



**PUBLIC MATTER**

**FILED**

**MAR 20 2017**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 15-N-15345-YDR
	)	
THOMAS WILLIAM SMITH,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 93102.	)	ENROLLMENT
_____	)	

Respondent Thomas William Smith (Respondent) was charged with willfully violating California Rules of Court, rule 9.20, by failing to file a declaration of compliance as required by that rule and in conformity with the requirements of rule 9.20(c), as required by an order of the Supreme Court. He failed to participate, either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

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.<sup>2</sup>

<sup>1</sup> Unless otherwise indicated, all references to rule(s) are to this source.

<sup>2</sup> 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 May 2, 1980, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On April 13, 2016, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's 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 OCTC on April 21, 2016, with the unsigned return receipt attached.

Thereafter, OCTC took additional steps to notify Respondent about these proceedings. From April 21, 2016 through June 2, 2016, the following occurred: (1) OCTC contacted Respondent at his membership records telephone number and left a message; (2) Respondent contacted OCTC and provided a new address after OCTC explained the previously sent NDC was returned; (3) OCTC sent Respondent a letter and copy of the NDC to the new address Respondent provided;<sup>3</sup> (4) OCTC left two voicemail messages for Respondent advising him of the intent to file a motion for default if OCTC did not receive his response to the NDC by a designated date; and (5) Respondent left two messages for OCTC indicating that he could not file a response by the deadlines given because he was "on a bike in Texas and did not have access to a computer."

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<sup>3</sup> Respondent updated his membership records address on May 17, 2016.

Respondent failed to file a response to the NDC. On July 15, 2016, OCTC 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 OCTC 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 August 11, 2016. 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 November 15, 2016, OCTC properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are no other investigative matters pending against Respondent; (3) Respondent has two records of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.<sup>4</sup> 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 15, 2017.<sup>5</sup>

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<sup>4</sup> The court takes judicial notice that after the petition for disbarment was filed, the Client Security Fund paid claims against this attorney on December 8, 2016.

<sup>5</sup> The case was submitted for decision on December 14, 2016, but the submission date was vacated and the record was reopened. OCTC was ordered to provide certified copies of

### **Prior Record of Discipline**

Respondent has two prior records of discipline. Pursuant to an order of the Supreme Court filed on July 10, 2013, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions including that he be suspended from the practice of law for 30 days. Respondent was culpable of four ethical violations in three client matters. His violations consisted of: (1) failing to perform legal services with competence (two counts); (2) failing to promptly release a client's file; and (3) failing to comply with the laws of California by practicing law when he was not an active member of the State Bar.

In his second prior, pursuant to an order of the Supreme Court filed on May 12, 2015, the Court revoked Respondent's probation and suspended him for at least one year and until he paid restitution and submitted proof that he completed the State Bar's Ethics School and passed the test given at the end. Respondent failed to participate in the probation revocation proceedings. This court found that he violated three conditions of his disciplinary probation.

### **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(F)(1)(d).)

### **Case Number 15-N-15345 (The Rule 9.20 Matter)**

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing, with the clerk of the State Bar Court, by July 21,

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Respondent's prior discipline records. The case was resubmitted upon OCTC's compliance with the court's order.

2015, a declaration of compliance as required by California Rules of Court, rule 9.20 and in conformity with the requirements of rule 9.20(c), as required by Supreme Court order number S199224.

**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) Reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his 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 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.

**RECOMMENDATION**

**Disbarment**

The court recommends that Respondent Thomas William Smith, State Bar number 93102, 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.

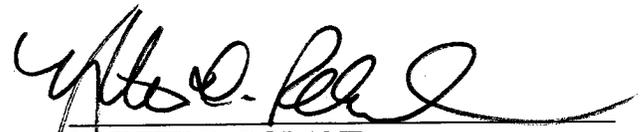
**Costs**

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 Thomas William Smith, State Bar number 93102, 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: March 17, 2017

  
YVETTE D. ROLAND  
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 Los Angeles, on March 20, 2017, 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:

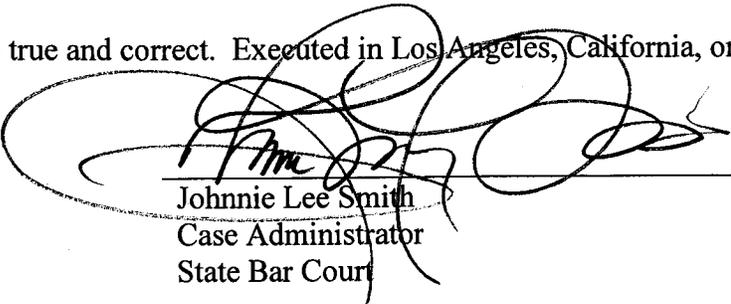
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**THOMAS WILLIAM SMITH  
3186 VISTA WAY STE 300  
OCEANSIDE, CA 92056 - 3631**

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

**Shataka A. Shores-Brooks, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 20, 2017.



Johnnie Lee Smith  
Case Administrator  
State Bar Court