

FILED

AUG 31 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER
STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-16236-YDR
)	
SHERMAN L. LISTER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 38616,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent **Sherman L. Lister** (respondent) was charged with 12 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

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.

(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

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 California on June 21, 1966, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 18, 2014, the State Bar properly filed and served the NDC on respondent by certified mail, return receipt requested, to his membership records address. The return card was not returned to the State Bar. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On January 5, 2015, the State Bar sent respondent a copy of the NDC by regular first class mail to respondent's official membership records address. The mailing was not returned as undeliverable.

On January 5, 2015, the State Bar telephoned respondent at his official membership records telephone number and left him a message. The next day respondent returned the call. Respondent affirmed that he had received a copy of the NDC. He also indicated that he may or may not participate in the proceeding. On January 6, 2015, the State Bar sent respondent a letter, informing him the due date for his response to the NDC and providing him the date of the initial status conference of January 20, 2015. The State Bar also left him a telephone message on January 6, asking him for a return call. To date, respondent has not returned the call or

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).)

responded to the letter from the State Bar. Respondent did not appear at the status conference held on January 20, 2015.

Respondent failed to file a response to the NDC. On January 21, 2015, the State Bar properly filed and 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 February 6, 2015. 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. 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 May 13, 2015, the State Bar properly filed and served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his default was entered; (2) there are no disciplinary matters pending against respondent; (3) respondent has three records of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on June 15, 2015.

Prior Record Of Discipline

Respondent has three prior records of discipline. Pursuant to an order of the State Bar Court, effective June 27, 1978, respondent was privately reprovved with conditions for client trust account violations and failure to pay client funds in two client matters. Respondent entered into a stipulation in this prior disciplinary matter.

Pursuant to a Supreme Court order filed on December 13, 1990, respondent was suspended for three years, the execution of which was stayed, and placed on probation for three years subject to conditions including that he be suspended from the practice of law for nine months. Respondent committed misconduct in three client matters, including failure to perform services competently, improper withdrawal from employment, failure to promptly return client files, client trust account violations, failure to return unearned fees, failure to communicate, and failure to cooperate with the State Bar.

Pursuant to a Supreme Court order filed on May 15, 1991, respondent was suspended for six months, the execution of which was stayed, and placed on probation for one year subject to conditions including that he be suspended from the practice of law for 30 days and until he paid restitution. Respondent committed misconduct in two client matters, including client trust account violations, improper withdrawal from employment, and failure to promptly return client files.

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(F)(1)(d).)

Case Number 13-O-16236 (Georgianna Matter)

Count 1 – Respondent willfully violated rule 1-300(A) of the Rules of Professional Conduct (aiding in the unauthorized practice of law) by allowing Carol Wood, who is not licensed to practice law in California, to provide legal advice to his client, Gina Georgianna.

Count 2 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to properly supervise Wood, a non-attorney, who worked on Georgianna's marital dissolution and personal injury matters, and by failing to prosecute the personal injury matter.

Count 3 - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide accountings for the advanced legal fees paid to respondent.

Count 4 – Respondent willfully violated rule 1-320(A) of the Rules of Professional Conduct (sharing legal fees with a non-lawyer) by sharing legal fees with Wood, a non-lawyer, in Georgianna's marital dissolution matter, *Blackmer v. Blackmer*, Ventura County Superior Court, case No. SD 034200.

Count 5 – Respondent willfully violated section 6106 (moral turpitude and misrepresentation) by filing a revised stipulation, which purported to be signed by the client when in fact the signature was false, in the marital dissolution matter on August 28, 2008.

Count 6 – Respondent willfully violated section 6106 by filing a stipulation, which purported to be signed by the client when in fact the signature was false, in the marital dissolution matter on March 20, 2013.

Count 7 – Respondent willfully violated section 6106 by misrepresenting to the court regarding the client's income and expenses in the marital dissolution matter on June 10, 2013.

Count 8 – Respondent willfully violated section 6104 (appearing for party without authority) by appearing as an attorney for Georgianna without authority when he filed certain documents in the marital dissolution matter on June 10, 2013.

Count 9 – Respondent willfully violated section 6068, subdivision (e) (breach of confidentiality), by disclosing Georgianna's confidences to a third party without the client's consent on February 20, 2009.

Count 10 – Respondent willfully violated section 6068, subdivision (e), by knowingly causing Wood to disclose client confidences to a third party without the client's consent on September 17, 2011.

Count 11 – Respondent willfully violated section 6068, subdivision (e), by disclosing Georgianna's confidences to a third party without the client's consent on June 11, 2013.

Count 12 – Respondent willfully violated section 6106 by providing false and misleading billing statements to his client from May 2006 through February 2013.

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) 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 his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent **Sherman L. Lister**, State Bar number 38616, 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.

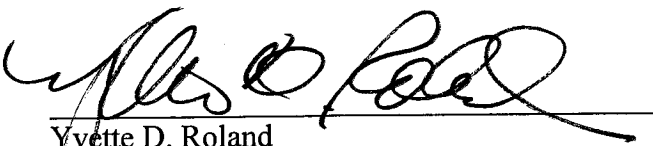
Costs

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 **Sherman L. Lister**, State Bar number 38616, 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 28, 2015


Yvette D. Roland
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 August 31, 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 Los Angeles, California, addressed as follows:

SHERMAN L. LISTER
22647 VENTURA BLVD #367
WOODLAND HILLS, CA 91364

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

DREW MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 31, 2015.



Angela Carpenter
Case Administrator
State Bar Court