

# PUBLIC MATTER

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JAN 13 2017

STATE BAR COURT  
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LOS ANGELES

## STATE BAR COURT OF CALIFORNIA

### HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 15-O-14305-DFM
	)	
MARK SITRAK SIMONIAN,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 96969.	)	ENROLLMENT
_____	)	

Respondent Mark Sitrak Simonian (Respondent) was charged with violations of the Business and Professions Code.<sup>1</sup> He failed to participate in this matter, either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>2</sup>

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.<sup>3</sup>

<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>3</sup> 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**

### **Jurisdiction**

Respondent was admitted to practice law in this state on January 22, 1981, and has been a member since then.

### **Procedural Requirements Have Been Satisfied**

On May 13, 2016, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, at 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 NDC was returned on May 26, 2016, by the U.S. Postal Service bearing a stamp reading, “‘ATTEMPTED – NOT KNOWN/UNABLE TO FORWARD’.”

Thereafter, Deputy Trial Counsel Alex Hackert (DTC Hackert) instructed a State Bar investigator to conduct a LexisNexis search for Respondent. This search yielded a telephone number matching Respondent’s membership records telephone number and an address for Respondent in Encino, California.

On June 3, 2016, the investigator reached Respondent at his membership records telephone number and forwarded the call to DTC Hackert. During the conversation with Respondent, DTC Hackert advised him of the June 13, 2016, initial status conference in this matter. Respondent indicated during the conversation that he no longer maintained an office at his membership records address. Respondent provided DTC Hackert with a mailing address in

Encino, California and an e-mail address where he could be reached. Neither the mailing address nor the e-mail address was listed in Respondent's official membership records.<sup>4</sup>

DTC Hackert thereafter sent Respondent a letter at his Encino address, enclosing a copy of the NDC and the court's Notice of Assignment and Notice of Initial Status Conference. A copy of the letter was also sent to Respondent's e-mail address.<sup>5</sup>

Respondent attended the court's June 13, 2016 initial status conference. The undersigned informed Respondent that his default could be entered if he did not file a response to the NDC. This admonition was repeated in the written trial-setting order served and filed by this court on the same day, in which Respondent was ordered by the court to file a response to the NDC on or before June 23, 2016. After the hearing, DTC Hackert also discussed with Respondent his outstanding response to the NDC, among other issues.

Thereafter, although the parties had communications by both telephone and e-mail, Respondent still did not file a response to the NDC.

On July 8, 2016, not having heard from Respondent since June 26, 2016, DTC Hackert called Respondent's membership records telephone number and left a message on his voicemail stating that, since he had not heard from Respondent regarding his response to the NDC, he would be filing a motion for entry of Respondent's default. DTC Hackert also sent an e-mail to Respondent's e-mail address, indicating that if DTC Hackert had not heard from Respondent by the close of business on July 11, 2016, he would proceed with a motion for entry of default.

When Respondent continued to fail to file a response to the NDC, the State Bar filed and properly served a motion for entry of Respondent's default on July 12, 2016.<sup>6</sup> The motion

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<sup>4</sup> 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).)

<sup>5</sup> This is the e-mail address Respondent provided to DTC Hackert on June 3, 2016.

complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the assigned deputy trial counsel. (Rule 5.80.) The motion notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. When Respondent did not file a response to the motion, his default was entered on August 4, 2016. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served on Respondent at his membership records address by certified mail, return receipt requested, and to his Encino address by first-class mail, postage prepaid.

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 November 17, 2016, the State Bar filed and properly served a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not received any contact from Respondent since his default was entered; (2) there are no other investigations or disciplinary matters pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has not paid out 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 December 16, 2016.

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<sup>6</sup> The motion was served on Respondent at his membership records address by certified mail, return receipt requested, and by the U.S. Postal Service to Respondent's Encino address. On July 18, 2016, the return card for the copy of the motion sent to Respondent's membership records address was received by the State Bar with an illegible signature and a delivery date of July 14, 2016. However, on July 28, 2016, the copy of the motion sent to Respondent's membership records address was returned to the State Bar. The copy of the motion sent to Respondent's Encino address, however, had not been returned to the State Bar as of November 17, 2016.

### **Prior Records of Discipline**

Respondent has two prior records of discipline.<sup>7</sup>

Effective July 9, 2008, Respondent was privately reprovved with conditions attached to the reprovral for two years. In this Alternative Discipline Program matter, Respondent stipulated that he: (1) held himself out as entitled to practice law and actually practiced law when he was not an active member of the State Bar in willful violation of sections 6125 and 6126, thereby failing to support the laws of California in willful violation of section 6068, subdivision (a); and (2) willfully failed to cooperate in a disciplinary investigation in violation of section 6068, subdivision (i).

Respondent's second discipline resulted from his failure to comply with the conditions attached to his prior reprovral. Pursuant to a Supreme Court order filed on July 22, 2010, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years on certain conditions. Respondent stipulated in that matter that he failed to comply with conditions attached to his earlier private reprovral in willful violation of rule 1-110 of the State Bar Rules of Professional Conduct.

### **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(2).) 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).)

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<sup>7</sup>The court admits into evidence the certified copies of Respondent's prior records of discipline attached to the November 17, 2016 petition for disbarment.

**Case Number 15-O-14305 (MCLE Matter)**

Count One – Respondent willfully violated section 6106 (moral turpitude, dishonesty or corruption) by falsely reporting to the State Bar, under penalty of perjury, that he had fully complied with his minimum continuing legal education (MCLE) requirements for the period of February 1, 2011 to January 31, 2014, when Respondent was grossly negligent in not knowing that he had failed to complete the MCLE requirements for that period.

Count Two – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two letters from the State Bar, which he received, requesting his response to the allegations of misconduct being investigated in this matter.

**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, and Respondent had actual notice of this matter;
- (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 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.

## RECOMMENDATIONS

### Disbarment

The court recommends that respondent **Mark Sitrak Simonian**, State Bar number 96969, 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.

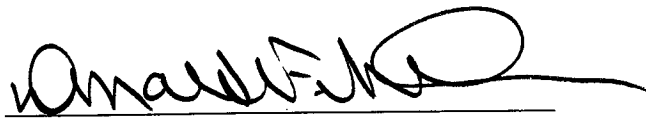
### Costs

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.

### ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Mark Sitrak Simonian**, State Bar number 96969, 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. (Rule 5.111(D).)

Dated: January 13, 2017

  
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 January 13, 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 Los Angeles, California, addressed as follows:

MARK SITRAK SIMONIAN  
500 S GRAND AVE 19TH FL  
LOS ANGELES, CA 90071

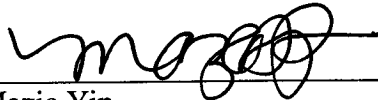
COURTESY COPY TO:

MARK SITRAK SIMONIAN  
5051 AMESTOY AVE  
ENCINO, CA 91316

- 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 January 13, 2017.

  
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Mazie Yip  
Case Administrator  
State Bar Court