



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

FILED

P.B.

FEB 29 2016

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

In the Matter of)	Case No.: 14-J-04543-WKM
)	
MICHAEL GREGORY McCOY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 241836,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

On March 10, 2014, the Evidentiary Panel for State Bar of Texas District Number 9-1 issued a default judgment imposing a partially probated suspension on respondent Michael Gregory McCoy (March 10, 2014, Texas default judgment) for professional misconduct that respondent was deemed to have committed by the entry of his default in a Texas disciplinary proceeding on March 5, 2014. As a result, the Office of the Chief Trial Counsel of the State Bar of California (OCTC) initiated this expedited, streamlined disciplinary proceeding against respondent in California. (Cal. Bus. & Prof. Code, § 6049.1;¹ Rules Proc. of Cal. State Bar, rule 5.350 et seq.)

Under California section 6049.1, a certified copy of a final order, made by a body authorized to conduct disciplinary proceedings against attorneys under the laws or the rules of court of the United States, of any state or territory of the United States, or of the District of Columbia, determining that a member of the State Bar of California committed professional

¹ All further references to California sections are to the California Business and Professions Code.

misconduct in that jurisdiction is conclusive evidence that the member is culpable of professional misconduct in California subject to the following two exceptions. Such a final out-of-state disciplinary order is not conclusive evidence of an attorney's misconduct in California (1) if the misconduct found in the final order would not warrant the imposition of discipline in California under the laws and rules of California in effect at the time of the misconduct, or (2) if the disciplinary proceeding in the other jurisdiction lacked fundamental constitutional protection.

Respondent failed to participate in this California State Bar Court proceeding either in person or through counsel, and, accordingly, his default was entered. The California State Bar filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the California State Bar, which sets forth the procedure to follow when an attorney fails to participate in a State Bar Court disciplinary proceeding after receiving adequate notice of the proceeding and an opportunity to be heard. The rule provides that, if an attorney's default is entered for failing to file a response to the NDC and if the attorney fails to have the default set aside or vacated within 90 days, then the California State Bar must file a petition requesting that the State Bar Court recommend the attorney's disbarment.

In the instant case, the court concludes that the requirements of rule 5.85 of the Rules of Procedure of the California State Bar have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law in this state.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in the State of California on March 6, 2006, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On March 26, 2015, OCTC properly filed and 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. (Rules Proc. of Cal. State Bar, rule 5.41.) On April 21, 2015, the State Bar received the return receipt from the United States Postal Service, but the signature on the receipt is illegible.

OCTC also mailed a courtesy copy of the NDC to respondent at his membership records address by first class mail, regular delivery. In addition, on May 12, 2015, OCTC sent courtesy copies of the NDC to respondent at an additional address in Tennessee, an additional address in Kentucky, and three email addresses that OCTC either had in its files or found during a Lexis-Nexis search for respondent or obtained from Texas disciplinary counsel. The courtesy copy of the NDC mailed to respondent's membership-records address by regular first class mail was returned to OCTC undelivered and marked "Vacant. Unable to Forward."

The courtesy copy of the NDC sent to the additional address in Tennessee was also returned to OCTC undelivered and with a handwritten notation stating "Return to Sender, No one here by this name." None of the other courtesy copies was returned to OCTC. On May 12, 2015, OCTC also telephoned respondent and left voicemail messages for him (1) at his membership-records telephone number and (2) at an additional telephone number that OCTC had for respondent in its files. OCTC also did an internet search for respondent, but did not find any additional information on his whereabouts.

Respondent failed to file a response to the NDC. On May 26, 2015, OCTC filed and served a motion for entry of default on respondent at his membership-records address by certified mail, return receipt requested.² The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence from the DTC declaring the additional steps taken to provide notice to respondent. (Rules Proc. of Cal. State Bar, rule 5.80.)

² On June 8, 2015, the motion for default was returned to OCTC undelivered and marked "Vacant Suite."

On May 26, 2015, respondent sent an email to the Member Services Center at the State Bar of California stating that he has been living in the Netherlands for the past three years. Attached to that email was an unsigned response to the NDC from respondent.³ The Member Services Center forwarded respondent's email and response to the State Bar Court. Thereafter, the court instructed OCTC to attempt contact respondent at the email address from which respondent sent his May 26, 2015, email to the Member Services Center. OCTC did so on June 16, 2015.

