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SEP 05 2018 *JK*

STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)
) Case Nos. 17-O-02964 (17-O-02974;
) 17-O-02975)-YDR
)
MATTHEW BARTLEY BUTLER,)
) DECISION AND ORDER OF INVOLUNTARY
) INACTIVE ENROLLMENT
)
)
A Member of the State Bar, No. 201781.)

Matthew Bartley Butler (Respondent) is charged with a total of twelve counts of misconduct involving three separate client matters. Even though Respondent had actual knowledge of this proceeding and even though Respondent participated in the initial status conference in this matter, Respondent's default was properly entered after he stopped participating and failed to file a response to the notice of disciplinary charges (NDC). The State Bar's Office of Chief Trial Counsel (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 NDC and if the attorney fails to have

¹ Except where otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar.



the default set aside or vacated within 90 days, OCTC will file a petition requesting the court to 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

Respondent was admitted to practice law in California on June 10, 1999, and has been licensed to practice law in this state since that time.³

Procedural Requirements Have Been Satisfied

On December 28, 2017, OCTC filed and served the NDC in this proceeding on Respondent at his official State Bar address by certified mail, return receipt requested. However, there was a typographical error in Respondent's State Bar number in the caption of the NDC. Specifically, Respondent's bar number was incorrectly listed in the caption as "201787" when it should have been listed as "201781." Thereafter, OCTC elected to correct this relatively minor error by filing, on January 8, 2018, an "Amended Notice of Disciplinary Charges" (amended NDC) in which Respondent's State Bar number is correctly listed in the caption as 201781.⁴

On January 8, 2018, OCTC served the amended NDC on Respondent by certified mail, return receipt requested at Respondent's official State Bar address. On January 8, 2018, OCTC also sent courtesy copies of the amended NDC to Respondent at four possible alternative

² If the court determines that any due process requirement is not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment, vacate the default, and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

³ Even though Respondent has been licensed to practice law since 1999, Respondent has not been able to lawfully practice law since September 1, 2017.

⁴ Except for Respondent's bar number in the caption, the amended NDC is identical to the NDC.

addresses that OCTC located for Respondent while performing a search for Respondent on Lexis.

According to the declaration of Deputy Trial Counsel Ester Fallas in support of OCTC's motion for entry of default:⁵ "On January 16, 2018, respondent appeared in person at the San Francisco office of the Office of Chief Trial Counsel of the State Bar of California. Senior Trial Counsel Manuel Jimenez ("STC Jimenez") provided respondent with a courtesy copy of the filed NDC. ... [When STC Jimenez questioned respondent about his current address,] respondent stated that he moved up to the Bay Area, and [that] his local address is 3133 Frontera Boulevard, Burlingame, California 94010" (Respondent's Burlingame address).⁶ Of course, because the NDC was superseded by the amended NDC, STC Jimenez should have provided Respondent with a copy of the *amended* NDC and not the NDC. Any mistake, however, was harmless since the amended NDC is identical to the NDC except that Respondent's State Bar number is correctly listed in the amended NDC (see footnote 4, *ante*).

⁵ DTC Fallas's declaration at pages 6 through 10 of OCTC's February 12, 2018, motion for entry of default, and DTC Fallas's declaration at pages 8 and 9 of OCTC's July 13, 2018, petition for disbarment are very confusing and inconsistent with each other. For example, on multiple occasions, Fallas inartfully refers to the "amended NDC" as "the NDC" as though the terms were interchangeable. In addition, she repeatedly states that Respondent's responses to the NDC and to the amended NDC were due within 20 days after their service by mail without noting that Respondent had an additional 5 days (or a total of 25 days) because the notices were served by mail (Rules Prof. Conduct, rule 5.28(A)). Moreover, in her declaration in support of the motion for entry of default, Fallas states that, during a telephone conversation with Respondent on January 18, 2018, "I reminded respondent that he has 20 days after the January 8, 2018, service of the [amended] NDC to file a written answer to the notice." However, in her declaration in support of the petition for disbarment, Fallas states that, during her January 18, 2018, telephone conversation with Respondent, "I reminded respondent that his written response to the [amended] NDC was due 20 days after the January 18, 2018, service of the [amended] NDC."

⁶ OCTC should have established these facts with a declaration from STC Jimenez.

On January 22 and 30, 2018, Respondent sent emails to DTC Fallas asking that OCTC agree to extend the time for him to file his response. Without telling Respondent why, DTC Fallas notified Respondent that OCTC “would not stipulate to an extension [of time].”

Even though Respondent did not appear at the February 5, 2018, initial status conference in person, he appeared and participated in that status conference by telephone. At that status conference, the court extended the time for Respondent to file a response to the amended NDC from February 2, 2018, until February 9, 2018.

