

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 12-O-12820-RAH
)	(12-O-13118; 12-O-14327
SCOTT NELSON HARLOW,)	12-O-15779); 12-N-17468 (Cons.)
)	
Member No. 107024,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
)	

Respondent Scott Nelson Harlow (respondent) was charged with 21 counts of misconduct¹ and with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with rule 9.20. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial 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 to be heard. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary

¹ The notice of disciplinary charges indicates that it has 22 counts, but there is no count 21.

² Unless otherwise indicated, all references to rules are to this source.

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.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 this state on December 7, 1982, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 15, 2013, the State Bar filed and properly served the 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 State Bar received a return receipt signed by "Bonnie Kramer" on April 17, 2013.

Thereafter, the State Bar attempted to notify respondent of these proceedings by (1) sending the NDC to respondent to four potential addresses for him discovered by conducting an internet search.⁴ None of the correspondence was returned; and (2) sending an email, which attached the NDC, to an email address for respondent maintained by membership records, notifying respondent that a NDC had been filed against him in State Bar Court.⁵

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(E)(2).)

⁴ Two of these addresses were respondent's membership records address.

⁵ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

On May 22, 2013, respondent answered the State Bar's May 20, 2013 email stating, among other things, that he would file a response to the NDC on May 24, 2013.

Respondent failed to file a response to the NDC. On June 14, 2014, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, to his membership records address and by regular first-class mail to respondent's prior membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar 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 July 2, 2013. The order entering the default was properly 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 February 7, 2014, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, at his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) as of February 7, 2014, respondent has not contacted the State Bar since July 2, 2013, the date the order entering his default was filed and served; (2) there are five disciplinary investigations pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has made a payment resulting from respondent's conduct and has one additional payment pending against respondent. 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 March 5, 2013.

Respondent has a prior record of discipline.⁶ Pursuant to a Supreme Court order filed on July 27, 2012, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years on conditions including that he be suspended for the first one year of probation. Respondent participated in this prior disciplinary matter. The court found that respondent made false statements to his clients; failed to perform legal services with competence or release a client's file; and failed to return unearned fees in willful violation of section 6106 and rules 3-110(A) and 3-700(D)(1) and (2) of the Rules of Professional Conduct.

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 12-O-12820

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to prosecute a client matter and allowing it to be dismissed for failure to prosecute.

Count Two – Respondent willfully violated section 6106 (moral turpitude – misrepresentation) by knowingly, or with gross negligence, making false statements to a client and by creating, or causing to be created, a purported right to attach order and order for issuance

⁶ The court takes judicial notice of the relevant State Bar Court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

of writ of attachment and presenting it to the client as genuine.

Count Three – Respondent willfully violated section 6068, subdivision (m) (failure to inform client of significant developments) by not informing the client that his matters had been dismissed by the court.

Count Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by not refunding any portion of the \$3,500 in advanced unearned attorney fees paid by the client.

Count Five – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation) by failing to respond to the allegations of misconduct as requested by the State Bar in two letters.

Case Number 12-O-13118

Count Six – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by not refunding any portion of the \$650 in advanced unearned attorney fees paid by the client.

Count Seven – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation) by failing to respond to the allegations of misconduct as requested by the State Bar in two letters.

Case Number 12-O-14327

Count Eight – Respondent willfully violated section 6106 (moral turpitude – misrepresentation) by knowingly making false statements to a client, and by creating the purported writ of execution and abstract of judgment.

Count Nine – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to file with the court the order granting the motion for judgment on the pleadings and the judgment for the judge's

signature until April 9, 2009, and by failing to provide any legal services of value after April 9, 2009.

Count 10 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to client inquiries), by failing to respond to a client’s requests for a status update of her case.

Count 11 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by not refunding any portion of the \$1,500 in advanced unearned attorney fees paid by the client.

Count 12 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation), by failing to respond to the allegations of misconduct as requested by the State Bar in two letters.

Case Number 12-O-15779

Count 13 – Respondent willfully violated section 6106 (moral turpitude) by forging, or causing to be forged, the signature of the appointed referee on the final inventory and appraisal.

Count 14 – Respondent willfully violated section 6106 (moral turpitude) by fabricating and recording, or causing to be fabricated or recorded, false letters of administration.

Count 15 – Respondent willfully violated section 6106 (moral turpitude) by assisting the decedent’s cousin in improperly withdrawing all of the estate’s assets.

Count 16 – Respondent willfully violated section 6106 (moral turpitude) by forging, or causing to be forged, the signature of the appointed referee, fabricating the final inventory and appraisal.

Count 17 – Respondent willfully violated section 6106 (moral turpitude) by misrepresenting to his client that he had filed a petition, and fabricating, or causing to be fabricated, the letters testamentary.

Count 18 – Respondent willfully violated section 6106 (moral turpitude) by misappropriating \$605 in client funds.

Count 19 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by not refunding any portion of the \$1,400 in advanced unearned attorney fees paid by the client.

Count 20– Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation), by failing to respond to the allegations of misconduct as requested by the State Bar in two letters.

Case Number 12-N-17468 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys), by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of the Supreme Court’s July 27, 2012 order requiring compliance 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(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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (1) filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address; (2) sent the NDC to respondent by regular, first-class mail to his prior membership records address; (2) attempted to locate respondent’s membership records telephone number; (3) sent an email, which attached the NDC, to an email address for respondent maintained by membership records; and (4) sent the

NDC to respondent by regular, first-class mail to his membership records address and to four other addresses indentified in an on-line search report;

(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 disbarment.

RECOMMENDATION

Disbarment

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

Restitution

The court recommends that respondent be ordered to make restitution to:

(1) Edward Masucci in the amount of \$3,500.00 , plus 10 percent interest per year from December 4, 2008;

(2) Kim Bailey in the amount of \$650.00 , plus 10 percent interest per year from November 4, 2010;

(3) Robin Lohr in the amount of \$1,500.00 , plus 10 percent interest per year from March 1, 2007;

(4) Barbara Donaldson in the amount of \$605.00 , plus 10 percent interest per year from December 2, 2010; and

(5) Barbara Donaldson in the amount of \$1,400.00 , plus 10 percent interest per year from December 2, 2010.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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 Scott Nelson Harlow, State Bar number 228124, 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 _____, 2014

RICHARD A. HONN
Judge of the State Bar Court