



PUBLIC MATTER

FILED

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MAY - 6 2015

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

STATE BAR COURT CLERK'S OFFICE
 SAN FRANCISCO

In the Matter of)	Case Nos.: 13-O-15161-LMA
)	(13-O-16623)
MATTHEW SCOTT ROSENBERG,)	
)	DECISION AND ORDER OF
Member No. 265201,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
_____)	

In this matter, respondent Matthew Scott Rosenberg (respondent) was charged with five counts of misconduct stemming from two client matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) 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 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.²

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).)

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 December 1, 2009, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 27, 2014, the State Bar properly filed and served an 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 by the United States Postal Service as undeliverable.

In addition, respondent had actual notice of this proceeding. On June 11, 2014, the State Bar received a voicemail from respondent requesting a return call.³ On June 12, 2014, the State Bar returned respondent's telephone call at his membership records telephone number and left a voicemail message requesting a return call.

On July 7, 2014, the State Bar received another voicemail from respondent stating he was unaware that he had court that day.⁴ On July 8, 2014, the State Bar called respondent back and left another message requesting a return call.

On July 9, 2014, the State Bar sent an email to respondent's membership records email address. In this email, the State Bar informed respondent that a default motion would be filed

³ Respondent confirmed that his membership records telephone number was his current phone number. This was also verified by the State Bar's caller ID.

⁴ The initial status conference in this matter was on July 7, 2014. Respondent did not appear at the initial status conference.

due to respondent's failure to file an answer to the NDC. In response to this email, respondent called the State Bar that same day. A deputy trial counsel for the State Bar discussed the default proceedings with respondent and directed him to the Rules of Professional Conduct and the Business and Professions Code.

Respondent failed to file a response to the NDC. On July 14, 2014, the State Bar filed and properly served a motion for entry of respondent's default. Respondent did not file a response to the motion, and his default was entered on August 5, 2014. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. 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 90 days to file motion to set aside default].) On March 11, 2015, the State Bar filed the petition for disbarment.⁵ As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since before the default was entered; (2) respondent has another disciplinary matter pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any 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 7, 2015.

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 An earlier petition for disbarment was denied without prejudice.

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).)

Case Number 13-O-16623 – The Estate of Myers Matter

Count One – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by charging and collecting a fee in the total amount of \$4,000 to perform legal services in a conservatorship proceeding without an order fixing and allowing attorney compensation.

Count Two – respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with a March 25, 2013 court order of the Shasta County Superior Court requiring respondent to refund the \$4,000 advanced fee to the conservatorship of John A. Myers and pay \$1,414.40 to the Estate of John A. Myers by April 29, 2013.⁶

Count Three – 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 State Bar.

Case Number 13-O-15161 – The Edwards Matter

Count Four – the court does not find respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as there is no clear and convincing

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⁶ There is no indication in the record that respondent subsequently made any payments in response to the court's order.

evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.⁷

Count Five – 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 State Bar.

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, as he was properly served with a copy of the NDC and communicated with the State Bar regarding the present proceedings prior to the entry of 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 actual 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.

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⁷ The State Bar merely alleged that respondent "performed no legal services of value." This allegation is vague and arbitrary and does not establish, by clear and convincing evidence, that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Matthew Scott Rosenberg 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) Mary Jane Seeger, on behalf of the conservatorship of John A. Myers, in the amount of \$4,000 plus 10 percent interest per year from February 15, 2012; and
- (2) The Estate of John A. Myers in the amount of \$1,414.40 plus 10 percent interest per year from April 29, 2013.

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 Matthew Scott Rosenberg, State Bar number 265201, 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: May 6, 2015



LUCY ARMENDARIZ
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 San Francisco, on May 6, 2015, 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 San Francisco, California, addressed as follows:

MATTHEW S. ROSENBERG
16356 N THOMPSON PEAK PKWY, # 2129
SCOTTSDALE, AZ 85260

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

SUSAN CHAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 6, 2015.



Mazie Yip
Case Administrator
State Bar Court