

PUBLIC MATTER

FILED

MAY 02 2016

**STATE BAR COURT CLERK'S OFFICE
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case Nos.: 14-O-06290-PEM (15-O-10363);
)	15-O-11765 (15-O-12404;
TIMOTHY BROOKS BALCOM,)	15-O-12641; 15-O-13552)(Cons.)
)	
Member No. 190496,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
)	

Respondent Timothy Brooks Balcom (respondent) was charged with 26 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 November 24, 1997, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 11, 2015, the State Bar properly filed and served the first notice of disciplinary charges on respondent (First NDC) in case Nos. 14-O-06290 et al. by certified mail, return receipt requested, to his membership records address. On August 26, 2015, the State Bar properly filed and served the second notice of disciplinary charges on respondent (Second NDC) in case Nos. 15-O-11765 et al. by certified mail, return receipt requested, to his membership records address. The two NDCs notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The mailings were returned as undeliverable. Courtesy copies of the First NDC and Second NDC were also sent to respondent by regular first class mail to his membership records address. The mailings were not returned.

Respondent failed to file a response to the two NDCs. On September 30, 2015, the State Bar properly filed and served a motion for entry of respondent's default for each of the NDCs. The motions complied with all the requirements for a default, including a supporting declaration

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).)

of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motions also notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

The two matters were consolidated on October 5, 2015.

Respondent did not file a response to the motion, and his default was entered on October 16, 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 January 19, 2016, 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 investigations pending against respondent; (3) respondent has three records of prior discipline; and (4) the Client Security Fund has three claims pending as a result of respondent's misconduct, but has not yet made payments.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was originally submitted for decision on February 24, 2016, after the court had directed the State Bar to provide prior record of discipline. But because the State Bar did not provide a complete prior record of discipline as required under rule 5.85(B), the submission date was vacated and the record was reopened on March 21, 2016. After the State

Bar had fully complied with rule 5.85(B), this matter was submitted for decision on April 22, 2016.

Prior Record of Discipline

Respondent has been disciplined on three prior occasions.⁴ On August 22, 2012, respondent was privately reprovved for his DUI conviction.

Pursuant to a Supreme Court order filed on October 29, 2013, respondent was suspended for two years, the execution of which was stayed, placed on probation for two years, and actually suspended for 30 days for violating the terms of his private reprovval.

Pursuant to a Supreme Court order filed on January 7, 2016, respondent was suspended for three years, the execution of which was stayed, and placed on probation for three years and actually suspended for two years and until he has shown rehabilitation. Respondent was terminated from the State Bar Court's Alternative Discipline Program (ADP) because he failed to comply with the ADP's requirements. His underlying misconduct included failing to comply with the conditions attached to a private reprovval and to his disciplinary probation and engaging in unauthorized practice of law.

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

⁴ The court admits into evidence the certified copy of respondent's prior records of discipline filed January 26 and March 28, 2016.

First NDC

Case Number 14-O-06290 (Long Matter)

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to perform any legal services on behalf of his client, Justin Long, in a DMV matter.

Count 2 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to inform his client that he was withdrawing from employment and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client when he constructively terminated his employment on October 27, 2014.

Count 3 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$2,500 unearned attorney fees, upon the termination of his employment on November 12, 2014.

Count 4 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar's December 17, 2014 and February 3, 2015 letters.

Case Number 15-O-10363 (Apostolou Matter)

Count 5 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services on behalf of his clients, Evelyn and Ted Apostolou, in a criminal investigation matter.

Count 6 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to inform his clients that he was withdrawing from employment and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his clients when he constructively terminated his employment on December 22, 2014.

Count 7 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any portion of the \$2,500 unearned attorney fees, upon the termination of his employment on December 26, 2014.

Count 8 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's February 3, 2015 letter.

Second NDC

Case Number 15-O-11765 (Robison Matter)

Count 1 – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to promptly release to his client, Timothy Robison, upon the client's request between June and July 2014, the client's property and papers.

