

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

FILED *up.8*

JAN - 3 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No. 17-O-02962-CV
)	
KYLE SHELDON HACKETT,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 194658.)	ENROLLMENT
_____)	

Respondent Kyle Sheldon Hackett (Respondent) is charged with four 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 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 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, OCTC will file a petition requesting that the court recommend the attorney's disbarment.²



¹ 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.

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

Jurisdiction

Respondent was admitted to practice law in this state on March 30, 1998, and has been a member since then.

On March 15, 2018, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's 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 certified mail return receipt was signed, but the signatory is unknown.

Thereafter, OCTC took additional steps to notify Respondent about these proceedings by: (1) attempting to contact Respondent by telephone at his membership records telephone number; (2) performing a LEXIS search to locate Respondent; and (3) emailing a copy of the NDC to Respondent at an alternate email address.

Respondent failed to file a timely response to the NDC. On April 13, 2018, OCTC 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 OCTC 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 April 16, 2018, after OCTC filed the motion for entry of default, OCTC received an email from Respondent wherein Respondent acknowledged that he received notice of the NDC.

Respondent sought additional time to file a response to the NDC – he wanted until April 26, 2018. Since OCTC had already filed a default motion, OCTC advised Respondent to file his response “ASAP.” Respondent did not file a response to the NDC or the default motion, and his default was entered on May 16, 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 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 September 18, 2018, OCTC properly filed and served the petition for disbarment on Respondent at his 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) there are other disciplinary matters pending against Respondent; (3) Respondent has two prior discipline records; 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 November 7, 2018.

Prior Record of Discipline

Pursuant to a stipulation and order of the Hearing Department filed on March 29, 2007, Respondent received a public reproof with conditions. Respondent was culpable of four ethical violations in a single client matter. Respondent stipulated that he failed to perform legal services with competence, in violation of rule 3-110(A) of the Rules of Professional Conduct; failed to respond to his client’s reasonable status inquiries, in violation of section 6068, subdivision (m); failed to take reasonable steps to avoid reasonably foreseeable prejudice to a client once

Respondent's employment was terminated, in violation of rule 3-700(A)(2) of the Rules of Professional Conduct; and failed to cooperate in a disciplinary investigation, in violation of section 6068, subdivision (i). There were no aggravating circumstances, and Respondent's lack of a prior discipline record was the sole mitigating factor.

In his second discipline record, pursuant to an order of the Supreme Court filed on September 15, 2016, Respondent was suspended for one year, stayed, and placed on probation for two years subject to conditions. Respondent stipulated to a single count of misconduct in one client matter. Respondent stipulated that he violated rule 4-200(A) of the Rules of Professional Conduct by entering into an agreement that allowed for a contingency fee in a medical malpractice matter in excess of the limits provided for in section 6146, which constituted an agreement for an illegal fee. Respondent's misconduct was aggravated by his prior record of discipline, but tempered by the lack of client harm and Respondent's pretrial stipulation.

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. 17-O-02962 (The Aghajanian Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to respond to or comply with court-ordered discovery, and failing to oppose a motion for summary judgment, and a motion to dismiss, which allowed a lawsuit to be dismissed contrary to a client's interests.

Count Two – Respondent willfully violated section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform his client that the superior court dismissed a lawsuit because Respondent failed to respond to discovery and failed to oppose dispositive motions.

Count Three – Respondent willfully violated section 6103 (duty to obey a court order) by failing to comply with the Los Angeles Superior Court’s order directing Respondent to pay \$1,650 in discovery sanctions.

Count Four – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 17-O-02962.

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 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 Respondent’s disbarment.

RECOMMENDATIONS

Discipline - Disbarment

It is recommended that Kyle Sheldon Hackett, State Bar Number 194658, 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 imposing discipline in this matter.³ Failure to do so may result in disbarment or suspension.

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.

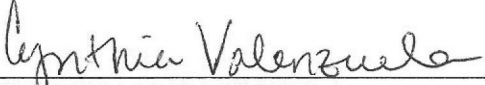
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Kyle Sheldon Hackett, State Bar number 194658, be involuntarily enrolled as

³ 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 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).)

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 3, 2019



CYNTHIA VALENZUELA
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 January 3, 2019, 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:

KYLE S. HACKETT
LAW OFFICES OF KYLE S. HACKETT
2355 WESTWOOD BLVD # 1105
LOS ANGELES, CA 90064

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

ROSS VISELMAN, Enforcement Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 3, 2019.



Paul Songco
Court Specialist
State Bar Court