

**PUBLIC MATTER**

**FILED** *SP*

**JAN 11 2018**

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	Case Nos. 16-O-13333
	)	(16-O-13371)-PEM
DANIEL HERBERT NEUFELD,	)	
	)	DECISION AND ORDER OF
A Member of the State Bar, No. 68476.	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT

Respondent Daniel Herbert Neufeld (respondent) is charged with five counts of misconduct. He failed to participate in these proceedings either in person or through counsel, and his default was entered. Thereafter, 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.<sup>1</sup>

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 that the court recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

<sup>2</sup> 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**

### **Jurisdiction**

Respondent was admitted to practice law in this state on May 11, 1976, and has been a member since then.

### **Procedural Requirements Have Been Satisfied**

On June 28, 2017, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at respondent's membership records address.<sup>3</sup> The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The U.S. Postal Service returned the NDC to the State Bar bearing a stamp, "NO LONGER AT THIS ADDRESS."

Thereafter, the State Bar took additional steps to notify respondent about these proceedings. The State Bar sent a courtesy copy of the NDC by regular first-class mail to an alternate address; attempted to obtain a second alternate address for respondent from the State Bar Office of Probation;<sup>4</sup> attempted to call respondent at his membership records telephone number, but the number was no longer in service; and attempted to email respondent at his membership records email address and at an alternate email address, but both emails were returned as undeliverable.

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<sup>3</sup> The State Bar declaration attached to the motion for entry of default indicates that the NDC was served by regular first-class mail. However, the proof of service attached to the NDC indicates that the NDC was served by certified mail and includes the return receipt article number.

<sup>4</sup> Respondent was recently on disciplinary probation in case No. 12-O-10055.

Respondent failed to file a response to the NDC. On August 3, 2017, the State Bar properly filed and served a motion for entry of respondent's default. The motion complied with all of 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 August 21, 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 of California 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 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 November 28, 2017, the State Bar properly filed and served the petition for disbarment on respondent at his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has one prior discipline record; and (4) the Client Security Fund has not paid any claims as a result of respondent's misconduct. 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 December 27, 2017.

### **Prior Record of Discipline**

Respondent has one prior record of discipline. Pursuant to an order of the Supreme Court filed on July 31, 2014, Respondent was suspended for one year, stayed, and placed on probation for two years subject to conditions. Respondent stipulated that he was culpable of sharing legal fees with a nonlawyer, in willful violation of rule 1-320 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, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

### **Case No. 16-O-13333 (The Heskett Matter)**

Count One - Respondent willfully violated section 6106.3, subdivision (a) (violation of Civil Code section 2944.7), by collecting \$13,000 in a loan modification matter before respondent had fully performed all services respondent had been contracted to perform or represented to the client that respondent would perform.

Count Two – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (collecting an illegal fee) by collecting \$13,000 in a loan modification matter before respondent had fully performed all services respondent had been contracted to perform or represented to the client that respondent would perform, which was illegal pursuant to Civil Code section 2944.7 and section 6106.3.

Count Three - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render an accounting) by failing to provide his client with an accounting of the \$13,000 advance fee that respondent received from his client.

Count Four - Respondent willfully violated rule 3-700(D)(2) (failure to refund unearned fees) by failing to promptly refund, upon termination of his employment, any part of the unearned \$13,000 advanced fee paid by his client, as the advanced fee was illegal.

**Case No. 16-O-13371 (The Probation Violation Matter)**

Count Five - Respondent willfully violated section 6068, subdivision (k), (duty to comply with probation conditions), by failing to comply with the conditions attached to his disciplinary probation in Supreme Court case No. S218696 (State Bar case No. 12-O-10055). Respondent failed to timely submit quarterly reports that were due by April 10, 2015, July 10, 2015, January 10, 2016, and October 10, 2016; and failed to pay \$16,050 in restitution by July 16, 2016.

**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 disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that Daniel Herbert Neufeld, State Bar number 68476, 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 also recommends that respondent be ordered to make restitution to Douglas Heskett in the amount of \$13,000 plus 10 percent interest per year from November 4, 2011. 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**

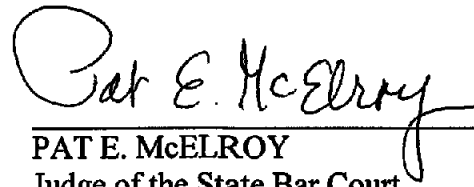
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Daniel Herbert Neufeld, State Bar number 68476, 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: January 11, 2018

A handwritten signature in black ink that reads "Pat E. McElroy". The signature is written in a cursive style with a large initial "P".

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PAT E. McELROY  
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 San Francisco, on January 11, 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 San Francisco, California, addressed as follows:

DANIEL HERBERT NEUFELD  
LAW OFFICE OF DANIEL H  
NEUFELD  
4115 BLACKHAWK PLAZA CIR  
STE 100  
DANVILLE, CA 94506

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

Susan I. Kagan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 11, 2018.

  
Laurretta Cramer  
Case Administrator  
State Bar Court