

PUBLIC MATTER

FILED

APR 19 2018

STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 13-C-10127-DFM
)	
EDWIN JEFFREY HOWARD,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 134627.)	ENROLLMENT
_____)	

Respondent Edwin Jeffrey Howard (Respondent) was convicted in the Los Angeles County Superior Court of violating Penal Code section 273.5(a) (corporal injury to a spouse/cohabitant/child's parent). Enhancements to this conviction included Respondent's use of a deadly weapon (Penal Code section 12022(b)(1)) and infliction of great bodily injury (Penal Code section 12022.7(e)). Upon finality of the conviction, the Review Department of this court 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 conviction 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 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.¹



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.

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 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.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 June 14, 1988, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 20, 2014, the State Bar Court filed and properly served a notice of hearing on conviction (for case No. 13-C-10127) on Respondent by certified mail, return receipt requested, at his membership records address. The notice of hearing on conviction notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.)

Thereafter, now-Senior Attorney Elizabeth Stine located Respondent at the Valley State Prison in Chowchilla, California. Ms. Stine communicated with Respondent by mail. Respondent requested – through a letter to Ms. Stine – that the present proceedings be continued. Ms. Stine replied to Respondent's letter and advised him that he needed to file a response to the notice of hearing on conviction.

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).)

Respondent failed to file a response to the notice of hearing on conviction. On July 18, 2014, the State Bar properly filed and served a motion for entry of Respondent's default. Respondent did not file a response to the motion; however, due to his incarceration, this court abated these proceedings on August 29, 2014. This matter remained in abatement for the next three years.

On July 27, 2017, Ms. Stine discovered that Respondent was no longer incarcerated. Thereafter, Ms. Stine attempted to locate and communicate with Respondent by: (1) conducting a LexisNexis people search; and (2) calling and leaving a voicemail for Respondent at a possible alternative telephone number identified through the LexisNexis search.³ Despite these efforts, Respondent never filed a response to the notice of hearing on conviction. On October 30, 2017, this matter was unabated.

On November 14, 2017, the State Bar properly filed and served another 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 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 November 30, 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 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.

³ The State Bar noted that Respondent's membership records telephone number was no longer in service.

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 March 8, 2018, the State Bar filed and served a 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 a disciplinary investigation 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 April 10, 2018.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations set forth in Respondent's conviction matter 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 Respondent's conviction matter support the conclusion that Respondent violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case No. 13-C-10127

Respondent was convicted of one felony violation of Penal Code section 273.5(a) (corporal injury to a spouse/cohabitant/child's parent). Enhancements to this conviction included Respondent's use of a deadly weapon (Penal Code section 12022(b)(1)) and infliction of great bodily injury (Penal Code section 12022.7(e)).

The court finds that the facts and circumstances surrounding Respondent's conviction involve moral turpitude. On or about December 2, 2011, Respondent and his girlfriend of ten years had several arguments culminating with Respondent stabbing her with a knife in the stomach, cutting her colon. As a result, Respondent's girlfriend underwent two surgeries and spent five days in the hospital.

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 notice of hearing on conviction was properly served on Respondent;
- (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 Respondent's conviction matter 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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Edwin Jeffrey Howard 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.

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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 Edwin Jeffrey Howard, State Bar number 134627, 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: April 19, 2018



DONALD F. MILES
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 April 19, 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:

EDWIN J. HOWARD
14055 THAITI WAY #301
MARINA DEL REY, CA 90292

EDWIN J. HOWARD
8781 LAKEVIEW APT/RM# 33
RIVERSIDE, CA 92509

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

DESIREE M. FAIRLY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 19, 2018.



Marc Krause
Court Specialist
State Bar Court