

PUBLIC MATTER

FILED

JUL 07 2015



STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case Nos.: 14-O-01188-DFM (14-O-01381;
)	14-O-01689; 14-O-02914)
BRIAN THOMAS McKIBBIN,)	
)	DECISION AND ORDER OF
Member No. 117158,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent **Brian Thomas McKibbin** (Respondent) was charged with 23 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

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

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

(NDC) and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

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 December 3, 1984, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 17, 2014, the State Bar properly filed and served the NDC on Respondent by certified mail, return receipt requested, to his membership records address. The return card was signed and returned to the State Bar. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

On November 13, 2014, the State Bar sent Respondent an email, informing him that his response to the NDC was due. On November 17, 2014, Respondent appeared at a status conference and stated that he would file a response that day. On November 18, 2014, Respondent sent the State Bar an email, stating that he would be emailing his response to the NDC. On November 21, 2014, the State Bar sent Respondent another email, advising him that he needed to file a response to the NDC or that a motion seeking entry of his default would be filed. To date, Respondent has not contacted the State Bar.

Respondent failed to file a response to the NDC. On December 2, 2014, the State Bar properly filed and served a motion for entry of Respondent's default. The motion complied with

³ 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).)

all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel 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 18, 2014. 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 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 24, 2015, the State Bar properly filed and served the petition for disbarment on Respondent at his official 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 three investigations pending against Respondent; (3) Respondent has no record of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on April 23, 2015.

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

1. Case Number 14-O-01188 (Newman Matter)

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to represent his client, Dominique Newman, in her claims against her landlord in *Domenique D. Newman v. Betty Brosmer Weidner et al.*, Los Angeles County Superior Court, case No. SC120043 (Newman action), and by failing to defend her in an unlawful detainer action in *Ann C. Brosmer Trust v. Dominique D. Newman*, Los Angeles County Superior Court, case No. 13R04459.

Count 2 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to respond to reasonable client status inquiries between October and December 2013.

Count 3 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to inform client of significant developments in the Newman action and in an unlawful detainer action, including entering into a stipulation and judgment without the client's informed consent.

Count 4 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client when the client terminated his employment in December 2013.

Count 5 – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to promptly release to his client, upon the client's request on January 30, 2014, the client's property and papers.

Count 6 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar’s May 22, 2014 letter.

2. Case No. 14-O-01381 (Munns Matter)

Count 7 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to represent his clients, William Munns and Jaklin Munns, in their claims arising from their tenancy at a residential property, including failing to appear at a discovery motion hearing and at a mandatory settlement conference in *William Munns and Jaklin Munns v. Shahrooz Abootalebi et al.*, Los Angeles County Superior Court, case No. LC095901.

Count 8 – Respondent willfully violated section 6068, subdivision (m), by failing to inform clients of significant developments, including the dismissal of their civil action.

Count 9 – Respondent willfully violated section 6103 (failure to comply with court order) by failing to comply with the \$990 sanctions order issued by the Los Angeles County Superior Court on September 7, 2012.

Count 10 – Respondent willfully violated section 6103 by failing to comply with the \$990 sanctions order issued by the Los Angeles County Superior Court on November 19, 2012.

Count 11 – Respondent willfully violated section 6106 (moral turpitude) by making multiple misrepresentations in his emails to his clients between February and June 2013 and thereby concealing the fact that their action had been dismissed.

Count 12 – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly release to his clients, upon the clients' request on November 6, 2013, and April 24, 2014, the clients’ property and papers.

Count 13 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters of May 22 and September 3, 2014.

3. Case No. 14-O-01689 (Chiu Matter)

Count 14 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to represent his clients, Lisa Chiu and her minor daughter, Tiffany Liu, in their claims arising from their tenancy at a residential property, including failing to appear at a case management conference and hearing on the motion to strike in *Lisa Chiu et al. v. Kirk Lee et al.*, Los Angeles County Superior Court, case No. KC066065.

Count 15 – Respondent willfully violated section 6068, subdivision (m), by failing to respond to reasonable client status inquiries between July 2013 and February 2014.

Count 16 – Respondent willfully violated section 6068, subdivision (m), by failing to inform clients of significant developments, including the dismissal of their civil action.

Count 17 – Respondent willfully violated section 6106 (moral turpitude) by making multiple misrepresentations to Chiu over the telephone and in person in November and December 2013 and thereby concealing the fact that their action had been dismissed.

Count 18 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's June 9, 2014 letter.

4. Case No. 14-O-02914 (Newman Action Matter)

Count 19 – Respondent willfully violated section 6103 by failing to comply with a March 26, 2014 court order in *Domenique D. Newman v. Betty Brosmer Weidner et al.*, Los Angeles County Superior Court, case No. SC120043 (*Newman* action).

Count 20 – Respondent willfully violated section 6103 by failing to comply with a April 29, 2014 court order in the *Newman* action.

Count 21 – Respondent willfully violated section 6103 by failing to comply with a May 16, 2014 order to pay \$1,000 court sanctions in the *Newman* action.

Count 22 – Respondent willfully violated section 6068, subdivision (o)(3) (failure to report judicial sanctions), by failing to report the \$1,000 court sanctions ordered by the Los Angeles County Superior Court on May 16, 2014 in the *Newman* action.

Count 23 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters of July 16 and August 8, 2014.

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 his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent **Brian Thomas McKibbin**, State Bar number 117158, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to pay court sanctions in the amount of \$1,000 in *Domenique D. Newman v. Betty Brosmer Weidner et al.*, Los Angeles County Superior Court, case No. SC120043.

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 **Brian Thomas McKibbin**, State Bar number 117158, 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: July 7, 2015



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 Case Administrator 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 July 7, 2015, 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:

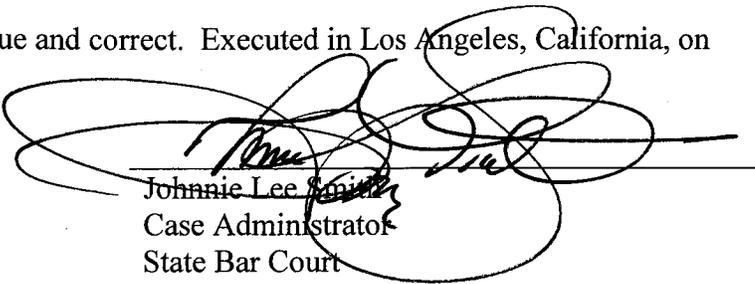
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**BRIAN THOMAS MCKIBBIN
1925 CENTURY PARK EAST
SUITE 2120
LOS ANGELES, CA 90067**

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

DIANE MEYERS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 7, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court