



PUBLIC MATTER

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STATE BAR COURT
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case No.: 18-O-13772-CV
)	
MARK T. GALLAGHER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
State Bar No. 180514.)	ENROLLMENT
)	
_____)	

In this matter, respondent Mark T. Gallagher (Respondent) was charged with seven 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, the 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 1, 1995, and has been a California attorney since then.

Procedural Requirements Have Been Satisfied

On September 18, 2018, the OCTC filed and properly served a notice of disciplinary charges (NDC) 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 October 9, 2018, Respondent filed his response to the NDC.

Respondent subsequently appeared at multiple status conferences, including the pretrial conference on January 7, 2019. At the pretrial conference, Respondent advised the court that he intended to default at trial.

On January 15, 2019, the 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. 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 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 March 12, 2019, the OCTC filed the petition for disbarment. As required by rule 5.85(A), the OCTC reported in the petition that: (1) since default was entered, the 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

previously made payments resulting from Respondent's misconduct. 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 April 17, 2019.

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).)

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Count One – It has not been established by clear and convincing evidence that Respondent violated former rule 3-110(A) of the Rules of Professional Conduct³ (failing to perform legal services with competence), as alleged in Count One. Moreover, the same conduct alleged in Count One was more appropriately charged in Counts Three (failing to convey a settlement offer), Four (misrepresentation), and Five (failing to inform client of significant developments). Accordingly, Count One is dismissed with prejudice.

Count Two – Respondent willfully violated former rule 3-700(D)(1) of the Rules of Professional Conduct (failing to release file) by failing to promptly turn over his client's papers and property upon his client's request following termination of employment.

Count Three – Respondent willfully violated former rule 3-510 of the Rules of Professional Conduct (communication of settlement offer) by failing to promptly communicate all terms and conditions of a written settlement offer made to his client.

³ The State Bar Rules of Professional Conduct were revised on November 1, 2018.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments) by failing to inform his client that: (1) Respondent executed a settlement agreement on the client’s behalf; (2) the client had obligations to perform pursuant to the settlement agreement; and (3) opposing counsel communicated his intention to enforce the settlement agreement against Respondent’s client.

Count Five – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by simulating his client’s signature on a settlement agreement, when Respondent knew or was grossly negligent in not knowing that the signature was false and misleading.

Count Six – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by stating to opposing counsel that Respondent’s client had executed the settlement agreement, when Respondent knew or was grossly negligent in not knowing this statement was false.

Count Eight⁴ – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the 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 NDC does not contain a Count Seven.

(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

Disbarment

The court recommends that respondent Mark T. Gallagher, State Bar Number 180514, 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

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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

It is 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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the

effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: April 24, 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 April 24, 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:

Mark T. Gallagher
Law office of Mark Gallagher
177 Parkshore Dr
Folsom, CA 95630-4726

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

Danielle A. Lee, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 24, 2019.



Paul Songco
Court Specialist
State Bar Court