

PUBLIC MATTER

FILED

APR 26 2017

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case Nos. 14-C-02704-LMA
)	15-O-13573 (Cons.)
JUSTIN THOMAS ALLEN,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 238195.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

In this matter, respondent Justin Thomas Allen was charged with misconduct stemming from two consolidated matters. Respondent failed to appear at trial and his default was entered. The Office of 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

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.



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).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 1, 2005, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 24, 2015, Respondent pleaded nolo contendere to misdemeanor violations of Penal Code section 29825, subdivision (b) (possession of a firearm subject to domestic violence restraining order) and Penal Code section 273.6, subdivision (a) (violation of a court order). On May 11, 2016, OCTC transmitted evidence of finality of Respondent's convictions to the Review Department. On June 2, 2016, the Review Department referred the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the convictions involved moral turpitude or other misconduct warranting discipline. On June 6, 2016, the State Bar Court filed and properly served a Notice of Hearing on Conviction on Respondent by certified mail, return receipt requested, at his membership records address. The Notice of Hearing on Conviction notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.345.)

On May 4, 2016, the State Bar filed and properly served a notice of disciplinary charges (NDC), in case No. 15-O-13573, on Respondent at his membership records address by certified mail, return receipt requested. The NDC also notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.)

On May 25, 2016, Respondent filed a response to the NDC. On July 5, 2016, Respondent filed a response to the Notice of Hearing on Conviction. These two matters were consolidated on August 1, 2016.

Respondent initially participated; however, as the proceedings progressed, he failed to appear for status conferences and failed to file a pretrial statement. On December 5, 2016, OCTC appeared for trial but Respondent did not. 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 after order entering default is served to file motion to set aside default].) On March 15, 2017, OCTC filed the petition for disbarment. As required by rule 5.85(A), OCTC reported in the petition that: (1) it has had contact with Respondent since his default was entered;³ (2) Respondent has no other disciplinary matters pending; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made payments resulting from 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 April 11, 2017.

Respondent has been disciplined on two prior occasions.⁴ Pursuant to a Supreme Court order filed on January 22, 2015, Respondent was suspended for two years, the execution of

³ On January 27, 2017, OCTC communicated with Respondent by telephone and email. OCTC told Respondent that his default had been entered and noted the time restrictions for filing a motion to set aside the default.

⁴ A portion of the prior record of discipline provided by the State Bar is not a certified copy. The State Bar explained that, despite repeated requests, it had difficulty obtaining certified records of Respondent's prior discipline. The court notes, however, that the State Bar's requests for certified records asked for prior packets for the current case numbers rather than for Respondent's prior case numbers. (See disbarment petition exhibits 3 & 4.) The court takes judicial notice of the State Bar's official membership records relating to Respondent's prior record of discipline.

which was stayed, and he was placed on probation for two years, including a sixty-day period of actual suspension. In this matter, Respondent stipulated to twelve counts of misconduct in three client matters, including failing to competently perform legal services, improper withdrawal, failing to communicate significant developments, failing to promptly refund unearned fees, failing to promptly release client files, and failing to cooperate with a disciplinary investigation.

Pursuant to a Supreme Court order filed on February 17, 2016, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years, including a six-month period of actual suspension. In this matter, Respondent stipulated to failing to comply with conditions attached to his prior disciplinary probation.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the NDC and as set forth in Respondent's conviction matters 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 Respondent's convictions and the NDC support the conclusion that Respondent is culpable as charged and violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 14-C-02704

On or about February 8, 2014, Respondent intentionally, knowingly, and unlawfully violated a lawful order of the Stanislaus County Superior Court issued on January 24, 2014. And on or about February 9, 2014, Respondent unlawfully owned or was in possession of a firearm while knowing he was prohibited from doing so by a protective order. Based on this conduct, Respondent, on September 24, 2015, pleaded nolo contendere to and was convicted on misdemeanor violations of Penal Code section 273.6, subdivision (a) (violation of a court order) and Penal Code section 29825, subdivision (b) (possession of a firearm subject to domestic

violence restraining order). The court finds that the facts and circumstances surrounding these convictions do not involve moral turpitude, but do constitute other misconduct warranting discipline.⁵

Case Number 15-O-13573

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to file a personal injury complaint on his client’s behalf and failing to perform any other legal services related to that matter.

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments), by failing to inform his client that Respondent was going to be suspended from the practice of law for sixty days and that Respondent would not be filing a complaint on his client’s behalf.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by making a statement to his client when Respondent knew or was grossly negligent in not knowing the statement was false.

Count Four – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit funds received for the benefit of a client into a trust account.

Count Five – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$2,000.

⁵ The State Bar was required to file and serve a statement reciting the facts and circumstances surrounding Respondent’s convictions pursuant to rule 5.346(C). Although such a statement was not filed, the court concludes that Respondent’s convictions involve other misconduct warranting discipline, as both convictions constitute intentional violations of court orders.

Count Six – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment without adequate and proper notice.

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 and Notice of Hearing on Conviction were properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of the proceedings prior to the entry of his default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC and Respondent’s convictions deemed admitted by the entry of 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 appear for the trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Justin Thomas Allen 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 Julie Vang in the amount of \$2,000 plus 10 percent interest per year from January 16, 2015. 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.

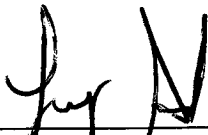
Costs

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 Justin Thomas Allen, State Bar number 238195, 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: April 26, 2017



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 April 26, 2017, 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:

JUSTIN T. ALLEN
JUSTIN THOMAS ALLEN, ESQ
2300 SYLVAN AVE UNIT 578724
MODESTO, CA 95357 - 2109

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 26, 2017.



Bernadette Molina
Case Administrator
State Bar Court