



PUBLIC MATTER

FILED

JUL 29 2015

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)
)
PALAK CHOPRA,)
)
Member No. 225048,)
)
A Member of the State Bar.)

Case Nos.: 13-O-14521-PEM (14-O-00682)

**DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT**

Respondent Palak Chopra was charged with total of seven counts of misconduct. Four of the seven counts involve a single client matter and the remaining three counts involve or relate to respondent's client trust account (CTA). 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 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 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 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

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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(F)(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 3, 2003, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On October 10, 2014, the State Bar filed and properly served the NDC on respondent at his membership-records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The certified mail return receipt was never returned to the State Bar (see motion for entry of default at page 6, lines 4 and 5) or the return receipt was returned to the State Bar unsigned (see petition for disbarment at page 2, line 6).

Thereafter, on October 17 and 31, 2014, the State Bar called respondent at his membership-records telephone number and left voicemail messages for him asking him to return the calls. In the voicemail message that the State Bar left for petitioner on October 31, 2014, the State Bar also notified respondent that it would seek his default if he did not file a response to the NDC by November 6, 2014. On October 31, 2014, the State Bar also (1) sent an email to respondent at his membership-records email address notifying him of its intent to seek his default (the State Bar attached a courtesy copy of the NDC to that email)³ and (2) sent a second

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

courtesy copy of the NDC to respondent at his membership-records address by first class mail, regular delivery. Neither of the courtesy copies of the NDC was returned to the State Bar.

On November 24, 2014, the court held a properly-noticed status conference in this matter. Neither the State Bar nor respondent appeared. However, on November 24, 2014, one of respondent's friends called the court and advised it that respondent would not appear at the status conference because he was in the hospital.

Respondent failed to file a response to the NDC. On December 5, 2014, the State Bar properly served a motion for entry of default on respondent at his membership-records address by certified mail, return receipt requested. Thereafter, on December 9, 2014, the State Bar filed that motion with the court.

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. (Rule 5.80.) The motion also notified respondent that, if he did not timely move to set aside or vacate his default, the court would recommend his disbarment.

Respondent did not file a response to the motion and his default was entered on December 30, 2014. The order entering the default was properly served on respondent at his membership-records address by certified mail, return receipt requested. In the order entering the default, the court also ordered respondent's involuntary enrollment as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),⁴ and he has remained enrolled inactive under that order 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 April 16, 2015, the State Bar filed

⁴ All further statutory references are to the Business and Professions Code.

the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has not had any contact with respondent after the default was entered; (2) there are two disciplinary 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 did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on May 12, 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 here support the conclusion that respondent is culpable on six out of the seven counts of misconduct and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 13-O-14521 (Dosa Lite Indian Veg. Grill Client Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (repeatedly failing to perform legal services with competence) by failing to appear at three superior court case management conferences and failing to appear at four superior court hearings.

Count Two – respondent willfully violated section 6103 (violation of court order) by failing to pay court-ordered sanctions totaling \$3,925.

Count Three – respondent willfully violated section 6068, subdivision (o)(3) (failing to report sanctions) by not reporting, to the State Bar, the \$3,925 in sanctions.

Count Four – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to a letter he received

from the State Bar requesting that he respond to various allegations of misconduct that had been made against in the Dosa Lite Indian Veg. Grill client matter.

Case Number 14-O-00682 (CTA Matters)

Count Five – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling personal funds with client funds) by maintaining earned fees in his CTA instead of withdrawing them at the earliest reasonable time after they are earned and by repeatedly paying personal expenses from his CTA using CTA checks for the six-month period from October 2013 to March 2014.

Count Six charges respondent with willfully violating section 6106 (moral turpitude) by repeatedly issuing checks drawn on his CTA when respondent knew or was grossly negligent in not knowing that there were insufficient funds in the CTA to pay them. Count six is DISMISSED with prejudice. First, count six fails to state a disciplinable violation of section 6016. Even if the factual allegations in count six that are deemed admitted by respondent's default establish that respondent wrote four NSF checks (three on December 16, 2014, and one on February 13, 2014), the allegations also establish that respondent's bank paid each check when it was presented for payment. There is nothing morally wrong or dishonest in issuing an NSF check when the drawer knows that its bank will advance the funds needed to pay the check and thereafter collect the advanced funds from the drawer, which is commonly referred to as overdraft protection.

Second, even assuming arguendo that count six states a disciplinable violation of section 6106, count six fails to provide respondent with adequate notice of the section 6106 violation. For example, count six does not allege how respondent (1) knew or (2) was grossly negligent in not knowing that the four checks were each insufficiently funded. (See *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 168-169 [Fundamental due process

mandates that the NDC allege sufficient factual detail to provide the respondent with a reasonable opportunity to prepare and present a defense and to prevent the respondent from being taken by surprise by the evidence offered at trial.]; § 6085 [In disciplinary proceedings, the attorney must “be given fair, adequate and reasonable notice” of the factual basis of the charges against him or her.])

Count Seven – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to two letters that he received from the State Bar asking him to respond to specific allegations of misconduct involving his CTA.

Disbarment is Appropriate under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and respondent’s disbarment should be 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) his 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.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent Palak Chopra 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.

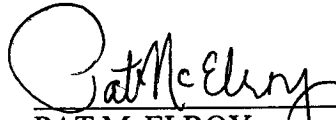
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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 Palak Chopra, State Bar number 225048, 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: July 29, 2015.


PAT McELROY
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 San Francisco, on July 29, 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 San Francisco, California, addressed as follows:

PALAK CHOPRA
LAW OFFICE OF PALAK CHOPRA, APC
PO BOX 2528
ORANGE, CA 92859

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- by overnight mail at , California, addressed as follows:

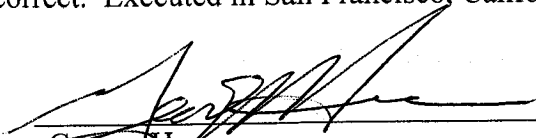
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Sue K. Hong, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 29, 2015.


George Hue
Case Administrator
State Bar Court