

PUBLIC MATTER

FILED

AUG 10 2015

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of)
MICHAEL ALAN BRUSH,)
Member No. 46576,)
A Member of the State Bar.)
Case Nos.: **14-O-02549 (14-O-02915;**
14-O-03847)
DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

Respondent **Michael Alan Brush** (respondent) was charged with sixteen violations of professional misconduct. He 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

¹Unless otherwise indicated, all references to rules are to this source.

²If 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

Jurisdiction

Respondent was admitted to practice law in this state on June 26, 1970, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 14, 2014, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular mail, 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 sent by certified mail was returned to the State Bar by the U.S. Postal Service as unclaimed.

Respondent, however, had actual notice of this proceeding, as respondent and the deputy trial counsel assigned to this matter exchanged email communications between November 23 through December 5, 2014, concerning a response to the NDC.

Nevertheless, respondent failed to file a response to the NDC. On December 30, 2014 and January 5, 2015, the State Bar properly served and filed, respectively, a motion for entry of respondent's default.³ The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel. (Rule 5.80.)

³ The motion was served on respondent at his membership records address by certified mail, return receipt requested, and by U.S. first-class mail. A courtesy copy was also sent to respondent via email on December 30, 2014. Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

The motion notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

On January 9, 2015, respondent filed a response to the motion for the entry of his default. Thereafter, the court set a telephonic status conference in this matter for January 20, 2015.

On January 14, 2015, the assigned deputy trial counsel (DTC) received an email from respondent advising that he was currently in the hospital and was unable to attend the January 20, 2015, telephonic status conference. As such, respondent requested a continuance of the status conference. The deputy trial counsel replied to respondent by email on January 15, 2015, indicating that she did not object to a continuance, but it was up to the judge to grant respondent's request and suggesting that he send an email to the judge's case administrator regarding his request.

Although respondent was sent proper notice of the telephonic status conference, he did not participate in the January 20, 2015 status conference and he did not request a continuance from the court. The DTC informed the court at the status conference of the communication exchanged between respondent and the DTC on January 14 and 15, 2015. The court thereafter filed an order on January 20, 2015, entering respondent's default. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling respondent inactive was served on respondent at his membership records address by certified mail, return receipt requested, on January 20, 2015.

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 April 29 and 30, 2015, the State Bar served and filed, respectively, a petition for disbarment on respondent by certified mail,

return receipt requested, and by U.S. first-class mail, at his membership records address.⁴ As required by rule 5.85(A), the State Bar reported in the petition that: (1) the DTC has not had any contact with respondent since his default was entered; (2) there is one matter pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's present 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 May 27, 2015.

Prior Record of Discipline

Respondent has three prior records of discipline.⁵ On July 9, 2012, the court issued an order publicly reprimanding respondent with conditions for two years. Respondent stipulated in that matter that the facts and circumstances surrounding his conviction of violating California Vehicle Code section 23152, subdivision (b) [driving with blood alcohol of .08% or more] did not involve moral turpitude but did involve other misconduct warranting discipline. Respondent's misconduct occurred on September 30, 2010.

Pursuant to an order of the Supreme Court filed February 24, 2014, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for three years subject to conditions including that he be suspended from the practice of law for the first 60 days of probation. Respondent stipulated in that matter that he failed to comply with all conditions of his earlier public reprimand.

Pursuant to an order of the Supreme Court filed on January 22, 2015, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years subject to conditions including that he be suspended from the practice of law for the

⁴The petition was also served on respondent at an electronic address.

⁵The court admits into evidence the certified copies of respondent's prior record of discipline attached to the April 30, 2015 petition for disbarment.

first six months of probation. Respondent stipulated in that matter that he commingled funds belonging to himself in his client trust account.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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(2).) As set 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).)

1. Case Number 14-O-02549 (Perez Matter)

Count One - Respondent willfully violated Business and Professions Code section 6068, subdivision (a)⁶ (attorney's duty to support Constitution and laws of United States and California) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar in violation of sections 6125 and 6126.

