

PUBLIC MATTER

FILED

FEB 13 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-O-15239-DFM
)	
FRANK EPSTEIN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 97325.)	ENROLLMENT
_____)	

Respondent Frank Epstein (Respondent) is charged with failing to comply with probations conditions attached to the disciplinary probation imposed on him under Supreme Court order S217225 (State Bar Court case No. 13-H-13261). That discipline, in turn, arose from Respondent's prior failure to comply with the conditions of reproof ordered by this court in case No. 04-O-14278. Respondent failed to participate, either in person or through counsel, in this proceeding and his default was entered. Thereafter, the Office of 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 90 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

Jurisdiction

Respondent was admitted to the practice of law in California on May 11, 1981, and has been a member since that time.

Procedural Requirements Have Been Satisfied

On June 17, 2016, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, and by "regular" U.S. mail at 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.) Neither the NDC nor the return receipt for the NDC was returned to the State Bar.

Thereafter, the deputy trial counsel assigned to this matter (DTC) attempted to contact Respondent at his official membership telephone number but discovered that Respondent did not have a telephone number listed. The DTC then sent an email to Respondent at the email address listed by Respondent with the State Bar, notifying Respondent that the State Bar had not received a response to the NDC and that Respondent's response was past due. The DTC also informed

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).)

Respondent of the upcoming status conference, previously scheduled by the court.³ This email was returned as undeliverable. On July 18, 2016, the court conducted the status conference, but, Respondent failed to appear.

On July 19, 2016, the State Bar conducted a Lexis search for Respondent, which generated five telephone numbers and five addresses for Respondent as being addresses and phone numbers attributable to Respondent between June 1990 and June 2016. On July 19, 2016, the DTC attempted to contact Respondent at each of the identified phone numbers and left a message at the only phone number that accepted messages. The DTC requested that Respondent return her phone call. The DTC also sent courtesy copies of a letter to Respondent at each of the five addresses generated by the Lexis search and to one additional address. The courtesy copies of the DTC's letter notified Respondent of the State Bar's intent to file a motion for entry of default and included a copy of the NDC that had been filed in this matter. Thereafter, on July 21, 2016, the DTC made phone calls to an additional phone number that was possibly attributable to Respondent. Nevertheless, Respondent failed to file a response to the NDC.

On August 2, 2016, the State Bar filed and properly served a motion for entry of default on Respondent at his membership records address by certified mail, return receipt requested. The motion complied with the requirements for a default, including a supporting declaration of reasonable diligence by the DTC. (Rule 5.80.) The motion 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 23, 2016. The court also ordered Respondent's involuntary inactive enrollment as a member of the

³ Effective February 1, 2010, all attorneys are required to maintain a current email address on record with the State Bar to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

State Bar under Business and Professions Code section 6007, subdivision (e),⁴ effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served on Respondent at his membership records address by certified mail, return receipt requested, and by first-class mail, postage fully prepaid.

Respondent has not sought 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 December 22, 2016, the State Bar filed and properly served a 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) the State Bar has not received any contact from Respondent since his default was entered; (2) Respondent has no other disciplinary matters or investigations pending against him; (3) Respondent has two records of discipline; and (4) the Client Security Fund has not made any payments as a result of Respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate his default.

The case was submitted for decision on January 24, 2017.

Prior Records of Discipline

Respondent has two prior records of discipline.⁵ On August 29, 2011, the State Bar Court issued a decision and order in State Bar Court case Nos. 04-O-14278 (07-O-14039) after Respondent's successful completion of the Alternative Discipline Program. The court ordered that Respondent be publicly reprovved and be required to comply with specified reprovval conditions for a period of one year following the effective date of the court's order.

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

⁵ The court admits into evidence the certified copies of Respondent's two prior records of discipline, which are attached to the State Bar's petition for disbarment as exhibits 1 and 2.

Respondent's misconduct consisted of a violation of rule 3-110(A) (failure to perform legal services with competence), as well as a violation of section 6068(1) (failure to keep agreements in lieu of discipline).

In his second prior discipline, pursuant to Supreme Court order S217225 (State Bar Court case No. 13-H-13261), effective July 9, 2014, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years subject to probation conditions, including that he be actually suspended from the practice of law for the first 90 days of probation. Respondent stipulated that he engaged in misconduct when he willfully violated rule 1-110 of the Rules of Professional Conduct by not complying with the probation conditions imposed by the prior reprobation order. Specifically, the misconduct to which Respondent stipulated consisted of: (1) failing to timely submit quarterly reports due on April 10, July 10, and October 4, 2012; (2) failing to have the Lawyer Assistance Program (LAP) timely submit quarterly reports that were due on January 10, April 10, July 10, and October 4, 2012; and (3) failing to provide by May 21, 2013, proof of timely passage of the Multistate Professional Responsibility Examination (MPRE).

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(2).) 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-O-15239 (Violation of Disciplinary Probation)

Count One - Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with the conditions of probation), by failing to comply with

the reprobation conditions attached to the disciplinary probation imposed on him by the Supreme Court in its order S217225. Specifically, Respondent failed to: (1) timely submit a compliant quarterly report by its due date of January 10, 2015; (2) submit three quarterly reports by their respective due dates of October 10, 2015, January 10, 2016, and April 10, 2016; and (3) attend Ethics School, take the test given at the end of the session, and submit proof of the same to the Office of Probation by July 9, 2015 (i.e., one year from the effective date of the Supreme Court disciplinary order).

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.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent **Frank Epstein**, State Bar number 97325, 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.

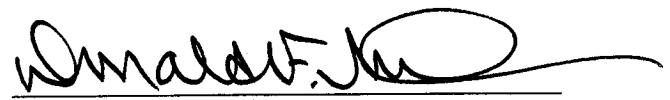
Costs

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 **Frank Epstein**, State Bar number 97325, 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: February 13, 2017


DONALD F. MILES
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 February 13, 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:

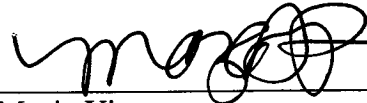
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

FRANK EPSTEIN
28 W 3RD ST APT 2430
SOUTH ORANGE, NJ 07079

- 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 February 13, 2017.



Mazie Yip
Case Administrator
State Bar Court