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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA **PUBLIC MATTER**

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 12-O-15002-DFM (12-O-16879;
)	15-O-12674; 15-O-12688)
TODD EUGENE MARSH,)	
)	DECISION AND ORDER OF
Member No. 176065,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
)	

Respondent Todd Eugene Marsh (Respondent) was charged in nine counts with 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) and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

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.

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(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 California on April 7, 1995, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 30, 2015, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, 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 on August 10, 2015, stating, "BOX CLOSED, UNABLE TO FORWARD, RETURN TO SENDER."

However, reasonable diligence was used to notify Respondent of this proceeding. The State Bar made several attempts to contact Respondent without success. On August 24, 2015, the State Bar sent letters to Respondent by first class mail, notifying him that: (1) the NDC had been filed against him; (2) the due date for his response had passed; and (3) the State Bar intended to file a motion for default if he did not file a response by September 8, 2015, which was the date the court had scheduled for a status conference in this matter. Included with the letters were copies of the NDC, all of which were mailed to Respondent's membership records address, as well as four other possible addresses for Respondent discovered during the course of a LexisNexis search. On August 28, 2015, the mailing sent to Respondent's membership records address was returned stating, "BOX CLOSED" and "UNABLE TO FORWARD." On August 31, 2015, the letter sent to one of the addresses, which had been generated as a possible address

for Respondent, was also returned, bearing the note "BOX CLOSED" and "UNABLE TO FORWARD."

Additionally, efforts to notify Respondent of this proceeding included attempts made by the deputy trial counsel (DTC) assigned to the instant matter. As set forth in her declaration of reasonable diligence, on August 25, 2015, the DTC sent an email to Respondent at his membership records email address, notifying him that the NDC had been filed against him and that the due date for his response had passed. The email stated that the State Bar intended to file a motion for default, if Respondent did not file a response by the September 8, 2015 status conference, which had been scheduled in the matter. Attached to the email was a courtesy copy of the NDC. As of September 14, 2015, the date on which the DTC signed her declaration in support of the State Bar's motion for default, she had not received a response to the email.

On August 31, 2015, the DTC attempted to reach Respondent at his official membership telephone number. However, there was no voice mail box set up for that number and the DTC was unable to reach Respondent. Therefore, the DTC immediately called Respondent at two other telephone numbers generated by the LexisNexis search as numbers associated with Respondent. The DTC could not leave a message at the first of the two numbers, because it had no voice mail box set up. The second of the two numbers had a voice mail box, but did not provide a name associated with the number. The DTC left a message at that voicemail, stating that she was calling from the State Bar regarding a case against Respondent and that Respondent's response to the NDC was due on August 24th and, therefore, should be filed immediately. The DTC also stated in her message that there was a status conference scheduled for September 8th; and, if Respondent failed to respond to the NDC, the State Bar, soon thereafter, would file a motion for default. As of September 14, 2015, Respondent had not returned any of the DTC's aforementioned telephone calls.

Additionally, the DTC attempted to reach Respondent at four more telephone numbers which were generated by a ZabaSearch. Only one of the numbers had a voice mail box. That voice mail box identified the number for which it was answering, as the number for the "Marsh residence." The DTC left a voice message at that number, stating that she was calling from the California State Bar about a case against Respondent and was requesting that Respondent return her call as soon as possible. As of September 14, 2015, the DTC's call had not been returned.

As Respondent is on disciplinary probation, the DTC contacted his probation deputy on September 8, 2015, to inquire if Respondent's profile contained any additional addresses. The probation deputy provided two alternative email addresses and one additional telephone number reflected in Respondent's probation file. After attending the status conference in this matter, at which Respondent failed to appear, the DTC sent emails to Respondent at those additional email addresses. Those emails informed Respondent that a NDC had been filed against him and that the due date for his response had passed. The emails also noted that at the status conference, the State Bar Court had ordered the State Bar to file a default motion against Respondent within 10 days. The DTC further advised Respondent to contact her by September 11, 2015, to avoid having a default entered against him. Attached to the emails were courtesy copies of the NDC. As of September 14, 2015, the DTC had not received a response to any of the emails she had sent.

On September 8, 2015, the DTC again attempted to reach Respondent by calling one of the numbers provided to her by Respondent's probation deputy. The greeting for the voicemail box for that number only identified the telephone number, but not the name associated with the number. The DTC nonetheless left a message, informing Respondent that: (1) she was calling from the California State Bar regarding a case against Respondent; (2) a status conference had been held on September 8, 2015, in the State Bar Court, during which the court ordered the State Bar to file a motion for entry of default due to Respondent's failure to file a response within 10

days' time; and (3) Respondent should immediately file a response; and, if he did not do so the State Bar would comply with the court's order to file a motion for entry of default.

Despite the efforts of the DTC, Respondent failed to file a response to the NDC. On September 14, 2015, the State Bar filed and properly served a motion for entry of Respondent's default on Respondent at his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the DTC 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 October 9, 2015. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested, and by first-class mail, postage fully prepaid. 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 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 January 27, 2016, the State Bar filed and properly served a 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 on October 9, 2015; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct.

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 25, 2016.

Prior Record of Discipline

Respondent has two prior records of discipline.

