



PUBLIC MATTER

FILED

MAY 17 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos. 17-O-02679 (17-O-02986;
)	17-O-03135; 17-O-03702; 17-O-06043;
JOSEPH CHRISTOPHER MARTO,)	17-O-07392; 17-O-07430)-YDR
)	
State Bar No. 171425.)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT

In this matter, respondent Joseph Christopher Marto (Respondent) was charged with 32 counts of misconduct involving 7 correlated 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, 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 July 14, 1994, and has been a California attorney since then.

Procedural Requirements Have Been Satisfied

On August 9, 2018, OCTC properly filed and served an NDC on Respondent by certified mail, return receipt requested, at his official State Bar records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) According to the United States Postal Service tracking records, the NDC was successfully delivered to Respondent's official State Bar records address on August 13, 2018.

In addition, Respondent had actual notice of this proceeding. On August 24, 2018, Respondent communicated by email with OCTC. On August 27, 2018, Respondent and an OCTC Senior Trial Counsel spoke over the telephone, and the parties subsequently exchanged some emails. On September 10, 2018, Respondent appeared by telephone and participated in the initial status conference in this matter.

Thereafter, however, Respondent did not file a response to the NDC or otherwise participate in these proceedings. On October 16, 2018, OCTC filed and properly served a motion for entry of Respondent's default. The motion included a supporting declaration of reasonable diligence by Senior Trial Counsel Britta Pomrantz 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 December 11, 2018. The order entering default was served on Respondent at his official State Bar records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as an attorney 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 did not subsequently 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 26, 2019, OCTC filed the petition for disbarment. OCTC reported in the petition that: (1) it had not had any contact with Respondent since the default was entered; (2) Respondent has 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 May 6, 2019.

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, except as otherwise noted, 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. 17-O-02679 – The Miranda Matter

Count One (A) – Respondent willfully violated former rule 3-110(A) of the Rules of Professional Conduct³ (failing to perform legal services with competence) by failing to perform

³ The State Bar Rules of Professional Conduct were revised on November 1, 2018.

the services for which he was employed, i.e., filing a claim within the statute of limitations, rendering accountings, and appearing at hearings.

Count One (B) – Respondent willfully violated former rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment without notice to his client.

Count One (C) – Respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with an April 12, 2017 order to show cause.

Case No. 17-O-02986 – The Client Trust Account Matter

Count Two (A) – Respondent willfully violated former rule 4-100(A) of the Rules of Professional Conduct (commingling) by issuing checks for personal expenses from his client trust account on nine occasions.

Count Two (B) – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – NSF checks) by issuing a check from his client trust account when he knew – or was grossly negligent in not knowing – there were insufficient funds to pay the check.

Count Two (C) – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds⁴ in the amount of \$11,000.

Count Two (D) – In Count Two (D), OCTC alleged that Respondent committed moral turpitude by directing his office manager to remove from his client trust account the same money that was alleged in Count Two (C). Since Count Two (D) is based on the same conduct as Count Two (C), the court does not find Respondent culpable on Count Two (D).

⁴ The NDC does not specify which clients were entitled to these funds.

Case No. 17-O-03135 – The Garriott Matter

Count Three (A) – Respondent willfully violated former rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform any of the services for which he was employed.

Count Three (B) – Respondent willfully violated former rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment without notice to his client.

Count Three (C) – Respondent willfully violated former rule 3-700(D)(1) of the Rules of Professional Conduct (failing to release file) by failing to promptly turn over his client's papers and property upon his client's request following termination of employment.

Count Three (D) – Respondent willfully violated former rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Three (E) – Respondent willfully violated former rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit funds received for the benefit of a client into a trust account.

Count Three (F) – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

Count Three (G) – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries) by failing to promptly respond to multiple reasonable client status inquiries.

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Case No. 17-O-03702 – The Puppo Matter

Count Four (A) – Respondent willfully violated former rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform any of the services for which he was employed.

Count Four (B) – Respondent willfully violated former rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Four (C) – Respondent willfully violated former rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide his client with an accounting.

Count Four (D) – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

Case No. 17-O-06043 – The Burney Matter

Count Five (A) – Respondent willfully violated former rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform services for which he was employed, i.e., the transfer of a liquor license.

Count Five (B) – Respondent willfully violated former rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Five (C) – Respondent willfully violated former rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide his client with an accounting.

Count Five (D) – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a

substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

Case No. 17-O-07392 – The Velador Matter

Count Six (A) – Respondent willfully violated former rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform the services for which he was employed, i.e., failing to appear at a scheduled court date and failing to correct errors identified by the court in Respondent’s petition.

Count Six (B) – Respondent willfully violated former rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment without notice to his client.

Count Six (C) – Respondent willfully violated former rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit funds received for the benefit of a client into a trust account.

Count Six (D) – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

Count Six (E) – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments) by failing to inform his client that her case was dropped from the court’s calendar due to Respondent’s failure to appear.

Count Six (F) – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$335.

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Case No. 17-O-07430 – The Foster Matter

Count Seven (A) – Respondent willfully violated former rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform any of the services for which he was employed.

Count Seven (B) – Respondent willfully violated former rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment without notice to his client.

Count Seven (C) – Respondent willfully violated former rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Seven (D) – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by OCTC.

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.

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

Discipline - Disbarment

It is recommended that Joseph Christopher Marto, State Bar Number 171425, be disbarred from the practice of law in 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) Dena Garriott in the amount of \$2,000 plus 10 percent interest per year from May 16, 2016;
- (2) Carletta Puppo in the amount of \$7,200 plus 10 percent interest per year from February 23, 2017;
- (3) Katherine Burney in the amount of \$2,000 plus 10 percent interest per year from September 1, 2017;
- (4) Paulette Velador in the amount of \$335 plus 10 percent interest per year from March 31, 2016; and
- (5) Cheryl Foster in the amount of \$1,500 plus 10 percent interest per year from April 3, 2017.

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

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.⁵

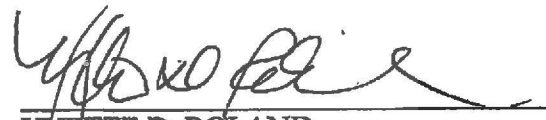
Costs

It is also 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 an attorney 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 Joseph Christopher Marto, State Bar number 171425, be involuntarily enrolled as an inactive attorney of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: May 17, 2019


YVETTE D. ROLAND
Judge of the State Bar Court

⁵ 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).)

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 May 17, 2019, 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:

JOSEPH CHRISTOPHER MARTO
334 72ND AVE
ST PETE BEACH, FL 33706 - 1913

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

BRITTA G. POMRANTZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 17, 2019.



Mazie Yip
Court Specialist
State Bar Court