

FILED

DEC 06 2017 EE

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 16-O-15948;
)	16-O-16186 (Cons.)-CV
SEAN JOSEPH GALLAGHER,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 183153.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
_____)	

In this matter, respondent Sean Joseph Gallagher (Respondent) was charged with six counts of misconduct involving two consolidated matters. 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 (OCTC) 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 OCTC 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 June 11, 1996, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 20, 2017, the OCTC 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 NDC was not returned to the OCTC by the U.S. Postal Service as undeliverable.

In addition, Respondent had actual notice of this proceeding. Between May 23 and 25, 2017, Respondent sent several emails to the OCTC regarding the instant matter. These emails demonstrated that Respondent was aware of his requirement to file a response to the NDC. Nonetheless, he failed to file a response to the NDC. On May 30, 2017, the OCTC filed and properly served a motion for entry of Respondent's default. The motion included a supporting declaration of reasonable diligence by Deputy Trial Counsel Alex Hackert 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 26, 2017. 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 October 6, 2017, the OCTC filed the petition for disbarment. The OCTC reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has no 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 submitted for decision on November 27, 2017.

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-15948

Count One – Respondent willfully violated section 6068, subdivision (j) (failure to update membership address) by failing to update his State Bar official membership records address within 30 days after moving from Arizona to California.

Case No. 16-O-16186

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (c) (maintaining an unjust action) by filing a meritless and frivolous action in the Orange County Superior Court that was barred by Civil Code section 43.5 and related case law.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by filing a lawsuit he knew – or was grossly negligent in not knowing – was frivolous, without merit, and filed for the sole purpose of harassing and embarrassing the defendants.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (b) (failing to maintain respect due to the court) by failing to comply with an Orange County Superior Court order to pay sanctions in the amount of \$11,565.³

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to timely report to the OCTC judicial sanctions against Respondent in the amount of \$11,565.

Count Six – Respondent willfully violated Business and Professions Code section 6068, subdivision (b) (failing to maintain respect due to the court) by failing to comply with an Orange County Superior Court order to pay sanctions in the amount of \$3,446.93.

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.

³ The misconduct involved in Counts Four and Six would have more aptly been charged as violations of Business and Professions Code section 6103 (failure to obey a court order). (See *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 522.)

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 Sean Joseph Gallagher 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 the following payees:

- (1) Fredrick Carl Stegmann, Jr. in the amount of \$11,565 plus 10 percent interest per year from March 24, 2014; and
- (2) Fredrick Carl Stegmann, Jr. in the amount of \$3,446.93 plus 10 percent interest per year from July 7, 2014.

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.

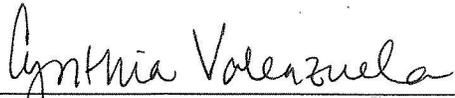
Costs

The court further recommends that costs be awarded to the OCTC 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 Sean Joseph Gallagher, State Bar number 183153, 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 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 December 6, 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:

SEAN J. GALLAGHER
14215 N WILLOW BEND DR
ORO VALLEY, AZ 85755

Courtesy copy:
SEAN JOSEPH GALLAGHER
1850 WHITLEY AVE #1119
LOS ANGELES, CA 90028

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

Scott D. Karpf, Enforcement, Los Angeles

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



Erick Estrada
Case Administrator
State Bar Court