Count 2 – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (accepting fee from a non-client) by accepting \$3,000 from David Pellone as compensation for representing Robison, without obtaining the client's informed written consent to receive such compensation.

Count 3 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's June 19, 2015 letter.

Case Number 15-O-12404 (Sinclair Matter)

Count 4 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services on behalf of his clients' minor son in a criminal matter before his suspension from the practice of law on January 5, 2015. Respondent failed to timely inform Earl and Sonia Sinclair that he had been suspended from the practice of law and that he would not be appearing at a hearing on their son's behalf on January 12, 2015. He failed

to advise his clients whether another attorney would appear on their son's behalf. And, he failed to advise his clients to appear at the hearing, which resulted in an arrest warrant for the child.

Count 5 – Respondent willfully violated section 6106 (dishonesty) by informing his clients that the two criminal charges against their child were dismissed when he knew or was grossly negligent in not knowing that the statements were false.

Count 6 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to inform his clients that he was withdrawing from employment and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his clients' child when he constructively terminated his employment on January 5, 2015, the date of his suspension.

Count 7 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any portion of the \$2,500 unearned attorney fees, upon the termination of his employment on January 5, 2015.

Count 8 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's June 17 and July 6, 2015 letters.

Count 9 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to respond promptly to client's status inquiries.

Count 10 – Respondent willfully violated section 6068, subdivision (m), by failing to inform his clients that he had been suspended from the practice of law, effective January 5, 2015.

Case Number 15-O-12641 (Coleman Matter)

Count 11 – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct by accepting a total of \$4,400 from Catherine Mary Coleman as compensation for

representing James Thomas Coleman, without obtaining the client's informed written consent to receive such compensation.

Count 12 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's July 6, 2015 letter.

Case Number 15-O-13552 (Fontenot Matter)

Count 13 – Respondent did not willfully violate rule 3-110(A) of the Rules of Professional Conduct in the Fontenot matter. The rule regarding failure to act competently has no applicability to attorneys practicing while suspended. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574.) The suspended attorneys' only duty is to stop practicing until they have reestablished themselves as attorneys in good standing (*ibid.*). Here, respondent was suspended at the time that he was to appear in court on April 21, 2015, on behalf of Erica Fontenot. Because respondent was expressly precluded by statute from practicing law, he was not entitled to appear in court on behalf of Fontenot during his suspension. Thus, he could not have violated rule 3-110(A) of the Rules of Professional Conduct.

Count 14 – Respondent willfully violated rule 3-120(B)(2) of the Rules of Professional Conduct (sexual relations with client) by employing coercion, intimidation, or undue influence in entering into sexual relations with his client.

Count 15 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to inform his client that he was withdrawing from employment and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client when he constructively terminated his employment on January 5, 2015.

Count 16 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any portion of the \$1,500 unearned attorney fees, upon the termination of his employment on January 5, 2015.

Count 17 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s July 30, 2015 letter.

Count 18 – Respondent willfully violated section 6068, subdivision (m), by failing to inform his client that he had been suspended from the practice of law.

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) 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 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 participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Timothy Brooks Balcom, State Bar number 190496, 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) Justin Long in the amount of \$2,500 plus 10 percent interest per year from November 12, 2014;
- (2) Evelyn and Ted Apostolou in the amount of \$2,500 plus 10 percent interest per year from December 26, 2014;
- (3) Earl and Sonia Sinclair in the amount of \$2,500 plus 10 percent interest per year from January 5, 2015; and
- (4) Erica Fontenot in the amount of \$1,500 plus 10 percent interest per year from January 5, 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 Timothy Brooks Balcom, State Bar number 190496, 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: May 2, 2016


PAT 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 May 2, 2016, 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:
- TIMOTHY B. BALCOM
BALCOM & ASSOCIATES
229 VERNON ST
ROSEVILLE, CA 95678
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Catherine Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 2, 2016.


George Hue
Case Administrator
State Bar Court