



FILED
M
DEC 14 2018
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

| | | |
|--|---|--------------------------------|
| In the Matter of |) | Case Nos.: 17-O-01301 |
| |) | (17-O-01324; 17-O-03616) - YDR |
| STEELE NICOLSON GILLASPEY, |) | |
| |) | DECISION AND ORDER OF |
| A Member of the State Bar, No. 145935. |) | INVOLUNTARY INACTIVE |
| |) | ENROLLMENT |
| _____ |) | |

Respondent Steele Nicolson Gillaspey (Respondent) was charged with nineteen counts of misconduct stemming from three underlying matters. Even though Respondent had notice of the trial dates, he failed to appear at the trial, 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 appear at trial after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 45 days, the OCTC will file a petition requesting the court to recommend the attorney's disbarment.²

¹Unless 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

Jurisdiction

Respondent was admitted to practice law in this state on March 13, 1990, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 6, 2018, the OCTC properly served a Notice of Disciplinary Charges (NDC) in case Nos. 17-O-01301 (17-O-01324; 17-O-03616) on Respondent by certified mail, return receipt requested, at his membership records address. The NDC was filed with the State Bar Court on the same date. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On March 14, 2018, the return receipt was received by the OCTC, signed by Shirley Rosati.

Respondent appeared for a telephonic status conference on June 19, 2018. Respondent's answer to the NDC was deemed filed on this date. The trial date was rescheduled to commence on August 27, 2018.³ An order setting forth the August 27, 2018 trial date was filed and served on June 19, 2018, by first-class mail, postage paid, addressed to Respondent at his membership records address.

Respondent failed to appear at an August 21, 2018 pretrial conference. The court's August 22, 2018 minute order provided notice that trial would commence as previously scheduled. This order was served that same day by first-class mail, postage paid, addressed to Respondent at his membership records address.

³ Trial was originally scheduled to commence on June 19, 2018.

On August 27, 2018, the OCTC appeared for trial but Respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering Respondent's default that same day. The order notified Respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status 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. The order was properly served by certified mail, return receipt requested, addressed to Respondent at his membership records address. (Rule 5.81(B).) Respondent was also served by first-class mail, postage paid, at another address in La Jolla, California.

Respondent did not timely seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On October 18, 2018, the OCTC properly filed and served a petition for disbarment on Respondent.⁴ As required by rule 5.85(A), the OCTC reported in the petition that:

(1) Respondent has not been in contact with the OCTC since the entry of his default; (2) there are no other investigations or disciplinary matters pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) the Client Security Fund has not paid out any claims as a result of 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 20, 2018.

⁴ The petition for disbarment was served by certified mail, return receipt requested, to Respondent at his membership records address, as well as at another address in La Jolla, California.

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(2).) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, except as otherwise noted, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 17-O-01301 (The Lindsey Matter)

Count One – The OCTC failed to prove by clear and convincing evidence that Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence), as insufficient evidence was provided of Respondent's conduct being intentional, reckless, or repeated. The court therefore dismisses this count with prejudice.

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments), by failing to inform his client that the opposing party had filed a motion to compel further discovery responses; that the superior court granted the motion to compel and ordered Respondent to serve said responses without objections and produce additional documents; that Respondent did not timely supplement the discovery responses; that a hearing on the discovery motion and motion for sanctions was scheduled; and that the superior court ordered monetary sanctions against Respondent's client.

Count Three – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond promptly to status inquiries), by receiving and failing to respond promptly to 13 status inquiry telephone calls made by his client.

Count Four – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment by failing to take any action on his client’s behalf after the motion to compel and motion for sanctions hearing and then failing to inform his client he was withdrawing from employment.

Count Five – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate accounts to client) by failing, following the termination of his employment, to render an appropriate accounting to his client regarding the advanced fees that he had received from his client.

Count Six – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to promptly refund, upon his termination, any of the \$21,238.90 in advanced fees that he had received from his client that he had not earned.

Count Seven – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate in disciplinary investigation), by failing to provide a substantive response to the OCTC’s letters which he received that requested his response to the allegations of misconduct in this matter.

Case Number 17-O-01324 (Sanctions Matter)

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivisions (o)(3) (failure to report judicial sanctions), by failing to report to the State Bar, in writing, within 30 days of his knowledge of the imposition of judicial sanctions in the amount of \$50,876.50 against him in connection with a civil case.

