

PUBLIC MATTER

FILED

JUN 15 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 16-O-14103- DFM
)	
GENE W. CHANG,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 177216.)	ENROLLMENT
_____)		

Respondent Gene W. Chang, (Respondent) is charged with violations of the Business and Professions Code¹ and the State Bar Rules of Professional Conduct. 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 (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

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.³

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

² Unless otherwise indicated, all references to rules are to this source.

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).)



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 June 12, 1995, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 14, 2016, the State Bar 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.) On November 21, 2016, the return receipt was returned to the State Bar. The signature on the return receipt was unintelligible.

Reasonable diligence was then exercised by the State Bar to notify Respondent of this proceeding. On November 14, 2016, the State Bar emailed a copy of the NDC to Respondent's: (1) official membership records email address; (2) private email address, and (3) email address located on the Facebook page for Respondent's public relations business. The emails sent to Respondent's membership email records address and his private email address were not returned. The email sent to Respondent's public relations business email failed because of an error made in the email address to which it was sent. Therefore, on November 15, 2016, another email, including a copy of the NDC, was sent to the correct email address for Respondent's public relations firm. That email was not returned as undeliverable or for any other reason.

On November 15, 2016, the Senior Trial Counsel (STC) assigned to this matter telephoned Respondent at his official membership telephone number. In his message, the STC

identified himself and provided his telephone number. The message also informed Respondent that the State Bar had filed an NDC against Respondent on November 14, 2016. The STC requested a return phone call from Respondent so that he and Respondent could discuss the instant matter. Respondent did not return the call or otherwise respond to the STC's request.

On November 16, 2016, the STC telephoned Respondent at his private phone number and left a voicemail message in which he identified himself and again provided the information regarding the November 14th filing and service of the NDC.

Despite the efforts made by the State Bar, Respondent failed to file a response to the NDC. Consequently, on December 12, 2016, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by the assigned senior 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 did not file a response to the motion, and his default was entered on January 3, 2017. The order also placed Respondent on involuntary inactive status 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. 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 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].) As a result on April 11, 2017, 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 had any contact with Respondent since his default was entered; (2) there is one non-public disciplinary matter pending against Respondent; (3) Respondent does not have a prior record 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 May 10, 2017.

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 No. 16-O-14103 (Taylor Matter)

Count One – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain in a client trust account a balance of \$8,323, which funds Respondent had received on behalf of his client, Michael Taylor.

Count Two – Respondent willfully violated section 6106 (moral turpitude - misappropriation) between November 2, 2015, and February 11, 2016, by acting dishonestly or with gross negligence in misappropriating and using for his own purposes \$8,124.26 of funds he had received for the benefit of his client.

Count Three – Respondent willfully violated section 6106 (moral turpitude – dishonesty) when on November 23, 2015, he knowingly or with gross negligence misrepresented to his client, Taylor, that he had tendered Taylor's 2014 \$8,323 tax refund, which had previously been deposited by Taylor into Respondent's client trust account, to the trustee in the Taylor's chapter 13 bankruptcy matter. In fact, Respondent had not provided any portion of those funds to the trustee.

Count Four – Respondent willfully violated section 6068, subdivision (m) (not responding promptly to reasonable client inquiries), by not responding to any of his client’s reasonable inquiries between December 2, 2015, and March 2, 2016, regarding the status of that client’s matter.

Count Five – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to provide an accounting to the client regarding the \$8,323 in client funds that had been deposited into Respondent’s client trust account, even after the client had made multiple inquiries regarding those funds between December 2, 2015 and March 2, 2016.

Count Six – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay funds to client) by failing to pay promptly or at any time to the client the \$8,323 in client funds which were in Respondent's possession and to which the client was entitled and had requested.

Count Seven – Respondent willfully violated section 6106 (moral turpitude – misrepresentation), by knowingly or with gross negligence misrepresenting to an attorney for Taylor that Taylor’s \$8,323 was still being held by him for Taylor. In fact, when Respondent made this statement, the balance in Respondent’s client trust account had already fallen to \$198.74.

Count Eight – Respondent willfully violated prohibition of rule 4-100(A) of the Rules of Professional Conduct against commingling personal funds in a client trust account by making 28 deposits of personal funds into his client trust account between June 8, 2015, and August 19, 2016.

Count Nine – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling personal funds in trust) by issuing checks from his client trust account for the payment of personal expenses between November 14, 2015, and August 19, 2016.

Count Ten - 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 dated July 18, 2016, August 5, 2016, and October 18, 2016. Those letters, which Respondent received, requested Respondent's response to the allegations of misconduct being investigated in case No. 16-O-14103.

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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Gene W. Chang**, State Bar number 177216, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to make restitution to Michael Taylor in the amount of \$8,323, plus 10 percent interest per year from December 2, 2015. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court 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

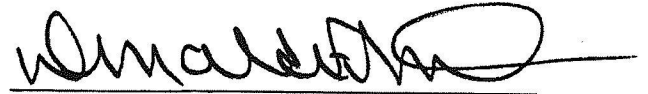
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Gene W. Chang**, State Bar number 177216, 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: June 15, 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 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:

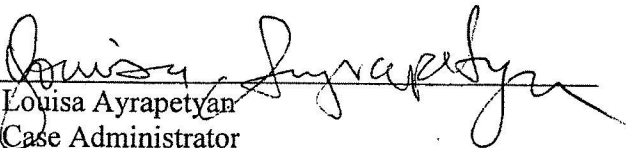
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

GENE W. CHANG
9025 WILSHIRE BLVD PH
BEVERLY HILLS, CA 90211 - 1855

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

ELI D. MORGENSTERN, Enforcement, Los Angeles

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


Louisa Ayrapetyan
Case Administrator
State Bar Court