

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 09-O-14066-DFM (10-O-03780)
)	
ERIC JON PROSSER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 185726,)	ENROLLMENT
)	
A Member of the State Bar.)	

Respondent Eric Jon Prosser (Respondent) was charged with six counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) 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 180 days, the State Bar 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 this state on December 16, 1996, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 24, 2011, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at 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 by the U.S. Postal Service as undeliverable. On June 22, 2011, courtesy copies of the NDC were sent by regular mail to two alternate addresses found through an internet search. One mailing was returned as undeliverable while the other was not.

The State Bar attempted to reach Respondent at his official membership records email address, at his official membership records telephone number, and at another telephone number found through an internet search.

Respondent failed to file a response to the NDC. On June 27, 2011, the State Bar filed and properly 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

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(E)(2).)

State Bar 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, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on July 14, 2011. 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, and 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 180 days to file motion to set aside default].) On March 12, 2012, the State Bar sent letters to Respondent at his official membership records address and to the two alternate addresses by certified mail. The letters informed Respondent of the State Bar's intent to file a petition for disbarment. Two of the letters were returned as undeliverable, but one letter was delivered and the return receipt was signed "Wanda Prosser." On the same day, the State Bar also sent a copy of the letter to Respondent's official membership records email address.

On March 26, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no disciplinary matters pending; (3) Respondent has one record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of Respondent's misconduct in this matter. 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 April 26, 2012.

Respondent has been disciplined on one prior occasion.⁴ Respondent also failed to file a response to the NDC in that matter, and his default was entered. Pursuant to a Supreme Court order filed on March 18, 2011, Respondent was suspended for one year, the execution of which was stayed, and he was actually suspended from the practice of law for a minimum of 60 days and until the State Bar Court grants a motion to terminate his suspension. The misconduct involved two client matters. Respondent failed to communicate or inform his clients of significant developments, improperly withdrew from employment, failed to cooperate with the State Bar, and failed to update his official membership records address.

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(E)(1)(d).)

Case Number 09-O-14066 (The Rossler 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 file the proof of service as ordered by the court on August 15, 2008, and by failing to appear at the March 20, 2009 Order to Show Cause hearing.

Count Two - Respondent willfully violated section 6103 (failure to obey a court order) by failing to file the proof of service within 45 days of August 15, 2008; by failing to appear in

⁴ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

court on January 30, March 20, April 17, and May 22, 2009; and by failing to pay the court-ordered sanctions.

Count Three - Respondent willfully violated section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to report to the State Bar, in writing, within 30 days of the time he had knowledge of the imposition of judicial sanctions against him.

Case Number 10-O-03780 (The Ummel Matter)

Count Four - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to take any action to protect his clients' interests in the appeal after receiving notice of its default.

Count Five - Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to release the client file to his clients' new attorney at their request.

Count Six - Respondent willfully violated section 6068, subdivision (j) (failure to update membership address) by failing to maintain a current address and telephone number on the official membership records of the State Bar.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and Respondent's disbarment must be 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, as the NDC was served on Respondent at his membership records address and to two alternate addresses; and the State Bar attempted to reach Respondent by telephone at two telephone numbers and by email;

(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 must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent **Eric Jon Prosser**, State Bar number 185726, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Rule 9.20

The court also recommends 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

The court further recommends 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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Eric Jon Prosser**, State Bar number 185726, 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 _____, 2012

DONALD F. MILES
Judge of the State Bar Court