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JAN 25 2017

**STATE BAR COURT
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LOS ANGELES**

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos. 15-O-14340
)	(15-O-14347)-YDR
MICHAEL LEE GOOLSBY,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 159660.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

Michael Lee Goolsby (Respondent) is charged with three counts of misconduct involving the disciplinary probations imposed on him under two separate Supreme Court orders. Even though Respondent has actual notice of this proceeding, he failed to file a formal response to the notice of disciplinary charges (NDC), 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 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 NDC and if 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



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

² If the court determines that any due process requirement is 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 that the petition for disbarment should be granted. Accordingly, the court will recommend that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to the practice of law in this state on August 4, 1992, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On May 13, 2016, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's 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 did not receive a return receipt for the NDC from the United States Postal Service (Postal Service). However, the Postal Service did not return the NDC to the State Bar as undeliverable or otherwise. In any event, as set forth *post*, Respondent not only had actual notice of this proceeding, but he also participated in it before his default was entered.

Before the NDC was filed, Respondent requested and participated in an Early Neutral Evaluation Conference. However, once the NDC was filed, Respondent failed to timely file a response to the NDC. Thus, On June 23, 2016, the DTC mailed a letter to Respondent at Respondent's membership-records address and emailed the same letter to Respondent at Respondent's private-membership-records email address³ warning Respondent that the State Bar intended to seek Respondent's default if Respondent did not file a response to the NDC.

³ Effective February 1, 2010, all attorneys are required to maintain a current email address on record with the State Bar to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

On June 29, 2016, the DTC received a voicemail message from Respondent requesting that he be given until July 11, 2016, to file his response. That same day, the DTC sent an email to Respondent at Respondent's private-membership-records email address giving Respondent until July 7, 2016, to file his response. Respondent failed to file a response by July 7, 2016. Accordingly, on July 12, 2016, the State Bar filed and properly served a motion for entry of default on Respondent at his membership-records address by certified mail, return receipt requested. The motion complied with the requirements for a default, including a supporting declaration from the DTC. (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.

On July 14, 2016, Respondent tendered a response to the NDC to the court. The court, however, rejected the response and returned it to Respondent unfiled because it was not accompanied by a certificate of service and because it was not accompanied by the requisite number of copies. (State Bar Ct. Rules of Prac., rule 1112(a)(1)&(4).)

On July 22, 2016, Respondent participated in a voluntary settlement conference in this matter. Thereafter, Respondent failed to file a formal response to the NDC (i.e., a response that was accompanied by a certificate of service and the requisite number of copies). And, on July 28, 2016, the court properly entered Respondent's default. The court properly served the default order on Respondent at his membership-records address by certified mail, return receipt requested.

In the default order, the court advised Respondent that, if he did not timely move to set aside his default, it would recommend that he be disbarred. In that order, the court also ordered that Respondent be involuntarily enrolled as an inactive member of the State Bar of California in

accordance with Business and Professions Code section 6007, subdivision (e).⁴ In accordance with the court's order, Respondent was involuntarily enrolled inactive on July 31, 2016, and he has continually been involuntarily enrolled inactive under the default order since that time.

Even though the Postal Service returned as undeliverable both Respondent's service copies of the State Bar's motion for entry of default and of the court's default order, it is clear that Respondent knew, no later than August 24, 2016, that his default had been entered for failing to file a response to the NDC. On August 24, 2016, Respondent telephoned and spoke with the DTC. In their August 24, 2016, telephone conversation, Respondent indicated to the DTC that he knew that his default had been entered and Respondent and the DTC discussed what actions Respondent would have to take to vacate the default.⁵ Respondent, however, never sought to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) Thus, on November 4, 2016, the State Bar filed and properly served the petition for disbarment on Respondent at his membership-records address by certified mail, return receipt requested. In addition, the State Bar sent a courtesy copy of the petition for disbarment to Respondent at Respondent's private-membership-records email address.

