

FILED V.A.

MAR 08 2017

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of)	Case Nos.: 16-N-12537-LMA;
)	16-O-13434-LMA
)	(Consolidated)
KELLY SCOTT JOHNSON,)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar, No. 134520.</u>)	ENROLLMENT

In this consolidated disciplinary proceeding, Respondent Kelly Scott Johnson (Respondent) is charged with willfully (1) failing to file a California Rules of Court, rule 9.20(c) compliance declaration in accordance with an order of the Supreme Court¹ and (2) violating his duty, under Business and Professions Code section 6068, subdivision (k),² to comply with all the conditions attached to his disciplinary probation. Respondent failed to appear at the trial, 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.³

¹ Rule 9.20(c) provides: "Within such time as the order may prescribe . . . , the member must file with the Clerk of the State Bar Court [a declaration] showing that he or she has fully [performed the acts specified in rule 9.20(a)]. The [declaration] must also specify an address where communications may be directed to the disbarred, suspended, or resigned member."

² All further statutory references are to the Business and Professions Code.

³ Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

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 vacated within 45 days, then the State Bar will file a petition requesting that the State Bar Court recommend the attorney's disbarment.⁴

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.

Respondent has one prior record of discipline. On September 11, 2015, the Supreme Court filed an order in case number S226345 (State Bar Court case number 13-O-11690, etc.), styled *In re Kelly Scott Johnson on Discipline*, placing Respondent on three years' stayed suspension and three years' probation on conditions, including minimum actual suspension of two years that will continue until Respondent pays \$15,000 in sanctions to a United States Bankruptcy Trustee and until Respondent establishes his rehabilitation, fitness to practice, and learning and ability in the law in accordance with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).

The Supreme Court imposed that discipline on Respondent in accordance with a stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with the State Bar, which was approved by the State Bar Court in an order filed on March 16, 2015, in State Bar Court case number 13-O-11690, etc. In that stipulation, Respondent stipulated to the following 21 counts of misconduct involving seven different client matters: three counts of failing to perform legal services competently (Rules Prof. Conduct, rule 3-110(A)); three counts

⁴ If the court determines that any due process requirements 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).)

of entering into improper transactions with clients (Rules Prof. Conduct, rule 3-300); two counts of advising violation of the law (Rules Prof. Conduct, rule 3-210); two counts of failing to report sanctions of \$1,000 or more (§ 6068, subd. (o)(3)); two counts of failing to employ only means consistent with truth (§ 6068, subd. (d)); two counts of failing to obey court orders (§ 6103); one count of failing to cooperate in a State Bar disciplinary investigation (§ 6068, subd. (i)); one count of improperly accepting compensation from one other than the client (Rules Prof. Conduct, rule 3-310(F)); one count of failing to return the client's file (Rules Prof. Conduct, rule 3-700(D)(1)); one count of failing to refund an unearned fee (Rules Prof. Conduct, rule 3-700(D)(2)); one count of failing to maintain client funds in a trust account (Rules Prof. Conduct, rule 4-100(A)); one count of failing to account for client funds (Rules Prof. Conduct, rule 4-100(B)(3); and one count of failing to promptly pay out client funds (Rules Prof. Conduct, rule 4-100(B)(4)). In aggravation, Respondent stipulated that his misconduct caused serious client harm and involved multiple acts of misconduct and that he failed to make restitution for the unearned fees he failed to refund. In mitigation, Respondent had 22 years of misconduct free practice and stipulated to his misconduct before trial.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on June 14, 1988, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On August 12, 2016, the State Bar filed and properly served the notice of disciplinary charges (NDC) in case number 16-N-12537 on Respondent at his membership-records address by certified mail, return receipt requested in accordance with rule 5.25. Respondent filed a response to that NDC on September 12, 2016.

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On September 26, 2016, the State Bar filed and properly served the NDC in case number 16-O-13434 on Respondent at his membership-records address by certified mail, return receipt requested in accordance with rule 5.25. Respondent filed a response to that NDC on October 31, 2016.

At a status conference on November 8, 2016, case number 16-N-12537 was consolidated with case number 16-O-13434 on Respondent's motion. At that same status conference, the trial in the consolidated matters was set for November 23, 2016. On November 8, 2016, following the status conference, the court filed a status conference order setting forth the foregoing trial date in the consolidated matters. That status conference order was properly served on Respondent by first-class mail, postage prepaid, at the address provided in both Respondents' response to the NDC in case number 16-N-12537 and Respondent's response to the NDC in case number 16-O-13434, which was at the time and still is also Respondent's membership-records address. (Rule 5.81(A)(2)(b)&(c).)