Count Two – Respondent willfully violated section 6068, subdivision (d) [attorney's duty to employ means consistent with truth] by appearing before a judge at a criminal arraignment and attempting to substitute himself as the attorney of record for a defendant in a criminal matter when respondent knew he was not entitled to practice law and without disclosing to the judge that respondent was not entitled to practice law.

Count Three – Respondent willfully violated section 6106 [moral turpitude, dishonesty or corruption] by holding himself out as entitled to practice law and actually practicing law when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar.

⁶ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

Count Four – Respondent willfully violated section 6103 [failure to obey a court order] by disobeying or violating a Supreme Court order suspending respondent from the practice of law by holding himself out as entitled to practice law and actually practicing law during his period of suspension.

Count Five – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct [illegal fee] by entering into an agreement for, charging, and collecting an illegal \$7,500 advance fee on behalf of a client at a time when respondent was suspended and not entitled to practice law.

Count Six – The court does not find respondent culpable of willfully violating rule 3-700(D)(2) of the Rules of Professional Conduct [failure to return unearned fees] as the court has already found respondent culpable of entering into an agreement for, charging, and collecting an illegal fee.

Count Seven – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct [improper acceptance of compensation] by accepting compensation for representing a client from one other than the client without obtaining his client's informed written consent to receive such compensation.

2. Case Number 14-O-02915 (Juvenile Client Matter)

Count Eight – Respondent willfully violated section 6068, subdivision (a) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar by appearing in court at hearings as the attorney of record for a juvenile client in violation of sections 6125 and 6126.

Count Nine - Respondent willfully violated section 6068, subdivision (d) by appearing in court before a judge at hearings as the attorney of record for a juvenile client when respondent

knew he was not entitled to practice law and without disclosing to the judge that respondent was not entitled to practice law.

Count Ten - Respondent willfully violated section 6106 by holding himself out as entitled to practice law and actually practicing law when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar.

Count Eleven - Respondent willfully violated section 6103 by disobeying or violating a Supreme Court order suspending respondent from the practice of law by holding himself out as entitled to practice law and appearing in court at hearings as the attorney of record for a juvenile client during his period of suspension.

Count Twelve – Respondent willfully violated section 6068, subdivision (i) [failure to cooperate] by failing to provide a substantive response to letters from the State Bar which he received that requested respondent's response to allegations of misconduct being investigated.

3. Case Number 14-O-03847 (Thomas Matter)

Count Thirteen - Respondent willfully violated Business and Professions Code section 6068, subdivision (a) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar by appearing in court at a hearing as the attorney for record for an individual in a criminal matter in violation of sections 6125 and 6126.

Count Fourteen - Respondent willfully violated section 6068, subdivision (d) by appearing in court before a judge at a hearing as the attorney of record for an individual in a criminal matter when respondent knew he was not entitled to practice law and without disclosing to the judge that respondent was not entitled to practice law.

Count Fifteen - Respondent willfully violated section 6106 by holding himself out as entitled to practice law and actually practicing law when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar.

Count Sixteen - Respondent willfully violated section 6103 by disobeying or violating a Supreme Court order suspending respondent from the practice of law by holding himself out as entitled to practice law and appearing in court at a hearing as the attorney of record for an individual in a criminal matter during his period of suspension.

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;
- (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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Michael Alan Brush**, State Bar number 46576, 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 Salvador Perez, Jr. in the amount of \$7,500, plus 10 percent interest per year from April 1, 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 Michael Alan Brush, State Bar number 46576, 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 10, 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 August 10, 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:

MICHAEL ALAN BRUSH
BRUSH & SACKS
PO BOX 920776
SYLMAR, CA 91392

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

DIANE J. MEYERS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 10, 2015.



Mazie Yip
Case Administrator
State Bar Court