

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 08-O-14216; 08-O-14319
)	
MARC RAYMOND TOW,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 78429,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

Respondent Marc Raymond Tow was charged with eight counts of misconduct involving two different clients. He failed to appear at the trial of this case and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.¹

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 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that all of 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.

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(E)(2).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on December 21, 1977, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On May 24, 2011, the State Bar filed and properly served the notice of disciplinary charges (NDC) on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On June 15, 2011, respondent filed his response to the NDC.

By order filed July 18, 2011, the trial was set to start on August 16, 2011. The order setting the trial date was served on respondent at his membership records address by first class mail, postage paid. (Rule 5.81(A).) On August 8, 2011, the court received a letter from respondent in which he stated that he received the order setting the trial dates and was not going to appear for the trial. He said he had moved to Kansas and he did not intend to practice law again. The State Bar appeared for trial but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed August 17, 2011. 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), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On December 21, 2011, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar

reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent does not have any other disciplinary matters pending against him in the State Bar Court but does have 15 matters pending in investigation; (3) respondent has no record of prior discipline; and (4) the Client Security Fund has not paid out 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 January 18, 2012.

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 here support the conclusion that respondent is culpable of violating a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

1. Case Number 08-O-14216 (Nelson Matter)

Count One – respondent is culpable of violating rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by depositing \$10,000 in advanced costs paid to him by his client in his operating account and not his client trust account.

Count Two – respondent violated Business and Profession Code section 6106 (moral turpitude) by misappropriating the \$10,000 in advanced costs by failing to maintain it in his client trust account. Respondent paid part for the advanced costs for the costs of the litigation repaid part to the client. It is unclear whether any of the advanced costs remain owing to the client.

Count Three – respondent violated rule 3-310(B)(3) of the Rules of Professional Conduct (avoiding representation of adverse interests, written disclosure) by continuing to represent his client without providing written disclosure to the client that he was the president and majority

shareholder of, and therefore had a financial and professional relationship with, Preferred Default Management (PDM), a foreclosure corporation. The client employed PDM to foreclose on property that the client had an interest in. Respondent knew or should have known that PDM would be affected substantially by the resolution of foreclosure matter.

Count Four – respondent violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to maintain records of client property/render appropriate accounts) by providing his client with an inaccurate accounting regarding the date of payment of a portion of the advanced costs for an arbitration proceeding.

Count Five - respondent violated Business and Profession Code section 6106 (moral turpitude) by misrepresenting to his client that he had paid a portion of the advanced costs for an arbitration proceeding when he had not done so at the time.

Count Six – respondent violated rule 4-100(B)(4) of the Rules of Professional Conduct (promptly pay/deliver client funds) by failing to pay promptly a portion of the advanced costs for the arbitration proceeding. The money was paid approximately 14 months late.

2. Case Number 08-O-14319 (Walsh Matter)

Count Seven – respondent violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to complete a family estate plan for his client.

Count Eight – respondent violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing refund promptly \$3,500 in unearned fees to his client upon his termination from employment by the client. The money was paid 7 months late.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and of the trial date prior to entry of the 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 appear for the trial of this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Marc Raymond Tow be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 Marc Raymond Tow, State Bar Number 78429, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: February _____, 2012

PAT McELROY
Judge of the State Bar Court