

PUBLIC MATTER

FILED

AUG 11 2015

STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 14-N-04099-PEM
)	
ALAN MARK SCHNITZER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 129024,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Alan Mark Schnitzer (respondent) was charged with willfully violating California Rules of Court, rule 9.20, by failing to file a declaration of compliance with that rule in conformity with the requirements of rule 9.20(c), as required by an order of the Supreme Court. He failed to participate either in person or through counsel, and his default was entered. Thereafter, 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),

¹ Unless otherwise indicated, all references to rule(s) are to this source.

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

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 17, 1987, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 27, 2014, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by U.S. first-class mail, to his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDCs served by certified mail and by U. S. first-class mail were returned by the U.S. Postal Service with a handwritten notation indicating that the U. S. Postal Service was unable to forward the mailing.

Thereafter, the State Bar: (1) sent an email attaching a copy of the NDC to respondent at his membership records email address;³ (2) attempted on two different occasions to reach respondent at his membership records telephone number; (3) attempted to reach respondent at two telephone numbers produced by an online search engine; (4) sent respondent a letter with a copy of the NDC by first-class mail to an address produced by an online search engine as an address associated with respondent; (5) telephoned respondent at a telephone number generated

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).)

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).)

by LexisNexis as a number associated with respondent; (6) sent respondent an email to three other email addresses generated by LexisNexis as emails associated with respondent; and (7) contacted the probation deputy assigned to respondent's current disciplinary probation to determine any other contact information for respondent.

Respondent, however, failed to file a response to the NDC. On January 9, 2015, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, at his membership records address. 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 his default, the court would recommend his disbarment.

Respondent did not file a response to the motion, and his default was entered on January 27, 2015. The order entering the default was properly served on respondent at his membership records address by certified mail, return receipt requested. The order notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. 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, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default vacated or set aside. (Rule 5.83(B); rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On May 4, 2015, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, at his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent has not contacted the State Bar since the date the

order entering his default was served;⁴ (2) there are no disciplinary charges or investigations pending against respondent; (3) respondent has a record of prior discipline;⁵ and (4) the Client Security Fund has not made any payments 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 June 4, 2015.

Prior Record of Discipline

Respondent has three prior records of discipline.⁶ Pursuant to a State Bar Court order filed on May 22, 2007, respondent was publicly reprovved with conditions for one year. Respondent stipulated in this prior disciplinary matter that he intentionally, repeatedly or recklessly failed to perform legal services with competence in two matters; failed to respond to his client's status requests in two matters and, in one of those two matters, also failed to inform his client that the client's matters had been dismissed.

Pursuant to a Supreme Court order filed on May 17, 2012, respondent was suspended for two years, the execution of which was stayed, and he was suspended for a minimum of six months and until the court grants a motion to terminate his suspension. Respondent did not file a response to the NDC, and the court entered his default in this prior disciplinary matter. The court found respondent culpable of failing to comply with certain conditions attached to his earlier public reprovval; committing an act involving dishonesty, moral turpitude, or corruption by

⁴ This is the same date the order entering respondent's default was filed.

⁵ However, the petition for disbarment failed to include an authenticated copy of respondent's prior record of discipline as required by rule 5.85(B). On May 5, 2015, the court filed an order directing the State Bar to provide an authenticated copy of respondent's prior record of discipline. The State Bar filed a response on May 7, 2015, to the court's May 5, 2015 order with certified records of respondent's prior discipline.

⁶ The court admits into evidence the certified copies of respondent's prior records of discipline that were attached to the State Bar's May 7, 2015 Response to Order Dated May 5, 2015.

altering the date on a summons and complaint and by submitting the altered documents to an insurance company; and failing to participate and cooperate in a disciplinary investigation.

Pursuant to a Supreme Court order filed on April 11, 2014, respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for three years subject to conditions, including that he be suspended for a minimum of the first year of probation and until he provides proof to the court of his rehabilitation, fitness to practice, and learning and ability in the general law. Respondent participated in this prior disciplinary proceeding. The Review Department of the State Bar Court found that respondent held himself out as entitled to practice law and, in fact, practiced law while he was involuntarily enrolled as an inactive member of the State Bar.

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(F)(1)(d).)

Case Number 14-N-04099 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing, with the clerk of the State Bar Court, by June 20, 2014, a declaration of compliance with California Rules of Court, rule 9.20, in conformity with the requirements of rule 9.20(c), as required by the Supreme Court in order number S216107.

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 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) the 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 disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Alan Mark Schnitzer 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

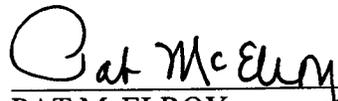
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Alan Mark Schnitzer, State Bar number 129024, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order. (Rule 5.111(D).)

Dated: August 11, 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 August 11, 2015, I deposited a true copy of the following document(s):

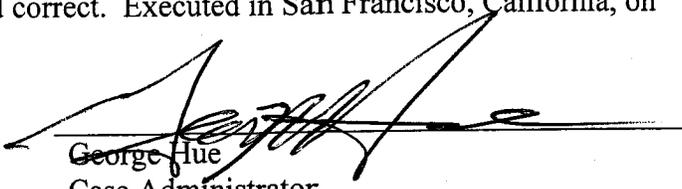
DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:
- ALAN M. SCHNITZER
LAW OFC ALAN M SCHNITZER
11278 LOS ALAMITOS BLVD.
SUITE 104
LOS ALAMITOS, CA 90720
- 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:

Jamie J. Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 11, 2015.


George Hue
Case Administrator
State Bar Court