As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent contacted the State Bar after his default was entered on July 28, 2016 (as noted *ante*, on August 24, 2016, Respondent telephoned the DTC to discuss what actions Respondent would need to take to vacate his default); (2) Respondent has no other disciplinary matters pending against him; (3) Respondent has three prior records of discipline; and (4) the Client Security Fund has not

⁴ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

⁵ In this same August 24, 2016, telephone conversation, Respondent also stated that he had not been paying for his post office box and had not been picking up his mail and that the best way to contact him was by email.

made any payments resulting from Respondent's conduct in this matter. Respondent did not respond to the petition for disbarment or move to set aside or vacate his default.

The case was submitted for decision on December 7, 2016.

Prior Records of Discipline

Respondent has the following three prior records of discipline.⁶

Goolsby I

On April 21, 2011, the Supreme Court filed an order in case number S190515 (State Bar Court case number 09-O-17012, etc., styled *In re Michael Lee Goolsby on Discipline* (*Goolsby I*), placing Respondent on one year's stayed suspension and two years' probation on conditions, including a thirty-day period of actual suspension. In *Goolsby I*, Respondent stipulated to being culpable on a total of six counts of misconduct involving three separate client matters. Specifically, Respondent stipulated to being culpable on two counts of engaging in the unauthorized practice of law (UPL) in violation of another jurisdiction's regulations (Rules Prof. Conduct, rule 1-300(B)); two counts of collecting illegal fees (Rules Prof. Conduct, rule 4-200(A)); one count of improper telephone solicitation (Rules Prof. Conduct, rule 1-400(C)); and one count of failing to account for an advanced fee (Rules Prof. Conduct, rule 4-100(B)(3)). No aggravating circumstances were found. In mitigation, Respondent had no prior record of discipline since he was admitted in 1992.

Goolsby II

On July 31, 2013, the Supreme Court filed an order in case number S210924 (State Bar Court case number 12-O-17100), styled *In re Michael Lee Goolsby on Discipline* (*Goolsby II*), placing Respondent on two years' stayed suspension and two years' probation on conditions, including a ninety-day period of actual suspension. In *Goolsby II*, Respondent stipulated to

⁶The court admits into evidence the copies of Respondent's three prior records of discipline that are attached to the State Bar's petition for disbarment as exhibits 1 through 3.

being culpable of willfully violating his duty, under section 6068, subdivision (k), to comply with the conditions of the disciplinary probation that the Supreme Court imposed on him in Goolsby I by failing to contact the Office of Probation within the first thirty days of the effective date of discipline; failing to timely submit five quarterly-probation reports; failing to timely make the required restitution payments in three client matters; and failing to successfully complete Ethics School within one year. In aggravation, Respondent had one prior record of discipline and committed multiple acts of misconduct. In mitigation, Respondent entered into a pre-trial stipulation of facts, culpability, and discipline and engaged in ameliorating behavior.

Goolsby III

On April 10, 2015, the Supreme Court filed an order in case number S223684 (State Bar Court case number 13-O-14919), styled *In re Michael Lee Goolsby on Discipline (Goolsby III)*, placing Respondent on one year's stayed suspension and one year's probation on conditions, but no actual suspension. In *Goolsby III*, Respondent stipulated to being culpable on the following two counts of misconduct in a single client matter: one count of engaging in UPL in violation of another jurisdiction's regulations (Rules Prof. Conduct, rule 1-300(B)); and one count of collecting an illegal fee (Rules Prof. Conduct, rule 4-200(A)). In aggravation, Respondent had two prior records of discipline (i.e., *Goolsby I* and *Goolsby II*); committed multiple acts of misconduct; and failed to make restitution for the illegal fee. In mitigating, Respondent entered into a pre-trial stipulation of facts, culpability, and discipline.

The Factual Allegations Deemed Admitted by Default Warrant the Imposition of Discipline

Under section 6088 and rule 5.82, the factual allegations (but not the charges or the conclusions of fact or law) set forth in the NDC are deemed admitted by the entry of Respondent's default. As set forth in greater detail *post*, the factual allegations in the NDC admitted by default support a finding that Respondent is culpable of the misconduct charged in

each of the three counts and, therefore, “support a finding that [Respondent] violated a statute, rule or court order that would warrant the imposition of discipline.” (Rule 5.85(F)(1)(d).)

