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SEP 17 2018

STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 16-014969-CV
)	
)	
NELSON LEE COHEN,)	DECISION AND ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar, No. 153311.</u>)	

In this original disciplinary proceeding, respondent Nelson Lee Cohen (Respondent) is charged with two counts of misconduct. Even though Respondent had actual notice of the March 15, 2018, trial setting in this 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.¹ Thereafter, the State Bar's Office of Chief Trial Counsel (OCTC) 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, OCTC will file a petition requesting the State Bar Court to recommend the attorney's disbarment to the Supreme Court.²

¹ All further references to rules are to the Rules of Procedure of the State Bar of California.

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 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 June 6, 1991, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On November 20, 2017, OCTC filed the NDC in this proceeding with the court and properly served it on Respondent at his membership-records address by certified mail, return receipt requested. The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.)

On January 5, 2018, the court filed an order regarding trial date, pretrial conference, trial preparation requirements, and settlement conference and properly served that order on Respondent, by first class mail, postage paid, at Respondent's address in the State Bar's membership records (rule 5.81(A)(2)(c)).³ The January 5, 2018, order notified Respondent that the trial in this proceeding was set for March 20, 2018, at 10:00 a.m.

Respondent filed a response to the NDC on January 20, 2018. On March 16, 2018, the parties filed a joint pretrial statement, which Respondent signed on March 9, 2018.

On March 20, 2018, OCTC appeared for trial, but Respondent did not. On that same day, after finding that all of the requirements of rule 5.81(A) were satisfied, the court filed an order entering Respondent's default and properly served that order on Respondent at his membership-records address by certified mail, return receipt requested. (Rules 5.25(B), 5.81(B).) The order

³ The court's January 5, 2018, order incorrectly recites that Respondent participated in the January 5, 2018, initial status conference in this proceeding.

notified Respondent that, if he did not timely move to set aside or vacate his default, the court would recommend his disbarment.

In its March 20, 2018, order entering Respondent's default, the court also ordered that Respondent be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (e),⁴ effective three days after service of that order by mail. Accordingly, Respondent was involuntarily enrolled inactive on March 23, 2018, and Respondent has continuously been enrolled inactive under section 6007, subdivision (e) 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 May 15, 2018, OCTC filed a petition for disbarment after default. On May 15, 2018, OCTC also properly served the petition for disbarment on Respondent at his membership-records address by certified mail, return receipt requested. (Rules 5.25, 5.85(D).) As required by rule 5.85(A), OCTC reported in the petition that: (1) since the entry of default, OCTC has received no contact from Respondent; (2) there are no other investigations or disciplinary charges 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 court took the petition for disbarment under submission for decision on July 10, 2018.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a Respondent's default, the factual allegations, but not the conclusions or the charges, 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

⁴ All further statutory references are to the Business and Professions Code.

deemed admitted in the NDC support a finding that Respondent is culpable on one of the two counts of misconduct charged in the NDC 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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Count One — Respondent willfully violated section 6106 (moral turpitude, dishonesty, or corruption). Respondent engaged in acts involving moral turpitude and dishonesty by submitting false billings totaling more than \$216,000 to a client from about May 2011 through January 2016; submitting false expense reports totaling more than \$216,000 to Bremer Whyte Brown & O'Meara, the law firm in which he was a partner; and obtaining, from Bremer Whyte Brown & O'Meara, more than \$216,000 in reimbursements for false expenses.

Count Two charges Respondent with willfully violating section 6068, subdivision (a) (support the constitution and laws) but fails to specify a constitutional provision or law that Respondent failed to support. Accordingly, count two fails to provide Respondent with fair, adequate, and reasonable notice of the charges against him and is, therefore, DISMISSED with prejudice.

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) Respondent had actual knowledge of this proceeding and of the trial date before the entry of his default;
- (3) Respondent's default was properly entered under rule 5.81; 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.

Despite adequate notice and opportunity, Respondent failed to appear at trial in this proceeding. As set forth in the Rules of Procedure of the State Bar, the court will recommend disbarment.

RECOMMENDATIONS

Discipline – Disbarment and Restitution

The court recommends that respondent Nelson Lee Cohen (Respondent) be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

The court further recommends that Respondent be ordered to make restitution in the amount of \$216,320 plus 10 percent interest per year from April 30, 2016, to Bremer Whyte Brown & O'Meara, or such other recipient as may be designated by the Office of Probation or the State Bar Court (or to reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5).

California Rules of Court, Rule 9.20

The court further 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 imposing discipline in this matter.⁵

⁵ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent


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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Nelson Lee Cohen, State Bar Number 153311, be involuntarily enrolled inactive, effective three calendar days after the service of this decision and order by mail (rule 5.111(D)).

Dated: September 17, 2018.



CYNTHIA VALENZUELA
Judge of the State Bar Court

has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 September 17, 2018, 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:

NELSON L. COHEN
11510 VIA PRINCESSA CT
LAS VEGAS, NV 89138 - 7561

- 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 Los Angeles, California, on September 17, 2018.



Paul Songco
Court Specialist
State Bar Court