

PUBLIC MATTER

FILED

MAY 6 2019

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STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos. 17-O-07153;
)	18-O-16507 (Cons.)-CV
MICHAEL ROSS LEWIS,)	
)	DECISION AND ORDER OF
State Bar No. 247934.)	INVOLUNTARY INACTIVE
_____)	ENROLLMENT

Respondent Michael Ross Lewis (Respondent) was charged in one Notice of Disciplinary Charges (NDC) with failing to comply with certain conditions attached to his disciplinary probation and, in a separate NDC, with failing to cooperate in a State Bar investigation. He failed to file a response to either NDC in this matter, 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 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

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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).)

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

Respondent was admitted to practice law in this state on December 21, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 19, 2018, the State Bar filed and properly served the NDC in case No. 17-O-07153 on Respondent by certified mail, return receipt requested, to his official State Bar record address. On October 16, 2018, the OCTC filed and properly served the NDC in case No. 18-O-16507 on Respondent by certified mail, return receipt requested, to his official State Bar record address. Each NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt card for the NDC served by certified mail in case No. 17-O-07153 was returned to the OCTC bearing an illegible signature. No return receipt was received by the OCTC for the NDC served by certified mail in case No. 18-O-16507.

On October 29, 2018, Respondent participated in an in-person status conference in both matters. As such, Respondent had actual notice of both case Nos. 17-O-07153 and 18-O-16507. On motion of the OCTC, the court ordered the consolidation of case Nos. 17-O-07153 and 18-O-16507 in an order filed on October 29, 2018. Respondent was also ordered to file a response to the NDC in case No. 17-O-07153 on or before November 2, 2018, and he waived time and stipulated to also file a response in case No. 18-O-16507 on or before November 2, 2018. The court also ordered the OCTC to file a motion for the entry of Respondent's default on or before November 9, 2018, if Respondent failed to file a response in case Nos. 17-O-07153 and

18-O-16507 by November 2, 2018. The order was properly served on Respondent on October 29, 2018, by first-class mail, postage prepaid, to his official State Bar record address.

Respondent, however, failed to file a response to the consolidated NDCs by November 2, 2018 or any time thereafter. On November 9, 2018, the OCTC filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to his official State Bar record address. The motion complied with all the requirements for a default, including a supporting declaration setting forth that (1) Respondent appeared in-person at a status conference on October 29, 2018; (2) at the status conference, Respondent received actual notice of these matters and stipulated to file a response in both matters on or before November 2, 2018; and (3) if Respondent failed to file a response by November 2, 2018, the court ordered the OCTC “to file for [R]espondent’s default.”³ (Rule 5.80). The motion notified Respondent that if his default was entered and he did not timely move to set aside his default, the court would recommend his disbarment.

On November 19, 2018, the OCTC filed and served a supplemental declaration⁴ to the motion for entry of Respondent’s default on Respondent by certified mail, return receipt requested, to his official State Bar record address. In the declaration, it was noted that Deputy Trial Counsel Desiree Fairly contacted Respondent’s law partner who informed her that Respondent had a heart attack on November 8, 2018, and had been released from the hospital. However, the declaration noted that Respondent’s law partner had been unable to provide the deputy trial counsel with any documents to substantiate Respondent’s heart attack.

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³ Declaration of Deputy Trial Counsel Desiree Fairly attached to the OCTC’s motion for entry of Respondent’s default.

⁴ The declaration was of Deputy Trial Counsel Desiree Fairly.

Respondent did not file a response to the motion for the entry of his default, and his default was entered on December 14, 2018. The order entering the default was served on Respondent at his official State Bar record address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as an attorney under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. 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 March 28, 2019, the OCTC filed and properly served the petition for disbarment on Respondent at his official State Bar record address by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has not had any contact with Respondent since his default was entered;⁵ (2) there are other investigations or disciplinary charges pending against Respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's conduct. 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 April 19, 2019.

Prior Record

Respondent has two prior records of discipline. Pursuant to a Supreme Court order filed on July 31, 2017, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for one year subject to conditions, including that he be suspended for 30 days. Respondent was found culpable in this prior disciplinary matter of

⁵ The declaration of Deputy Trial Counsel Desiree Fairly reflects that there has been no contact with Respondent since the in-person status conference on October 29, 2018.

willfully violating Business and Professions Code section⁶ 6103 in six counts for failing to comply with a court order.

Pursuant to a Supreme Court order filed on October 18, 2018, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years subject to conditions, including that he be suspended for a minimum of the first year of probation and until he has paid specified sanctions.⁷ Respondent stipulated that he willfully violated: (1) section 6103 for failing to obey a court order; (2) section 6068, subdivision (i), for failing to cooperate in a State Bar investigation; (3) section 6068, subdivision (k), for failing to comply with probation conditions; and (4) section 6106 for committing an act of moral turpitude, dishonesty or corruption.

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 Number 17-O-07153 (Failure to Cooperate in State Bar Investigation)

By failing to provide a substantive response to the State Bar's March 6, 2018 letter and May 11, 29 and June 28, 2018 emails, which Respondent received, which requested Respondent's response to the allegations of misconduct being investigated in this matter,

⁶ All further references to section(s) refer to provisions of the Business and Professions Code.

⁷ The order also provided that if Respondent remains suspended for two years or more as a result of not satisfying the condition regarding sanctions, before his suspension will be terminated, he must provide proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law.

Respondent failed to participate and cooperate in a disciplinary investigation pending against him in willful violation of section 6068, subdivision (i) (duty to cooperate/participate in State Bar investigation).

Case Number 18-O-16507 (Failure to Comply with Conditions of Probation)

By failing to file the quarterly report due January 10, April 10, and July 10, 2018, and by failing to provide proof of attendance at the State Bar's Ethics School by August 30, 2018, Respondent failed to comply with conditions attached to his disciplinary probation in State Bar case No. 15-O-14877⁸ in willful violation of section 6068, subdivision (k) (duty to comply with probation conditions).

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) Respondent had actual notice 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.

⁸ Although the NDC alleged that Respondent failed to comply with conditions attached to his disciplinary probation in case No. 18-O-16507, that is one of the case numbers in this currently pending consolidated disciplinary proceeding. Therefore, the Supreme Court has not ordered Respondent to comply with probation conditions in case No. 18-O-16507, and Respondent could not have violated probation conditions in case No. 18-O-16507. Nevertheless, a review of the conduct alleged in this matter makes it clear that the charges were referencing the probation imposed in case No. 15-O-14877. The court therefore finds the case number error in the NDC to be de minimus and does not violate due process requirements. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 614 [requirements of due process met as notice specified the rule charged and the conduct at issue].)

Despite actual 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

Discipline - Disbarment

It is recommended that Michael Ross Lewis, State Bar Number 247934, 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 matter.⁹ Failure to do so may result in disbarment or suspension.

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

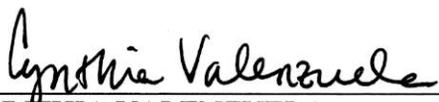
⁹ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent 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).)

assessed against an attorney 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 Michael Ross Lewis, State Bar number 247934, 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: May 6, 2019



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 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 May 6, 2019, 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:

Michael R. Lewis
Lewis & Ham, LLP
1425 W Foothill Blvd Ste 235
Upland, CA 91786

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

Drew Massey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 6, 2019.



Paul Songco
Court Specialist
State Bar Court