

PUBLIC MATTER

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DEC -5 2016

STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 14-C-05148-DFM
)	
JERRY LANE HEFNER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 216385.)	ENROLLMENT
_____)	

Respondent Jerry Lane Hefner (Respondent) was convicted of violating 720 Illinois Compiled Statute 646/60(a), (b)(2) (possession-methamphetamine), a felony which may or may not involve moral turpitude. Upon finality of the conviction, the Review Department of the State Bar Court issued an order on February 26, 2016, referring this matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding Respondent's conviction involved moral turpitude or other misconduct warranting discipline and, if so, for a recommendation of the discipline to be imposed.¹ When Respondent failed to participate in this proceeding, either in person or through counsel, his default was entered. The State Bar then 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,

¹ Effective March 21, 2016, Respondent was suspended from the practice of law pending final disposition of this conviction referral proceeding.

² Unless otherwise indicated, all references to rules are to this source. Rule 5.346(A) makes the default procedures in rules 5.80-5.86, with certain modifications, applicable in conviction proceedings.

if an attorney's default is entered for failing to respond to the notice of hearing on conviction (NOH) 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.³

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

Jurisdiction

Respondent was admitted to practice law in this state on December 4, 2001, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 1, 2016, the State Bar Court filed and properly served the NOH on Respondent by certified mail, return receipt requested, at his membership records address.⁴ The NOH notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.)

Thereafter, Alex Hackert (DTC Hackert), Deputy Trial Counsel of the Office of Chief Trial Counsel of the State Bar of California (State Bar), telephoned Respondent at his membership record telephone number following the initial status conference in this matter at which Respondent did not appear. The person answering the telephone identified himself as Respondent. Respondent was aware of the initial status conference. DTC Hackert informed Respondent that the court had ordered the State Bar to file a motion for the entry of

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(F)(2).)

⁴ The return receipt reflects that Respondent received the NOH, and the date of delivery was March 11, 2016.

Respondent's default by April 18, 2016, if Respondent did not file a response to the NOH.

Respondent expressed his understanding of this issue. He also indicated that he would review the documents that he had received from the court.

Thereafter, on April 8, 2016, DTC Hackert: (1) again telephoned Respondent at his membership records telephone number; (2) sent an email to Respondent's private membership records email address;⁵ and (3) sent a letter to Respondent, addressed to his official address. Respondent, however, failed to file a response to the NOH.

On April 18, 2016, the State Bar filed and properly served a motion for entry of Respondent's default.⁶ The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by DTC Hackert regarding the additional steps taken to provide notice to Respondent. (Rule 5.80.)⁷ 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 May 4, 2016. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested.⁸ 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. He has remained inactively enrolled since that time.

⁵ 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).)

⁶ On May 27, 2016, the U.S. Postal Service returned the unopened envelope containing the service copy of the motion to the State Bar. The envelope was marked "unclaimed." However, the return receipt was received by the State Bar on May 31, 2016, with an illegible signature and delivery date. (Declaration of DTC Hackert attached to the State Bar's motion for entry of Respondent's default.)

⁷ Respondent also had actual notice of this proceeding.

⁸ On May 24, 2016, the court received the return receipt reflecting that the order entering Respondent's default was received by Respondent. The date of delivery was May 17, 2016.

Respondent did not subsequently 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].) As a result, on August 12, 2016, the State Bar filed a 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 since the default was entered;⁹ (2) there is at least one other disciplinary matter pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's misconduct.

When 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 September 12, 2016.

Prior Record of Discipline

Respondent has a prior record of discipline.¹⁰ Pursuant to an order of the Supreme Court filed on November 17, 2015, Respondent was suspended from the practice of law for one year, the execution of which was stayed, and Respondent was placed on probation for two years subject to certain conditions, including that he be actually suspended for the first 90 days of his probation. Respondent stipulated in that matter that he failed to comply with a court order in willful violation of Business and Professions Code section 6103¹¹ and failed to comply with the requirements of section 6002.1 by failing to timely notify the State Bar of a change in his address in willful violation of section 6068, subdivision (j).

⁹ DTC Hackert specifically reported that Respondent has not contacted him or his office since March 28, 2016, when he had a telephone conversation with Respondent.

¹⁰ The court admits into evidence the certified copy of Respondent's prior record of discipline attached to the State Bar's August 12, 2016 petition for disbarment.

¹¹ Unless otherwise indicated, all further references to section(s) refer to the Business and Professions Code.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding Respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rules 5.346(D) & 5.82.) As set forth below in greater detail, Respondent's conviction for possession of methamphetamine supports the conclusion that Respondent violated a statute that would warrant the imposition of discipline. (Rule 5.85, subd. (F)(1)(d).)