Case Number 15-O-14340 (*Goolsby III* Disciplinary Probation)

Count One – Respondent willfully violated section 6068, subdivision (k) (comply with all conditions of disciplinary probation) with respect to the conditions of the one-year disciplinary probation imposed on him by the Supreme Court in *Goolsby III* by (1) failing to contact the Office of Probation and schedule a meeting within 30 days after the effective date of discipline, (2) failing to timely submit four quarterly probation reports, and (3) failing to pay the required minimum quarterly restitution payment for four quarters.

Case Number 15-O-14347 (*Goolsby II* Disciplinary Probation)

Count Two – Respondent willfully violated section 6068, subdivision (k) with respect to the conditions of the two-year disciplinary probation imposed on him by the Supreme Court in *Goolsby II* by (1) failing to contact the Office of Probation and schedule a meeting within 30 days after the effective date of discipline, (2) failing to timely submit six quarterly probation reports, (3) failing to submit a final probation report, (4) failing to report his change of address, and (5) failing to successfully complete Ethics School.⁷

Count Three – Respondent willfully violated section 6106 (moral turpitude) by falsely stating, in his probation report that was due on July 10, 2014, that he had complied with all the conditions of his probation in State Bar Court case number 12-O-17100 during the reporting

⁷ In count two, the State Bar incorrectly charges Respondent with violating the conditions attached to Respondent’s disciplinary probation in State Bar Court case number 12-O-14347. The State Bar should have charged Respondent with violating the conditions attached to Respondent’s disciplinary probation in State Bar Court case number 12-O-17100 or, even more apt, in Supreme Court case number S210924. Nonetheless, in light of the allegations in count three, which correctly reference State Bar Court case number 12-O-17100, the court concludes that the State Bar’s pleading error in count two did not deprive Respondent of fair, adequate, and reasonable notice of the charges against him.

period when he had not timely submitted the probation report that was due on April 10, 2014, and had not notified the Office of Probation of his change of address.

In addition, Respondent willfully violated section 6106 by falsely stating, in his probation report that was due on October 10, 2014, that he had complied with all the conditions of his probation in State Bar Court case number 12-O-17100 during the reporting period when he had not timely submitted the probation report that was due on July 10, 2014, and had not submitted proof that he successfully completed Ethics School by August 30, 2014.

In addition, Respondent willfully violated section 6106 by falsely stating, in his probation report that was due on July 10, 2015, that he had complied with all the conditions of his probation in State Bar Court case number 12-O-17100 during the reporting period when he had not timely submitted the probation report that was due on April 10, 2015, and had not notified the Office of Probation of his change of address.

Disbarment is Recommended

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and that it is appropriate to recommend Respondent's disbarment. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of this proceeding before the entry of his default;
- (3) Respondent's default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of Respondent's 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 will recommend disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent Michael Lee Goolsby 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 further 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.

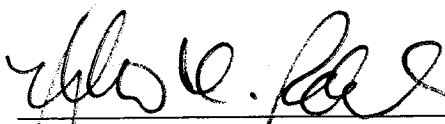
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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 Lee Goolsby, State Bar number 159660, 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 by mail. (Rule 5.111(D).)

Dated: January 24, 2017


YVETTE D. ROLAND
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 January 25, 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:

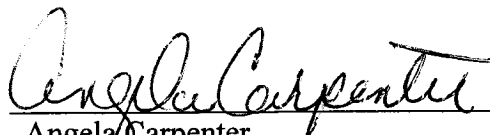
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL L. GOOLSBY
3334 E COAST HWY STE 645
CORONA DEL MAR, CA 92625

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

Alex J. Hackert, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in <select city>, California, on January 25, 2017.



Angela Carpenter
Case Administrator
State Bar Court