

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

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| In the Matter of |) | Case No.: 11-O-15995-PEM |
| |) | |
| JOHN GILBERT PLATT, |) | DECISION AND ORDER OF |
| |) | INVOLUNTARY INACTIVE |
| Member No. 224628, |) | ENROLLMENT |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

Respondent John Gilbert Platt (respondent) was charged with (1) failing to maintain client funds in trust account; (2) failing to render accounts of client funds; (3) failing to pay client funds promptly; (4) moral turpitude; (5) failing to maintain records of client funds; and (6) failing to cooperate in a State Bar investigation. 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.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 April 21, 2003, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 3, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular 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.)

Respondent had actual notice of this disciplinary proceeding. The return receipt card for the NDC was returned to the State Bar by the United States Postal Service indicating that the NDC was received by John G. Platt on February 13, 2012.

Respondent, however, failed to file a response to the NDC. On March 20, 2012, the State Bar filed and properly served upon respondent 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

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).)

did not file a response to the motion, but on April 2, 2012, respondent contacted Deputy Trial Counsel Treva R. Stewart (DTC Stewart) by telephone. DTC Stewart advised respondent of the motion for entry of default and the consequences if his default was entered. Respondent stated that he was having financial difficulties and “ ‘[could] not practice law anymore.’ ”³ Respondent requested information regarding resigning with charges pending.⁴ Respondent’s default was entered on April 6, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.⁵ 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 October 5, 2012, the State Bar filed and properly served the petition for disbarment upon respondent by certified mail, return receipt requested, and by regular mail to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent’s conduct. However, a claim to the Client Security Fund in the amount of \$2,933.25 has been made by the complaining witness in this matter. The claim is currently pending. No other claims are pending or have been paid.

³ Declaration of Treva R. Stewart attached to the petition for disbarment filed on October 5, 2012.

⁴ DTC Stewart sent respondent a letter on April 11, 2012, with the requested information. DTC Stewart had no further contact with respondent.

⁵ The order entering default was returned unclaimed to the State Bar Court by the United States Postal Service.

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 December 3, 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, 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 11-O-15995 (Elliott Matter)

Count One – respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to deposit \$2,933.25 entrusted to him for the benefit of his client's former husband into a trust account.⁶

Count Two – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to provide an accounting to his client's former husband despite his numerous requests for an accounting.

Count Three – respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (promptly pay/deliver client funds) by failing to release any of the funds demanded by his client's former husband and by failing to release any of the funds ordered by the arbitrator to be paid immediately to respondent's client's former husband and subsequently demanded by the client's former husband.

⁶ Respondent had a fiduciary relationship with his client's former husband. The NDC makes clear that respondent therefore owed his client's former husband the same duty he owed to a client with regard to the entrusted funds.

Count Four – respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by misappropriating \$2,933.25 in funds entrusted to him for the benefit of his client’s former husband.

Count Five – the State Bar failed to prove by clear and convincing evidence that respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to maintain records of client funds). Although respondent did not provide records to a State Bar investigator, there is no evidence that respondent did not have such records. Count Five is therefore dismissed with prejudice.

Count Six – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to the State Bar investigator’s letter or to ever provide the documentation requested therein.

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 the proceedings prior to the entry of his default, as respondent received the NDC and respondent and DTC Stewart spoke by telephone. DTC Stewart advised respondent of the motion for entry of default and the consequences if his default was entered;
- (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 actual 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 John Gilbert Platt 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 James Elliott in the amount of \$2,933.25 plus 10 percent interest per year from August 23, 2011. 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

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 John Gilbert Platt, State Bar number 224628, 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: February _____, 2013

PAT McELROY
Judge of the State Bar Court