

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 12-O-17424-DFM
)	(12-O-17538; 13-O-10586;
SEAN PATRICK SALMON,)	13-O-10702; 13-O-10712;
)	13-O-11058; 13-O-11316;
Member No. 202445,)	13-O-11773; 13-O-12443;
)	13-O-12829)
A Member of the State Bar.)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

Respondent Sean Patrick Salmon (Respondent) was charged with 34 counts of misconduct stemming from 10 separate matters. He attended the initial status conference, but subsequently 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

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

(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

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 August 30, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 22, 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.) The NDC was not returned to the State Bar as undeliverable or for any other reason.

On September 23, 2013, Respondent appeared telephonically before this court at a status conference. At this status conference, Respondent acknowledged receipt of the NDC and was instructed by the court to file a response to the NDC as soon as possible to avoid entry of his default.

Thereafter, the State Bar had several telephone conversations and email exchanges with Respondent regarding settlement. On October 29, 2013, the State Bar sent Respondent an email informing him that if he did not immediately file his response to the NDC, the State Bar would file a motion for entry of his default. Respondent did not respond to this email.

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).)

Respondent failed to file a response to the NDC. On November 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 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 November 20, 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 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. 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 May 20, 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 has not contacted the State Bar after his default was entered on November 20, 2013; (2) there are other disciplinary matters pending against Respondent; (3) Respondent has no 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 May 28, 2014.

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-17424 – The Chavez Matter

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

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate) by failing to respond to his client's reasonable status inquiries.

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 papers and property upon termination of employment.

Count Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to provide a response to the State Bar investigator's letter.

Case Number 12-O-17538 – The Siller Matter

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

Count Seven – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate) by failing to respond to his client’s reasonable status inquiries.

Count Nine – Respondent willfully violated rule 1-300(A) of the Rules of Professional Conduct (aiding the unauthorized practice of law) by allowing his non-attorney employee to offer legal advice to a client.

Count Ten – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to provide a response to the State Bar investigator’s letter.

Case Number 13-O-10586 – The Nguyen Matter

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

Count Twelve – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate) by failing to respond to his client’s reasonable status inquiries.

Count Thirteen – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Fourteen – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain funds received for the benefit of a client and deposited into a trust account.

Count Fifteen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$489.90.

Count Sixteen – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out funds in Respondent’s possession which the client was entitled to receive.

Count Seventeen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by knowingly making false statements to a client.

Count Eighteen – 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.

**Case Numbers 13-O-10702; 13-O-11058; 13-O-11316; 13-O-11773; 13-O-12443;
13-O-12829 – NSF Checks**

Count Nineteen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by issuing checks drawn upon his client trust account when he knew or was grossly negligent in not knowing that there were insufficient funds to pay them.

Case Number 13-O-10702 – State Bar Investigation

Count Twenty – 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.

Case Number 13-O-10712 – The Markham Matter

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

Count Twenty-Two – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by effectively withdrawing from representing a client without taking any steps to avoid reasonably foreseeable prejudice to the client.

Count Twenty-Three – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to maintain client funds in trust) by failing to maintain funds received for the benefit of a client and deposited into a trust account.

Count Twenty-Four – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating client funds in the amount of \$7,000.

Count Twenty-Five – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out funds in Respondent’s possession which the client was entitled to receive.

Count Twenty-Six – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate) by failing to respond to his client’s reasonable status inquiries and failing to keep his client informed of significant developments.

Count Twenty-Seven – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by concealing the status of misappropriated funds and knowingly making a false statement to a client.

Count Twenty-Eight – 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.

Case Numbers 13-O-10702; 13-O-11058; 13-O-11316; 13-O-11773; 13-O-12443 – NSF Checks

Count Twenty-Nine – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling) by using his client trust account to deposit personal funds and pay personal expenses.

Case Number 13-O-11058 – State Bar Investigation

Count Thirty – 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.

Case Number 13-O-11316 – State Bar Investigation

Count Thirty-One – 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.

Case Number 13-O-11773 – State Bar Investigation

Count Thirty-Two – 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.

Case Number 13-O-12443 – State Bar Investigation

Count Thirty-Three – 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.

Case Number 13-O-12829 – State Bar Investigation

Count Thirty-Four – 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.

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 he communicated with the State Bar, appeared in court for an initial status conference, and was instructed by the court to file a response to the NDC to avoid default;
- (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 Sean Patrick Salmon 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 following payees:

- (1) Michael and Donna Chavez in the amount of \$3,500 plus 10 percent interest per year from October 18, 2012;
- (2) Clayton Lou Siller in the amount of \$3,950 plus 10 percent interest per year from October 1, 2012;
- (3) Duc and Minchau Nguyen in the amount of \$3,990 plus 10 percent interest per year from January 3, 2013; and
- (4) Don and Aleda Markham in the amount of \$7,000 plus 10 percent interest per year from June 14, 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 Sean Patrick Salmon, State Bar number 202445, 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: August _____, 2014

DONALD F. MILES
Judge of the State Bar Court