

PUBLIC MATTER

FILED
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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 17-O-01718-YDR
)	
JIMMY PHILIP METTIAS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 269572.)	ENROLLMENT
)	

Respondent Jimmy Philip Mettias (Respondent) is charged with seven counts of misconduct. He failed to participate in these proceedings either in person or through counsel, and his default was entered. Thereafter, the Office of Chief Trial Counsel (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 the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting that the court recommend the attorney's disbarment.²



¹ Unless otherwise indicated, all references to rules are to this source. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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

Jurisdiction

Respondent was admitted to practice law in this state on May 20, 2010, and has been a member since then.

On September 25, 2017, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On September 30, 2017, the State Bar received the return receipt card but the signatory was undecipherable.

Thereafter, the State Bar took additional steps to notify Respondent about these proceedings by: 1) calling Respondent's membership records telephone number and leaving a message for Respondent indicating no response to the NDC had been received; 2) attempting to contact Respondent at telephone numbers obtained from an Internet search; and 3) sending Respondent an email at his membership records email with a copy of the NDC attached and notifying him that his response to the NDC was overdue.

Respondent failed to file a response to the NDC. On November 1, 2017, the State Bar 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 the State Bar 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 November 29, 2017. 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 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 March 8, 2018, the State Bar properly filed and served the petition for disbarment on Respondent at his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are other disciplinary matters pending against Respondent; (3) Respondent has one prior discipline record; 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 April 4, 2018.

Prior Record of Discipline

Respondent has one prior record of discipline. Pursuant to an order of the Supreme Court filed on July 31, 2014, Respondent was suspended for one year, stayed, and placed on probation for one year subject to conditions. Respondent stipulated that he was culpable of failing to perform with competence (Rules of Prof. Conduct, rule 3-110(A)); knowingly making misrepresentations to his married clients (§ 6106); and failing to promptly provide his clients with their client file (Rules of Prof. Conduct, rule 3-700(D)(1)).

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, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case No. 17-O-01718

Count One - 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 \$110,710.84 in client funds in his CTA.³

Count Two - Respondent willfully violated section 6106 (moral turpitude – misappropriation) by dishonestly or grossly negligently misappropriating for Respondent's own purposes, \$110,710.84 owed to Respondent's clients.

Count Three - Respondent willfully violated section 6106 (moral turpitude – misrepresentations) by knowingly making misrepresentations to his clients when he falsely stated in an email that they should receive a wire of the funds that they were entitled to receive by 10:00 a.m. EST on March 14, 2017. Respondent knew his statement was false.

Count Four - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform with competence) by repeatedly failing to appear at court hearings, by failing to resolve his clients' probate matter, and by failing to perform any services for which he was retained from April 28, 2016, through November 14, 2016.

³ The \$110,286.84 amount alleged in the NDC is a mathematical error.

Count Five - Respondent willfully violated section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform his clients about court hearings that took place on April 28, 2016, June 23, 2016, and September 8, 2016.

Count Six - The court does not find Respondent culpable of willfully violating section 6103 (failure to obey a court order) as the facts deemed admitted as a result of the entry of Respondent's default do not support a finding by clear and convincing evidence that Respondent disobeyed or violated an order of the court requiring Respondent to do or forbear an act connected with or in the course of Respondent's profession which Respondent ought in good faith to do or forbear.

Count Seven - Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to four State Bar letters or emails that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 17-O-01718.

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 Respondent's disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Jimmy Philip Mettias, State Bar number 269572, 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 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 State Bar 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 Jimmy Philip Mettias, State Bar number 269572, 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: April 25, 2018


YVETTE D. ROLAND
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 April 25, 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:

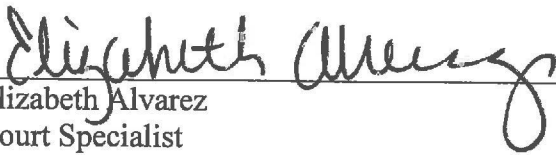
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JIMMY P. METTIAS
THE METTIAS LAW FIRM APLC
15500 W SAND ST
STE 1
VICTORVILLE, CA 92392 - 2931

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

Jaymin M. Vaghashia, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 25, 2018.


Elizabeth Alvarez
Court Specialist
State Bar Court