

PUBLIC MATTER

FILED
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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-16043-CV
)	
)	DECISION AND ORDER OF
JEFFREY HANS LEO,)	INVOLUNTARY INACTIVE ENROLLMENT
)	(Bus. & Prof. Code, § 6007, subd. (c)(4).)
)	
<u>A Member of the State Bar, No. 71640.</u>)	

Respondent Jeffrey Hans Leo is charged with one count of misconduct involving a single client matter. He failed to participate either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) 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 if the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting that the State Bar Court recommend the attorney's disbarment.²

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

² If the court determines that any due process requirement is 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 that the petition for disbarment should be granted. Accordingly, the court will recommend that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to the practice of law in this state on December 22, 1976, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On October 7, 2016, OCTC filed and properly 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. (Rule 5.41.)

Respondent failed to file a response to the NDC. Accordingly, on November 28, 2016, OCTC filed and properly served a motion for entry of default on respondent at his membership-records address by certified mail, return receipt requested. The motion complied with the requirements for a default, including a supporting declaration of reasonable diligence from the assigned Deputy Trial Counsel (DTC). (Rule 5.80.) In addition, the motion notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

The DTC's supporting declaration establishes that OCTC acted with the requisite reasonable diligence to notify respondent of the present proceeding before the entry of his default as follows. The United States Postal Service (Postal Service) returned the NDC that OCTC served on respondent to OCTC undelivered and marked "unclaimed." Accordingly, on November 14, 2016, the DTC attempted to contact respondent by telephone both at his

membership-records telephone number and at an alternative telephone number for respondent that the DTC obtained from LexisNexis. That same day, the DTC also mailed, to respondent both at his membership-records address and at two alternative addresses for respondent that the DTC obtained from LexisNexis, letters with copies of the NDC enclosed with them. The letters notified respondent that OCTC intended to file a motion for default against him if he did not file a response to the NDC by November 21, 2016. The Postal Service did not return any of the three letters to OCTC as undeliverable or otherwise. Finally, on November 14, 2016, the DTC sent, to respondent both at respondent's membership-records email address³ and at five alternative email addresses for respondent that the DTC obtained from LexisNexis, letters again notifying respondent that OCTC intended to seek his default if he failed to file a response to the NDC by November 21, 2016.

On November 27, 2016, respondent telephoned the DTC and left a voicemail message for her stating that he had received her messages, that he had been sick, and that he would soon give his attention to the present disciplinary proceeding. On November 28, 2016, the DTC attempted to return respondent's phone call and left a voicemail message for him notifying him that she was filing a motion for default against him that day and advising him that he should still file a response to the NDC or he might have to file a motion to set aside the default. Respondent, however, still did not file a response to the NDC. Nor did respondent file a response to the motion for entry of default.

On December 14, 2016, the court properly entered respondent's default and properly served the default order on respondent at his membership-records address by certified mail,

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³ Effective February 1, 2010, all attorneys are required to maintain a current email address on record with the State Bar to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

return receipt requested. In the default order, the court advised respondent that, if he did not timely move to set aside his default, the court would recommend that he be disbarred.

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 Business and Professions Code section 6007, subdivision (e). Thereafter, on December 17, 2016, respondent was involuntarily enrolled inactive, and he has been on involuntarily inactive enrollment under the court's December 14, 2016, order since that time.

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].) Thus, on May 15, 2017, OCTC filed and properly served a petition for disbarment on respondent at his membership-records address by certified mail, return receipt requested.

As required by rule 5.85(A), OCTC reported in the petition that (1) respondent has not contacted OCTC since his default was entered on December 14, 2016; (2) there are no other investigations or disciplinary charges pending against respondent; (3) respondent has one prior record of discipline; and (4) the Client Security Fund has not paid out claims resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default.

The court took the petition for disbarment under submission for decision on June 13, 2017.

Prior Record of Discipline⁴

Respondent has one prior record of discipline. On September 8, 1997, the Supreme Court filed an order in *In re Jeffery Hans Leo on Discipline*, case number S062559 (State Bar Court case numbers 91-C-07361, 94-C-12524, and 94-N-18294 (consolidated)), placing

⁴ The court admits into evidence the certified copy of respondent's prior record of discipline, which is attached as exhibit 1 to OCTC's May 15, 2017, petition for disbarment.

respondent on four years' stayed suspension and four years' probation on conditions, including a nine-month actual suspension with credit given for the almost 10 months respondent was on interim suspension. The Supreme Court imposed that discipline on respondent in accordance with a stipulation as to facts and disposition that respondent entered into with OCTC and which was approved by the State Bar Court in an order filed on May 22, 1997, in State Bar Court consolidated case numbers 91-C-07361, 94-C-12524, and 94-N-18294 (Stipulation). The Stipulation establishes the following facts.

