

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 10-O-00124 (10-O-05915;
)	10-O-06200; 10-O-07798;
)	10-O-07984; 10-O-09168)
CHARLES VICTOR STEBLEY,)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 158219,)	ENROLLMENT
)	
)	
<u>A Member of the State Bar.</u>)	

Respondent Charles Victor Stebley (respondent) was charged with 18 counts of violations of the Rules of Professional Conduct (RPC) and the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.²

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),

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

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

Respondent was admitted to practice law in this state on June 8, 1992, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 23, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular mail, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Neither the certified mail, return receipt, nor either NDC were returned to the State Bar by the U.S. Postal Service.

Thereafter, the State Bar attempted to reach respondent by telephone at his official membership records telephone number and left a message. The State Bar also emailed respondent at the email address listed in his membership records.⁴ A copy of the NDC was also sent to respondent by regular first class mail to three other addresses found using an internet search. Two of the mailings were returned by the U.S. Postal Service; one was not returned. The State Bar also attempted to reach respondent at four other telephone numbers found using an internet search. Two of the numbers were disconnected; one number was busy on two different

³ 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(E)(2).)

⁴ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

days; and one number was changed, but a message was left at the new number. Nevertheless, the State Bar was unable to reach respondent. The State Bar also checked the 2011 Daily Journal Directory of California Attorneys, but no further addresses or telephone numbers were found.

Respondent failed to file a response to the NDC. On July 19, 2011, the State Bar 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 State Bar deputy trial counsel 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 August 5, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.⁵ The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under 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.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On February 7, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has six other disciplinary matters pending; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's conduct; however, there are currently 11 pending claims against respondent. Respondent did not

⁵ The return receipt for the certified mail bears the name "Charles Stebley" and the signature "Charles V Stebley."

respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on March 8, 2012.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on October 19, 2011, respondent was suspended for three years, the execution of which was stayed subject to certain conditions, including a minimum one- year suspension which will continue until he pays specified restitution and the court grants a motion to terminate his suspension. The misconduct involved three client matters. Respondent was disciplined for his failure to perform legal services with competence, failure to keep to a client reasonably informed of significant developments in a matter, disobedience of a court order, failure to refund unearned fees, and failure to take reasonable steps to avoid reasonably foreseeable prejudice to his client. Respondent's default was entered in this prior disciplinary matter as a result of respondent's failure to appear at trial.

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, subd. (E)(1)(d).)

1. Case Number 10-O-00124 (The Garcia Matter)

Count One (A) – respondent willfully violated rule 4-100(A) of the RPC (failing to maintain client funds in trust account) by depositing \$470 in advanced costs into his personal account.

Count One (B) – respondent willfully violated section 6106 (commission of act of moral turpitude, dishonesty or corruption) by misappropriating \$470 of his clients’ funds for his own use and benefit.

Count One (C) – respondent willfully violated rule 3-110(A) of the RPC (failing to perform legal services with competence) by failing to apply for his client’s visa within the specified time period, failing to complete the visa application process on his client’s behalf, and by failing to submit a required document.

Count One (D) – respondent willfully violated section 6068, subdivision (m) (duty to communicate) by failing to keep his clients reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services.

2. Case Number 10-O-05915 (SBI Matter)

Count Two (A) – respondent willfully violated rule 4-100(A) of the RPC by failing to maintain at least \$1,201.01 from Therry Dinh; at least \$174.01⁶ from Andrew Francis; and at least \$51.01 from Miguel Nerri in a bank account labeled as a trust account.

Count Two (B) – respondent willfully violated section 6106 by misappropriating at least \$1,201.01 from Therry Dinh; at least \$174.01 from Andrew Francis; and at least \$51.01 from Miguel Nerri.⁷

3. Case Number 10-O-06200 (The Louise Paul and Mike Mullinx Matter)

Count Three (A) – respondent willfully violated rule 3-700(A)(2) of the RPC (withdrawing from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to a client’s rights) by withdrawing from employment without taking reasonable steps

⁶ Although the NDC alleges this amount as \$180, that amount is in error as the trust account balance on the date the check was presented for payment was -\$174.01.

⁷ As the checks for Dinh and Nerri were paid by the bank, the court will not recommend restitution to these clients.

to avoid foreseeable prejudice to his client Jorge Moscosa, including failing to refund \$6,000 in unearned advanced fees.

