

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 10-O-07138-PEM
)	
GUY ALLISON ODOM, JR.,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 77618,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Guy Allison Odom, Jr., (respondent) was charged with (1) committing acts involving moral turpitude, dishonesty or corruption by misappropriating \$175,304.51 in entrusted funds; and (2) failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled as a trust account. 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 the Rules of Procedure of the State Bar, rule 5.85.¹

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),

¹ Unless otherwise indicated, all references to rules are to this source.

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.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 December 21, 1977, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 6, 2011, a 20-day letter was mailed to respondent's then counsel. On April 12, the State Bar received a letter from respondent's counsel, which showed a "cc" to respondent, stating that he no longer represented respondent. A copy of the 20-day letter was then mailed that day to respondent at his State Bar membership records address.

On May 12, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular, first-class mail 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 return card was received by the State Bar on May 16, 2011, signed by "Megan Brown." The NDC mailed by regular, first-class mail was not returned by the U.S. Postal Service.

Thereafter, the State Bar twice attempted to reach respondent by telephone at his official membership records telephone number, but received a telephone company recording. The State Bar also called directory assistance for the area which includes respondent's office membership

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).)

records address; however, no new telephone numbers for respondent were obtained. The State Bar also sent respondent an email message to two e-mail addresses.³ The State Bar received automatic responses to both emails. However, shortly after receiving one of the automatic responses, the State Bar received an email response requesting that the State Bar email respondent a copy of the NDC. The State Bar did so, and thereafter, the State Bar received a return email message requesting that a disbarment stipulation be sent.

Respondent failed to file a response to the NDC. On June 7, 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 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 his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on June 23, 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 also 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 February 2, 2012, the State Bar filed a 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 nine other disciplinary investigations pending; (3) respondent has no record of prior discipline;

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct in this matter; however, there are two applications pending. 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 March 7, 2012.

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 and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

Case Number 10-O-07138 (The Howard Estate Matter)

Count One - respondent violated Business and Professions Code section 6106 (moral turpitude, dishonesty or corruption) by misappropriating \$175,304.51 in entrusted funds.

Count Two – respondent violated rule 4-100(A) of the Rules of Professional Conduct (preserving identify of funds and property of a client) by failing to maintain the balance of funds received for the benefit of a client and deposited in a bank account labeled as a trust account.

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 State Bar sent respondent an email message to two e-mail addresses and received a request for a copy of the NDC; after emailing a copy of the NDC, the State Bar received an email message requesting a disbarment stipulation;

(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 Guy Allison Odom, Jr., be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the Estate of Ruby Lee Howard in the amount of \$175,304.51 plus 10 percent interest per year from December 23, 2010. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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.

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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 Guy Allison Odom, Jr., State Bar number 77618, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: April _____, 2012

Pat McElroy
Judge of the State Bar Court