Respondent thereafter failed to file a response to the NDC. On February 12, 2018, OCTC filed and served a motion for entry of default on Respondent by certified mail, return receipt requested at his official State Bar address. On that same day, OCTC also sent courtesy copies of the motion for entry of default to Respondent at Respondent’s Burlingame address and at another address in Burlingame. The motion complied with all the requirements for a default, including a supporting declaration from the DTC that sets forth the additional steps that OCTC took to provide Respondent with actual notice of this proceeding. (Rule 5.80.) OCTC's motion for entry of default also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

On March 15, 2018, this court filed an order in case number 18-TR-11037-YDR involuntarily enrolling Respondent inactive under Business and Professions Code section 6007, subdivision (b)(2)⁷ because on September 28, 2017, the San Diego County Superior Court filed a section 6190 order assuming jurisdiction over Respondent’s law practice.⁸

⁷ All further statutory references are to the Business and Professions Code unless otherwise indicated.

⁸ Section 6190 grants the courts of this state jurisdiction to take over the law practice of any attorney who has become incapable of properly practicing law for any reason, including, but not limited to, excessive use of alcohol or drugs, physical or mental illness or other infirmity. A

Respondent did not file a response to the motion for entry of default or to the amended NDC, and his default was properly entered on March 16, 2018. The order entering default was properly served on Respondent by certified mail, return receipt requested at his official State Bar address. In addition, courtesy copies of the court's order were sent to Respondent at Respondent's Burlingame address and at another address in Burlingame.

In its March 16, 2018, order entering Respondent's default, the court also involuntarily enrolled Respondent inactive under section 6007, subdivision (e), effective three days after service of the order by mail. Accordingly, Respondent was involuntarily enrolled inactive on March 19, 2018, and Respondent has continuously been enrolled inactive under section 6007, subdivision (e) 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].) Thus, on July 13, 2018, OCTC filed and served a petition for disbarment on Respondent by certified mail, return receipt requested at Respondent's official State Bar address. On that same day, OCTC also sent courtesy copies of the petition for disbarment to Respondent at Respondent's Burlingame address and at two other addresses in Burlingame.

As required by rule 5.85(A), OCTC reported in the petition that: (1) Respondent's only contact with OCTC after his default was entered on March 16, 2018, was on April 23, 2018, when Respondent sent DTC Fallas a very strange email stating "that he was assigning the use of his voice to and for the benefit of the teachers union and other unions and the Democratic Party"; (2) there are no disciplinary investigations or other disciplinary charges pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not paid out any claims resulting from Respondent's conduct.

proceeding to assume jurisdiction over an attorney's law practice under section 6190 may be maintained concurrently with State Bar Court disciplinary proceedings. (§ 6190.5.)

Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The court took OCTC's petition for disbarment under submission for decision on August 10, 2018.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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 Number 17-O-02964 (Khuu and Nguyen Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by abandoning his representation of the clients' ongoing court matters and by failing to take any steps to advance the clients' case between January and May of 2017.

Count Two – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by not giving his clients notice that he was terminating his employment with them.

Count Three – Respondent willfully violated section 6068, subdivision (m) (failing to communicate) by failing to respond to reasonable status inquiries made by his clients.

Count Four – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failing to release a file in accordance with client's request) by failing to promptly release all of the clients' papers and property after the termination of his employment following the clients' May 24, 2017, request for their file.

Case Number 17-O-02974 (Hanley Matter)

Count Five – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by abandoning his client on or before March 15, 2017.

Count Six – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by not giving his client notice that he was terminating his employment with the client.

Count Seven – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly release all of the clients' papers and property after the termination of his employment following the client's April 17, 2017, request for his file.

Count Eight – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to account to his client for \$36,950 in advanced fees that the client paid respondent.

Case Number 17-O-02975 (Horne Matter)

Count Nine – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by abandoning his client and failing to communicate with the client since March 2017.

Count Ten – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by not giving his client notice that he was terminating his employment with the client.

Count Eleven – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly release all of the client's papers and property after the termination of his employment following the client's April 13, 2017, request for his file.

Count Twelve – Respondent willfully violated section 6068, subdivision (m) by failing to respond to reasonable status inquires made by his clients.

Disbarment is Recommended

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and that it is appropriate to recommend Respondent's disbarment. In particular:

- (1) the amended NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of this proceeding before the entry of his default;
- (3) Respondent's default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of Respondent's 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 will recommend disbarment.

RECOMMENDATIONS

Discipline - Disbarment

It is recommended that Matthew Bartley Butler, State Bar Number 201781, 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 Matthew Bartley Butler 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.⁹

⁹ 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 files 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).)

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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 Matthew Bartley Butler, State Bar number 201781, be involuntarily enrolled inactive, effective three calendar days after the service of this decision and order by mail (rule 5.111(D)).

Dated: September 5, 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 September 5, 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:

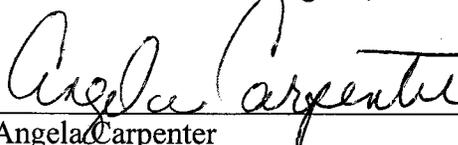
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MATTHEW B. BUTLER
THE BUTLER FIRM, APC
402 W BROADWAY 4TH FL
SAN DIEGO, CA 92101

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

Esther Fallas, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 5, 2018.



Angela Carpenter
Court Specialist
State Bar Court