



PUBLIC MATTER

FILED

Handwritten initials

SEP 21 2015

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case Nos.: 13-O-17117-PEM; 14-O-02232
)	(Cons.)
CHRISTIAN KELLEY JENSEN,)	
)	DECISION AND ORDER OF
Member No. 214239,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

In this matter, respondent Christian Kelley Jensen was charged with 11 counts of misconduct, stemming from two consolidated matters. He failed to appear at the trial of this case 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 45 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 the practice of law in California on June 28, 2001, and has been a member of the State Bar of California at all times since that date.

Procedural Requirements Have Been Satisfied

First NDC

On July 31, 2014, the State Bar properly filed and served a notice of disciplinary charges (First NDC) on respondent in case No. 13-O-17117. The First NDC clearly notified respondent that if he failed to respond to the NDC in this matter or failed to appear at the State Bar Court trial in this matter, his default would be entered and that if he, thereafter, failed to timely move to set aside his default, the State Bar Court would recommend that he be disbarred. (Rule 5.41(B).)

On August 5, 2014, the court filed and properly served a notice regarding the assignment of the undersigned judge to this matter, as well as a notice, setting of the initial status conference in this matter for September 8, 2014.

On August 21, 2014, respondent filed a motion to dismiss and a motion to disqualify the undersigned judge. On August 22, 2014, the State Bar filed its opposition to respondent's motion. On September 3, 2014, this court issued its order denying respondent's motion to dismiss and striking from the record his motion to disqualify. (Code Civ. Proc., § 170.4, subd. (b); see also Rules Proc. of State Bar, rule 5.46(C).)

On September 8, 2014, respondent failed to appear for the previously set status conference set for that date. The court filed an order on September 9, 2014, setting forth in writing its orders made at the September 8th status conference. In its September 9th order, the

court noted respondent's non-appearance at the September 8th status conference. It also ordered a pretrial conference to take place on September 22, 2014, and further ordered that respondent file his response to the First NDC by September 22, 2014.

Respondent filed his response to the First NDC on September 17, 2014.

Respondent, however, failed to appear for the status conference on September 22, 2014, as ordered. Accordingly, on September 23, 2014, the court filed and properly served its written status conference order on respondent by first-class mail, postage prepaid, at the address that respondent had listed as his on the first page of his September 17, 2014 response to the First NDC. The September 23rd order took note of the fact that respondent failed to appear for the September 22, 2014 court-ordered status conference and it also required that the parties appear at a pretrial conference on December 15, 2014.

Respondent did not appear at the December 15, 2014 pretrial conference. At that pretrial conference, the court vacated the trial in case No. 13-O-17117 and ordered the consolidation of case No. 13-O-17117 with case No. 14-O-12232. Additionally, the court ordered that the parties must appear in-person at a further pretrial conference in the consolidated matters on March 16, 2015. The court's orders issued at the December 15, 2014 pretrial conference were set forth in writing. The written order was filed and properly served on respondent on December 16, 2014.

Second NDC

On November 17, 2014, the State Bar filed and properly served a notice of disciplinary charges (Second NDC) in case No. 14-O-02232 on respondent by certified mail, return receipt requested at the address that respondent listed as his on the first page of his September 17, 2014 response to the NDC in case No. 13-O-17117. As noted, *ante*, that address is also respondent's membership-records address.

The Second NDC also clearly warned that if respondent did not file his response or failed to appear at the State Bar Court trial in this matter, his default would be entered. And, if he, thereafter, failed to timely move to set aside his default, the State Bar Court would recommend that he be disbarred. (Rule 5.41(B).)

On November 30, 2014, respondent executed a motion to dismiss case No. 14-O-02232. The motion was served on the State Bar on January 17, 2015; and, it was filed in the State Bar Court on February 17, 2015. In his motion to dismiss, respondent stated that he received the Second NDC, and noted that it was “filed November 17, 2014.” He further stated that he “received the [Second] NDC on “November 28, 2014.” (“Respondent’s Notice of Motion and Motion to Dismiss . . . ,” filed February 17, 2015, pp. 1-2.) Thus, respondent had actual notice of the proceeding as it relates to case No. 14-O-02232.

As set forth, *ante*, respondent did not appear at the December 15, 2014 pretrial conference or the further pretrial conference in the consolidated matters, which was held on March 16, 2015. Respondent did not file a pretrial statement and also failed to appear at the pretrial conference as had been ordered by the court.

Although respondent had filed a motion to dismiss the Second NDC, respondent had not filed a response/answer to the Second NDC. Consequently, included in the March 17th pretrial conference order was a warning notifying respondent that if he did not file an answer to the Second NDC by March 20, 2015, the matter “may proceed by default.”³

In its March 17, 2015 written order, the court also set the trial in the consolidated matters for April 1 through April 3, 2015, and properly served that order on respondent at his membership records address by first-class mail, postage prepaid,. (Rule 5.81.)

³ Respondent did not file a response to the Second NDC.

