

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>13-O-13049-LMA</b>
	)	(13-O-13999; 13-O-14023);
<b>JOSEPH YOUNG,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 248795,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
A Member of the State Bar.	)	
_____	)	

In this matter, respondent Joseph Young (respondent) was charged with nine counts of misconduct stemming from three client matters. With the exception of filing one motion, respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

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 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> 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(E)(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 May 11, 2007, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On November 13, 2013, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was not returned to the State Bar as undeliverable or for any other reason.

Respondent failed to file a response to the NDC. On January 28, 2014, the State Bar filed and properly served a motion for entry of respondent's default.<sup>3</sup> Respondent did not file a response to the motion, and his default was entered on February 11, 2014. 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.

On April 14, 2014, respondent, who was incarcerated, filed a handwritten motion to set aside the default. On April 22, 2014, the court issued an order granting respondent's motion to set

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<sup>3</sup> The State Bar learned that respondent was incarcerated at the Twin Towers Correctional Facility in Los Angeles. Therefore, a courtesy copy of this motion was also sent to respondent at that address.

aside the default, terminating respondent's involuntary inactive enrollment, and setting a status conference.

Between May 23, 2014 and June 19, 2014, the State Bar Court filed and properly served four separate notices of hearing on conviction (for case nos. 13-C-17086; 14-C-00571; 14-C-01417; and 14-C-00638) on respondent by certified mail, return receipt requested, at his membership records address.<sup>4</sup> These conviction matters were later consolidated with the present matters.

On August 29, 2014, the State Bar filed a status report with the court, advising that respondent was released from custody on July 13, 2014.

Despite the court setting aside his previous default order, respondent failed to file a response to the NDC or to any of the notices of hearing on conviction. On September 12, 2014, the State Bar filed and properly served a motion for entry of respondent's default.<sup>5</sup> The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the 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 September 26, 2014. 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),

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<sup>4</sup> Courtesy copies of two of the notices of hearing on conviction were sent to respondent in custody.

<sup>5</sup> Although the matters were consolidated, the default motion made no reference to respondent's conviction matters. (See Rules Proc. of State Bar, rule 5.346(C).) Accordingly, the court is issuing a separate order severing the conviction matters from the present matter.

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 January 8, 2015, the State Bar filed the petition for disbarment. 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) respondent has other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from 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 February 3, 2015.

### **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 and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **Case Number 13-O-13049 – The Londean Matter**

Count One – respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with a June 18, 2013 sanctions order of the San Bernardino County Superior Court.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (o)(3) (failure to report judicial sanctions), by failing to report \$5,241 in judicial sanctions to the State Bar.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

**Case Number 13-O-14023 – The Toran Matter**

Count Four – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to appear on his client’s behalf at a May 16, 2013 Department of Motor Vehicles re-examination hearing.

Count Five – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to promptly refund his client’s unearned advanced fees after performing no legal services of value on his client’s behalf.

Count Six – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

**Case Number 13-O-13999 – The Ward Matter**

Count Seven - respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by misappropriating \$22,316.78 in client funds.

Count Eight – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out funds, in the full amount of \$47,316.78, in respondent’s possession which the client was entitled to receive.<sup>6</sup>

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<sup>6</sup> At the time the NDC was filed, respondent had not paid the “full amount” of \$47,316.78. It remains ambiguous what portion of the \$47,316.78 has or has not been paid. Accordingly, the court lacks clear and convincing evidence regarding how much restitution is currently owed, if any.

Count Nine – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain funds received for the benefit of a client in a trust account.<sup>7</sup>

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) 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, as he was properly served with a copy of the NDC and filed a motion to set aside an earlier default order, which was granted;
- (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 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**

### **Disbarment**

The court recommends that respondent Joseph Young be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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<sup>7</sup> The court notes an apparent contradiction between Counts Eight and Nine. Count Eight states that respondent’s client was entitled to \$47,316.78, while Count Nine states that the client was entitled to \$74,677.52.

**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 Joseph Young, State Bar number 248795, 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: March \_\_\_\_\_, 2015

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LUCY ARMENDARIZ  
Judge of the State Bar Court