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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of)	Case No. 17-C-00402-PEM
CARL DOUGLAS SPIECKERMAN,)	DECISION AND ORDER OF INVOLUNTARY
<u>A Member of the State Bar, No. 67636.</u>)	INACTIVE ENROLLMENT

The subject of this conviction referral proceeding is the felony violation of Penal Code section 4573.6 (unauthorized and knowing possession of a controlled substance in a state prison) of which respondent Carl Douglas Spieckerman (Respondent) was convicted in December 2016. Because Respondent's conviction is for a felony crime, the State Bar Court Review Department suspended Respondent from the practice of law effective July 24, 2017, pending the final disposition of this proceeding. (Bus. & Prof. Code, § 6102, subd. (a); Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.161(A).)

In July 2017, after Respondent's conviction was final, the Review Department referred Respondent's conviction to the Hearing Department for a trial on the issues of whether the facts and circumstances surrounding Respondent's commission of the crime involved moral turpitude (Bus. & Prof. Code, §§ 6101, 6102) or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494); and, if so, for a recommendation as to the discipline to be imposed. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.161(A).) Even though Respondent had actual knowledge of this proceeding, Respondent failed to participate in

this proceeding either in person or through counsel, and his default was entered. Thereafter, the State Bar's Office of Chief Trial Counsel (OCTC) filed a petition for disbarment under Rules of Procedure of the State Bar, rules 5.85 and 5.346.¹

Rules 5.85 and 5.346 provide the procedures to follow when an attorney fails to participate in a conviction referral proceeding after receiving adequate notice and opportunity. Those rules provide that, if an attorney's default is entered for failing to respond to the notice of hearing on conviction (NOH) 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

In the instant case, the court concludes that the requirements of rules 5.85 and 5.346 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 the practice law in this state on December 15, 1975, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On July 28, 2017, the State Bar Court filed and properly served the NOH in this conviction referral proceeding on Respondent at his membership-records address by certified

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¹ Unless otherwise indicated, all further references to rules are to this source. Rule 5.346(A) makes the default procedures in rules 5.80 through 5.86, with certain modifications, applicable in conviction referral proceedings, such as the present proceeding.

² If the court determines that any due process requirement is not satisfied, including adequate notice to the attorney, the court will deny the petition for disbarment and take appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

mail, return receipt requested.³ The NOH notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.)

On August 18, 2017, the assigned Deputy Trial Counsel (DTC) spoke with Respondent on the telephone about the upcoming initial status conference, which was set for August 28, 2017. Later that same day, the DTC sent a follow-up email to Respondent at his membership-records email address. On August 20, 2017, Respondent sent the DTC a reply email stating that he did not intend to contest the matter. And, on September 7, 2017, Respondent sent an email to the DTC stating: "I intend to let the matter proceed by way of default."

Respondent failed to file a response to the NOH. On September 12, 2017, OCTC filed and properly served a motion for entry of default on Respondent at his membership-records address by certified mail, return receipt requested. OCTC also mailed a courtesy copy of the motion for entry of default to Respondent at his membership-records address by regular mail (i.e., first class mail, regular delivery). The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the DTC declaring the additional steps taken to provide Respondent with actual notice of the proceeding. (Rules 5.80, 5.346.) The motion also 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 for entry of default or to the NOH, and his default was properly entered on September 28, 2017. The default order was properly served on Respondent at his membership records address by certified mail, return receipt requested. In the default order, the court also ordered Respondent's involuntary enrollment as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e). Accordingly, on September 31,

³ The court received a return receipt for copy of the NOH that was served on Respondent, but the signature on the receipt is illegible.

2017, Respondent was involuntarily enrolled inactive, and he has continuously been involuntarily enrolled inactive since that time.

Respondent did not seek to have his default vacated or set aside. (Rules 5.83(B)&(C)(1), 5.346 [attorney has 90 days to file motion to set aside default].) On January 22, 2018, OCTC filed a petition for disbarment after default and served it on Respondent at his membership-records address by certified mail, return receipt requested. As required by rules 5.85(A) and 5.346, OCTC reported in the petition (1) that, on January 9, 2018, following the entry of Respondent's default, Respondent sent the DTC an email confirming his knowledge of the court's default order and his intent to let the matter proceed by default; (2) that there are three other disciplinary matters pending against Respondent; (3) that Respondent has no prior record of discipline; and (4) that the Client Security Fund has not made any payments resulting from 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 matter under submission for decision on April 11, 2018.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations that are set forth in OCTC's statement of facts and circumstances surrounding Respondent's conviction are deemed admitted, and no further proof is required to establish the truth of such facts. (Rules 5.346(C)(1)&(D), 5.82.) As set forth below in greater detail, Respondent's conviction for knowingly possessing a controlled substance in a state prison without authorization to do so and the facts and circumstances surrounding the crime support the conclusion that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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Case Number 17-C-00402 (Conviction Matter)

