

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-O-17165-RAP
)	
GREGORY SCOTT EMERSON,)	
)	DECISION AND ORDER OF
Member No. 205053,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent Gregory Scott Emerson (respondent) was charged with three counts of violations of 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 (NDC),

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.

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 8, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 18, 2012, 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.) Neither the NDC nor the return receipt was returned to the State Bar.

Respondent had actual notice of this disciplinary proceeding. On May 30, 2012, the State Bar sent an email with an attached copy of the NDC to respondent, advising him that a failure to file a response to the NDC would lead to a motion for entry of default. Respondent responded to the email: "Thanks. I will file a timely reply. Greg."

Additional emails were received by the State Bar from respondent on June 18, 19, and 28, 2012. In the June 28 email, respondent claimed that he would file his response by the afternoon, but he did not.

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).)

Respondent failed to file a response to the NDC. On June 29, 2012, 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 State Bar Deputy Trial Counsel William Todd 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 July 18, 2012. 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, despite discussions with Deputy Trial Counsel Todd via emails on August 7, 2012, regarding the steps by which respondent could, in his words, "avoid disbarment." (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].)

On January 28, 2013, the State Bar properly filed and served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has had contact with respondent since the default was entered; on August 7, 2012, via email, respondent requested information on how he might avoid disbarment; (2) respondent has two disciplinary matters pending (case Nos. 11-O-19086 and 11-O-18203) and other matters not yet filed; (3) respondent has two records of prior

discipline (case Nos. 00-O-13198⁴ and 10-O-09442 et al.); and (4) the Client Security Fund (CSF) 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 the default. The case was submitted for decision on February 25, 2013.

Respondent has been disciplined on two prior occasions.⁵ Pursuant to a Supreme Court order filed on August 2, 2002, respondent was placed on probation for two years and was actually suspended from the practice of law for a minimum of 30 days and until he makes restitution in one client matter. Respondent was disciplined for charging and collecting an illegal fee and failing to deposit client funds in a client trust account. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on January 30, 2012, respondent was suspended for two years, the execution of which was stayed, placed on probation for three years, and was actually suspended from the practice of law for two years and until he provides proof of his rehabilitation, fitness to practice and learning and ability in the general law. Respondent was disciplined for engaging in the unauthorized practice of law in another jurisdiction, failing to perform services competently, failing to return client file and unearned fees, committing acts of moral turpitude, and failing to cooperate with the State Bar in five client matters. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

⁴ The State Bar omitted to cite respondent's first prior record of discipline: State Bar Court case No. 00-O-13198 (Supreme Court order No. 107294), effective September 1, 2002.

⁵ 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.

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(E)(1)(d).)

Case Number 11-O-17165 (The Hernandez Matter)

Count One – respondent willfully violated section 6103 (failure to obey court order) by failing to obey two court orders regarding discovery and sanctions.

Count Two – respondent willfully violated section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to report the \$1,500 court sanctions ordered by the Orange County Superior Court on August 11, 2011 (case No. 30-2010-00401274-CU-PO-CJC).

Count Three – respondent willfully violated section 6068, subdivision (i) (failure to cooperate/participate in a disciplinary investigation) by failing to respond to the State Bar letters and to participate in the State Bar investigation.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is 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 and the State Bar exchanged various emails. Deputy Trial Counsel Todd informed respondent about the pending proceeding and the State Bar's intention to file a motion for entry of default for his failure to file a response to the NDC;
- (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 disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Gregory Scott Emerson 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 pay the \$1,500 sanctions ordered by the Orange County Superior Court on August 11, 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).

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 Gregory Scott Emerson, State Bar number 205053, 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: May 13, 2013

RICHARD A. PLATEL
Judge of the State Bar Court