On April 1, 2015, the State Bar appeared, by and through its deputy trial counsel, who had been assigned to this proceeding. Respondent did not appear for trial on April 1, 2015. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering respondent's default that same day. The order notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days to file motion to set aside default].) On May 28, 2015, the State Bar properly served and filed the petition for disbarment on respondent at his membership records address by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent had not contacted the State Bar or the assigned deputy trial counsel in this matter since the default was served on April 1, 2015; (2) respondent has other investigations pending; (3) respondent does not have a prior record of discipline; and (4) as of May 28, 2015, the Client Security Fund had 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 July 7, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDCs 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 NDCs 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).)

First NDC

Case No. 13-O-11081 (The Trbovich Matter)

Count One – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay funds to client) by failing, despite a request made to him in September 2013, on behalf of his client, Anthony Trbovich (Trbovich), to pay Trbovich \$4,250, which was the amount of a settlement check respondent had received on the client's behalf and to which the client was entitled in its entirety.

Count Two – respondent willfully violated Business and Professions Code section 6106 (moral turpitude –misappropriation) when between September 30, 2013 and December 9, 2013, after having received and deposited \$4,250 on behalf of his client, Trbovich, into his client trust account, respondent dishonestly or with gross negligence misappropriated the \$4,250 to which Trbovich was entitled from the client trust account for his own purposes.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform his client that he had received settlement check No. 3003 for \$4,250 and deposited that check into his client trust account at JP Morgan Chase Bank, N.A.

Count Four – respondent willfully violated rule 4-100(B)(1) of the Rules of Professional Conduct (failing to promptly notify client of receipt of client funds) by failing to notify his client that he had received \$4,250 in settlement funds on September 4, 2013, on the client's behalf.

Count Five – the court does not find respondent culpable of willfully violating rule 2-100(A) of the Rules of Professional Conduct (communicating with a represented party) as there is no clear and convincing evidence alleged in the First NDC to show that respondent communicated with a "party," as the term "party" is defined in rule 2-100(B)(1) or (B)(2). Although it is alleged that Patrick Henry (Henry), the person with whom respondent

communicated, was an “agent” of a party represented by another lawyer in the same matter in which respondent was representing Trbovich, that factual allegation and the other facts alleged in Count Five do not show by clear and convincing evidence that Henry qualifies as a “party,” as defined under rule 2-100(B). Accordingly, Count Five is Dismissed with prejudice.

Count Six – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust account) by failing to maintain in his trust account the balance of \$4,250, which was the amount of the settlement funds to which the client was entitled and which respondent had received and deposited into his client trust account on behalf of his client, to be maintained there on the client’s behalf.

Second NDC

Case No. 14-O-02232 (The Ruiz Matter)

Count One – respondent, who was retained to represent his client Willy Ruiz (Ruiz) before the Labor Commission at a March 4, 2014 hearing, willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to review any documents in preparation for the hearing and by failing to appear at the hearing.

Count Two – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by constructively terminating his employment on March 4, 2014, when he did not take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client by failing to take any action on the client’s behalf after the client had paid him and failing to inform the client that he was withdrawing from employment.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund, upon termination of employment on March 4, 2014, any part of the \$1,475, which he had received from his client as

an advanced legal fee, although respondent had failed to perform any legal services for the client and earned none of the advanced fees paid.

Count Four – respondent willfully violated section 6068, subdivision (m) (failing to respond to client inquiries) by not responding promptly to reasonable telephonic and written status inquiries made by his client between January 2014 and February 14, 2014, which inquiries respondent received, regarding a matter in which respondent had agreed to provide legal services for his client.

Count Five – respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by making statements to State Bar Investigator Laura Sharek or providing written statements to her, which statements falsely indicated that: (1) the November 20, 2013 agreement entered into by respondent and his client, Ruiz, was the only agreement they had entered; (2) their contract was for an hourly agreement; and (3) respondent had given Ruiz notice of his withdrawal from employment, when respondent knew or was grossly negligent in not knowing that the three statements he had made to the State Bar investigator were false.

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 NDCs were properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and of the trial date prior to entry of his default;
- (3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the NDCs, 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 appear for trial 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 **Christian Kelley Jensen**, State Bar number 214239, 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) Anthony Trbovich in the amount of \$4,250 plus 10 percent interest per year from September 30, 2013; and
- (2) Willy Ruiz in the amount of \$1,475 plus 10 percent interest per year from March 4, 2014.

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.

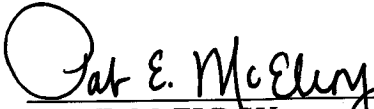
Costs

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 Christian Kelley Jensen, State Bar number 214239, 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: September 21, 2015


PAT E. McELROY
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 September 21, 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:

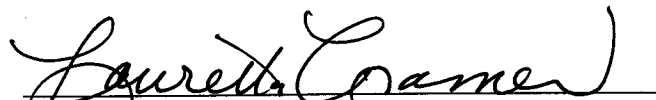
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

CHRISTIAN K. JENSEN
LAW OFFICES OF CHRISTIAN
JENSEN
PO BOX 197
LAFAYETTE, CA 94549

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

Catherine E. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 21, 2015.


Laretta Cramer
Case Administrator
State Bar Court