

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-10658-RAH
)	
ULYSSES LAFOY COOK, JR.,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 68779,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Ulysses Lafoy Cook, Jr. (respondent) was charged with failing to comply with conditions of his disciplinary probation. 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.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 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.²

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).)

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 this state on June 25, 1976, and has been a member since then.

Procedural Requirements Have Been Satisfied

Respondent had actual notice of this disciplinary proceeding. On April 19, 2012, in response to an email from Deputy Trial Counsel Anand Kumar (DTC Kumar),³ respondent telephoned DTC Kumar requesting to meet with him in person to discuss his options before the State Bar filed disciplinary charges against him. On April 20, 2012, respondent and DTC Kumar met in person and discussed respondent's options, including the ramifications of having a default order entered against him. The parties submitted a joint request for an early neutral evaluation conference (ENEC) with the court, but the day before the scheduled ENEC, a family member of respondent emailed DTC Kumar, informing him on respondent's behalf that respondent would not be available for the scheduled ENEC and asking the State Bar to proceed by filing disciplinary charges against him.

On May 14, 2012, the State Bar filed and properly served the NDC in this matter on respondent by certified mail, return receipt requested, to both his membership records address and to an address respondent provided to DTC Kumar during their April 19, 2012 telephone conversation.⁴ The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt for the NDC

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

⁴ This alternate address will hereafter be referred to as the W. 24th Street address.

served on respondent at the W. 24th Street address was returned reflecting that the NDC was received by respondent.

On June 21, 2012, DTC Kumar spoke to respondent by telephone. DTC Kumar informed respondent that because he had failed to file his response to the NDC and had failed to appear that morning at the in person status conference, the court ordered the State Bar to file a motion for entry of respondent's default by June 28, 2012. "Respondent responded 'do what you have to do to get this done as expeditiously as possible.' [DTC Kumar] reminded him that entry of his default would result in his disbarment. Respondent responded that he was 'fully aware of the ramifications' of a default order being entered against him."⁵

Respondent failed to file a response to the NDC. On June 27, 2012, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, to his membership records address. A courtesy copy of the motion, addressed to the W. 24th Street address, was also served on respondent. The motion complied with 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 and reflecting that respondent had actual notice of this proceeding. (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 July 16, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested, and at the W. 24th Street address by first-class mail, postage prepaid. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section

⁵ Declaration of DTC Kumar attached to the State Bar's motion for entry of respondent's default.

6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

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 January 25, 2013, the State Bar filed and served the petition for disbarment on respondent at both his membership records address and the W. 24th Street address by certified mail, return receipt requested. The petition was also served on respondent by regular mail to the W. 24th Street address. 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) there are no other disciplinary investigations pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has not paid on any claims resulting from respondent's prior misconduct. 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 February 20, 2013.

Respondent has a record of prior discipline.⁶ Pursuant to a Supreme Court order filed on April 1, 2010, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions. Respondent participated in this prior discipline matter. Respondent was found culpable in this matter of failing to obey a court order and failing to promptly pay funds to a lien holder as requested by the lien holder.

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

⁶ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

respondent is culpable as charged, except as otherwise noted, 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-O-10658 (Probation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with all conditions (specifically, failing to comply with the requirement regarding the submission of quarterly reports) attached to the disciplinary probation ordered by the Supreme Court in its Order filed on April 1, 2010.⁷

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) respondent had actual notice of this proceeding as (1) he telephoned DTC Kumar and met with him prior to the filing of disciplinary charges; (2) the State Bar properly served the NDC in this matter on respondent by certified mail, return receipt requested, to both his membership records address and to an alternate address respondent provided to DTC Kumar; (3) the return receipt for the NDC served on respondent at the alternate address was returned reflecting that the NDC was received by respondent; and (4) during a telephone conversation with DTC Kumar, when reminded that entry of his default would result in his disbarment, respondent stated that he was aware of the ramifications of his default being entered;
- (3) the default was properly entered under rule 5.80; and

⁷ The court does not base culpability on respondent's failure to report successful passage of the MPRE to the Office of Probation, as the MPRE requirement is a separate requirement and is not a condition of probation.

(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 actual 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.

RECOMMENDATION

Disbarment

The court recommends that respondent Ulysses Lafoy Cook, Jr. 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 Ulysses Lafoy Cook, Jr., State Bar number 68779, be involuntarily enrolled as

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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: May _____, 2013

RICHARD A. HONN
Judge of the State Bar Court