

PUBLIC MATTER

FILED

JAN 04 2017



STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 13-C-11780-PEM
)	
ANATOLY SMOLKIN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 274388.)	ENROLLMENT
_____)	

Respondent Anatoly Smolkin (respondent) was convicted of (1) felony violations of Penal Code sections 646.9, subdivision (a) (stalking); 646.9, subdivision (b) (stalking in violation of restraining order); 422 (criminal threats); and 69 (resisting officer); and of (2) misdemeanor violations of Penal Code sections 243, subdivision (b) (battery on officer); 166, subdivision (a) (contempt); and 626.8, subdivision (a) (disruptive school presence), which may or may not involve moral turpitude.¹ Upon finality of the convictions, the review department issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violations involved moral turpitude or other misconduct warranting discipline. Respondent failed to participate, either in person or through counsel, and his default was entered. The Office of Chief Trial

¹ Respondent was placed on interim suspension as a result of his felony convictions, effective June 21, 2013.



Counsel (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 hearing on conviction (NOH), 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

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 California on December 10, 2010, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 14, 2013, the State Bar Court filed and properly served the NOH on respondent by certified mail, return receipt requested, at his membership records address. The NOH notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation.

On November 15, 2013, the court abated this proceeding, pending respondent's release from prison. In May and November 2015, respondent participated in the status conferences by

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).)

telephone while in prison. Sometime between March 30 and April 4, 2016, respondent was released from prison. Thereafter, the State Bar had to locate him.

On May 12, 2016, respondent sent an email to the State Bar, stating: "I have no use whatsoever for a legal license, and have better things to do with my time than waste it with the case referenced in the subject line of this email. Do what you must with regards to the case, but please do not send me any further communications by any means."

On May 23, 2016, the court held a status conference by telephone. Although respondent received the telephone call, he did not participate in the proceeding or go on the record.

Respondent failed to file a response to the NOH.

On May 26, 2016, the State Bar filed and properly served 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 senior trial counsel declaring the additional steps taken to provide notice to respondent. (Rules Proc. of State Bar, 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 June 13, 2016. 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 did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days after order entering default is served to file motion to set aside default].)

On September 19, 2016, the State Bar properly filed and served the petition for disbarment on respondent at his official business address. As required by rule 5.85(A), the State

Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on October 17, 2016.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding respondent's convictions are deemed admitted and no further proof is required to establish the truth of such facts. (Rules Proc. of State Bar, rules 5.346 and 5.82.) As set forth below in greater detail, respondent's convictions for 47 counts of stalking, violating restraining orders, and making criminal threats support the conclusion that respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rules Proc. of State Bar, rule 5.85.)

Case No. 13-C-11780 (Conviction Matter)

Between November 2011 and January 2012, respondent engaged in a campaign of threats, harassment and intimidation by sending emails to victims, targeting his wife, his 11-year-old daughter, and others with sexual violence and death threats.

After a jury trial, respondent was convicted of violating 20 counts of stalking 11 victims, 9 counts of making criminal threats to 9 victims, 1 count of creating a disruptive presence at an elementary school, 1 count of resisting a peace officer by threat and 1 count of battery on that officer, and 15 counts of violating restraining orders.

In summary, the jury found respondent guilty of 30 felonies and 17 misdemeanors, involving 17 victims, as follows:

1. Eleven counts of Penal Code section 646.9, subdivision (a) [stalking];
2. Nine counts of Penal Code section 646.9, subdivision (b) [stalking in violation of restraining order];
3. Nine counts of Penal Code section 422 [criminal threats];
4. One count of Penal Code section 69 [resisting officer];
5. One count of Penal Code section 243, subdivision (b) [battery on officer];
6. One count of Penal Code section 626.8, subdivision (a) [disruptive school presence];
and
7. Fifteen counts of Penal Code section 166, subdivision (a)(4) [contempt of court by violating a civil harassment restraining order].

After his convictions, respondent was sentenced to state prison for seven years in April 2013. He was released from prison sometime in March or April 2016.

The court finds that the facts and circumstances surrounding respondent's convictions of 30 felonies and 17 misdemeanors, including stalking, making criminal threats, and violating restraining orders, involved moral turpitude. Conviction of a crime involving moral turpitude is cause for discipline. (Bus. & Prof. Code, § 6101, subd. (a).)

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 NOH was properly served on respondent under rule 5.25.
- (2) Respondent had actual notice of this proceeding and had adequate notice of the proceedings prior to the entry of his default.
- (3) The default was properly entered under rule 5.80.

(4) The factual allegations in the statement of facts and circumstances surrounding respondent's convictions, 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 his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Anatoly Smolkin, State Bar number 274388, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, 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, such costs being 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 Anatoly Smolkin, State Bar number 274388, 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: January 4, 2017



PAT 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 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 San Francisco, on January 4, 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 San Francisco, California, addressed as follows:

ANATOLY SMOLKIN
TINYCO
1 BUSH ST 7TH FL
SAN FRANCISCO, CA 94104

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

MANUEL JIMENEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 4, 2017.



Bernadette Molina
Case Administrator
State Bar Court