

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 10-H-06418-PEM;
)	11-N-11380-PEM (11-O-11574)
)	(Cons.)
KRIS PATRICK THOMPSON,)	
Member No. 154866,)	DECISION AND ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT
)	
A Member of the State Bar.)	

In two separate notices of disciplinary charges, respondent Kris Patrick Thompson (respondent) was charged with (1) violating two of the conditions attached to a public reproof imposed on respondent in 2007, (2) failing to comply with California Rules of Court, rule 9.20(c); and (3) violating two of the conditions of the disciplinary probation imposed on him in 2010. Even though respondent had actual notice of the trial setting in this consolidated proceeding, respondent failed to appear at the trial, and his default was entered. Thereafter, the Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is

¹ Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

entered for failing to appear at trial and if the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that all of 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 the practice of law in California on December 16, 1991, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

In Spring 2011, the State Bar filed two separate disciplinary proceedings against respondent. In each case, the State Bar properly served the notice of disciplinary charges (NDC) on respondent. At a status conference on July 25, 2011, the court consolidated the two proceedings for all purposes and then set the consolidated proceeding for trial beginning on September 28, 2011. Respondent participated in the July 25, 2011 status conference, and the order from that status conference was served on respondent by first-class mail, postage paid, at his membership-records address. (Rule 5.81(A).)

On July 26, 2011, respondent filed a response to the consolidated NDC's.

On the morning of trial on September 28, 2011, respondent sent Deputy Trial Counsel Brandon K. Tady (DTC Tady) an email stating that he woke up sick and could not travel. On September 28, 2011, the State Bar appeared for trial, but respondent did not.

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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(E)(2).)

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default in an order filed on March 15, 2012. The order was properly served on respondent by certified mail, return receipt requested, at respondent's membership-records address. (Rule 5.81(B).) The order notified respondent that, if he did not timely move to set aside 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 inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On July 13, 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) the State Bar has not had any contact with respondent since his default was entered; (2) there are no other investigations or disciplinary charges pending against respondent; (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 did not respond to the petition for disbarment or move to set aside or vacate his default. The case was submitted for decision on August 9, 2012.

Respondent has been disciplined on two prior occasions. The court grants the State Bar's September 14, 2011 request to take judicial notice of the pertinent State Bar Court records regarding respondent's two prior records of discipline and admits those records, which are attached to the State Bar's request, into evidence.

In 2007, respondent was publicly reprovved with conditions attached for three years as a result of his 2005 conviction of violating Vehicle Code section 23152(a) (driving under the influence of drugs or alcohol) with an admitted prior conviction for violating the same section in

2000. Respondent's conviction with an admitted prior was found to involve other misconduct warranting discipline. Respondent participated in this prior disciplinary matter.

In late 2010, respondent was placed on two years' stayed suspension and three years' probation with conditions, including that he be suspended during the first ninety days of his probation, as a result of his repeated failures to comply with the conditions attached to his 2007 public reproof. Respondent participated in this disciplinary matter.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the consolidated NDC's 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 consolidated NDC's 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(E)(1)(d).)

Case Number 10-H-06418 (Reproof Matter)

Count One – respondent willfully violated rule 1-110 of the Rules of Professional Conduct (failure to comply with conditions of reproof) by failing to submit, to the State Bar's Office of Probation, any of his last six reproof reports or proof of his attendance and successful completion of the State Bar's Ethics School in accordance with the conditions attached to respondent's 2007 public reproof.

Case Number 11-N-11380 (Rule 9.20 Matter)

Count One – respondent willfully violated California Rules of Court, rule 9.20(c) (filing proof of compliance) by failing to file, with the State Bar Court, an affidavit showing that he fully complied with the Supreme Court's November 9, 2010 disciplinary order directing respondent to comply with rule 9.20.

Case Number 11-O-11574 (Disciplinary Probation Matter)

Count two – respondent is charged with willfully violating Business and Professions Code section 6068, subdivision (k) (failing to comply with conditions of disciplinary probation) by failing “to complete a substance abuse evaluation by a member of [the] American Society of Substance Abuse Medicine (ASSAM) as well as [failing] to provide to the Office of Probation a signed waiver allowing the Office of Probation to obtain a copy of the ASSAM evaluation and access to his treatment records by February 7, 2011,” as required under the condition of a three-year disciplinary probation that was imposed on respondent in 2010. The conditions of respondent’s 2010 disciplinary probation, however, did not (and do not) require that respondent complete a substance abuse evaluation by a member of ASSAM. Nor do the conditions of respondent’s 2010 probation require that respondent provide the Office of Probation with a signed waiver by February 7, 2011. Accordingly, count two is DISMISSED with prejudice.

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) respondent had actual notice of this proceeding and of the trial date prior to entry of the 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 the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

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Despite actual notice and opportunity, respondent failed to appear for trial in this consolidated 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 Kris Patrick Thompson be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, 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 and that the costs be 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 Kris Patrick Thompson, State Bar Number 154866, 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: October __, 2012.

PAT McELROY
Judge of the State Bar Court