Thereafter, on June 22, 2015, respondent sent OCTC two emails. In one of his two emails, respondent stated that his only mailing address in the United States was 300 Algoma Street, Hazard, KY 41701 (respondent's Kentucky address).⁴ On June 22, 2015, OCTC replied to both of respondent's emails.

On June 25, 2015, OCTC filed a supplemental declaration in support of its motion for default. OCTC served a copy of its supplemental declaration on respondent at his membership-records address and sent a courtesy copy of it to respondent at respondent's Kentucky address. Even though the service copy of the supplemental declaration was returned to OCTC undelivered, the courtesy copy of it, which was sent to respondent's Kentucky address, was not returned to OCTC.

Respondent failed to file a response to the NDC, and his default was entered on July 9, 2015. The July 9, 2015, order entering respondent's default was properly served on respondent at his membership-records address by certified mail, return receipt requested. In addition, a courtesy copy of the order entering default was mailed to respondent at respondent's Kentucky

³ All pleadings submitted for filing will be rejected where the pleading is not accompanied by a proof of service or does not contain an original, handwritten signature. (Rules Prac. of the State Bar Court, rule 1112(a)(1) and (3).)

⁴ Respondent's Kentucky address is the same address in Kentucky to which OCTC sent a courtesy copy of the NDC on May 12, 2015.

address. The default order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The default order served on respondent at his membership-records address was returned to the court as undelivered. However, the courtesy copy of the default order sent to respondent's Kentucky address was not returned to the court as undelivered.

In the default order, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California in accordance with California section 6007, subdivision (e). Respondent's inactive enrollment under that order became effective three days after the order was served and has continued since that time.

Respondent did not seek to have his default vacated or set aside. (Rules Proc. of Cal. State Bar, rule 5.83(B)&(C)(1) [attorney has 90 days to file motion to set aside default].) On December 11, 2015, OCTC filed and served a petition for disbarment after default on respondent at his membership-records address by certified mail, return receipt requested. On that same date, OCTC mailed a courtesy copy of the petition for disbarment to respondent at respondent's Kentucky address.

As required by rule 5.85(A) of the Rules of Procedure of the California State Bar, OCTC reported in the petition that (1) "Respondent has failed to contact the State Bar since the default was entered on July 9, 2015," (2) there are no other disciplinary matter pending against respondent, (3) "Respondent has no prior record of discipline," and (4) the Client Security Fund has not made any payments due to Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The petition for disbarment was submitted for decision on January 15, 2016.

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Respondent's Texas Misconduct Warrants the Imposition of Discipline in California

The court admits into evidence the certified copies of the portions of the record in the Texas disciplinary proceeding that are attached to the NDC as exhibit 1. (Cal. § 6049.1, subd. (d); Rules Proc. of Cal. State Bar, rule 5.353.) In addition, the court takes judicial notice of the copies of various Texas rules and statutes that are attached to the NDC as exhibit 2.

Case Number 14-J-04543 – The March 10, 2014 Texas Judgment

Under the March 10, 2014, Texas default judgment, respondent was, effective March 7, 2014, suspended from the practice of law in Texas for ten years and placed on disciplinary probation for ten years beginning on March 7, 2014, provided that, if respondent complies with conditions of his disciplinary probation, the last eight years of his ten-year suspension will be probated. Under the Texas judgment, respondent is required to make restitution to the client in the amount of \$10,250, together with interest thereon. The record before this court does not disclose why respondent was required to pay restitution for the entire \$10,250 the client paid to respondent as an advance for expenses. The Texas judgment clearly provides that the restitution requirement was imposed on respondent as part of his disciplinary sanctions and that “the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts [of restitution].”

Texas imposed that discipline on respondent because, following his default in Texas, he was deemed to have violated rules 1.14(a), 1.14(b), 1.15(d), and 8.04(a)(1) of the Texas Disciplinary Rules of Professional Conduct in a single client matter. In the NDC, OCTC charges that respondent's culpability as determined by Texas “indicates that the following California statutes or rules have been violated or warrant the filing of this [NDC]: [State Bar of California] Rules of Professional Conduct, rule 4-100(A), rule 4-100(B)(3), and rule 3-700(D)(2).”

