



FILED

AUG 28 2018

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

PUBLIC MATTER

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of)	Case No. 17-O-01369-YDR
)	
HOWARD STEPHEN LEVINE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 61881.)	ENROLLMENT
)	

Respondent Howard Stephen Levine (Respondent) was charged with one count of violation of the Business and Professions Code.¹ He 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 (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

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

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

(NDC) and the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting the court to recommend the attorney's disbarment.³

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 20, 1974, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 21, 2017, OCTC 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.) The NDC was returned as undeliverable on December 12, 2017.

On December 18, 2017, OCTC made several attempts to reach Respondent by telephone and by email, but was unsuccessful. OCTC left a voice mail at a telephone number associated with Respondent's law firm; OCTC also tried to telephone Respondent at four other alternate telephone numbers, based on a LexisNexis search. OCTC did not receive any response from Respondent.

On December 21, 2017, a courtesy copy of the NDC and a letter, informing him that a motion for entry of default would be filed if he did not file a response to the NDC, were also sent

³ 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).)

to Respondent at three additional alternate addresses. On January 2, 2018, two of the mailings were returned as undeliverable.

Respondent failed to file a response to the NDC. On January 4, 2018, OCTC properly filed and served a motion for entry of Respondent's default by certified mail, return receipt requested. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by OCTC 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. On February 15, 2018, the mailing was returned as undeliverable.

Respondent did not file a response to the motion, and his default was entered on February 6, 2018. 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 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 June 13, 2018, OCTC properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) Respondent has one pending investigation matter; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has not paid any claims as a result of 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 July 12, 2018.

Prior Record of Discipline

Respondent has two prior records of discipline. On May 28, 1998, Respondent stipulated to a private reproof for failing to promptly notify client of funds received, failing to promptly pay client funds, and failing to employ means consistent with the truth, in one client matter.

In his second prior record of discipline, Respondent was suspended for two years, the execution of which was stayed, and placed on probation for three years, with conditions of probation, including six months' actual suspension. Respondent's stipulated misconduct in four matters involved failure to maintain client funds, misappropriation, issuance of insufficiently funded checks, and failure to render an accounting.

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 and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case No. 17-O-01369 (State Bar Matter)

Count 1 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to OCTC's May 19 and September 8, 2017 letters.

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

It is recommended that **Howard Stephen Levine**, State Bar number 61881, 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 further 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 in this proceeding.

Costs

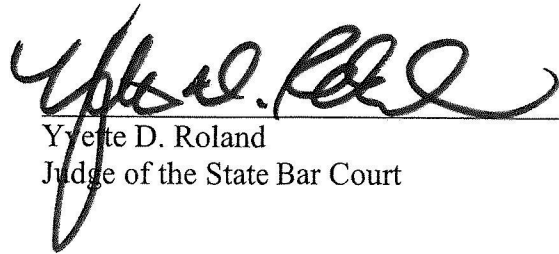
It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to section 6086.10, subdivision (c), 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 **Howard Stephen Levine**, State Bar number 61881, 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: August 24, 2018



Yvette D. Roland
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 August 28, 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:

HOWARD STEPHEN LEVINE
HOWARD S LEVINE & ASSOCIATES
9482 URBANA AVE
ARLETA, CA 91331

- 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 August 28, 2018.



Angela Carpenter
Court Specialist
State Bar Court