

PUBLIC MATTER

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STATE BAR COURT
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P.B.

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

) Case No. 16-O-11832-CV

JOSEPH D. GUMINA,

)
) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE ENROLLMENT
) (Bus. & Prof. Code, § 6007, subd. (c)(4).)

A Member of the State Bar, No. 288834.

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) Respondent Joseph D. Gumina is charged with two counts of misconduct involving a single client matter. 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 if the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting that the State Bar Court recommend the attorney's disbarment.²

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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 January 31, 2013, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On October 28, 2016, the State Bar filed and properly served the NDC on respondent at his membership-records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent failed to file a response to the NDC. On December 8, 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 of reasonable diligence from assigned Senior Trial Counsel (STC). (Rule 5.80.) In addition, the motion notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

In his supporting declaration of reasonable diligence, the STC incorrectly recites that the State Bar served the NDC on respondent "via regular first class mail." Moreover, the STC failed to state in his supporting declaration whether a signed return receipt for the NDC was received from respondent. (Rule 5.80(B)(1).) Notwithstanding these deficiencies, the STC's supporting declaration establishes that the State Bar acted with requisite reasonable diligence to notify respondent of the present proceeding as follows. On November 30, 2016, the STC attempted to

telephone respondent at his membership-records telephone number, and a State Bar investigator performed a LexisNexis search for respondent. Later that same day, the STC sent, to respondent's membership-records email address³ and to several additional email addresses for respondent located through the LexisNexis search, emails advising respondent that the NDC had been filed against him October 28, 2016; that his response to the NDC was due immediately; and that his failure to file a response to the NDC would result first in the entry of his default and then in his disbarment. On December 7, 2016, the STC attempted to contact respondent by telephoning respondent at an additional telephone number that the State Bar has for respondent. Moreover, the STC's declaration in support of the State Bar's petition for disbarment, *post*, establishes that the State Bar received a return receipt for the motion for entry of default that respondent signed on December 14, 2016.

Even though respondent received the motion for entry of default on December 14, 2016, respondent did not file a response to the motion or to the NDC. The court properly entered respondent's default on December 29, 2016. 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, the court would recommend that he be disbarred. In the default 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). Thereafter, on January 1, 2017, respondent was involuntarily enrolled inactive, and he has been on involuntarily inactive enrollment 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].) Thus, on April 10, 2017, the State Bar

³ Attorneys have been required to maintain a current email address on record with the State Bar since February 1, 2010. (Cal. Rules of Court, rule 9.7(a)(2).)

filed and properly served a petition for disbarment on respondent at his membership-records address by certified mail, return receipt requested.

As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent has not contacted the State Bar since his default was entered on December 29, 2016; (2) no other disciplinary matters are pending against respondent; (3) respondent does not have a prior record of discipline; and (4) the Client Security Fund has not paid any claims resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default.

The court took the petition for disbarment under submission for decision on May 15, 2017.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations (but not the conclusion of law or the charges) in the NDC were deemed admitted, and no further proof was 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 of the charged misconduct and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 16-O-11832 (Invensure Insurance Brokers Matter)

Count One— Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by constructively terminating his employment by failing to take any action on the client's behalf after December 24, 2015, and by failing to inform the client he was withdrawing from employment.

Count Two –Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a substantive response to the State Bar's letters.

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) reasonable diligence was used to notify respondent 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 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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Joseph D. Gumina 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

Finally, the court 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 Joseph D. Gumina, State Bar number 288834, is 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: June 6, 2017.



CYNTHIA VALENZUELA
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 June 6, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT (Bus. & Prof. Code, § 6007, subd. (c)(4).)

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:

**JOSEPH D. GUMINA
LAW OFFICE OF JOSEPH D. GUMINA
139 BAILEIGH LYN LOOP
JONESBOROUGH, TN 37659 - 4895**

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

WILLIAM S. TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 6, 2017.



Paul Barona
Case Administrator
State Bar Court