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STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-O-04181-DFM
)	
DANA ALLAN GODFREY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 152913,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Dana Allan Godfrey (Respondent) was charged with violations of 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 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.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

Jurisdiction

Respondent was admitted to practice law in this state on June 6, 1991, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 11, 2015, the State Bar filed and properly served the Notice of Disciplinary Charges (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 State Bar received a return card on February 17, 2015, but bearing an illegible signature that did not appear to be Respondent's name.

Thereafter, the State Bar (1) sent a courtesy copy of the NDC to Respondent by regular first-class mail to Respondent's membership records address and two alternate addresses located through a computer search; (2) sent a courtesy copy of the NDC to Respondent by electronic mail to Respondent's membership records email address⁴ as well as two alternate addresses located through a computer search; (3) attempted to reach Respondent by telephone at his

³If 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).)

⁴Effective 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).)

membership records telephone number; (4) as Respondent is currently on disciplinary probation, contacted the assigned Probation Deputy to determine whether Respondent's profile contained any other address; (5) attempted to reach Respondent at a private cellular telephone number provided by the assigned Probation Deputy; and (6) attempted to reach Respondent at another number located through a computer search.

Nevertheless, Respondent failed to file a response to the NDC. On March 23, 2015, the State Bar filed and properly 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 assigned deputy trial counsel. (Rule 5.80.) The motion notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent still did not file a response to the motion, and his default was entered on April 10, 2015. 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.

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 July 21, 2015, the State Bar filed and properly served a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent had not contacted the State Bar since the date the order entering his default was served on April 10, 2015;⁵ (2) there are other disciplinary matters pending against Respondent; (3) Respondent has four prior records of discipline; and (4) the Client Security Fund has paid out on a claim as a result of Respondent's misconduct.

⁵ This is the same date that Respondent's default was entered.

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 August 20, 2015.

Prior Records of Discipline

Respondent has four prior records of discipline.⁶ Pursuant to a Supreme Court order filed on August 14, 2013, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years on conditions including a 30-day suspension. Respondent stipulated in that matter that he (1) failed to keep a client reasonably informed of a significant development in a matter in which he had agreed to provide legal services; (2) recklessly, intentionally, or repeatedly failed to perform legal services with competence; (3) failed to render appropriate accounts to a client (two matters); and (4) failed to participate and cooperate in a disciplinary investigation (two matters).

Pursuant to a Supreme Court order filed on September 30, 2014, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years on conditions including a 30-day suspension. Respondent stipulated in that matter that he (1) failed to render an accounting to his client regarding fees and costs that Respondent received; (2) recklessly, intentionally, or repeatedly failed to perform with competence; (3) failed to keep his client reasonably informed of significant developments in a matter in which he had agreed to provide legal services; and (4) violated or disobeyed a court order requiring him to do or forbear an act connected with or in the court of his profession which he ought in good faith to do or forbear.

⁶The court admits into evidence the certified copies of Respondent's prior records of discipline attached to the July 21, 2015 petition for disbarment. Although the deputy trial counsel's declaration attached to the disbarment petition reflects that respondent has four prior records of discipline, one prior record was not listed in the petition and certified copies of only three prior records were attached to the disbarment petition. Therefore, pursuant to Evidence Code section 452(d), the court takes judicial notice of Respondent's prior record of discipline in Supreme Court matter S220200 (State Bar Court No. 15-PM-10767), admits these records into evidence, and directs the Clerk to include copies in the record of this case.

Pursuant to a Supreme Court order filed on February 6, 2015, Respondent's probation was revoked, and he was suspended for one year, the execution of which was stayed, and he was placed on probation for two years on conditions including that he be suspended for a minimum of the first year of his probation and until he makes certain specified restitution.⁷ In that disciplinary matter, in which Respondent did not participate, the court found that Respondent willfully violated his (1) probation-deputy-meeting condition; (2) probation-reporting condition; (3) accounting probation condition; and (4) restitution condition.

Pursuant to a Supreme Court order filed on August 7, 2015, Respondent's latest probation was revoked, he was suspended for a minimum of one year, and he will remain suspended until he pays specified sanctions.⁸ In that disciplinary matter, in which Respondent did not participate, the court found that Respondent violated his (1) probation-deputy-meeting condition; and (2) probation-reporting condition.

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 and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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Count One – Respondent willfully violated section 6068, subdivision (a) (attorney's duty to support Constitution and laws of United States and California), by holding himself out as

⁷ If Respondent is suspended for two years or more, he must also provide proof of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated.

⁸ If Respondent is suspended for two years or more, he must also provide proof of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated.

entitled to practice law and by 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 6106 (moral turpitude, dishonesty or corruption) by holding himself out as entitled to practice law and by 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 Three – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two letters from the State Bar which he received that requested his response to allegations of misconduct being investigated in this matter.

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 disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that Respondent **Dana Allan Godfrey**, State Bar number 152913, 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 **Dana Allan Godfrey**, State Bar number 152913, 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: November 3, 2015


DONALD F. MILES
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 November 3, 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:

**DANA A. GODFREY
GODFREY LAW GROUP
324 S DIAMOND BAR BLVD # 194
DIAMOND BAR, CA 91765**

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

RIZAMARI SITTON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 3, 2015.



Tammy Cleaver
Case Administrator
State Bar Court