

PUBLIC MATTER

FILED

JUN 15 2017

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STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos. 15-O-12391 (15-O-12587);
)	16-N-10777; 16-O-10987-LMA
)	(Consolidated.)
)	
MARTIN IAN CUTLER,)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar, No. 139536.</u>)	

In this disciplinary proceeding, three separate notices of disciplinary charges (NDC) have been consolidated. In the three consolidated NDC's, respondent Martin Ian Cutler (Respondent) is charged with a total of nine counts of misconduct as follows: (1) seven counts of misconduct involving two separate client matters; (2) one count of failing to file a compliance declaration in accordance with California Rules of Court, rule 9.20(c) as ordered by the Supreme Court; and (3) one count of failing to comply with the conditions attached to his disciplinary probation (Bus. & Prof. Code, § 6068, subd. (k)).¹ Even though Respondent had adequate notice of the March 7, 2017, trial setting in this consolidated proceeding, Respondent failed to appear at the trial, and his default was entered under rule 5.81 of the Rules of Procedure of the State Bar.²

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

² Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

Thereafter, the State Bar's Office of Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85.

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 if the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the State Bar Court to recommend the attorney's disbarment to the Supreme Court.³

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 May 11, 1989, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On November 19, 2015, the State Bar filed and properly served the NDC in case number 15-O-12391, etc., on Respondent at his membership-records address by certified mail, return receipt requested. Respondent filed a response to that NDC on January 8, 2016.

On April 4, 2016, the State Bar filed and properly served the NDC in case number 16-N-10777 on Respondent at his membership-records address by certified mail, return receipt requested. On April 4, 2016, the State Bar also filed and properly served the NDC in case number 16-O-10987 on Respondent at his membership-records address by certified mail, return receipt requested.

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).)

On May 13, 2016, the court filed and served on Respondent at membership-records address by first class mail, postage paid, an order in case number 16-O-10987 in which the court, among other things, set case number 16-O-10987 for trial beginning on August 1, 2016. (Rule 5.81(A).) Also, on May 13, 2016, the court filed and served on Respondent at his membership-records address by first class mail, postage paid, an order in case number 16-N-10777 in which the court, among other things, set case number 16-N-10777 for trial beginning on August 1, 2016. (Rule 5.81(A).)

Even though the cases were not yet consolidated, Respondent put his responses to the NDCs in case numbers 16-N-10777 and 16-O-10987 in a single pleading and then filed that pleading in each of those cases on May 20, 2016. On June 10, 2016, the court filed an order in case number 16-N-10777 striking Respondent's May 20, 2016 response to the NDC because the response was not verified in accordance with Rules of Procedure of the State Bar, rule 5.335. On June 10, 2016, the court also filed and served on Respondent at his membership-records address by first class mail, postage paid, a status conference order consolidating case number 15-O-12391 with case number 16-O-10987 for all purposes and confirming that the August 1, 2016, trial date remained on calendar.

On June 21, 2016, Respondent filed a verified response to the NDC in case number 16-N-10777. Then, on July 26, 2016, the court filed and served on Respondent at his membership-records address by first class mail, postage paid, a minute order consolidating case number 16-N-10777 with case numbers 15-O-12391 and 16-O-10987 for all purposes and confirming that the August 1, 2016, trial date remained on calendar.

The NDC in each of the three consolidated case numbers (i.e., 15-O-12391, 16-O-10987, and 16-N-10777) notified Respondent that his failure to appear at the State Bar Court trial would

result in a disbarment recommendation. (Rule 5.41.) On August 1, 2016, the trial date was vacated, when Respondent failed to appear for trial (apparently for medical reasons).

Effective October 6, 2016, the consolidated proceeding was reassigned from State Bar Court Judge W. Kearse McGill to the undersigned State Bar Court Judge Lucy Armendariz.

At a telephonic status conference in the consolidated matter on December 12, 2016, in which Respondent participated, the court set the consolidated matter for trial on March 7 through 10, 2017. On December 12, 2016, the court also filed and served on Respondent, by first class mail, postage paid, at the address provided in Respondent's responses to the three consolidated NDCs, a status conference order confirming that the trial in the consolidated matter was set for March 7 through 10, 2017.⁴

On March 7, 2017, the State Bar appeared for trial, but Respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served on Respondent at his membership-records address by certified mail, return receipt requested on March 7, 2017, an order entering Respondent's default. The order notified Respondent that, if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also involuntarily enrolled Respondent as an inactive member of the State Bar of California under section 6007, subdivision (e) effective March 10, 2017. And Respondent has remained involuntarily enrolled inactive under that order since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) On April 28, 2017, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has received no contact from Respondent since

⁴ The address provided in Respondent's responses to the three consolidated NDCs is the same address as Respondent's membership-records address. (Rule 5.81(A)(2)(b)&(c).)

his default was entered; (2) there are no other investigations or disciplinary charges pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has not paid out claims as a result of Respondent's misconduct. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on May 24, 2017.