Count Three (B) – the court will not find that respondent willfully violated rule 4-100(B)(3) of the RPC (failure to maintain records of client property/render appropriate accounts) by failing to provide an accounting as requested by Louise Paul and Mike Mullinx, as Paul and Mullinx were not respondent’s clients. Rule 4-100(B)(3) provides, in pertinent part, that an attorney maintain records of client funds and properties and render appropriate accounts to a client regarding them.

Count Three (C) – respondent willfully violated rule 3-110(A) of the RPC by failing to file a request for a labor certification and green card on behalf of his Moscosa and by abandoning the matter prior to completion.

Count Three (D) – the court will not find respondent culpable of willfully violating section 6068, subdivision (m) by failing to respond to status update requests from Paul and Mullinx, as respondent’s client was Moscosa, not Paul and Mullin. As such, respondent had no duty to respond to the status update requests of Paul and Mullin.

4. Case Number 10-O-07798 (The Gilman Matter)

Count Four (A) – respondent willfully violated rule 3-110(A) of the RPC by failing to take any step toward filing an application for certificate of citizenship for Joe Gilman and his son and changing the legal name of Gilman’s son.

Count Four (B) – respondent willfully violated section 6068, subdivision (m) by failing to respond to his client’s various communications seeking a status update on his matter.

Count Four (C) – respondent willfully violated rule 3-700(D)(2) of the RPC (failing to refund unearned fees) by failing to refund \$500 in advanced fees. However, the court will not

find respondent culpable of this rule violation for failing to refund \$420 in advanced costs, as rule 3-700(D)(2) applies only to failing to refund unearned fees.

Count Four (D) – respondent willfully violated section 6106 by misappropriating \$420 of advanced costs from Gilman.

5. Case Number 10-O-07984 (SBI Matter)

Count Five (A) – respondent willfully violated section 6106 by misappropriating at least \$2,170 from four clients and by issuing checks totaling \$3,070 when he knew or should have known there were insufficient funds in the account to cover the checks.

6. Case Number 10-O-09168 (The Valencia and Mercado Matter)

Count Six (A) – respondent willfully violated rule 3-110(A) of the RPC by failing to file a petition with the U.S. Custom and Immigration Services on behalf of his client Geronimo Mercado.

Count Six (B) – respondent willfully violated rule 3-700(A)(2) of the RPC by failing to communicate with Mercado and by constructively terminating the legal relationship without refunding unearned fees and costs. The court will not find respondent culpable of violating rule 3-700(A)(2) as a result of his failure to perform any work on behalf of Mercado and Luz Valencia or his failure to communicate with Valencia, as Valencia was not respondent's client, and respondent's failure to perform any work on behalf of Mercado is the basis of the rule 3-110(A) violation found in Count Six (A).

Count Six (C) – respondent willfully violated section 6068, subdivision (m) by failing to respond to the status inquiries of his client Mercado. The court will not find respondent culpable of willfully violating section 6068, subdivision (m) for failing to respond to Valencia's status inquiries as Valencia was not respondent's client. Accordingly, respondent had no duty to communicate with Valencia.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment must be 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, as the State Bar attempted to reach respondent by telephone at several different telephone numbers, by email, by sending a copy of the NDC to three other addresses, and by checking the 2011 Daily Journal Directory of California Attorneys.⁸ In addition, the return receipt for the certified mail containing the order entering respondent’s default bears the name “Charles Stebley” and the signature “Charles V Stebley.”

(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 must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Charles Victor Stebley be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Jamie and Antonio Garcia in the amount of \$470 plus 10 percent interest per year from June 26, 2008;
- (2) Andrew Francis in the amount of \$174.01 plus 10 percent interest per year from December 16, 2009;
- (3) Louise Paul and Mike Mullinx in the amount of \$6,000 plus 10 percent interest per years from September 1, 2009;
- (4) Joe Gilman in the amount of \$920 plus 10 percent interest per year from October 21, 2010;
- (5) Dector Baltozar in the amount of \$1,365 plus 10 percent interest per year from April 1, 2010;
- (6) Ana Sandoval in the amount of \$355 plus 10 percent interest per year from May 21, 2010;
- (7) Gianina Flores-Frazeze in the amount of \$1,010 plus 10 percent interest per year from August 2, 2010;
- (8) Alfred Aryee in the amount of \$340 plus 10 percent interest per year from August 2, 2010; and
- (9) Luz Valencia and Geronimo Mercado in the amount of \$1,155 plus 10 percent interest per year from September 1, 2010.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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Rule 9.20

The court also recommends 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

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Charles Victor Stebley, State Bar number 158219, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: June _____, 2012

PAT McELROY
Judge of the State Bar Court