

FILED

MK

JUL 23 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-03617-DFM
)	
SCOTT BUNKER HAYWARD,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 138582.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

Respondent Scott Bunker Hayward (Respondent) was charged with failing to comply with numerous conditions of his prior disciplinary probation, in violation of section 6068, subdivision (k) of the Business and Professions Code.¹ He then failed to participate, either in person or through counsel, in this proceeding 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 12, 1988, and has been a member since then.

Procedural Requirements Have Been Satisfied

On January 2, 2018, OCTC properly filed and served an amended 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.) A courtesy copy of the NDC was also sent to Respondent by regular first class mail at his membership records address. The mailings were not returned as undeliverable.

On January 30, 2018, OCTC reached Respondent by telephone at his official membership records telephone number and informed him that a motion for entry of default would be filed if he did not file a response to the NDC. Respondent answered, "That's fine."

Respondent then failed to file a response to the NDC. On January 31, 2018, OCTC properly filed and served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to

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).)

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 2, 2018, OCTC received the return receipt, signed by Tracy Hayward.

Respondent did not file a response to the motion, and his default was entered on February 21, 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].) As a result, on May 29, 2018, OCTC properly filed and served a 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) there is no other disciplinary matter pending against Respondent; (3) Respondent has two records of prior 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 June 27, 2018.

Prior Record of Discipline

Respondent has been disciplined on two prior occasions.

Case Nos. 10-O-00132 (10-O-04786; 10-O-05180; 10-O-05183)

In Respondent's first record of discipline, pursuant to a Supreme Court order filed on December 21, 2010, Respondent was suspended for one year, the execution of which was stayed, and placed on probation for two years, with conditions of probation not including any period of

actual suspension. Respondent's stipulated misconduct in four matters involved violations of rule 1-310 (forming a partnership with a non-lawyer in the practice of law); rule 1-320(A) (sharing fees with non-lawyers); rule 3-700(D)(2) (failing to return unearned fees); rule 1-400(D)(2) (sending deceptive communication to the public); and section 6068, subd. (a) (failing to support constitution and laws of United States and California by violating sections 14701, subdivision (a), and 14702 (solicitations for financial services)).

Case No. 14-C-00022

In his second prior record of discipline, pursuant to a Supreme Court order filed on January 20, 2017, Respondent was suspended for two years, the execution of which was stayed, and placed on probation for five years, with conditions of probation not including any period of actual suspension, for his criminal convictions which did not involve moral turpitude but did involve other misconduct warranting discipline. He was convicted of misdemeanor violations of Penal Code section 245, subdivision (a)(4) (assault with force likely to produce great bodily injury), and sections 236 and 237, subdivision (a) (false imprisonment).

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.) 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-03617 (Probation Violation Matter)

Count 1 – Respondent willfully violated section 6068, subdivision (k), by violating the conditions attached to his disciplinary probation in Supreme Court case No. S238646, including failing to schedule a required meeting with a probation deputy; failing to submit a medical form;

failing to provide proof of treating psychiatrist's evaluation; failing to submit a copy of treating psychiatrist's waiver; failing to submit three quarterly reports, including a declaration of compliance with his criminal probation, due April 10, July 10, and October 10, 2017; and failing to submit mental health reports due April 10, July 10, and October 10, 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) 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 **Scott Bunker Hayward**, State Bar number 138582, 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 **Scott Bunker Hayward**, State Bar number 138582, 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: July 23, 2018



DONALD F. MILES
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 July 23, 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:

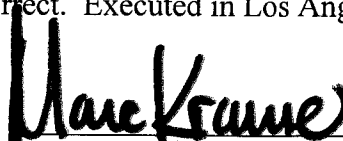
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SCOTT B. HAYWARD
12612 LEMONA LN
SANTA ANA, CA 92705 - 8411

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

ANGIE ESQUIVEL, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 23, 2018.



Marc Krause
Court Specialist
State Bar Court