

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-10777-DFM
)	
EUGENE CHENG-CHIEN HU,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 130282,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Eugene Cheng-Chien Hu (Respondent) was charged with one count of misconduct. 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.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 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

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).)

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 11, 1987, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 7, 2013, the State Bar filed and properly served the NDC on Respondent by UPS, with a tracking number, to his membership records address.³ The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, the State Bar (1) sent Respondent a letter on June 10, 2013, by first-class mail to his membership records address. The letter contained a copy of the NDC. It was not returned as undeliverable; and (2) sent an email to Respondent on June 19, 2013, at his membership records email address and a private email address informing his that a default would be filed in his matter. The email did not “bounce back.” Respondent did not reply.

Previously, on April 24, 2013, the State Bar wrote to Respondent by first-class mail at his membership records address regarding the availability of an Early Neutral Evaluation Conference (ENEC). On May 6, 2013, Respondent replied, declining the ENEC and acquiescing to the commencement of the disciplinary proceedings.

Respondent failed to file a response to the NDC. On June 24, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by UPS International, with a

³ The NDC was properly served on Respondent’s then-membership address on Chien Kuo South Road in Taipei, Taiwan. Respondent later changed his membership address to an An Ho Road address in Taipei, Taiwan, effective February 7, 2014.

tracking number, to his 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 26, 2013. The order entering the default was properly served on Respondent at his membership records address by UPS International, with a tracking number. 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. 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 14, 2014, the State Bar filed and properly served the petition for disbarment on Respondent by Registered International Mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent had no contact with the State Bar after his default was entered on July 26, 2013; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has no record of prior 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 March 26, 2014.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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).)

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Count One - Respondent willfully violated section 6106 (moral turpitude) by reporting to the State Bar that he had complied with his 25-hour MCLE requirement for the February 1, 2009 through January 31, 2012 compliance period when he knew or was grossly negligent in not knowing that he was not in compliance with the MCLE requirements.

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 (a) filed and properly served the NDC on Respondent by UPS, with a tracking number, at his membership records address; (b) sent Respondent a letter on June 10, 2013, by first-class mail to his membership records address. The letter contained a copy of the NDC. It was not returned as undeliverable; and (c) sent an email to Respondent on June 19, 2013, at his membership records email address and a private email address informing him that a default would be filed in his matter. The email did not "bounce back." Respondent did not reply.
- (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.

RECOMMENDATION

Disbarment

The court recommends that respondent Eugene Cheng-Chien Hu 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 Eugene Cheng-Chien Hu, State Bar number 130282, 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

DONALD F. MILES
Judge of the State Bar Court