

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **12-O-15901-RAH**
) **(12-O-16223; 12-O-16678;**
JAMES ROBERT GILLEN,) **12-O-17249; 12-O-17309;**
) **12-O-17362;12-O-17582)**
Member No. 68137,)
) **DECISION AND ORDER OF**
A Member of the State Bar.) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
)
_____)

Respondent James Robert Gillen (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 the 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 this state on January 5, 1976, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 21, 2013, the State Bar properly filed and served a 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.) On July 8, 2013, the NDC was returned to the State Bar by the United States Postal Service bearing the stamp, "Return to Sender Not Deliverable As Addressed Unable to Forward."

In addition, reasonable due diligence was used to notify respondent of the proceeding. On July 10, 2013, the deputy trial counsel (DTC) assigned to this case by the State Bar from at least May 29 through July 10, 2013, caused a letter to be mailed to respondent at his official membership records address, and also caused copies of the letter to be sent to respondent via facsimile and email, advising respondent that on June 21, 2013, the State Bar had filed and properly served the NDC in this matter on him at his official membership records address. The DTC enclosed a copy of the NDC and copies of other relevant documents issued by the State Bar

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).)

Court. On July 23, 2013, the letter was returned to the State Bar bearing the stamp, "Return to Sender Not Deliverable As Addressed Unable to Forward."

On July 10, 2013, the DTC conducted an online search for respondent on zabasearch.com. But, it did not reveal any contact information for respondent.

The State Bar also received a handwritten letter dated July 8, 2013, which, apparently, was signed by respondent. The letter referenced case numbers 12-O-16223, 12-O-17362, and 12-O-17249. Enclosed with respondent's letter were the letters that a State Bar investigator had mailed to respondent regarding the three matters. Respondent also enclosed with his letter his original State Bar membership card for the year 2012. In his letter respondent acknowledged culpability for the misconduct in the three referenced cases. He wrote, "By the time you receive this letter I will be dead. I dishonored the Bar." The return address on the envelope was respondent's official membership records address.

In response to respondent's July 8, 2013 letter, Assistant Chief Trial Counsel Alan Gordon (ACTC) telephoned respondent's official membership telephone number. But, it was disconnected. The ACTC then called the Marina Del Rey station of the Los Angeles County Sheriff's Office and requested that the sheriff conduct a welfare check on respondent. On July 10, 2013, the sheriff telephoned the ACTC and informed the ACTC that he had visited respondent's official membership records address and discovered that respondent no longer lived there.

On July 11, 2013, the ACTC sent an email to respondent indicating that he had attempted to telephone respondent, but that respondent's telephone number was disconnected, that the ACTC had received respondent's July 8th letter and was concerned about respondent. The ACTC invited respondent to telephone him immediately. Respondent did not respond to the

ACTC's email. The State Bar has had no further contact with respondent since receiving his July 8, 2013 letter.

Respondent failed to file a response to the NDC. On August 1, 2013, 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 Supervising Senior Trial Counsel (STC) 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 19, 2013. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.⁴ 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 180 days to file motion to set aside default].) On March 13, 2014, 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; (2) there are other disciplinary investigations pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's conduct. 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 April 8, 2014.

⁴ The envelope was returned to the State Bar Court, bearing a stamp, "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

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(E)(1)(d).)

Case Number 12-O-15901 (The Lieberman Matter)

Count One – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to return the client files upon termination of employment or any time thereafter, despite repeated requests from the client.

Count Two – respondent willfully violated section 6068, subdivision (i) of the Business and Professions Code (failure to cooperate in a disciplinary investigation) by failing to provide a written response to two letters he received from the State Bar requesting that he respond to specified allegations of misconduct raised by the client's complaint.

Case Number 12-O-16223 (The Carl Matter)

Count Three –respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account), by failing to maintain entrusted client funds received for the benefit of his client in his client trust account on several dates over a period extending from March 2, 2011 through, including but not limited to, August 7, 2012.

Count Four –respondent willfully violated section 6106 (moral turpitude) by misappropriating settlement funds due to his client in the amount of \$99,437.19.

Count Five – respondent willfully violated section 6068, subdivision (i) of the Business and Professions Code by failing to provide a written response to two letters he received from the

State Bar requesting that he respond to specified allegations of misconduct raised by the client's complaint.

Case Number 12-O-16678 (The Newman Matter)

Count Six –respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain in his client trust account at least \$5,000 of the \$25,000 in settlement funds he received on behalf of his client.

Count Seven – respondent willfully violated section 6106 (moral turpitude) by misappropriating settlement funds due to his client in the amount of \$5,000.

Count Eight – respondent failed to cooperate with or participate in a State Bar disciplinary investigation, in willful violation of section 6068, subdivision (i), by failing to provide a written response to two letters he received from the State Bar, requesting that he respond to specified allegations of misconduct under investigation by the State Bar.

