

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 12-O-15343-LMA
)	(12-O-16045)
CLARENCE LIVINGSTON, JR.,)	
)	DECISION AND ORDER OF
Member No. 85773,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

In this matter, respondent Clarence Livingston, Jr., was charged with seven counts of misconduct stemming from two client matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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), 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

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

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).)

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 May 31, 1979, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 19, 2013, the State Bar properly filed and served an 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 to the State Bar by the United States Postal Service.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included calling him at his membership records telephone number, calling him at possible alternative telephone numbers identified in internet and Lexis/Nexis searches, sending an email to him at an email address contained in the State Bar's files, checking Parker's online directory for any additional contact information, and calling directory assistance.

Respondent failed to file a response to the NDC. On June 6, 2013, 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 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 24, 2013. 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 January 6, 2014, 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 one other disciplinary matter pending; (3) respondent has one prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. 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 3, 2014.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on December 22, 2009, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years. In this matter, respondent stipulated to three counts of misconduct stemming from a single client matter, including failing to competently perform legal services, failing to keep a client reasonably informed of significant developments, and failing to abide by the terms of an agreement in lieu of discipline.

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 12-O-15343 – The Smith, Smith-Lewis, and Smith-Grady Matter

Count One – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to communicate significant developments), by failing to promptly inform his clients that he had been suspended from the practice of law.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – unauthorized practice) by holding himself out as entitled to practice law when he was not an active member of the State Bar, in willful violation of Business and Professions Code sections 6125 and 6126.

Count Three – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over his client’s file upon termination of employment.

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Count Four – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to perform any of the substantive legal services for which he was retained.

Count Five – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to respond to client inquiries), by failing to respond to his client’s telephone calls requesting a status update.

Count Six – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over his client’s file upon termination of employment.

Count Seven – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar investigator’s letters or otherwise cooperate in the State Bar’s 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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar properly served him with the NDC and made various efforts to locate respondent, including: calling him at his membership records telephone number, calling him at possible alternative telephone numbers identified in the State Bar’s internet and Lexis/Nexis searches, sending an email to him at an email address contained in the State Bar’s files, checking Parker’s online directory for any additional contact information, and calling directory assistance;

(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.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent Clarence Livingston, Jr., 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, 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 Clarence Livingston, Jr., State Bar number 85773, 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 ____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court