

**FILED**

**DEC 13 2018** *VC*

**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-01304-YDR
	)	
IRA COHEN,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 79888.	)	ENROLLMENT
_____	)	

Respondent Ira Cohen (Respondent) was charged with five counts of misconduct in violation of the California Rules of Professional Conduct and the Business and Professions Code. Even though Respondent had notice of the trial date, he failed to appear at the 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.<sup>1</sup>

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, the OCTC will file a petition requesting the court to 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.

<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**

Respondent was admitted to practice law in this state on June 23, 1978, and has been a member since then.

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

On May 11, 2018, the OCTC filed and properly served a Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, at his membership records address. 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 June 13, 2018, Respondent was present at the initial status conference in this matter. Respondent was ordered to file a response to the NDC by June 18, 2018; the matter was referred for a settlement conference scheduled for July 23, 2018; the pretrial conference was set for August 20, 2018; and the trial was scheduled to commence on August 24, 2018. An order dated June 14, 2015, setting forth the August 24, 2018 trial date, was filed and served on June 15, 2018, by first-class mail, postage paid, addressed to Respondent at his membership records address.

On June 18, 2018, Respondent filed a response to the NDC.

On August 24, 2018, the OCTC appeared for trial but Respondent did not. 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), effective three days after service of the order, and he has remained inactive since that time. The order was properly served on August 24, 2018, by certified mail, return receipt requested, addressed to Respondent at his membership records address. (Rule 5.81(B).)

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 October 16, 2018, the OCTC properly filed and served a petition for disbarment on Respondent.<sup>3</sup> As required by rule 5.85(A), the OCTC reported in the petition that: (1) it has not had contact with Respondent since his default was entered; (2) there are no other investigations or disciplinary matters pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made payments resulting from 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 20, 2018.

### **Prior Record of Discipline**

Respondent has been disciplined on one prior occasion. Pursuant to the Supreme Court order filed on July 22, 2010, in Supreme Court matter S183390 (State Bar Court Nos. 03-O-00950; 05-O-04634; 06-O-10677; 07-O-12539 Cons.), Respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for three years, including a sixty-day period of actual suspension. Beginning in January of 2004 through April of 2010,<sup>4</sup> Respondent stipulated that he failed to perform legal services with competence (three counts), improperly withdrew from employment, and failed to promptly release client papers and

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<sup>3</sup> The petition for disbarment was served by certified mail, return receipt requested, to Respondent at his membership records address. A courtesy copy was sent by regular first-class mail to the same address.

<sup>4</sup> The court consolidated case numbers 03-O-00950, 05-O-04634, 06-O-10677, and 07-O-12539 on April 1, 2010.

property in willful violation of the California Rules of Professional Conduct, rules 3-110(A), 3-700(A)(2), and 3-700(D)(1). Respondent further admitted to engaging in acts of moral turpitude (two counts), failing to obey a court order, failing to cooperate in the OCTC's disciplinary investigation (two counts), failing to report judicial sanctions imposed against him, and failing to communicate significant developments to his client in willfully violation of Business and Professions Code sections 6106, 6103, and 6068, subdivisions (i), (o)(3), and (m).

**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(2).) 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 Number 17-O-01304 (The Hample Matter)**

Count One – The OCTC failed to prove by clear and convincing evidence that Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence). Though the OCTC claims that Respondent failed "...to take any action following the filing of a petition on or about May 20, 2016..." insufficient evidence was provided of Respondent's conduct to constitute intentional, reckless, or repeated failures to perform competent legal services. The court therefore dismisses this count with prejudice.

Count Two – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers and property), by failing to promptly release to his client, after termination of his employment, all the client's papers and property following the client's request for the client's file.

Count Three – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees), by failing to promptly refund, upon his termination, any part of the \$6,500 in advanced fees that he had received from his client that he had not earned.

Count Four – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to maintain records of client property and render appropriate accounts), by failing to render an appropriate accounting to his client regarding the \$6,500 in advanced fees that he had received from his client.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond promptly to status inquiries), by receiving and failing to respond promptly to one telephonic and four written inquiries made by his client between on or about November 22, 2016 and February 7, 2017.

**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 this proceeding and adequate notice of the trial date 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.

### **RECOMMENDATION**

#### **Disbarment**

It is recommended that Ira Cohen, State Bar Number 79888, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

#### **Restitution**

It is further recommended that Respondent make restitution to Robert Hample or such other recipient as may be designated by the Office of Probation or the State Bar Court, in the amount of \$6,500 plus 10 percent interest per year from March 15, 2017. 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**

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.<sup>5</sup> Failure to do so may result in disbarment or suspension.

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<sup>5</sup> 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).)

## Costs

It is further recommended 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. 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 Ira Cohen, State Bar number 79888, 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: December 13, 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 December 13, 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:

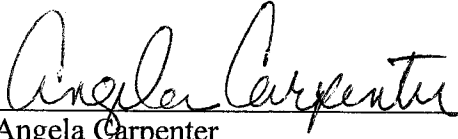
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

IRA COHEN  
LAW OFC IRA COHEN  
31355 OAK CREST DR  
STE 220  
WESTLAKE VILLAGE, CA 91361 - 4698

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

Terese E. Laubscher, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 13, 2018.

  
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Angela Carpenter  
Court Specialist  
State Bar Court