Respondent pleaded guilty to and was convicted of one count of violating Penal Code section 4573.6, a felony, by knowingly possessing 15 grams of marijuana in the Central California Women's Facility (a state prison) in Chowchilla, California (CCWF) without being authorized to possess it. Specifically, in June 2016, Respondent went to CCWF for a legal visit with his client Ms. T. Thompson, who was incarcerated there. Respondent's visit with Thompson was monitored by correctional officers using surveillance video cameras because in May 2016 correctional officers received information that Thompson was attempting to smuggle narcotics into the prison through her meetings with Respondent.

During Respondent's legal visit with Thompson, correctional officers observed Respondent pass a black popcorn bag under the table to Thompson, who then reached into the popcorn bag, retrieved an object, and concealed the object in the back of her pants. The correctional officers went to the visiting area, which smelled strongly of marijuana, and placed Thompson in handcuffs. They then searched the back of Thompson's pants and her buttocks area where they found (1) a plastic bag containing 15 grams of marijuana, (2) a separate plastic bag containing one pill of amphetamine and one pill of morphine; and (3) three separate bags containing methamphetamine, which together collectively weighed 11 grams.

The correctional officers detained Respondent and confiscated the black popcorn bag. However, no contraband was found on Respondent's person. Respondent was given the Miranda advisement and thereafter disclosed that Thompson possessed a contraband cell phone that she had previously used to contact Respondent. When confronted with the surveillance video that showed Respondent passing the black popcorn bag to Thompson under the table, Respondent denied giving Thompson the marijuana and falsely suggested that a correctional officer smuggled the marijuana to his client. The record, however, clearly shows that Respondent

smuggled and provided all of the drugs (i.e., the marijuana, the amphetamine and morphine pills, and the methamphetamine) to Thompson during their June 2016 attorney-client meeting at CCWF.

In June 2016, the district attorney charged Respondent with the following four felony counts: (1) knowingly bringing a controlled substance into a jail or prison in violation of Penal Code section 4573; (2) knowingly possessing methamphetamine in a state prison in violation of Penal Code section 4573.6; (3) knowingly possessing morphine in a state prison in violation of Penal Code section 4573.6; and (4) knowingly possessing marijuana in a state prison in violation of Penal Code section 4573.6. In December 2016, Respondent pleaded guilty to and was convicted on the fourth count charging him with knowingly possessing marijuana in a state prison without authorization in violation of Penal Code section 4573.6. The superior court suspended the imposition of sentence on the fourth count and placed Respondent on probation for a period of three years with the condition that Respondent be confined for 228 days (minus Respondent's custody credit in the amount of 203 days).

Violating Penal Code section 4573.6 is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The facts and circumstances surrounding Respondent's conviction for violating Penal Code section 4573.6 clearly involve other misconduct warranting discipline, if not moral turpitude. Respondent smuggled illegal drugs into a state prison and gave them to his incarcerated client during an attorney-client meeting inside of a state prison. When confronted with the video tape showing Respondent handing the black bag to Thompson under the table, Respondent not only lied and denied his guilt, but he also falsely suggested that a correctional officer smuggled and provided drugs to Thompson.

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Disbarment is Recommended

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and recommends disbarment. Specifically, the court finds:

(1) that the NOH was properly served on Respondent under rule 5.25;

(2) that reasonable diligence was used to give Respondent actual notice of this proceeding before the entry of his default;

(3) that the default was properly entered under rules 5.80 and 5.346; and

(4) that the factual allegations in the statement of facts and circumstances surrounding Respondent's conviction 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 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 Carl Douglas Spieckerman, State Bar number 67636, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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.

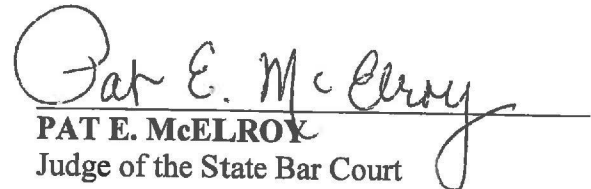
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 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 Carl Douglas Spieckerman, State Bar number 67636, 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 (Rules Proc. of State Bar, rule 5.111(D)).

Dated: May 7, 2018.


PAT E. McELROY
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 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 San Francisco, on May 7, 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 San Francisco, California, addressed as follows:

CARL DOUGLAS SPIECKERMAN
2647 JAVETE WAY
STOCKTON, CA 95209

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

Laura A. Huggins, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 7, 2018.



Mauretta Cramer
Court Specialist
State Bar Court