

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 10-C-03559-RAH
)	
COLBERN COX STUART, III,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 177897,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Colbern Cox Stuart, III, was convicted of violating Penal Code sections 653m(a) (harassing by telephone) and 653m(b) (repeated harassing by telephone or electronic contact), misdemeanors which may or may not involve moral turpitude or constitute other misconduct warranting discipline. Upon finality of the conviction, 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 did not participate either in person or through counsel, and his default was entered. The State Bar 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

¹ Unless otherwise indicated, all references to rules are to this source. Rule 5.345(C) makes the default procedures in rules 5.80-5.86, with certain exceptions, applicable in conviction proceedings.

an attorney's default is entered for not responding to the notice of hearing on conviction (NOH), and the attorney does not 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.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 November 22, 1995, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 21, 2011, 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. (Rule 5.345.)

Respondent participated at a September 1, 2011, status conference and thereafter had a lengthy conversation with the deputy trial counsel (DTC) in this matter. On September 2, 2011, the State Bar sent respondent a letter to an address he provided to the DTC. Also, respondent contacted the State Bar by email on September 21, 2011, inquiring about the status of his default.

Respondent did not file a response to the NOH. On October 12, 2011, the State Bar filed and properly served a motion for entry of respondent's default at his membership records and at an alternate address he provided. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel

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(E)(2).)

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 October 31, 2011. 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 180 days to file motion to set aside default].) On May 7, 2012, the State Bar filed and properly served the petition for disbarment at respondent's membership records address and at two alternate addresses. 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 except for two voicemails respondent left for the DTC in this matter on November 1 and 4, 2011, indicating his intent to oppose the default. Also on November 4, 2011, the State Bar received from respondent a pleading entitled "Opposition" which bore no proof of service and was not filed with the court; (2) there are no pending disciplinary investigations against respondent; (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 June 4, 2012.

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 conviction are deemed admitted

and no further proof is required to establish the truth of such facts. (Rules 5.345(C) & 5.82.) As set forth below in greater detail, respondent's conviction for harassing by telephone and repeated harassing by telephone or electronic contact support the conclusion that respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 10-C-03559 (Conviction Matter)

Respondent was convicted of violating Penal Code sections 653m(a) (15 counts) and 653m(b) (two counts) because he created, generated and caused to be transmitted a series of approximately 21 or more emails and/or telephone calls to his former spouse that were threatening, obscene and calculated to harass, intimidate and frighten.

Harassing by telephone and repeated harassing by telephone or electronic contact are crimes that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction involve moral turpitude.

Conviction of a crime involving moral turpitude is cause for discipline. (Bus. & Prof. Code, §6101, subd. (a).)

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NOH was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding as he participated in a status conference, spoke to the DTC and contacted the State Bar by email;
- (3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the statement of facts and circumstances surrounding respondent's conviction 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 must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Colbern Cox Stuart, III, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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 Colbern Cox Stuart, III, State Bar number 177897, 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: July _____, 2012

RICHARD A. HONN
Judge of the State Bar Court