



PUBLIC MATTER

FILED

OCT 17 2018

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 17-J-04121
)	
DAVID CHIPMAN VENIE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 204954.)	ENROLLMENT
_____)	

On January 18, 2017, respondent David Chipman Venie (Respondent) was ordered disciplined by the Supreme Court of the State of New Mexico (Supreme Court of New Mexico) upon findings that Respondent had committed professional misconduct. As a result, the Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding on March 6, 2018. (Bus. & Prof. Code, § 6049.1; Rules Proc. of State Bar, rules 5.350-5.354.¹)

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the New Mexico proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of Respondent's misconduct in New Mexico; and (3) whether the New Mexico proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

Respondent bears the burden of establishing that the conduct for which he was disciplined in New Mexico would not warrant the imposition of discipline in California and/or

¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar and all statutory references or sections are to the Business and Professions Code.

that the New Mexico proceeding lacked fundamental constitutional protection. Unless Respondent establishes one or both of these, the record of discipline in the New Mexico proceeding is conclusive evidence of Respondent's culpability of misconduct in California. (Section 6049.1, subdivisions (a) and (b).)

Respondent failed to participate in these proceedings either in person or through counsel, and his default was entered. OCTC then filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar. 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, OCTC will file a petition requesting that the court recommend the attorney's disbarment.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 December 8, 1999, and has been a member since then.

On March 6, 2018, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's membership records address. The NDC notified

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).)

Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, OCTC took additional steps to notify Respondent about these proceedings by: (1) leaving a voicemail for Respondent at an alternate telephone number; (2) attempting to contact Respondent at two other alternate phone numbers; (3) sending letters and a copy of the NDC to Respondent's membership records address and two alternate addresses; and (4) sending an email to Respondent at his membership records email address and two alternate email addresses, attaching a copy of the NDC and notifying Respondent that OCTC intended to file a motion for default if he did not file a response.

Respondent had actual notice of these proceedings. On April 6, 2018, Respondent sent OCTC an email with a proposed response to the NDC attached. Respondent directed OCTC to file the response. On the same date, OCTC responded to Respondent's email advising Respondent that OCTC could not file the response on his behalf.

Respondent then failed to file a response to the NDC. On April 10, 2018, OCTC properly filed and 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 OCTC 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 May 2, 2018. The order entering the 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 of California under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

Respondent has not sought 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 August 22, 2018, OCTC properly filed and served a petition for disbarment on Respondent at his 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 other disciplinary matters pending against him; (3) Respondent has two prior discipline records; and (4) the Client Security Fund has not paid 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 submitted for decision on September 24, 2018.

Prior Record of Discipline

Pursuant to an order of the Supreme Court filed on October 27, 2010, Respondent was suspended for one year, stayed, and placed on probation for two years subject to a 90-day actual suspension. Respondent was found culpable of violating rule 1-400(D) of the Rules of Professional Conduct and section 6106 by sending deceptive and misleading advertisements to county jail inmates. Respondent's misconduct was aggravated by multiple acts of wrongdoing and indifference. There were no mitigating circumstances.

In his second prior discipline, pursuant to an order of the Supreme Court filed on July 10, 2012, Respondent was suspended for two years, stayed, and placed on probation for two years subject to an actual suspension of six months. Respondent committed misconduct in a foreign jurisdiction. The United States District Court for the District of New Mexico (District Court of New Mexico) suspended Respondent from practicing before the District Court of New Mexico for six months and placed Respondent on probation for one year, if he was readmitted. Respondent stipulated that his misconduct as determined by the District Court of New Mexico constituted a violation of the following California statutes: section 6068, subdivision (k) (failing

to comply with all conditions of disciplinary probation); and section 6103 (failing to comply with a court order [two counts]). Respondent's prior record was an aggravating circumstance that was tempered by Respondent's candor and cooperation.

The Admitted Factual Allegations Warrant the Imposition of Discipline

The court finds that Respondent's culpability in the New Mexico proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this state at the time of Respondent's misconduct in the New Mexico proceeding, as set forth below.

**Case No. 17-J-04121 – January 18, 2017 Supreme Court of New Mexico
Disciplinary Order**

On January 18, 2017, the Supreme Court of New Mexico ordered that Respondent be disbarred based on the finding that he had committed professional misconduct in that jurisdiction. Respondent's misconduct involved three client matters. The Supreme Court determined that Respondent: (1) introduced multiple misrepresentations to a tribunal; (2) knowingly filed a false affidavit; (3) denied knowledge of his client's guilt during an underlying disciplinary proceeding; (4) filed a frivolous lawsuit on behalf of his client; (5) unnecessarily revealed confidential communications from a client during a fee dispute; (6) deposited funds from a third party paid on behalf of a client into his personal account instead of a trust account; (7) converted for his own use funds from a third party paid on behalf of a client; and (8) filed a lien against a third party of a client to secure fees owed by the client. Respondent's misconduct violated the following New Mexico Rules Annotated: 16-801(A) (knowingly making a false statement of material fact in connection with a disciplinary matter); 16-303(A)(1) (making a false statement of material fact to a tribunal); 16-303(A)(3) (knowingly offering false evidence); 16-301 (filing a frivolous action); 16-804(A) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); 16-804(D) (engaging in conduct prejudicial to the administration of justice); 16-106(A) (revealing confidential client information without client consent); 16-115(A)

(duty to hold client property separately from the lawyer's property); 16-115(E) (lawyer in possession of disputed property has duty to keep property separate until dispute is settled); and 16-115(D) (duty to promptly deliver funds to client or third person entitled to such funds).

The NDC filed by OCTC in the instant proceeding alleges that Respondent's misconduct in the New Mexico matter reflects violations of sections 6068, subdivisions (d) and (e)(1), and 6106; and rules 3-210, 3-700(D)(2), 4-100(A), 4-200(A) and 5-100(A) of the California Rules of Professional Conduct. This court agrees. This allegation is deemed admitted upon the entry of Respondent's default in this proceeding and is supported by the agreed-upon facts giving rise to Respondent's discipline in New Mexico.

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 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.

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RECOMMENDATIONS

Discipline - Disbarment

It is recommended that David Chipman Venie, State Bar Number 204954, 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 imposing discipline in this matter.³ Failure to do so may result in disbarment or suspension.

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 subdivision (c) of section 6086.10, 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 that David Chipman Venie, State Bar number 204954, be involuntarily enrolled as

³ For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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: October 17, 2018


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 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 October 17, 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:

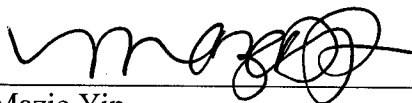
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID C. VENIE
2615 CORTE CASTELLON SE
RIO RANCHO, NM 87124 - 8845

- 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 October 17, 2018.



Mazie Yip
Court Specialist
State Bar Court