

PUBLIC MATTER

FILED

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JUL 29 2015

**STATE BAR COURT OF CALIFORNIA STATE BAR COURT CLERK'S OFFICE
HEARING DEPARTMENT – SAN FRANCISCO SAN FRANCISCO**

In the Matter of)	Case No.: 14-O-01920-LMA
)	
MYRON FRANCIS SMITH,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 72722,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Myron Francis Smith is charged with a total of four counts of professional misconduct involving two client matters. Respondent's default was entered in this disciplinary proceeding when he failed to appear for trial. Thereafter, the State Bar's 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and if the attorney fails to have the default set aside or

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¹ Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

vacated within 45 days, then the State Bar will file a petition requesting that the State Bar Court recommend the attorney's disbarment.²

In the instant case, the court concludes that all of 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 the practice of law in California on December 22, 1976, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On October 20, 2014, the State Bar filed and properly served a notice of disciplinary charges (NDC) on respondent at his membership-records address by certified mail, return receipt requested. Respondent filed an answer to the NDC on November 17, 2014. Respondent represented himself.

The NDC clearly notified respondent that, if he failed to appear at the State Bar Court trial in this matter, his default would be entered and that, if he thereafter failed to timely move to set aside his default, the State Bar Court would recommend that he be disbarred. (Rule 5.41(B)(5).)

On December 1, 2014, the court filed an order setting the trial in this matter for February 18 through 20, 2015, and properly served that order on respondent by first-class mail, postage prepaid, at the address that respondent listed as his on the first page of his November 17, 2014, answer to the NDC. That address is also respondent's membership-records address. (Rule 5.81(A)(2)(b)&(c).)

² If the court determines that any due process requirement is 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).)

On January 20, 2015, the court filed a status conference order in which the trial date was continued from February 18 through 20, 2015, to February 24 through 27, 2015. The court properly served that January 20, 2015, order on respondent by first-class mail, postage prepaid, at the address that respondent listed as his on the first page of his November 17, 2014, answer to the NDC. That address is also respondent's membership-records address.

Respondent failed to appear at trial on February 24, 2015. Accordingly, on February 24, 2015, the court filed an order entering respondent's default and properly served that order on respondent at his membership-records address by certified mail, return receipt requested. (Rule 5.81(B); see also rule 5.25(B).)

The Court's February 24, 2015, order clearly notified respondent that, if he did not timely move to set aside his default, the court would recommend that he be disbarred.

In the February 24, 2015, order, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),³ effective three days after service of the order. Since that time, respondent has continuously been involuntarily enrolled inactive under the court's February 24, 2015, order.

Respondent did not seek to have his default set aside (or vacated). (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) Thus, on April 17, 2015, the State Bar filed and properly served on respondent a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the only contact the State Bar had with respondent after the entry of his default, was on February 27, 2015, an individual contacted the assigned deputy trial counsel (DTC) by telephone and told the DTC that he would substitute in as respondent's attorney of record and seek to set aside the

³ All further statutory references are to the Business and Professions Code.

default;⁴ (2) respondent has one abated disciplinary investigation pending against him; (3) respondent does not have a prior record of discipline; and (4) the Client Security Fund has not paid out any claims 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 13, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations (not the charges) in the NDC were 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 on two of the four counts of misconduct charged in the NDC 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-O-01920

Count one charges that respondent violated section 6103 (violation of court order) by failing to comply with three separate Tulare County Superior Court orders to show cause why sanctions should not be imposed. Count one is DISMISSED with prejudice because it fails to provide respondent with adequate notice of a section 6103 violation. Count one does not allege the factual basis of the charged section 6103 violations (i.e., how did respondent fail to comply with the three orders). (See *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 168-169 [Fundamental due process mandates that the NDC allege sufficient factual detail to provide the respondent with a reasonable opportunity to prepare and present a defense and to prevent the respondent from being taken by surprise by the evidence offered at trial.]; § 6085 [In disciplinary proceedings, the attorney must "be given fair, adequate and reasonable

⁴ No substitution of attorney form was ever filed, and the DTC never heard back from this individual.

notice” of the factual basis of the charges against him or her].) Nor does the NDC allege that respondent had actual knowledge of each of the three orders; nor does the NDC allege that respondent had a reasonable amount of time to comply with each order. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787-788, and cases there cited.)

Count Two charges that respondent willfully violated section 6103 by failing to comply with three separate Alameda County Superior Court orders to show cause and one Alameda County Superior Court case management order. Count two is DISMISSED with prejudice because it fails to provide respondent with adequate notice of a section 6103 violation. Count two does not allege the factual basis of the charged section 6103 violations (i.e., how did respondent fail to comply with the four orders). (See *In the Matter of Glasser, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 168-169; § 6085.) Nor does the NDC allege that respondent had actual knowledge of each of the four orders; nor does the NDC allege that respondent had a reasonable amount of time to comply with each order. (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 787-788, and cases there cited.)

Count Three – respondent willfully violated section 6068, subdivision (o)(3) (failing to report judicial sanctions of \$1,000 or more) by failing to report judicial sanctions in the amount of \$1,000 to the State Bar within 30 days of the time respondent knew of them.

Count Four – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to two letters that he received from the State Bar asking him to respond to various allegations of misconduct being investigated in case number 14-O-01920.

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Disbarment is Recommended

In light of the foregoing, 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 this proceeding and was properly given the required advance notice of the trial date;
- (3) the default was properly entered under rule 5.81; 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 appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Myron Francis Smith, State Bar number 72722, 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.

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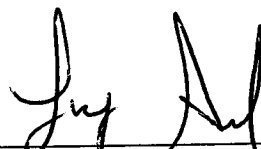
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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 Myron Francis Smith, State Bar number 72722, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: July 29 2015.



LUCY ARMENDARIZ
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 29, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MYRON FRANCIS SMITH
LAW OFC MYRON F SMITH
1284 W SHAW AVE # 103
FRESNO, CA 93711

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

HEATHER E. ABELSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 29, 2015.



Mazie Yip
Case Administrator
State Bar Court