

PUBLIC MATTER

FILED ✓

JAN 10 2017

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

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 15-O-14763-DFM
)	
RICHARD D. HUFFMAN II,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 157740.)	ENROLLMENT
_____)	

Respondent Richard D. Huffman II (Respondent) is charged with failing to render an appropriate accounting to a client, failing promptly to release client papers and property, and failing to cooperate and participate in a disciplinary investigation. He failed to participate in this proceeding, 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.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) 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

¹Unless otherwise indicated, all references to rules are to this source.

²If 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 March 6, 1992, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 2, 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 State Bar received a return card on June 6, 2016, bearing an illegible name and signature.

Thereafter, the State Bar (1) attempted to reach Respondent by telephone at his official membership records public and private telephone numbers; (2) sent an e-mail³ to Respondent's membership records e-mail address, along with a copy of the NDC and the court's Notice of Assignment and Notice of Initial Status Conference; (3) conducted a LexisNexis search for Respondent; and (4) spoke with Respondent's father, who stated that he would try to reach Respondent, who was out of town, to request that Respondent contact the State Bar.

As a result of the above efforts, it is clear that Respondent was aware of this proceeding. On July 5, 2016, Respondent sent two e-mail messages to the State Bar investigator from his membership records e-mail address.⁴ In one of the emails, Respondent indicated that he received

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).)

⁴ This is the same address to which the earlier email was sent.

his father's message. In the other message, he asked the investigator to respond to his messages and advised that he was not aware of the alleged charges.

On the next day, July 6, 2016, the assigned deputy trial counsel (DTC) in this matter sent an e-mail to Respondent at his membership records e-mail address, advising Respondent that he was the attorney handling his case and that he could reach the DTC at his direct number set forth below in the e-mail. Thereafter, the DTC attempted to call Respondent at his membership records private telephone number and left a voicemail asking Respondent to call him. In addition, as Respondent was then on disciplinary probation, the DTC also contacted Respondent's assigned Probation Deputy to determine whether the Office of Probation had any other contact information for Respondent; but it did not.

Also on July 6, 2016, the initial status conference was held in the case. Although notice of that conference had previously been provided by the court to Respondent, he did not appear for it. After the status conference, at which a trial date of September 20, 2016, was scheduled, a trial-setting order was filed and served by the court. In this order, Respondent was advised that he "needs to file a response immediately to avoid [his] default being entered."

Despite these efforts, Respondent failed to file a response to the NDC. On July 11, 2016, the State Bar filed and properly served a motion for entry of Respondent's default. The motion 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. Respondent still did not file a response to the motion, and his default was entered on July 29, 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.

Respondent has not sought 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 4, 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) Respondent had not contacted the State Bar since the date the order entering his default was served on July 29, 2016;⁵ (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made payments as a result of Respondent's conduct in this matter. 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 8, 2016.

Prior Records of Discipline

Respondent has two prior records of discipline.⁶ Effective November 14, 2013, Respondent was publicly reprovved with conditions attached to the reprovval for one year. Respondent stipulated in that matter that he failed to inform a client of significant developments in a matter in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code section 6068, subdivision (m), and failed promptly to release to his client upon termination of employment all the client papers and property requested by the client, in willful violation of rule 3-700(D)(1) of the State Bar Rules of Professional Conduct.

Pursuant to a Supreme Court order filed on October 16, 2015, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for one year on conditions, including a 30-day suspension. Respondent stipulated in that matter that he failed to

⁵ This is the same date that Respondent's default was entered.

⁶The court admits into evidence the certified copies of Respondent's prior records of discipline attached to the November 4, 2016 petition for disbarment.

comply with conditions attached to his earlier public reproof 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).)

Case Number 15-O-14763 (Danney Matter)

Count One – Respondent willfully violated rule 4-100(B)(3) (maintain records of client property/render appropriate accounts) by failing to render an appropriate accounting to his client following termination of employment regarding advanced fees received on behalf of his client.

Count Two – Respondent willfully violated rule 3-700(D)(1) (failure to return client papers/property) by failing promptly to release to his client, after termination of his employment, all the client's papers and property following the client's request for his file.

Count Three – 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) Respondent had actual notice of this proceeding and 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 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 **Richard D. Huffman II**, State Bar number 157740, 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.

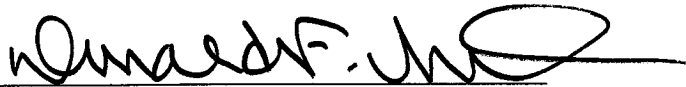
Costs

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 **Richard D. Huffman II**, State Bar number 157740, 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 10, 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 10, 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:

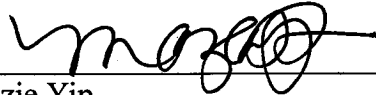
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD D. HUFFMAN II
LAW OFFICES OF RICHARD D HUFFMAN, II
2658 DEL MAR HEIGHTS RD
STE 220
DEL MAR, CA 92014

- 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 10, 2017.



Mazie Yip
Case Administrator
State Bar Court