Case Number 14-C-05148 (Conviction Matter)

Respondent was convicted of violating Illinois Compiled Statutes chapter 720 section 646/60(a) and 646/60(b)(2) (possession of methamphetamine), a felony, as a result of an incident which occurred in Illinois on May 26, 2014. On that day, Respondent was a passenger in a car driven by Jeannette Rockey (Rockey). An Illinois State Police Trooper initiated a traffic stop of Rockey. When the Trooper approached the vehicle, Respondent was asleep in the front passenger seat. Rockey was breathing heavily and, when asked about her driving, gave the Trooper an incoherent statement. Throughout the encounter, Rockey's statements were muddled and disjointed, and she continued to breathe in a rapid, heavy fashion.

When Respondent was asked for identification, he gave the Trooper his California driver's license. The Trooper observed white residue on Respondent's lips. Respondent was holding a piece of copper wire, and there was a butane torch on the floorboards where Respondent was sitting.

Other Illinois State Police Troopers arrived at the scene. Respondent was detained and placed in the back of a patrol car. As Respondent was escorted to the patrol car, he became highly agitated and began cursing and yelling at the Troopers. While in the back of the patrol car, Respondent began rocking back and forth in his seat and continued to scream at the

Troopers. A search of Respondent's person resulted in the discovery of a glass pipe in Respondent's pocket.

The Troopers conducted a search of the vehicle with the help of a police canine trained in narcotics detection and found a plastic jar containing a small amount of methamphetamine, a glass marijuana pipe, and other drug paraphernalia. A search of Rockey's purse revealed a pill bottle containing marijuana and a metal marijuana pipe with burnt marijuana residue. As the search continued, the Troopers found a drawstring bag containing a small plastic box. Inside the box was other drug paraphernalia and a clear plastic baggie containing crystal methamphetamine.

Based on the Troopers' observation, the belief was formed that Respondent and Ms. Rockey were under the influence of methamphetamine. Respondent and Ms. Rockey were arrested and cited for several violations of Illinois Compiled Statutes and transported to jail.¹²

On May 27, 2014, an information was filed, charging Respondent with one count of violation of Illinois Compiled Statutes chapter 720 sections 646/60(a) and 646/60(b)(2) [possession of methamphetamine], a felony, and one count of violation of Illinois Compiled Statutes chapter 720 section 600/3.5(a) [possession of drug paraphernalia], a misdemeanor, and one count of violation of Illinois Compiled Statutes chapter 720 section 550/4(a) [possession of cannabis], a misdemeanor.

On September 9, 2015, the court entered Respondent's plea of guilty to a count of violation of Illinois Compiled Statutes chapter 720 sections 646/60(a) and 646/60(b)(2) [possession of methamphetamine], a felony. The court dismissed the two remaining counts pursuant to a plea agreement. The court sentenced Respondent to 36 months' probation, to

¹² Respondent and Ms. Rockey were cited for possession of 5-15 grams of methamphetamine, possession of drug paraphernalia, and possession of less than 2.5 grams of cannabis.

include the requirement that Respondent serve 120 days in jail, with credit for 74 days of time served.

The court finds that the facts and circumstances surrounding Respondent's conviction do not involve moral turpitude but do constitute other misconduct warranting discipline. Conviction of a crime involving other misconduct warranting discipline is grounds for discipline. (*In re Kelley* (1990) 52 Cal.3d 487, 494.)

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NOH 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, and Respondent had actual notice of this proceeding;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the statement of facts and circumstances surrounding Respondent's conviction, 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 and 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 disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Jerry Lane Hefner, State Bar number 216385, 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 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.

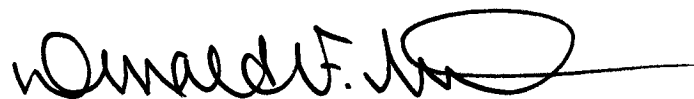
Costs

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 Jerry Lane Hefner, State Bar number 216385, 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: December 5, 2016



DONALD F. MILES
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 Los Angeles, on December 5, 2016, 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:

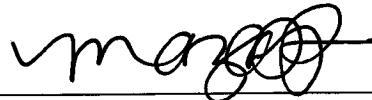
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JERRY L. HEFNER
35046 OAK WAY
JULIAN, CA 92036

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

ALEX J. HACKERT, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 5, 2016.



Mazie Yip
Case Administrator
State Bar Court