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STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 15-O-12609-DFM
)	
JAY MITCHELL VOGEL,)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 136926.)	ENROLLMENT
)	
)	

Respondent Jay Mitchell Vogel (Respondent) was charged with one count of violation of the Rules of Professional Conduct. He failed to participate, either in person or through counsel, and his default was entered. The Office of 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 90 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(F)(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 California on December 7, 1988, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 1, 2016, the State Bar properly filed and served a notice of disciplinary charges (NDC) on Respondent by certified mail, return receipt requested, to 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.) A courtesy copy of the NDC was also sent to Respondent by regular first class mail to his membership records address. On November 16, 2016, the State Bar received a return receipt signed by Respondent.

On December 12, 2016, the State Bar attempted to reach Respondent by telephone at his official membership records telephone number and by email, but was unsuccessful. The State Bar left a voice mail. The State Bar received no response from Respondent.

Respondent failed to file a response to the NDC. On December 19, 2016, the State Bar properly filed and served a motion for entry of Respondent's default by certified mail, return receipt requested. The return receipt was returned by Respondent on January 28, 2017. 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

January 5, 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. He has remained inactively enrolled since that time.

Respondent had contact with the State Bar on three occasions since the default was entered on January 5, 2017. On June 2, 2017, Deputy Trial Counsel Eric Aufdengarten spoke to Respondent by telephone. Respondent acknowledged that he was aware of the order of default. On August 7, 2017, Deputy Trial Counsel Aufdengarten again spoke to Respondent by telephone. Respondent informed the State Bar that he had been working on a motion to vacate the entry of default, but had not completed it due to health issues. On August 14, 2017, Respondent called Deputy Trial Counsel Aufdengarten, in which Respondent was told that if the motion to vacate was not filed by August 18, 2017, a petition for disbarment would be filed.

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 August 21, 2017, the State Bar properly filed and served the petition for disbarment³ on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there have been three contacts with Respondent since his default was entered (June 2, August 7, and August 14, 2017); (2) there are two disciplinary investigations pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.

³ On May 31, 2017, the State Bar filed a petition for disbarment. But the court declined to grant the petition on July 10, 2017, due to the numerous mistakes contained in the petition.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on October 10, 2017.

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(F)(1)(d).)

Case No. 15-O-12609 (Caldwell Matter)

Count 1 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to render an appropriate accounting to client Eric Caldwell's mother, Angela Dempsey, regarding the advanced fees of \$4,000 that he had received, upon the termination of his employment on April 26, 2014.

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 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;
- (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 his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Jay Mitchell Vogel, State Bar number 136926, 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.

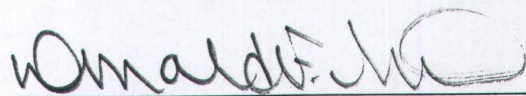
Costs

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 Jay Mitchell Vogel, State Bar number 136926, 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: November 27, 2017



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 Case Administrator 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 November 27, 2017, 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:

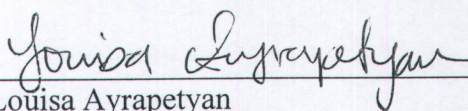
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAY M. VOGEL
LAW OFC JAY M VOGEL
909 WESTBOURNE DR APT 112
WEST HOLLYWOOD, CA 90069 - 4124

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

ERIC J. AUFDENGARTEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 27, 2017.



Louisa Ayrapetyan
Case Administrator
State Bar Court