

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **12-J-15361; 12-O-16787**
) **(12-O-16959) (Cons.)**
PATRICK JOSEPH SANDOVAL,)
) **DECISION AND ORDER OF**
Member No. 193979,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)
_____)

In this matter, respondent Patrick Joseph Sandoval was charged with ten counts of misconduct, stemming from two matters, which have been consolidated.

The first matter, case No. 12-J-15361 (the “J” matter), is based on a finding of misconduct in a jurisdiction other than California. On August 1, 2011, respondent was ordered by the United States Department of Justice, Executive Office for Immigration Review, Office of the Chief Immigration Judge (U.S. Department of Justice EOIR-OCIJ), to be disciplined upon findings that respondent had committed professional misconduct in that jurisdiction; the findings of the Chief Immigration Judge became final on May 22, 2012, when in the U.S. Department of Justice EOIR issued a Decision of the Board of Immigration Appeals, dismissing respondent’s appeal and affirming the August 1, 2011 decision of the U.S. Department of Justice EOIR-OCIJ. As a result, the Office of the Chief Trial Counsel of the State Bar of California (State Bar)

initiated the “J” proceeding on May 10, 2013. (Bus. & Prof. Code, § 6049.1; Rules Proc. of State Bar, rules 5.350-5.354.)¹

At the same time that the “J” case was filed, it was consolidated with an original matter, charging respondent with additional misconduct, based upon alleged violations of the California State Bar and the California Rules of Professional Conduct. Respondent failed to participate either in person or through counsel, and his default was entered in the consolidated matter. The 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 (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney’s disbarment.³

¹ In the “J” proceeding, the issues are limited to: (1) the degree of discipline to be imposed upon respondent in California; (2) whether, as a matter of law, respondent’s culpability in the EOIR proceedings would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of respondent’s misconduct that was at issue before the EOIR Courts; and (3) whether the EOIR court proceedings lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

Respondent bears the burden of establishing that the conduct for which he was disciplined by the EOIR Board of Immigration Appeals would not warrant the imposition of discipline in California and/or that the EOIR proceedings lacked fundamental constitutional protection. Unless respondent establishes one or both of these, the record of discipline in the EOIR proceedings is conclusive evidence of respondent’s culpability of misconduct in California. (Section 6049.1, subdivisions (a) & (b).)

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

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(E)(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 the practice of law in California on January 2, 1998, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 10, 2013, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On June 6, 2013, the NDC was returned in the mail with the handwritten note, “RTS” on the front of the envelope.

In addition, reasonable diligence was used to notify respondent of this proceeding. The deputy trial counsel (DTC) assigned to this case by the State Bar from July 31, 2012 through at least July 10, 2013 made numerous additional unsuccessful attempts during that time period to contact respondent. These efforts included calling respondent at his official membership records phone number, calling him at a private membership records telephone number that was not available to the public, calling a potential alternate telephone number for respondent that was listed in the case file for the “J” case, and calling a potential telephone number for a member of respondent’s staff. The DTC made further efforts to contact respondent by conducting internet searches on Zabasearch.com, Whitepages.com, and 411.com. Additionally, the DTC called directory assistance for the area which includes respondent’s official membership records address and asked for all the telephone listings for respondent. The DTC also conducted a public records search for respondent’s address and for telephone numbers which might belong to

respondent by using LexisNexis SmartLinx. On June 27, 2013, courtesy copies of the NDC and other pleadings in the file were sent to respondent at his official membership records address by regular first class mail. Those same documents and the NDC were also mailed to four other addresses attributable to respondent. Courtesy copies of the NDC and other documents in respondent's file were emailed to respondent's official membership records email address, to his private email membership records address and two other email addresses located for him. Courtesy copies of the NDC and other court documents also were sent to respondent at his official membership records facsimile number. Finally, on July 10, 2013, courtesy copies of the NDC and other relevant court documents were sent by regular first class mail to another address attributable to respondent.

Respondent failed to file a response to the NDC. On July 10, 2013, the State Bar properly filed and served on respondent at his membership records address, a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps which had been 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 the default was entered on July 29, 2013. On July 30, 2013, the order entering the default was filed and served on respondent at his membership records address by certified mail, return receipt requested.⁴ 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, and he has remained inactively enrolled since that time.

⁴ The order was returned to the court. The address on the envelope was crossed out with an "X" and the words "MOVED OUT" were hand-printed on the envelope. Additionally, the envelope was stamped, "RETURN TO SENDER UNDELIVERABLE AS ADDRESSED."

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On February 25, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the default was entered; (2) there are no other investigations or disciplinary matters pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made 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 March 26, 2014.

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.) Section 6049.1(a) provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that, subject to limited exceptions, the member is culpable of professional conduct in this state.

The court finds, as a matter of law, that respondent's culpability in the United States Department of Justice EOIR proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this state at the time of respondent's misconduct in the United States Department of Justice EOIR proceeding, as set forth in Count One, *post*. Moreover, as set forth below in Counts Two through Ten, in greater detail, the factual allegations in the NDC as to those counts support the conclusion that respondent is culpable as charged in eight of those nine counts and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-J-15361 – The U. S. Department of Justice EOIR Matter

Count One – respondent willfully violated section 6106 of the Business and Professions Code (commission of act of moral turpitude, dishonesty or corruption) by: (1) twice attempting to record an image appearing on a computer screen inside the United States Citizenship and Immigration Services (USCIS) offices, when he knew that he was not entitled to see that information; (2) presenting a declaration in which he falsely denied recording or attempting to record said confidential information; and (3) meaningfully assisting his client in presenting a similar false declaration, in violation of 8 Code of Federal Regulations (C.F.R.) §1003.102 and 8 C.F.R. §1003.102(c), as found in the U.S. Department of Justice EOIR proceedings.

