

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-11703-RAP
)	
HAIG PARSEH ASHIKIAN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 183083,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Haig Parseh Ashikian (respondent) was charged with seven counts of misconduct. 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 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 90 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 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.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on June 11, 1996, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On April 19, 2013, the State Bar filed and properly served the notice of disciplinary charges (NDC) in this matter on respondent by certified mail, return receipt requested, to his membership records address. On May 9, 2013, respondent filed his response to the NDC.

By order filed on May 31, 2013, trial was set to commence on August 22, 2013, at 9:30 a.m., for two days. The order setting the trial date was served on respondent at his membership records address by first-class mail, postage paid, on May 31, 2013. (Rule 5.81(A).)

The State Bar appeared for trial on August 22, 2013, 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 on August 22, 2013. The order notified respondent that if he did not timely move to set aside 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.³

On August 26, 2013, respondent filed a motion to set aside his default. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].)

³ The return receipt for the order entering default served on respondent at his membership records address was returned to the State Bar on August 26, 2013, but the signature was not legible.

On September 6, 2013, the State Bar filed an opposition to respondent's motion to set aside the default. On October 1, 2013, finding no good cause, the court denied respondent's motion to set aside the default.

On November 27, 2013, the State Bar filed and properly served 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 August 22, 2013, the date his default was entered and the order entering his default was served, other than by a telephone call on September 17, 2013, and by email on October 23, 2013;⁴ (2) there are four investigations pending against respondent; (3) respondent has one prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's conduct. Respondent has not responded to the petition for disbarment. The case was submitted for decision on January 7, 2014.

Respondent has been disciplined on one prior occasion.⁵ Pursuant to a Supreme Court order filed on September 10, 2008, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years subject to conditions, including a 90-day actual suspension. Respondent stipulated in the prior disciplinary matter to culpability and discipline for failing to respond promptly to reasonable client status inquiries; failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services; failing to maintain client funds in trust; committing acts

⁴ The Declaration of Hugh Radigan, filed with the State Bar's petition for disbarment, stated that he returned respondent's September 17, 2013, telephone call but was unable to speak to respondent and left a request that respondent return his call. He also states that the email sent by respondent on October 23, 2013, was forwarded to the appropriate party who discussed respondent's concerns as set forth in the email. The email also set forth that respondent wanted to discuss the possibility of resolving this matter.

⁵ The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), that respondent has a prior record of discipline, admits the relevant records into evidence, and directs the Clerk to include copies in the record of this case.

involving moral turpitude, dishonesty or corruption; and failing to promptly notify a client of the receipt of client funds.

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 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(E)(1)(d).)

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Count One - Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account), by failing to maintain at least \$206,800 of the settlement funds received by him for the benefit of his client and deposited in his client trust account.

Count Two - Respondent willfully violated section 6106 of the Business and Professions Code⁶ (commission of act of moral turpitude, dishonesty or corruption), by misappropriating at least \$206,800 of the client's settlement funds.

Count Three - Respondent willfully violated rule 4-100(A)(2) of the Rules of Professional Conduct (failure to timely withdraw attorney funds), by failing to withdraw from his client trust account attorney fees at the earliest reasonable time after respondent's interest to the funds became fixed.

Count Four - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate accounts), by failing to provide an itemized settlement breakdown evidencing the distribution of the client's \$412,500 in settlement funds.

⁶ Unless otherwise indicated, all further references to section(s) refer to the provisions of the Business and Professions Code.

Count Five - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence), by failing to negotiate and deposit the settlement draft into a blocked account on behalf of a minor client.

Count Six - Respondent willfully violated section 6103 (failure to obey a court order), by failing to negotiate and deposit into a blocked account the settlement draft intended to satisfy the minor client's claim as ordered by the court.

Count Seven - Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation), by failing to provide a substantive response to the allegations raised in a client's complaint as requested by the State Bar in two letters.

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 and adequate notice 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 and failed to have the default entered against him on August 22, 2013, be set aside or vacated. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

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RECOMMENDATION

Disbarment

The court recommends that respondent Haig Parseh Ashikian 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 recommends that respondent be ordered to make restitution to Maryel Jones in the amount of \$206,800, plus 10 percent interest per year from January 18, 2008.

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

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 Haig Parseh Ashikian, State Bar Number 183083, 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).)

January 21, 2014

RICHARD A. PLATEL
Judge of the State Bar Court