Count Nine – The OCTC failed to prove by clear and convincing evidence that Respondent willfully violated Business and Professions Code section 6103 (violation of a court order), as insufficient evidence was provided of Respondent’s acts or forbearances relating to the

sanction order alleged to have been disobeyed. The court therefore dismisses this count with prejudice.

Count Ten – Respondent willfully violated Business and Professions Code section 6068, subdivision (c) (maintaining an unjust action), by filing a lawsuit on behalf of his client in the United States District Court, Central District of California, that was found to be frivolous, without merit, and brought for an improper purpose.

Count Eleven – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate in disciplinary investigation), by failing to provide a substantive response to the OCTC’s letters which he received that requested his response to the allegations of misconduct in this matter.

Case Number 17-O-03616 (Carroll Shelby Wheel Company Matter)

Count Twelve – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to request discovery from the opposing party, demand jury trial on counterclaims, appear for a pretrial conference, and file pretrial documents.

Count Thirteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments), by failing to inform his client of (1) communications from opposing counsel regarding deficiencies in the complaint and their intent to request sanctions; (2) a motion for sanctions filed by the opposing parties and that his client’s complaint was dismissed with prejudice and monetary sanctions were awarded against them; (3) his failure to file pretrial documents; (4) the court barring his client from presenting witnesses or exhibits at the trial on the counterclaims; (5) the court denying the ability to proceed by jury trial on the counterclaims; (6) the opposing parties’ intent to seek \$2 million in damages plus legal fees and punitive damages at trial for the counterclaims; (7) the scheduled

pretrial conference dates and his failure to appear for them; (8) the scheduled and rescheduled trial dates; (9) his clients being listed as trial witnesses by the opposing parties; and (10) his filing of an appeal of the sanctions order and dismissal of the complaint.

Count Fourteen – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating his employment by failing to take any action on his client’s behalf after informing his client that opposing counsel had presented a settlement offer and then failing to inform his client he was withdrawing from employment.

Count Fifteen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by stating in writing to the United States District Court, Central District of California, that his client prepared a declaration when he knew or was grossly negligent in not knowing that it had not been prepared, reviewed or signed by his client.

Count Sixteen – The facts articulated in this count are unclear. Accordingly, the court lacks clear and convincing evidence that Respondent willfully violated Business and Professions Code section 6068, subdivision (d) (seeking to mislead a judge by artifice or false statement). The court therefore dismisses this count with prejudice.

Count Seventeen – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate accounts to client) by failing, following the termination of his employment, to render an appropriate accounting to his client regarding the advanced fees that he had received from his client.

Count Eighteen – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to promptly refund, upon his termination, any of the \$10,000 in advanced fees that he had received from his client that he had not earned.

Count Nineteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate in disciplinary investigation), by failing to provide a substantive response to the OCTC’s letters which he received that requested his response to the allegations of misconduct in this matter.

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 this proceeding and adequate notice of the trial date prior to the entry of his default;
- (3) the default was properly entered under rule 5.81; 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 disbarment.

RECOMMENDATIONS

Disbarment

It is recommended that Steele Nicolson Gillaspey, State Bar Number 145935, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

Restitution

It is further recommended that Respondent make restitution to the following payees or such other recipient as may be designated by the Office of Probation or the State Bar Court:

- (1) Jane Lindsey in the amount of \$21,238.90 plus 10 percent interest per year from December 4, 2015; and
- (2) Carroll Shelby Wheel Company, Inc. in the amount of \$10,000 plus 10 percent interest per year from May 18, 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 proceeding.⁵ 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

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).)

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 Steele Nicolson Gillaspey, State Bar number 145935, 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 14, 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 December 18, 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:

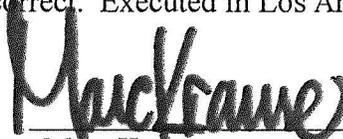
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

STEELE N. GILLASPEY
GILLASPEY & GILLASPEY
THE NBC TOWER
225 BROADWAY #2220
SAN DIEGO, CA 92101

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

KIMBERLY G. ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 18, 2018.



Marc Krause
Court Specialist
State Bar Court