

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

FILED
SEP 04 2018 P.B.
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No. 16-O-15393-CV
)	
GAURAV D. DATTA,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 269338.)	ENROLLMENT
)	
_____)	

Respondent Gaurav D. Datta (Respondent) was charged with six counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to appear at the trial of this case and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

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.

within 45 days, OCTC 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 April 19, 2010, and has been a member since then.

Procedural Requirements Have Been Satisfied

On January 10, 2018, OCTC properly filed and served a First Amended Notice of Disciplinary Charges (NDC) on Respondent. The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation.

Respondent, represented by attorney Arthur L. Margolis, filed a response to the NDC on January 12, 2018.

At a status conference on January 5, 2018, the trial was set to start on March 27, 2018. The January 5, 2018 order setting the trial date was served on Respondent at his membership records address by first-class mail, postage paid. (Rule 5.81(A).)

On March 19, 2018, through his counsel, Respondent filed a notice of Respondent's intent to default, stating that he had chosen to default by not appearing at the March 27 hearing, that he had admitted his culpability in his response to the NDC, and that he understood the default would result, ultimately, in his disbarment.

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).)

On March 27, 2018, OCTC appeared for trial, but Respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered Respondent's default by order filed March 19, 2018. The order notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On May 29, 2018, OCTC properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are no investigations or disciplinary charges pending against Respondent; (3) Respondent has no record of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on July 13, 2018.

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. 16-O-15393 (Client Trust Account Matter)

Count 1 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to maintain a balance of \$17,878.67 on behalf of nine clients in a client trust account.

Count 2 – Respondent willfully violated section 6106 (moral turpitude, dishonesty, or corruption) by intentionally misappropriating client funds of \$17,732.29 on April 20, 2016.

Count 3 – Respondent willfully violated section 6106 by intentionally misappropriating client funds of \$20,100 between September 4, 2015, and August 18, 2016.

Count 4 – Respondent willfully violated section 6106 by intentionally misappropriating client funds of \$30,000 between March 4 and July 11, 2016.

Count 5 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain a balance of \$80,944.31 on behalf of six clients in a client trust account.

Count 6 – Respondent willfully violated section 6106 by intentionally misappropriating client funds of \$39,669.31⁴ on July 26, 2016.

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 this proceeding and had adequate notice of the trial date prior to the entry of his default.
- (3) The default was properly entered under rule 5.81.

⁴ The alleged amount of "\$39,669.31" may not be mathematically correct ($\$83,944.31 - \$44,245 = \$39,699.31$; and $\$80,944.31 - \$44,245 = \$36,699.31$). But since Respondent defaulted in this matter, the factual allegations in the NDC are deemed admitted. (Rule 5.82.)

(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.

(5) Despite adequate notice and opportunity, Respondent failed to appear for the trial of this disciplinary proceeding.

As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATIONS

Disbarment

It is recommended that **Gaurav D. Datta**, State Bar number 269338, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended 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.

Restitution

The court also recommends that Respondent be ordered to make restitution to the following payees:

- (1) Zoila Camacho in the amount of \$2,400 plus 10 percent interest per year from September 28, 2015.
- (2) Maribel Partida in the amount of \$195.38 plus 10 percent interest per year from December 18, 2015.
- (3) Billy Charles Dyson in the amount of \$1,066.01 plus 10 percent interest per year from September 28, 2015.

- (4) Christine Lynn Chase in the amount of \$168.02 plus 10 percent interest per year from November 17, 2015.
- (5) Robert Montenegro in the amount of \$60.11 plus 10 percent interest per year from December 16, 2015.
- (6) Marcia Watts in the amount of \$601.98 plus 10 percent interest per year from May 25, 2016.
- (7) Edgar Atescateno in the amount of \$242.17 plus 10 percent interest per year from April 20, 2016.
- (8) Rebecca Atescateno in the amount of \$100 plus 10 percent interest per year from March 8, 2016.
- (9) Barbara Roach in the amount of \$1,845 plus 10 percent interest per year from April 20, 2016.
- (10) Deonne Meredith in the amount of \$1,953.31 plus 10 percent interest per year from July 26, 2016.
- (11) Kimberly Martinez in the amount of \$344.66 plus 10 percent interest per year from July 6, 2016.
- (12) Reyna Pena in the amount of \$444.66 plus 10 percent inters per year from July 6, 2016.
- (13) Jose Salcedo in the amount of \$111.34 plus 10 percent interest per year from July 8, 2016.
- (14) Im S. Pyun in the amount of \$340 plus 10 percent interest per year from July 26, 2016.
- (15) Theresa Blake in the amount of \$408.33 plus 10 percent interest per year from July 26, 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).

Costs


It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for

payment of discipline costs is extended pursuant to section 6086.10, subdivision (c), costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders **Gaurav D. Datta**, State Bar number 269338, 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: September 4, 2018


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 Court Specialist 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 September 4, 2018, 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:

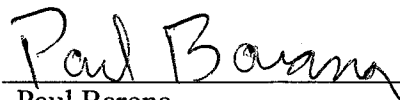
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 4, 2018.



Paul Barona
Court Specialist
State Bar Court