

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **12-O-16779-DFM (12-O-17711;**
) **12-O-17166)**
PAUL ELLIOTT SMITH,)
) **DECISION AND ORDER OF**
Member No. 216644,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)

Respondent Paul Elliott Smith (Respondent) was charged with eight counts of misconduct in connection with three separate client matters. 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) 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 December 4, 2001, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 31, 2013, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, to 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 as Respondent appeared telephonically at a status conference on July 10, 2013, and submitted a letter to the court on August 2, 2013, requesting that the proceeding be abated.³

Respondent failed to file a response to the NDC. On August 1, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to his membership records address. The motion complied with the requirements for a default, including a supporting declaration by the State Bar deputy trial counsel noting that Respondent had appeared telephonically at the July 10, 2013, status conference in this matter. (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.

³ Respondent also submitted a letter to the court on August 2, 2013, purporting to resign from the State Bar of California. However, on August 5, 2013, a case administrator for the Review Department rejected and returned that letter to Respondent, noting that it was not substantially in the form specified in California Rules of Court, rule 9.21(b).

In an order filed on August 15, 2013, the court denied Respondent's August 2, 2013, letter request to abate the proceedings, and extended the time in which Respondent had to file a response to the State Bar's motion for entry of default until August 26, 2013.

Respondent did not file a response to either the NDC or the motion for entry of default, and his default was entered on August 28, 2013. The order entering the default was properly served on Respondent at his membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary enrollment as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),⁴ effective three days after service of the order. He has remained inactively enrolled since that time. The return receipt was returned to the State Bar Court showing that the order was received by "Alan Kaminski" and delivered on August 30, 2013.

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 March 7, 2014, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent had not contacted the State Bar after his default was entered on August 28, 2013; (2) there are four other disciplinary investigations pending against Respondent; (3) Respondent has no record of prior 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 April 3, 2014. On May 9, 2014, the Supervising Judge of the State Bar Court Hearing Department reassigned the case from State Bar Court Judge Richard A. Honn to the undersigned State Bar Court Judge for all purposes.

⁴ Unless otherwise indicated, all references to sections are to the Business and Professions Code.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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-16779 (Richardson Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to file a case management statement, failing to appear at a scheduled mediation, failing to oppose a summary judgment motion, and failing to take any steps to secure relief from the judgment.

Count Two – Respondent willfully violated section 6068, subdivision (m) (failing to communicate) by failing to notify his client of a mediation date, the trial date, the filing of a motion for summary judgment, and the entry of summary judgment against the client.

Count Three – Respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to the State Bar's letters or to otherwise cooperate in the State Bar's investigation of the Richardson matter.

Case Number 12-O-17711 (Bagnall Matter)

Count Four – charges that Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct, which requires that an attorney render appropriate accountings of client funds. Count four is DISMISSED with prejudice because it charges Respondent with failing to account for a partial payment of a flat fee that was wholly unearned. Because Respondent did not earn any portion of the payment, there was nothing for which Respondent could account, and

Respondent's duty was to promptly refund the entire unearned payment when his employment terminated (Rules Prof. Conduct, rule 3-700(D)(2)).

Count Five – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund \$1,500 in unearned fees to his client.

Count Six – Respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's letters or to otherwise cooperate in the State Bar's investigation of the Bagnall matter.

Case Number 12-O-17166 (Vasserman Matter)

Count Seven – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to oppose a motion to compel discovery, failing to appear at the hearing on that motion, failing to oppose a motion for terminating sanctions, and failing to appear at the hearing on that motion.

Count Eight – Respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's letters or to otherwise cooperate in the State Bar's investigation of the Vasserman matter.

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 proceeding prior to the entry of his default, as he participated in a status conference and submitted a request to abate the proceeding;
- (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 recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent **Paul Elliott Smith**, State Bar number 216644, 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 recommends that Respondent be ordered to make restitution to Linda Bagnall in the amount of \$1,500 plus 10 percent interest per year from September 19, 2012.

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.

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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 **Paul Elliott Smith**, State Bar number 216644, 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 by mail. (Rule 5.111(D).)

Dated: July _____, 2014.

DONALD F. MILES
Judge of the State Bar Court