Respondent failed to appear for trial on November 23, 2016. The State Bar appeared for trial. The court entered Respondent's default in an order filed on November 23, 2016. The default order was properly served on Respondent at his membership-records address by certified mail, return receipt requested. (Rule 5.81(B).)

In the default order, the court advised Respondent that, if he did not timely move to set aside his default, the court would recommend that he be disbarred. In the default order, the court also ordered that Respondent be involuntarily enrolled as an inactive member of the State Bar of California under section 6007, subdivision (e). Thereafter, on November 26, 2016, Respondent was involuntarily enrolled inactive, and he has been enrolled inactive under the court's order since that time.

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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].) On January 17, 2017, the State Bar filed and properly served on Respondent the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) on November 23, 2016, which was the same day on which Respondent's default was entered, the State Bar received three emails from Respondent requesting to continue or vacate the trial setting (Respondent did not submit or file those requests with the court) and the State Bar has not had any contact with Respondent since those emails and the entry of his default; (2) there are currently two disciplinary investigations pending against Respondent; (3) Respondent has one prior record of discipline; and (4) the Client Security Fund has not paid out any claims resulting from Respondent's conduct, but one application for reimbursement is pending against Respondent with the fund. 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 14, 2017.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default in this consolidated proceeding, the factual allegations in the NDC's in case numbers 16-N-12537 and 16-O-13434 are deemed admitted, and no further proof is required to establish the truth of those 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 that he, therefore, violated a statute, rule, or court order that warrants the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 16-N-12537 (Rule 9.20 Matter)

Count One – Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned, or suspended attorneys) by failing to file a rule 9.20(c) compliance

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declaration with the Clerk of the State Bar Court in accordance with the Supreme Court's September 11, 2015, order in case number S226345.⁵

Case Number 16-O-13434 (Probation Violation Matter)

Count One – Respondent willfully violated section 6068, subdivision (k) (duty to comply with all probation conditions) by failing to comply with all conditions (specifically, meeting with probation deputy, quarterly reports, and payment of more than \$2,800 in restitution) attached to the three-year disciplinary probation imposed on him in the Supreme Court's September 11, 2015, order in case number S226345.

Disbarment Recommended

The court finds that the following four requirements of rule 5.85(F) have been satisfied:

1. the NDC's in case numbers 16-N-12537 and 16-O-13434 were properly served on Respondent in accordance with rule 5.25;
2. Respondent had actual notice of this proceeding and was properly given notice and had actual knowledge of the trial date before his default was entered;
3. Respondent's default was properly entered in accordance with rule 5.81; and
4. the factual allegations in the NDC's in case numbers 16-N-12537 and 16-O-13434, which were deemed admitted by the entry of Respondent's default in the consolidated proceeding, support a finding that Respondent violated a statute, rule, or court order that warrants the imposition of discipline.

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⁵ In the NDC in case 16-N-12537, the State Bar incorrectly refers to the Supreme Court's September 11, 2015, order in case number S226345 as "Supreme Court order number S226345." S226345 is not an order number; it is a Supreme Court case number. Notwithstanding the State Bar's erroneous description of the rule 9.20 order, Respondent was given adequate notice of the charges against him because a copy of the operative rule 9.29 order (i.e., the Supreme Court's September 11, 2015, order in case number S226345) was attached as an exhibit to the NDC in case number 16-N-12537 (Rule 5.334.)

Despite adequate notice and opportunity, Respondent failed to appear for trial in this disciplinary proceeding. Accordingly, as set forth in the Rules of Procedure of the State Bar, the court will recommend Respondent's disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Kelly Scott Johnson, State Bar number 134520, 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 Kelly Scott Johnson be again 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.

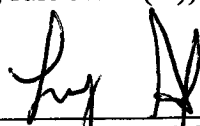
Costs

Finally, the court 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 Kelly Scott Johnson, State Bar number 134520, 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 by mail (Rules Proc. of State Bar, rule 5.111(D)).

Dated: March 8, 2017.



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 March 8, 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:

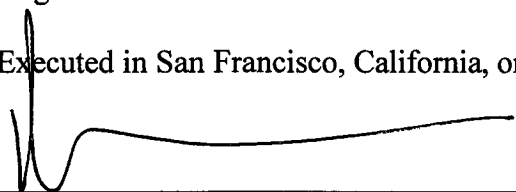
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KELLY S. JOHNSON
27068 LA PAZ RD STE 510
ALISO VIEJO, CA 92656

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

Michaela F. Carpio, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 8, 2017.



Vincent Au
Case Administrator
State Bar Court