Case Number 12-O-17249 (The Kim Matter)

Count Nine – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay/deliver client funds) by failing to pay from the client's settlement funds, as requested by the client, medical liens totaling \$5,076.72, which were owed to four of the client's medical lienholders.

Count Ten – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain a balance of \$10,000 in his client trust account on behalf of his client after May 18, 2012.

Count Eleven – respondent willfully violated section 6106 (moral turpitude) by dishonestly or with gross negligence misappropriating settlement funds, which he received on his client's behalf, in the amount of \$10,000.

Count Twelve – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing despite his client’s request, to provide an accounting of the settlement funds he received on the client’s behalf.

Count Thirteen – respondent willfully violated section 6068, subdivision (i) by failing to provide a written response to the State Bar’s letter, which he received, requesting that he respond to specified allegations of misconduct under investigation by the State Bar.

Case Number 12-O-17309 (The Rosa Matter)

Count Fourteen – respondent willfully violated rule 3-110 (A) of the Rules of Professional Conduct (failing to perform legal services with competence) by not performing any legal services of value on behalf of his client, which nonperformance included his failure to attempt to negotiate or settle the client’s matter.

Count Fifteen – respondent willfully violated section 6068, subdivision (i) by failing to provide a written response to the State Bar’s letters, which he received, requesting that he respond to specified allegations of misconduct under investigation by the State Bar.

Case Number 12-O-17362 (The Baum Williams Matter)

Count Sixteen – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct by failing to pay from the client’s settlement funds, as requested by the client, a lien for medical expenses in the amount of \$1,200.

Count Seventeen – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain at least \$9,652.17 of settlement funds that he received for the benefit of his client in his client trust account on several dates over a time period extending from April 5, 2012 through August 7, 2012.

Count Eighteen - respondent willfully violated section 6106 (moral turpitude) by dishonestly or with gross negligence misappropriating client settlement funds in the amount of \$9,652.17.

Count Nineteen – respondent willfully violated section 6068, subdivision (i), by failing to provide a written response to an investigative letter, which he received from the State Bar, requesting that respondent respond to allegations of misconduct raised by the client in a complaint filed with the State Bar.

Case Number 12-O-17582 (The Solomon Matter)

Count Twenty – respondent violated section 6106 (moral turpitude) by paying the fee for the services of Dr. Kenneth Solomon (Solomon), whom respondent had retained as an expert witness, by issuing a check from his own account in the amount of \$16,000, made payable to Solomon’s business “Laboratory of Risk and Safety Analyses,” despite the fact that respondent’s account had a balance of -\$1,101.11, and respondent knew, or in the absence of gross negligence would have known, that the balance in his bank account was substantially less than the amount of the check and, thus, that his account had insufficient funds to pay the check.

Count Twenty-One - respondent willfully violated section 6068, subdivision (i), by failing to provide a written response to two letters he received from the State Bar, regarding specified allegations which were being investigated pursuant to a complaint made by the expert witness whose company was the payee on the October 18, 2012 insufficient funds check issued by respondent.

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 by the State Bar to notify respondent of the proceedings prior to the entry of his default, including the following: (A) on July 10, 2013, the assigned DTC caused a letter and other relevant court documents to be mailed to respondent at his official membership records address (as well as caused copies of that letter and the enclosed court documents to be transmitted to respondent via facsimile and email), advising respondent, among other things, that on June 21, 2013, the State Bar had filed and properly served the NDC on him at his official membership records address; (B) on July 10, 2013, the assigned DTC conducted an online search for respondent on zabasearch.com; (C) in response to respondent's July 8, 2013 letter to the State Bar, on July 10, 2013, the ACTC telephoned respondent's official membership telephone number; (D) the ACTC requested that the Office of the Sheriff conduct a welfare check on respondent, which was in fact carried out by the sheriff; (E) on July 11, 2013, the ACTC sent an email to respondent, informing him, among other things, that the ACTC had attempted to telephone respondent and was requesting that respondent call him immediately.

(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 also recommends that respondent James Robert Gillen 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 recommends that James Robert Gillen be ordered to make restitution to the following payees:

- (1) Linda Carl in the amount of \$99,437.19 plus 10 percent interest per year from August 7, 2012;
- (2) Irene Newman in the amount of \$5,000 plus 10 percent interest per year from August 7, 2012;
- (3) John Kim in the amount of \$10,000 plus 10 percent interest per year from August 7, 2012; and
- (4) Fern Baum Williams in the amount of \$9,652.17 plus 10 percent interest per year from August 7, 2012.

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 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 James Robert Gillen, State Bar number 68137, 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: August _____, 2014

RICHARD A. HONN
Judge of the State Bar Court