

PUBLIC MATTER

FILED

AUG 11 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES



STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 16-O-12453-DFM
)	
KENNETH ASHER AMIRIAN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 264435.)	ENROLLMENT
_____)	

Respondent Kenneth Asher Amirian (Respondent) is charged with violations of the Business and Professions Code¹ and the California Rules of Professional Conduct. He 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.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 (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



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.

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).)

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 September 22, 2009, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 22, 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.) The mailing was returned to the State Bar as undelivered with no forwarding address.

Reasonable diligence was then exercised by the State Bar to notify Respondent of this proceeding. On December 27, 2016, the State Bar served Respondent with another copy of the NDC at the address Respondent had provided to a State Bar investigator in September 2016, during the period in which that investigator had been conducting her investigation. The letter was not returned as undeliverable.

An initial status conference was held in this matter on January 17, 2017. Respondent did not appear.

On January 17, 2017, the assigned trial counsel (DTC) made further efforts to notify Respondent of these proceedings. She attempted to reach Respondent by telephone at his State Bar membership records telephone number. The call could not be completed as dialed using that number. The DTC also called Respondent at the alternate telephone number he had provided to

the State Bar investigator who had been assigned to investigate this matter for the State Bar. The DTC left a voicemail message for Respondent at the alternate number, informing him that a NDC had been filed against him and that his response was required. Thereafter, the DTC received no contact from Respondent.

On January 27, 2017, the DTC again attempted to call Respondent at his membership records telephone number; again, the call could not be completed as dialed. The DTC then tried to reach Respondent at the alternate phone number and left a detailed voicemail message, including her contact information and a request that Respondent return her call. Respondent did not do so.

The DTC also sent an email to Respondent's official membership records email address on January 27, 2017, informing him of the State Bar's intent to file a motion for entry of default. The email included a copy of the NDC. That email was delivered.

Despite these efforts made by the State Bar, Respondent failed to file a response to the NDC. Consequently, on February 2, 2017, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by 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.

Respondent did not file a response to the motion, and his default was entered on February 21, 2017. The order also placed Respondent on involuntary inactive status 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. The order entering the default and enrolling Respondent inactive was served on Respondent at his membership records address by

certified mail, return receipt requested, and was also served on Respondent at an alternate address by first class mail.

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].) As a result, on June 23, 2017, 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 has not contacted the assigned deputy trial counsel or the State Bar since his default was entered; (2) there are two disciplinary investigations pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct.

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was then submitted for decision on July 19, 2017.

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.) 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 Number 16-O-12453 (Braggs Matter)

Count One – Respondent willfully violated section 6068, subdivision (j) (failure to update membership address), by moving out of his office in September 2016, which office had been located at the last address maintained on the official membership records of the State Bar and, thereafter, failing within 30 days to notify the State Bar of a change of address by updating his former membership records address with a current office address.

Count Two – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (accepting fees from a non-client) by accepting a total of \$600 from Tisa Wilson, an individual other than Respondent’s client, as compensation for representing his client, Kalun Braggs (the client), without obtaining the client’s informed written consent.

Count Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the client when Respondent constructively terminated his employment on March 4, 2016, by failing to take any further action on the client’s behalf, despite having already agreed to appear at the client’s March 15, 2016 probation revocation hearing, by failing to inform the client of his withdrawal from employment, and failing to appear at the client March 15 probation revocation hearing.

Count Four – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing upon termination of Respondent’s employment on March 4, 2016, to provide an appropriate accounting to the client regarding the \$600 advanced fees Respondent had received on behalf of the client for legal services to be performed.

Count Five – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund, upon termination of his employment on March 4, 2016, any part of the \$600 advanced fee he had received on behalf of the client, none of which fee Respondent had earned.

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 **Kenneth Asher Amirian**, State Bar number 264435, 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, payable to Kalun Braggs and Tisa Wilson, in the total amount of \$600, plus 10 percent interest per year from March 4, 2016. 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 rule 9.20 of the California Rules of Court 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 **Kenneth Asher Amirian**, State Bar number 264435, 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: August 11, 2017



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 August 11, 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:

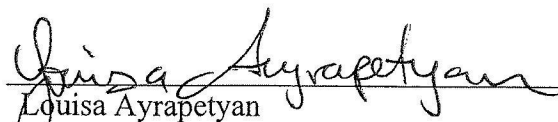
KENNETH A. AMIRIAN
LAW OFFICE OF KENNETH A. AMIRIAN
3225 GRANDE VISTA DR
NEWBURY PARK, CA 91320

COURTESY COPY
KENNETH ASHER AMIRIAN
625 KENDALE LANE
THOUSAND OAKS, CA 91360

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

ERIC J. AUFDENGARTEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 11, 2017.


Louisa Ayrapetyan
Case Administrator
State Bar Court