



PUBLIC MATTER

FILED

DEC 07 2016

V.A.

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of)	Case No.: 15-O-16039-LMA
)	
TIMOTHY DAVID MYERS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 199356,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

In this matter, respondent Timothy David Myers (Respondent) was charged with six counts of misconduct involving a single client matter. Respondent failed to participate either in person or through counsel, 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 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

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).)

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 this state on December 7, 1998, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 2, 2016, the State Bar properly filed and served an 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 from the U.S. Postal Service, containing Respondent's signature.

In addition, Respondent had actual notice of this proceeding. On May 11, 2016, a deputy trial counsel for the State Bar spoke with Respondent by telephone. The deputy trial counsel asked if Respondent received a copy of the NDC, and Respondent acknowledged that he had. The deputy trial counsel then inquired if Respondent had any questions, and Respondent stated that he did not.

Respondent subsequently failed to file a response to the NDC. On May 31, 2016, the State Bar filed and properly served a motion for entry of Respondent's default. The motion included a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on June 20, 2016. The order entering 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, and he has remained inactively enrolled since that time.

Respondent also 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 September 26, 2016, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has other disciplinary matters pending; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was reassigned to the undersigned judge on October 21, 2016, and was submitted for decision on October 25, 2016.

Respondent has been disciplined on two prior occasions. Pursuant to a Supreme Court order filed on December 11, 2013, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years subject to conditions including his suspension from the practice of law for ninety days. In this prior discipline, Respondent stipulated that he, in a single client matter, failed to perform legal services with competence, failed to promptly refund unearned fees, and committed an act of moral turpitude by making a false statement to the State Bar.

Pursuant to a Supreme Court order filed on January 14, 2015, Respondent's probation was revoked and he was suspended for two years, the execution of which was stayed, and he was placed on probation for two years subject to conditions including his suspension from the

practice of law for a minimum of six months and until payment of restitution. In this matter, Respondent was found culpable of violating the terms of 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 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 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).)

Case No. 15-O-16039 – The Nancy Myers Matter

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

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$60,024.37.

Count Four – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – NSF checks) by issuing a \$60,151.55 check to his client Nancy Myers when he knew – or was grossly negligent in not knowing – there were insufficient funds to pay the check.³

³ Respondent assured Ms. Myers he would make good on the check, but he did not.

Count Five – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by stating to his client that he had invested her funds and was holding them overseas on her behalf, when Respondent knew these representations were false.

Count Six – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

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 Timothy David Myers 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 Nancy Myers⁴ in the amount of \$60,151.55 plus 10 percent interest per year from August 31, 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.

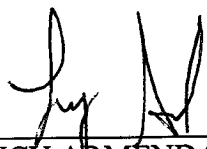
Costs

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 Timothy David Myers, State Bar number 199356, 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: December 7, 2016



LUCY ARMENDARIZ
Judge of the State Bar Court

⁴ It is unclear from the record whether a familial relationship exists between Respondent and Nancy Myers. In the event of a claim, the Client Security Fund may wish to further examine this issue.

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 December 7, 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:

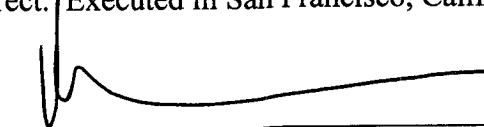
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

TIMOTHY D. MYERS
4911 WARNER AVE STE 201
HUNTINGTON BEACH, CA 92649

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

Drew D. Massey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 7, 2016.



Vincent Au
Case Administrator
State Bar Court