

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **14-H-02422-DFM**
)
DAVID IRA KUSSIN,)
) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
Member No. 151344,) **ENROLLMENT**
)
A Member of the State Bar.)

Respondent **David Ira Kussin** (Respondent) was charged with failing to comply with conditions attached to a prior public reproof. 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 90 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(F)(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 California on December 4, 1990, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 29, 2014, the State Bar properly filed and served the NDC on Respondent by certified mail, return receipt requested, to his membership records address. The return card was returned to the State Bar signed by “D. Holster.” On August 29, 2014, a courtesy copy of the NDC was also sent to Respondent by first-class mail at his membership records address and was not returned by the U.S. Postal Service. 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 these proceedings as he participated in a status conference held on September 8, 2014. The court directed him to serve his response to the State Bar and file it with the court.

Respondent failed to file a response to the NDC. On September 18, 2014, the State Bar properly filed and 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 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 October 9, 2014. 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. He has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].)

On February 12, 2015, 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) there has been no contact with Respondent since his default was entered; (2) there are no other matters pending against Respondent; (3) Respondent has one record of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on March 12, 2015.

Prior Record Of Discipline

Respondent has a record of prior discipline.³ Pursuant to an order of the State Bar Court, filed on October 31, 2013, Respondent was publicly reprovved with conditions for failure to perform services competently. Respondent entered into a stipulation in that matter.

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

³ The court admits into evidence the certified copy of Respondent's record of prior discipline that was attached to the State Bar's February 12, 2015 petition for disbarment after default.

Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 14-H-02422 (Reproval Matter)

Respondent willfully violated rule 1-110 of the Rules of Professional Conduct (failure to comply with conditions of reproval) by failing to comply with specified conditions of his public reproval effective on November 21, 2013.

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) 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 participated in a status conference in 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 his disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent **David Ira Kussin**, State Bar number 151344, 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 **David Ira Kussin**, State Bar number 151344, 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: June _____, 2015

DONALD F. MILES
Judge of the State Bar Court