Pursuant to a Supreme Court order S195921, filed on November 2, 2011, Respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for three years subject to conditions, including that he be suspended from the practice of law for the first 18-months of probation. Respondent stipulated to 13 violations of the Business and Professions Code and/or Rules of Professional Conduct in four matters. The violations to which he stipulated, included: moral turpitude for writing checks with insufficient funds in his client trust account and mishandling client funds; failing to maintain client funds in trust; failing to communicate with clients; commingling; failing to timely disburse client funds; concealing from his client the fact that he had not filed a lawsuit; failing to perform legal services with competence; and failing to release a client file and client fees (State Bar Court case Nos. 08-O-14841 (09-O-10709; 09-O-11499; 10-O-00282).

In his second prior, pursuant to Supreme Court order S222938 (State Bar Court case No. 12-N-12476), filed on January 29, 2015, Respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for four years subject to conditions, including that he be suspended from the practice of law for a minimum of the first two years of probation and that he remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. Respondent was found culpable of violating California Rules of Court, rule 9.20, by not filing an affidavit of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of Supreme Court order No. 195921, requiring compliance with California Rules of Court, rule 9.20.

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. 12-O-15002 (Martinez Matter)

Count One – Respondent willfully violated section 6068, subdivision (a) (attorney's duty to support Constitution and laws of United States and California), by holding himself out as entitled to practice law and by actually practicing law when he was not an active member of the State Bar in violation of sections 6125 and 6126. Specifically, on February 2 and April 19, 2012, dates on which Respondent was not an active member of the State Bar, he held himself out as entitled to practice law by accepting representation of Cody Martinez (Martinez) as a client and actually practiced law by providing legal advice to Martinez.

Count Two – Respondent willfully violated section 6106 (moral turpitude, dishonesty or corruption) by holding himself out as entitled to practice law and by actually practicing law on February 2 and April 19, 2012, when, after having received notice that he had been suspended from the practice of law, effective December 2, 2011, he knew or was grossly negligent in not knowing that he was not an active member of the State Bar.

Count Three – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (charging and collecting an illegal fee) by charging and collecting a fee of \$750 from Martinez for legal services to be performed, which fee Respondent charged and collected on February 2, 2011, while he was suspended and not entitled to practice law.

Case No. 12-O-16879 (Zaragoza Matter)

Count Four– Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to file an opening brief or any pleading other than the notice of appeal in his client’s post-conviction criminal appeal matter, conduct leading to the dismissal of his client’s appeal.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform the client that his appeal had been dismissed on February 8, 2011, due to the failure to file the opening brief in the case.

Count Six – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return promptly to his client upon termination of Respondent’s employment on August 20, 2012, any part of the approximately \$12,500 unearned fee previously advanced to him from January 10, 2010 through April 19, 2011, by the client.⁴

Count Seven – Respondent willfully violated section 6106 (moral turpitude – misrepresentation) by making a misrepresentation to his client’s sister in February 2012, by telling her that her brother’s appeal was active with the court and pending when Respondent knew or was grossly negligent in not knowing that his statement was false.

Case Nos. 12-O-15002 and 12-O-16879 (Failure to Update Membership Address)

Count Eight – Respondent willfully violated section 6068, subdivision (j) (failure to update membership address), by failing to update his State Bar official membership address with a current address within 30 days thereafter after closing down his prior mailing address.

⁴ The court does not recommend that Respondent be required to pay restitution of the unearned fees he received for the following reasons: (1) the facts as set forth in Count Six of the NDC fail to allege the exact amount of the unearned fees Respondent received from his client; but rather, the NDC states that Respondent “received advanced fees of *approximately* (italics added) \$12,500” from his client; and (2) the NDC does not allege that Respondent failed to return the unearned fees, which were advanced to him by his client; it alleges that “Respondent failed to refund *promptly*” (italics added) the unearned fees he received.

Case No. 15-O-12674 – (Violation of Disciplinary Probation)

Count Nine – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to comply with conditions attached to his disciplinary probation in State Bar Court case No. 12-N-12476. Specifically, Respondent failed to: (1) contact the Office of Probation of the State Bar of California (Office of Probation) and schedule a meeting within 30 days of the effective date of discipline; (2) hold an initial meeting with the Office of Probation; (3) submit a quarterly report by its April 10, 2015 due date; (4) commence mental health treatment by March 30, 2015, and provide the Office of Probation with proof of enrollment in mental health treatment; and (5) file a mental health report by its April 10, 2015 due date.

Case No. 15-O-12688 – (Violation of Disciplinary Probation)

Count Ten – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to comply with conditions attached to his disciplinary probation in State Bar Court case No. 08-O-14841. Specifically, Respondent failed to submit six quarterly reports, which were due by October 10, 2013, January 10, 2014, April 10, 2014, July 10, 2014, October 10, 2014, and December 2, 2014.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and that 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

The court recommends that respondent **Todd Eugene Marsh**, State Bar number 176065, 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

The court also 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 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 **Todd Eugene Marsh**, State Bar number 176065, 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: March 21, 2016



DONALD F. MILES
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 Case Administrator 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 March 22, 2016, 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:

**TODD EUGENE MARSH
LAW OFC TODD E MARSH
PO BOX 1043
LAKE HUGHES, CA 93532**

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

JAMIE KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 22, 2016.



Tammy Cleaver
Case Administrator
State Bar Court