

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case Nos.: 11-O-17945-PEM (11-O-17946;
)	11-O-18012; 11-O-18204;
GARY ROBERT MATTA,)	11-O-18205; 11-O-18942)
)	
Member No. 230483,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
)	
)	

Respondent Gary Robert Matta (respondent) was charged with 21 counts of violations of the Rules of Professional Conduct 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 rule 5.85 of the Rules of Procedure of the State Bar.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 the practice of law in California on May 25, 2004, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 13, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular first-class 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.) The NDC was returned to the State Bar by the United States Postal Service bearing the stamp "Notify Sender of New Address Law Offices of Gary Matta, P.O. Box 1792 Hagnata GU 96932-1792" (the Guam address).

Thereafter, the State Bar sent a copy of the NDC to respondent by regular, first-class mail at the Guam address.

Respondent failed to file a response to the NDC. On May 16, 2012, the State Bar properly filed and served on respondent at his membership records address, a motion for entry of default.⁴ 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

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 A courtesy copy of the Notice of Motion and Motion for Entry of Default was also served on respondent at the Guam address.

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 June 1, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. A courtesy copy of the order entering default was sent by regular mail to the Guam address. 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 January 28, 2013, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the default was entered on June 1, 2012; (2) there are no additional filed disciplinary matters pending against respondent; but, there are six pending investigations;⁵ (3) respondent has no prior record of discipline; and (4) the Client Security Fund received 12 applications regarding respondent in 2011 and 2012, which are still pending. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on February 27, 2013.

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

⁵ Additionally, in State Bar Court case No. 12-TR-12164, respondent was placed on involuntary inactive status under Business and Professions Code § 6007(b)(2), due to the fact that the superior court had assumed jurisdiction over his practice in *Assumption of Jurisdiction over the Law Practice of Gary R. Matta*, Sacramento Superior Court case No. 34-2011-00114699.

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(E)(1)(d).)

1. Case Number 11-O-17945 (LaBay Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to pursue his client’s dissolution suit or take any action on behalf of his client from February 10, 2011, until May 11, 2011.

Count Two – respondent willfully violated section 6068, subdivision (m) (failure to communicate), by failing to respond to the client’s email inquiries regarding the status of her case and by declining to discuss the case with the client when she visited him at his membership records address to ask about the status of her case.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$3,000 unearned attorney fee that had been advanced to him by his client.

Count Four – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release to the client, at the request of the client, all papers and property) by not returning the client file to his client, at her request, upon termination of his employment.

Count Five – respondent willfully violated section 6068, subdivision (m), by failing to inform the client that he had relocated his offices from the address where the client had originally met with him to another address.

Count Six – respondent willfully violated section 6068, subdivision (j) (failure to update membership address), by failing to maintain on the official membership records of the State Bar a current office address and telephone number or the address to be used for State Bar purposes

after he abandoned his law practice, which had been located at his last known membership records address.

2. Case Number 11-O-18205 (DeCastro Matter)

Count Seven – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund to his client the unearned \$2,500 advanced attorney fee he had received from her.

3. Case Number 11-O-18012 (Kolling Matter)

Count Eight – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to take any substantive action in his client’s family law matter after April 20, 2011, and by thereafter continuing hearings in that matter, without obtaining his client’s consent to do so.

Count Nine – respondent willfully violated section 6068, subdivision (m), by failing to advise his client of the May and June hearing dates in her family law matter and then failing to inform her that the court had rescheduled those hearings to later dates based on respondent’s requests for continuances.

Count Ten – respondent willfully violated section 6068, subdivision (m), by failing to respond to his client’s messages left in August 2011, inquiring about the status of her case.

Count Eleven – respondent, whose employment had been terminated on or about August 3, 2011, willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to thereafter refund the unearned \$3,500 advanced attorney fee he had received from the client’s daughter on the client’s behalf.

4. Case Number 11-O-18204 (Linn Matter)

Count Twelve – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to take any action to move his client’s case forward after July 11, 2011.

Count Thirteen – the court will not find respondent culpable of willfully violating section 6068, subdivision (m), by failing to respond to status update requests from his client, as the client messages did not include requests for status updates, but rather directed respondent to “prepare for the case.”

Respondent, however, is found culpable of willfully violating section 6068, subdivision (m), by failing to inform his client of the rescheduling of the June 7, 2011 hearing date, a significant development.

Count Fourteen – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by abandoning his client’s case after July 11, 2011, and by failing to take reasonable steps in order to avoid reasonably foreseeable prejudice to the rights of the client.

Count Fifteen – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any portion of the \$2,500 advanced fee he received from his client, which was not earned.

5. Case Number 11-O-17946 (The Murphy Matter)

Count Sixteen – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by taking no substantive action on behalf of his client in her domestic partnership dissolution matter from May 30 to August 3, 2011.

Count Seventeen – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund the \$3,000 fee advanced to him by his client, although he had provided only preliminary services that were of no benefit to the client and took no substantive action prior to his employment being terminated.

Count Eighteen – the court will not find respondent culpable of willfully violating section 6068, subdivision (m), by failing to respond to status update requests from his client, as

respondent responded to the client messages within approximately two weeks from the first message being left.

Respondent, however, is found culpable of willfully violating section 6068, subdivision (m), by failing to inform his client that he would be vacating his office, a significant development.

6. Case Number 11-O-18942 (Ganas Matter)

Count Nineteen – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to complete the estate planning services for which he was hired from March 2010, until the client was no longer able to reach him in December 2011.

Count Twenty – respondent willfully violated section 6068, subdivision (m), by failing to respond after August 2011, to his client's email and phone messages inquiring about the status of the case and by failing to inform his client that he would be vacating his office, a significant development.

Count Twenty-One – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund any part of the \$1,560 in advanced fees received from his client.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) 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, as the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular first-class mail, at his membership records

address and thereafter sent a copy of the NDC to respondent by regular first-class mail to the alternate forwarding address in Guam;

(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.

RECOMMENDATION

Disbarment

The court recommends that respondent Gary Robert Matta be disbarred from the practice of law in the State of 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) Sherry LaBay in the amount of \$3,000 plus 10 percent interest per year from May 11, 2011;

(2) Aileen DeCastro in the amount of \$2,500 plus 10 percent interest per year from June 3, 2011;

(3) Sylvia Schuler in the amount of \$3,500 plus 10 percent interest per year from August 3, 2011;

(4) John Linn in the amount of \$2,500 plus 10 percent interest per year from December 5, 2011;

(5) Leslie Murphy in the amount of \$3,000 plus 10 percent interest per year from August 3, 2011; and

(6) Nickolas Ganas in the amount of \$1,560 plus 10 percent interest per year from December 31, 2011.

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

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 Gary Robert Matta, State Bar number 230483, 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: June ____, 2013

Pat McElroy
Judge of the State Bar Court