Even though the NDC cites the California statutes or rules that respondent allegedly violated as required by rule 5.351(B) of the Rules of Procedure of the California State Bar, the NDC fails (1) to specify which of the Texas disciplinary rules respondent violated establish each of the California rules respondent is alleged to have violated and (2) to specify the factual basis of each such alleged violation of the California rules. To the extent that the court is able to determine which Texas rule violation establishes an alleged violation of the State Bar of California Rules of Professional Conduct and factual basis of the violation, the court will find respondent culpable on two rule violations and dismiss the third charged violation.

California State Bar Rule of Professional Conduct 4-100(A)

Respondent's violation of Texas rule 1.14(a) by failing to hold \$10,250 in client funds that he held for prepayment of the expenses in single patent law matter separate from his own funds establishes that respondent willfully violated California State Bar Rule of Professional Conduct 4-100(A) (commingling personal funds with client funds).

California State Bar Rule of Professional Conduct 4-100(B)(3)

Respondent's violation Texas rule 1.14(b) by failing to provide the client with a requested accounting of the \$10,250 that the client paid to respondent as an advance for expenses to perform prior art searches in a patent matter and for patent filing fees establishes that respondent willfully violated California State Bar Rule of Professional Conduct 4-100(B)(3) (render appropriate accounts).

California State Bar Rule of Professional Conduct 3-700(D)(2)

Respondent's violation of Texas rule 1.15(d) does not establish the charged violation of California State Bar Rule of Professional Conduct 3-700(D)(2) (failing to refund unearned fees). The only clear factual basis for respondent's violation of Texas rule 1.15(d) was respondent's

failure to provide the client, as requested, with a copy of the client's file. Even though the record establishes that the client paid respondent \$10,250 as an advance for expenses and patent filing fees, the record does not establish that the client paid respondent any advanced attorney's fees. In short, the unexplained charged violation of California State Bar Rule of Professional Conduct 3-700(D)(2) (failing to refund unearned fees) is **DISMISSED** with prejudice for want of proof.

Disbarment is Appropriate Under the Rules of Procedure of the California State Bar

Based on the above, the court concludes that the requirements of rule 5.85(F) of the Rules of Procedure of the California State Bar have been satisfied and that respondent's disbarment should be recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25 of the Rules of Procedure of the California State Bar;

(2) respondent had actual notice of the proceedings prior to the entry of his default;

(3) the default was properly entered under rule 5.80 of the Rules of Procedure of the California State Bar; and

(4) the factual allegations in the NDC, which are 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 to be heard, respondent failed to participate in this disciplinary proceeding. Thus, in accordance with the Rules of Procedure of the California State Bar, the court recommends his disbarment.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent Michael Gregory McCoy be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.⁵

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.

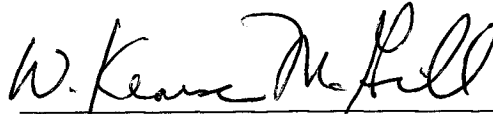
Costs

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 California Business and Professions Code section 6007, subdivision (c)(4), the court orders that Michael Gregory McCoy, State Bar number 241836, 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 Cal. State Bar, rule 5.111(D)(1).)

Dated: February 26, 2016.



W. KEARSE MCGILL
Judge of the State Bar Court

⁵ Even though the Texas disciplinary judgment requires that respondent pay restitution to his former client in the amount of \$10,250, the court does not recommend that respondent again be ordered to pay that restitution in the California disciplinary proceeding because the court cannot ascertain from the record whether respondent used it to pay legitimate expenses chargeable to the client. Therefore, the court is unable to conclude whether the client was denied the benefit of the funds. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 597.)

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 February 29, 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:


**MICHAEL G. MCCOY
MCCOY & ASSOCIATES
1212 E ANDERSON LN STE 100
AUSTIN, TX 78752**

**Courtesy copy:
MICHAEL GREGORY MCCOY
300 ALGOMA STREET
HAZARD, KY 41701**

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

SHATAKA A. SHORES-BROOKS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 29, 2016.



Paul Barona
Case Administrator
State Bar Court