

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

FILED

SEP 21 2018

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of) Case No.: 16-O-16551-YDR
)
JOHN FREDERICK LeBOUEF,) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE
A Member of the State Bar, No. 61851.) ENROLLMENT
)
)
_____)

In this matter, respondent John Frederick LeBouef (Respondent) was charged with ten counts of misconduct. He failed to appear at trial and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 45 days, OCTC 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.



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).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 18, 1974, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 6, 2018, OCTC filed and properly served a notice of disciplinary charges (NDC) on Respondent's attorney, Stephen Strauss, at his membership records address by certified mail, return receipt requested.³ The NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On February 28, 2018, Respondent, by and through his attorney, filed his response to the NDC. On March 12, 2018, Respondent and his attorney appeared before this court for an in-person status conference.

On March 26, 2018, Respondent filed a Substitution of Attorney stating that he would be representing himself in pro per.

On June 8, 2018, OCTC appeared for trial but Respondent did not. OCTC presented testimony from one witness and the court admitted three exhibits into evidence.⁴ Finding that all of the requirements of rule 5.81(A) were satisfied, the court issued and properly served an order entering Respondent's default that same day. The order notified Respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

³ OCTC also served a courtesy copy of the NDC on Respondent at his membership records address by certified mail, return receipt requested.

⁴ One of the exhibits is a 2016 California Second Appellate District decision finding that Respondent used his law license to enrich himself by taking advantage of his elderly and mentally infirm client. The Appellate Court described Respondent's conduct as "disturbing" and potentially warranting criminal culpability. (Exh. 5.)

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) On July 30, 2018, OCTC filed the petition for disbarment. As required by rule 5.85(A), OCTC reported in the petition that: (1) since default was entered, OCTC has had no contact with Respondent; (2) Respondent has no other disciplinary investigations pending; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's misconduct. 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 August 31, 2018.

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-16551

Count One – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by exercising undue influence on his client by drafting or causing to be drafted a revocable trust and last will and testament for his client in which Respondent was identified as the main beneficiary to the trust.

Count Two – OCTC alleged that Respondent failed to comply with all laws, in violation of Business and Professions Code section 6068, subdivision (a), by violating Probate Code section 21380, subdivision (a)(1). Probate Code section 21380, subdivision (a)(1), creates a rebuttable presumption of fraud or undue influence when a donative transfer is drafted by the

beneficiary. This statute is evidentiary in nature, as it creates a rebuttable legal presumption. As an evidentiary presumption, this statute cannot be “violated,” as alleged in the NDC. Count Two, therefore, has not been established by clear and convincing evidence and is hereby dismissed with prejudice.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – breach of fiduciary duties) by repeatedly placing his interests ahead of those of the other beneficiaries of his client’s trust – including using trust property for his own personal use for three years without paying rent (constituting a \$200,000 loss in rental value), using \$503,000 to pay for his defense in litigation related to the trust, and using \$14,000 to pay Respondent’s utility bills.

Count Four – Respondent willfully violated Business and Professions Code section 6103.6 by violating Probate Code section 15687. Respondent willfully violated Probate Code section 15687 by receiving compensation both for legal services and for duties performed as trustee for his client’s trust without obtaining an order permitting dual compensation or providing 30 days’ advanced notice to the beneficiaries regarding Respondent’s intent to collect dual compensation.

Count Five – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by engaging in the suppression of testamentary evidence. Specifically, Respondent removed his client’s original Last Will and Testament and Revocable Trust shortly after his client’s death, in an effort to hinder the litigation of his client’s probate.

Count Six – Respondent, as trustee, willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws), by using trust property for his own personal use without compensation to the trust, in willful violation of Probate Code section 16002, subdivision (a) [duty of trustee to administer trust solely in the beneficiaries’ interest].

Count Seven – Respondent, as trustee, willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws), by using trust property for his own personal profit and for purposes unconnected with the trust, in willful violation of Probate Code section 16004, subdivision (a) [duty of trustee not to use or deal with trust property for trustee’s own profit or other purposes unconnected with the trust].

Count Eight – Respondent, as trustee, willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws), by failing to preserve trust property, in willful violation of Probate Code section 16006 [duty of trustee to take reasonable steps to preserve trust property].

Count Nine – Respondent, as trustee, willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws), by failing to administer his client’s trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use, in willful violation of Probate Code section 16040, subdivision (a) [trustee shall administer trust with reasonable care, skill, and caution].

Count Ten – OCTC alleged that Respondent violated rule 3-300 of the Rules of Professional Conduct by entering into a “business transaction” with his client without advising the client in writing that he may seek the advice of an independent lawyer and without giving the client reasonable opportunity to seek that advice. It is unclear, however, how the naming of a beneficiary constitutes a “business transaction” for the purposes of rule 3-300. Accordingly, Count Ten has not been established by clear and convincing evidence and is dismissed with prejudice.⁵

⁵ Rule 3-300 also applies to instances when an attorney knowingly acquires an ownership, possessory, security, or other pecuniary interest adverse to the client; however, the NDC did not allege any such violations.

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) Respondent had actual notice of the proceedings prior to the entry of his default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of 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 appear for the trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Discipline - Disbarment

It is recommended that John Frederick LeBouef, State Bar Number 61851, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is also recommended 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 imposing discipline in this matter.⁶

⁶ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers*

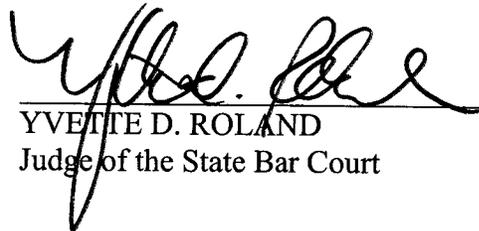
Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that John Frederick LeBouef, State Bar number 61851, 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: September 20, 2018


YVETTE D. ROLAND
Judge of the State Bar Court

v. State Bar (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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 September 21, 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:

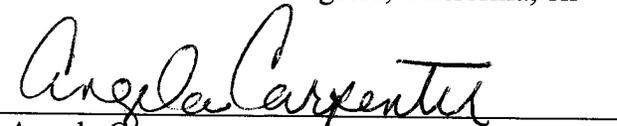
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOHN FREDERICK LEBOUF
PO BOX 69618
WEST HOLLYWOOD, CA 90069

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

Ross E. Viselman, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 21, 2018.



Angela Carpenter
Court Specialist
State Bar Court