondent) was charged with seven counts of misconduct involving a single client matter. Respondent failed to file a response to the Notice of Disciplinary Charges (NDC) in this matter 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 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 NDC and the attorney fails to have the default set aside or vacated within 90 days, the OCTC will file a petition requesting the court to recommend the attorney's disbarment.²

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).)

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 July 26, 2007, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 14, 2018, the OCTC properly served Respondent with the NDC by certified mail, return receipt requested, and by U.S. first-class mail, at his membership records address and at a possible alternate address for Respondent in Sacramento, California. A courtesy copy was sent by e-mail to Respondent's official membership e-mail address,³ as well as to four other possible e-mail addresses for Respondent. The NDC was filed with the State Bar Court on the same date. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The certified mail was returned by the U.S. Postal Service stamped with "Return to Sender; Not Deliverable as Addressed; Unable to Forward." The e-mail to each of the five e-mail addresses, except for one, was returned as undeliverable or rejected.

On July 9, 2018, the OCTC attempted to reach Respondent at his membership records telephone number, as well as another number known to the State Bar. A LexisNexis search revealed three possible telephone numbers for Respondent that the assigned deputy trial counsel called. None of these phone numbers were valid based on the recorded messages and the information provided by the recipients of the calls.

³ Effective February 1, 2010, all attorneys are required to maintain a current e-mail address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.9(a)(2).)

Despite the OCTC's efforts, Respondent failed to file a response to the NDC. On July 10, 2018, the OCTC filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the assigned deputy trial counsel. (Rule 5.80.) The motion notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. This motion was sent by certified mail, return receipt requested, and by regular first-class mail, addressed to Respondent at his membership records address, as well as at a possible alternate address for Respondent in Sacramento, California.

Respondent did not file a response to the motion and his default was entered on July 26, 2018. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served by certified mail, return receipt requested, addressed to Respondent at his membership records address. Courtesy copies were also sent to Respondent's possible alternate address in Sacramento and to five possible e-mail addresses for Respondent.⁴

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 30, 2018, the OCTC properly filed and served a petition for disbarment on Respondent. As required by rule 5.85(A), the OCTC reported in the petition that: (1) Respondent has not contacted the OCTC since the entry of his default; (2) there are no other investigations or disciplinary matters pending against Respondent; (3) Respondent does not have a record of prior discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's conduct. Respondent did

⁴ On August 6, 2018, this certified letter was returned to the State Bar Court marked as "Not Deliverable as Addressed; Unable to Forward."

not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on December 13, 2018.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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(2).) 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).)

Case No. 17-O-07313 (The Gardella Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence), by failing to attend a hearing where judgment and sentence were to be entered and failing to attend a hearing to show cause as to why he should not be held in contempt.

Count Two – Respondent willfully violated Business and Professions Code section 6103 (violation of a court order), by failing to appear at a hearing and, thereafter, failing to comply with the order to show cause regarding his failure to appear.

Count Three – Respondent willfully violated rule 3-700(A)(1) of the Rules of Professional Conduct (improper withdrawal), by constructively terminating his employment in a proceeding before a tribunal without the required permission of that tribunal.

Count Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees), by failing to promptly refund, upon his termination, any of the \$1,500 in advanced fees that he had received from his client that he had not earned.

Count Five – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate accounts to client), by failing, following the termination of

his employment, to render an appropriate accounting to his client regarding the advanced fees that he had received from his client.

Count Six – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond promptly to status inquires), by receiving and failing to respond promptly to three telephonic, two written, and one in-person status inquiries made by his client.

Count Seven – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate in disciplinary investigation), by failing to provide a substantive response to the OCTC's letters which he received that requested his response to the allegations of misconduct in this matter.

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

It is recommended that William Buckner Menn II, State Bar Number 250462, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

Restitution

It is further recommended that Respondent make restitution to Shelby Gardella or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$1,500 plus 10 percent interest per year from November 18, 2015. 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 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 proceeding.⁵ Failure to do so may result in disbarment or suspension.

⁵ 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).)

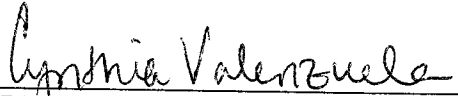
Costs

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 William Buckner Menn II, State Bar number 250462, 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: January 3, 2019


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 January 3, 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:

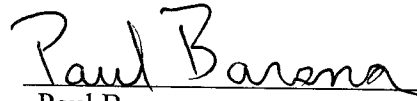
WILLIAM B. MENN, II
LAW OFFICE OF WILLIAM B MENN
770 L ST STE 950
SACRAMENTO, CA 95814

WILLIAM BUCKNER, II MENN
9130 KIEFER BLVD., APT. 117
SACRAMENTO, CA 95826

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

DINA E. GOLDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 3, 2019.



Paul Barona
Court Specialist
State Bar Court