

FILED

JUN 28 2018

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**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 17-O-05344-CV
)	
BENJAMIN YU,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 243005.)	ENROLLMENT
)	

Respondent Benjamin Yu (Respondent) is charged with a single count of misconduct. He failed to participate in these proceedings either in person or through counsel, and his default was entered. Thereafter, the Office of Chief Trial Counsel (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 notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting that the court recommend the attorney's disbarment.²

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¹ Unless otherwise indicated, all references to rules are to this source. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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

Jurisdiction

Respondent was admitted to practice law in this state on June 1, 2006, and has been a member since then.

On October 10, 2017, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On October 23, 2017, OCTC received the return receipt card from an individual other than Respondent.

Thereafter, OCTC took additional steps to notify Respondent about these proceedings by: 1) emailing a letter and a copy of the NDC to Respondent at his membership records email address; 2) calling and leaving a message for Respondent at his membership records phone number; and 3) mailing a copy of the NDC to Respondent at a possible forwarding address.

Respondent failed to file a response to the NDC. On November 17, 2017, OCTC properly filed and served a motion for entry of Respondent's default. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by OCTC 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 December 21, 2017. 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 of California 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 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 April 19, 2018, OCTC properly filed and served the petition for disbarment on Respondent at his membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are other disciplinary matters pending against Respondent; (3) Respondent has one prior discipline record; and (4) the Client Security Fund has not paid 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 case was submitted for decision on June 8, 2018.

Prior Record of Discipline

Respondent has one prior record of discipline. Pursuant to an order of the New York Supreme Court filed on October 27, 2016, effective nunc pro tunc to May 31, 2016, Respondent was disbarred. Respondent's disbarment was the result of his convictions, after a jury trial, of conspiracy in the fourth degree (N.Y. Penal Law § 105.10(1)), a felony; two counts of bribery in the second degree (N.Y. Penal Law § 200.03), a felony; and 13 counts of rewarding official misconduct in the second degree (N.Y. Penal Law § 200.20), a felony. Respondent was convicted of the aforementioned charges after he paid an employee of the New York City Criminal Justice Agency to persuade criminal defendants to retain Respondent as their attorney. Respondent was sentenced to three to nine years in prison.

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.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case No. 17-O-05344 (The Court Order Matter)

Count One – Respondent willfully violated section 6103 (duty to obey a court order) by failing to comply with the Review Department's May 19, 2017 order in case No. 14-C-05301, directing Respondent to comply with California Rules of Court, rule 9.20.

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) 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 Respondent's disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent Benjamin Yu, State Bar number 243005, 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.

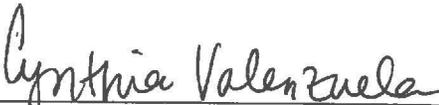
Costs

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 Benjamin Yu, State Bar number 243005, 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: June 28, 2018



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 June 28, 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:

BENJAMIN YU
LAW OFFICES OF BENJAMIN YU, ESQ.
111 WORTH ST 4F
NEW YORK, NY 10013

BENJAMIN YU
299 ADELPHI ST. APT. #510
BROOKLYN, NY 11205

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

PATRICE N. VALLIER-GLASS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 28, 2018.



Paul Barona
Court Specialist
State Bar Court