Case No. 12-O-16787 – The “Ninth Circuit” Matter

Count Two – respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with: (1) the June 12, 2012 order, issued by the U.S. Court of Appeals for the Ninth Circuit (the Ninth Circuit), requiring him to resign from the bar of the Ninth Circuit or show cause in writing why he should not be reciprocally suspended from the bar of that Court and ordered to withdraw from all cases before that Court in which he was counsel of record and (2) the August 8, 2012 order, issued by the U.S. Court of Appeals for the Ninth Circuit, requiring him within 21 days of the August 8th Order to file a notice of withdrawal in each pending case in the Ninth Circuit in which he was counsel of record, to serve the Court’s August 8th order on his clients in all the pending cases, to turn over all client files and materials, to inform his clients of their right to obtain new counsel, and to furnish the Ninth Circuit with proof that he had complied with the requirements of the August 8th order.

Count Three – respondent willfully violated section 6068, subdivision (o)(6) (failure to report imposition of discipline) by failing to report the August 8, 2012 imposition of discipline by the Ninth Circuit to the State Bar of California.

Count Four – respondent willfully violated section 6068, subdivision (o)(3) (failure to report sanctions) by failing to report to the State Bar that he had been sanctioned \$1,000 by the Ninth Circuit in its September 7, 2012 order, which he received.

Count Five – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing a response to the State Bar investigator’s letter requesting a response to the allegations in the Ninth Circuit matter.

Case No. 12-O-16959 – The Ung Matter

Count Six – the court does not find respondent culpable of violating 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 harm to his clients, the Ungs, based on a lack of clear and convincing evidence. The Ninth Circuit’s June 12, 2012 order required respondent to withdraw from all cases presently before that Court in which he was counsel of record within 28 days of June 12, 2012. On August 8, 2012, the Ninth Circuit ordered respondent removed from the roll of attorneys admitted to practice before the Ninth Circuit. The Court further ordered respondent to provide his clients with information within 45 days of the August 8th Order as to the steps to be taken to obtain new counsel.

On June 14, 2012, respondent’s employee sent a text message to Donald Ung stating that respondent was no longer practicing immigration law. The text message advised Donald Ung that: the Ung file would be returned, respondent would be filing a motion to withdraw as counsel, that Donald Ung should be present at the next hearing to advise the judge that the Ungs were no longer represented by counsel and to request additional time for new counsel. On June

14, 2012, respondent also sent a text message to Donald Ung, stating that he would be filing motion to withdraw as counsel. Respondent filed a motion to withdraw as counsel for the Ungs on June 18, 2012. On June 27, 2012, the Ungs filed a motion for a continuance of their August 15, 2012 hearing, which was consistent with the advice in the June 14th text message to Donald Ung advising him to ask the court for additional time to find new counsel. On July 9, 2012, the Immigration Court granted the Motion for Continuance with respect to all matters relevant to the Ung case and reset the hearings in those matters to June 14, 2013.

Thus, the court finds that the evidence is not clear and convincing that respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client.

Counts Seven and Eight – respondent willfully violated section 6068, subdivision (m) (failing to communicate) by: (1) failing to inform the Ungs of his potential discipline and thus keep his clients reasonably informed of a significant development; (2) failing to respond to the Ungs’ reasonable requests for status updates regarding their immigration matter, which they made via telephone messages, letters, e-mails and text messages between January and June 2012; and (3) failing to provide the Ungs with a status update in response to their July 2012 messages for an update with respect to the status of their request for a refund of their advanced attorney fees.

Count Nine – 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 provide the Ungs with an accounting of the advanced attorney fees they had paid him, even after receiving their June 2012 requests via text and email for an accounting.

Count Ten – respondent willfully violated section 6068, subdivision (i) by failing to provide a response to the State Bar’s letter, requesting that respondent provide a response to the allegations in the Ung matter.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) 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, as the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address and made numerous efforts to locate respondent, including: telephoning respondent at his membership records telephone numbers, as well as other alternative phone numbers for him; conducting internet searches to locate respondent; doing a public records search on Lexis/Nexis SmartLinx for respondent's address and for telephone numbers; calling directory assistance for the area which includes respondent's official membership records address and requesting all the telephone listings for respondent; sending courtesy copies of the NDC and other relevant pleadings in the file to respondent's official membership records address by regular first class mail; sending the NDC and other relevant pleadings to four alternative addresses attributable to respondent; emailing the NDC and relevant documents to respondent's official membership records email address, to his private email address and to two additional email addresses located for him; and sending courtesy copies of the NDC and other relevant documents to his official membership records facsimile number;
- (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 must recommend his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Patrick Joseph Sandoval be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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 Patrick Joseph Sandoval, State Bar number 193979, 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: June _____, 2014

RICHARD A. HONN
Judge of the State Bar Court