Case Number 91-C-07361 (Soliciting Cocaine)

In September 1991, respondent was arrested and charged with soliciting to purchase cocaine (Pen. Code, § 653f, subd. (d)) from an undercover officer from the Los Angeles Police Department. Respondent was initially granted diversion, but he was unable to complete the drug rehabilitation program and was convicted on a nolo-contendere plea in February 1994. Imposition of sentence was suspended, and respondent was placed on 24 months' summary probation and ordered to pay fines and assessments totaling \$810. In June 1994, because respondent paid his fine with an insufficiently funded check, respondent's probation was revoked, he was required to serve ten days in jail (with five days' credit for time served), and his probation was reinstated. In November 1996, the case was dismissed in the interest of justice (Pen. Code, § 1203.4). The facts and circumstances surrounding respondent's conviction for soliciting to purchase cocaine did not involve moral turpitude, but did involve other misconduct warranting discipline.

Case Number 94-C-12524

In February 1993, respondent got in an argument with a taxi-cab driver and threatened the driver with a pickax and was charged with (1) exhibiting a deadly weapon (Pen. Code, § 417, subd. (a)(1)), (2) assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), and (3)

threatening to commit a crime resulting in death or bodily injury (Pen. Code, § 422). From March to June 1993, Respondent was hospitalized for substance abuse. In January 1994, respondent pleaded nolo contendere to and was convicted on count one for exhibiting a deadly weapon. And the remaining two counts were dismissed.

Imposition of sentence was suspended, and respondent was placed on 36 months' summary probation on conditions including serving 30 day in jail, performing 20 days' work for Cal-Trans, paying \$175 restitution, and attending three Alcohol Anonymous meetings a week for one year. Respondent was allowed to substitute community service for his jail time and Cal-Trans time. Respondent's criminal probation was terminated six months early, and the case was dismissed in the interest of justice (Pen. Code, § 1203.4). The facts and circumstances surrounding respondent's conviction for exhibiting a deadly weapon did not involve moral turpitude, but did involve other misconduct warranting discipline.

Case Number 94-N-18294

In August 1996, following respondent's conviction for soliciting to purchase cocaine, the review department placed respondent on interim suspension and ordered respondent to give notice of his interim suspension to his clients, opposing parties and counsel, and the courts and to file a compliance declaration in accordance with former rule 955(a) and (c) of the California Rules of Court (now California Rules of Court, rule 9.20(a)&(c)). Respondent willfully violated his duty, under Business and Professions Code section 6103, to obey court orders by failing to file a compliance declaration in accordance with former rule 955(c).

Respondent's prior misconduct was aggravated by multiple (four) acts of misconduct (i.e., three charged acts plus a fourth uncharged act, which was respondent's arrest in 1994 for cocaine possession, which was disposed of through diversion). Respondent's prior misconduct

was mitigated by respondent's cooperation with OCTC, successful drug treatment and rehabilitation, and financial stress at the time of the misconduct.

The Admitted Factual Allegations in the Present NDC Warrant Discipline

Upon entry of respondent's default in the present proceeding, the factual allegations (but not the conclusions of law or the charges) in the NDC were deemed admitted, and no further proof was 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 of the charged misconduct 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-16043 (Lui Matter)

Count One:⁵ Respondent willfully violated Business and Professions Code section 6103 (violation of court order) by failing to pay two court-ordered sanctions totaling \$6,120.

Disbarment is Recommended

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and that it is appropriate to recommend respondent's disbarment. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) more than reasonable diligence was used to notify respondent of this proceeding before the entry of his default;
- (3) respondent's default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC 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.

⁵ In its November 15, 2016, order regarding trial date, pretrial conference, and trial preparation requirements, the court modified the NDC to change the numbering of the sole count from "Count Two" to "Count One."

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 will recommend disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Jeffrey Hans Leo 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 further recommends that respondent Jeffrey Hans Leo 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

Finally, the court 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 Jeffrey Hans Leo, State Bar number 71640, 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 by mail. (Rule 5.111(D).)

Dated: July 5, 2017.


CYNTHIA VALENZUELA
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 July 5, 2017, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT (Bus. & Prof. Code, § 6007, subd. (c)(4).)

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:

**JEFFREY HANS LEO
ATTORNEY AT LAW
1300 WALNUT ST
SAN GABRIEL, CA 91776**

- ☒ 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 Los Angeles, California, on July 5, 2017.



Paul Barona
Case Administrator
State Bar Court