Respondent has been disciplined on two prior occasions.⁵ First, in an order filed on January 7, 2014, in *In re Martin Ian Cutler on Discipline*, case number S214211 (State Bar Court case number 13-O-10932, etc.), the Supreme Court placed Respondent on one year stayed suspension and two years probation on conditions, including a sixty-day actual suspension. The Supreme Court imposed that discipline on Respondent in accordance with a stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with the State Bar, which was approved by the State Bar Court in an order filed on September 4, 2013, in State Bar Court case number 13-O-10932, etc. In that stipulation, Respondent stipulated to the following three counts of misconduct: (1) commingling and paying personal expenses from his client trust account ("CTA") (Rules Prof. Conduct, rule 4-100(A)); (2) issuing NSF checks drawn on his CTA (§ 6106 [moral turpitude]); and (3) failing to cooperate in a disciplinary investigation (§ 6068, subd. (i)). In aggravation, Respondent stipulated to committing multiple acts of misconduct. In mitigation, Respondent had no prior discipline in over 23 years of practice and stipulated to his misconduct.

Second, in an order filed on October 26, 2015, in *In re Martin Ian Cutler on Discipline*, case number S228802 (State Bar Court case number 13-O-13871, etc.), the Supreme Court placed Respondent on two years stayed suspension and two years probation on conditions,

⁵ The court admits into evidence the certified copies of Respondent's two prior records of discipline that are attached as exhibit 1 to the assigned Deputy Trial Counsel's declaration in support of the State Bar's April 28, 2017 petition for disbarment after default.

including a six-month actual suspension. The Supreme Court imposed that discipline on Respondent in accordance with a stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with the State Bar, which was approved by the State Bar Court in an order filed on July 16, 2015, in State Bar Court case number 13-O-13871, etc. In that stipulation, Respondent stipulated to the following eight counts of misconduct: (1) one count of commingling and paying personal expenses from his CTA (Rules Prof. Conduct, rule 4-100(A)); (2) one count of issuing NSF checks drawn on his CTA (§ 6106 [moral turpitude]); (3) one count of failing to perform competently (Rules Prof. Conduct, rule 3-110(A)); (4) one count of failing to account for advanced fees (Rules Prof. Conduct, rule 4-100(B)(3)); (5) one count of failing to comply with the conditions attached to his disciplinary probation (§ 6068, subd. (k)); and (6) three counts of failing to cooperate in disciplinary investigations (§ 6068, subd. (i)). In aggravation, Respondent had one prior record of discipline, displayed indifference to rectification for the harm caused by Respondent's misconduct, and committed multiple acts of misconduct. In mitigation, Respondent stipulated to his misconduct and was experiencing extreme emotional difficulties.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a Respondent's default, the factual allegations in the three consolidated NDCs 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 consolidated NDCs support the conclusion that Respondent is culpable on all nine of the charged counts of misconduct and that Respondent, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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First Consolidated NDC

Case Number 15-O-12391 (Hardison Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (repeatedly failing to competently perform legal services) by failing to file an opening brief in an appeal after receiving repeated extensions to do so, resulting in the dismissing of the appeal.

Count Two – Respondent willfully violated section 6068, subdivision (m) (failure to respond to client's reasonable status inquires) by failing to respond promptly to numerous telephonic status inquires made by the client.

Count Three – Respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a substantive response to the State Bar's letters.

Case Number 15-O-12587 (Baca Matter)

Count Four – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by repeatedly failing to competently perform legal services by filing a civil lawsuit for the client and thereafter failing to serve the defendants and prosecute the complaint and performing no other services for which he was retained for 14 months.

Count Five – Respondent willfully violated section 6068, subdivision (m) (failure to inform client of significant development) by failing to promptly inform his client that he attempted to modify the client's mortgage loan and that the loan modification application was denied.

Count Six – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide his client with an accounting.

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Count Seven – Respondent willfully violated section 6068, subdivision (i) by failing to provide a substantive response to the State Bar’s letters and electronic messages.

Second Consolidated NDC

Case Number 16-N-10777 (Rule 9.20 Matter)

Count One – Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with rule 9.20.

Third Consolidated NDC

Case Number 16-O-10987 (Probation Violation Matter)

Count One – Respondent willfully violated section 6068, subdivision (k) (duty to comply with all disciplinary probation conditions) by failing to comply with all conditions (specifically, quarterly and final reports, proof of Ethics School, proof of Client Trust Accounting School) attached to the two-year disciplinary probation imposed on him under the Supreme Court’s January 7, 2014 order in case number S214211 (State Bar Court case number 13-O-10932, etc.).

Disbarment Under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and Respondent’s disbarment should be recommended. In particular:

- (1) all three of the consolidated NDCs were properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of this proceeding and actual notice of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; and

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(4) the factual allegations in the three consolidated NDCs deemed admitted by the entry of Respondent's 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, Respondent failed to appear for trial in this consolidated disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Martin Ian Cutler 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 again 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 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 Martin Ian Cutler, State Bar Number 139536, be involuntarily enrolled as an

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inactive member of the State Bar of California, effective three calendar days after the service of this decision and order by mail. (Rule 5.111(D).)

Dated: June 15, 2017.



LUCY ARMENDARIZ
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 June 15, 2017, 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:

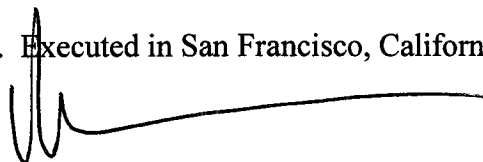
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MARTIN I. CUTLER
8500 WILSHIRE BLVD STE 916
BEVERLY HILLS, CA 90211

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

Ronald K. Bucher, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 15, 2017.



Vincent Au
Case Administrator
State Bar Court