

PUBLIC MATTER

FILED

OCT 30 2018

P.B.

STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 17-J-07001-CV
)	
WAYNE RICHARD HARTKE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 59474)	ENROLLMENT
)	
_____)	

On October 7, 2011, April 17, 2015, and September 11, 2017, Respondent **Wayne Richard Hartke** (Respondent) was disciplined by the Virginia State Bar Disciplinary Board upon facts that established his culpability for acts of professional misconduct in that jurisdiction. As a result, the Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding on January 24, 2018. (Bus. & Prof. Code, § 6049.1; Rules Proc. of State Bar, rules 5.350-5.354.)

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the Virginia proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of Respondent's misconduct in Virginia; and (3) whether the Virginia proceeding lacked fundamental constitutional protection. (Bus. & Prof. Code, § 6049.1, subd. (b).)



Respondent bears the burden of establishing that the conduct for which he was disciplined in Virginia would not warrant the imposition of discipline in California and/or that the Virginia proceeding lacked fundamental constitutional protection. Unless Respondent establishes one or both of these, the record of discipline in the Virginia proceeding is conclusive evidence of Respondent's culpability of misconduct in California. (Bus. & Prof. Code, § 6049.1, subd. (a) & (b).)

Respondent failed to participate in this matter either in person or through counsel, and his default was entered. 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 to be heard. 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

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 17, 1974, and has been a member since then.

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

² 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).)

Procedural Requirements Have Been Satisfied

On January 24, 2018, OCTC filed and properly served an NDC on Respondent by certified mail, return receipt requested, at his membership records address, with a courtesy copy to the address that was indicated to be Respondent's address of record in the 2017 Virginia disciplinary case. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Neither of these mailings was returned to OCTC, and the return receipt was never received by OCTC.

Thereafter, OCTC: (1) attempted to reach Respondent by telephone at his membership records telephone number, which number was not in service; (2) reviewed a TransUnion search for Respondent conducted by a State Bar investigator and attempted to reach Respondent at seven alternate telephone numbers for Respondent revealed by the search; (3) reviewed a LexisNexis search for Respondent conducted by a State Bar investigator and sent a copy of the NDC, with a cover letter, to Respondent at two alternate addresses for Respondent revealed by the search; (4) determined that Respondent did not have an email address listed with the State Bar membership records; (5) sent a copy of the NDC to Respondent at two email addresses which were revealed by the TransUnion search as potentially belonging to Respondent.

Respondent failed to file a response to the NDC. On March 2, 2018, OCTC filed and properly served on Respondent 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 State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) 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, and his default was entered on April 3, 2018. The order entering the default was served on Respondent at his membership records address by certified mail, return

receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar 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.

Respondent also 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].) On July 16, 2018, OCTC filed and properly served Respondent with the petition for disbarment. As required by rule 5.85(A), OCTC reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has no prior record of discipline in California; and (4) the Client Security Fund has not made 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 case was submitted for decision on September 17, 2018.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of 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).) Business and Professions Code section 6049.1, subdivision (a) provides, in pertinent part, that a certified copy of a final order by any body authorized by law or by rule of court to conduct disciplinary proceedings against an attorney, in any state, determining that a member of the State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that, subject to limited exceptions, the member is culpable of professional misconduct in this state.

The court finds, as a matter of law, that Respondent's culpability in the Virginia proceeding would warrant the imposition of discipline in California under the laws and rules

applicable in this state at the time of Respondent's misconduct in the Virginia proceeding, as follows.

Rules of Professional Conduct, Rule 3-110 [Intentional, Reckless, or Repeated Failure to Perform Legal Services with Competence]

By repeatedly failing to represent his client Sehbai with competence in the 2011 Virginia case, Respondent willfully violated Rules of Professional Conduct, rule 3-110.

Rules of Professional Conduct, Rule 4-100(B)(3) [Failure to Maintain Record of Client Funds and Render Appropriate Accounting]

By failing to render an appropriate accounting of funds in two client matters (Sehbai and Mosley) in the 2011 Virginia case, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

Rules of Professional Conduct, Rule 3-700(B)(3) [Failure to Withdraw for Ineffective Client Representation Due to Member's Mental or Physical Condition]

By failing to withdraw from representation of his client Posey in the 2011 Virginia case, Respondent willfully violated Rules of Professional Conduct, rule 3-700(B)(3).

Business and Professions Code, Section 6106 [Dishonesty, Moral Turpitude, or Corruption]

By (1) making two separate misrepresentations to Virginia courts in the 2011 Virginia disciplinary case and another in the 2017 Virginia disciplinary case; and (2) misrepresenting material facts in connection with the investigation of the 2015 Virginia disciplinary matter before finally admitting the truth, Respondent willfully violated Business and Professions Code section 6106.

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 must be 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.

RECOMMENDATION

Discipline - Disbarment

It is recommended that **Wayne Richard Hartke**, State Bar number 59474, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended 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 matter³.

³For 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

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are 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 **Wayne Richard Hartke**, State Bar number 59474, 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: October 30, 2018



CYNTHIA VALENZUELA
Judge of the State Bar Court

Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent 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 October 30, 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:

WAYNE RICHARD HARTKE
HARTKE & HARTKE
7637 LEESBURG PIKE
FALLS CHURCH, VA 22043

WAYNE RICHARD HARTKE
11890 SUNRISE VALLEY DR.
RESTON, VA 20191

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

DESIREE M. FAIRLY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 30, 2018.

Paul Barona

Paul Barona
Court Specialist
State Bar Court