

**FILED**

OCT 31 2017

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES *JS***PUBLIC MATTER**

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 17-O-01374-DFM
	)	
PAUL FRANCIS SMITH,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 42384.	)	ENROLLMENT
_____	)	

Respondent Paul Francis Smith (Respondent) was charged with failing to comply with certain conditions attached to his disciplinary probation. He failed to file a response to the Notice of Disciplinary Charges (NDC) in this matter, and his default was entered. 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.<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 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 rules 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 this state on June 19, 1968, and has been a member since then.

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

On March 27, 2017, the State Bar filed and properly served the NDC in this matter on Respondent by certified mail, return receipt requested, to his membership records address. A courtesy copy of the NDC was also sent to Respondent by first-class mail to 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.) The return receipt card for the certified mail was not received by the State Bar.

Thereafter, the State Bar (1) reviewed Respondent's probation case file to determine whether Respondent had provided any updated contact information; (2) attempted to reach Respondent by telephone at his membership records telephone number; (3) contacted Respondent at another telephone number found via a LexisNexis search and informed him of the matter; and (4) contacted Respondent on April 10, 2017, who indicated that he was no longer practicing law and intended to default and accept the disbarment recommendation that would result.

Respondent failed to file a response to the NDC. On April 24, 2017, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar senior

trial counsel declaring the additional steps taken to provide notice to Respondent (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 May 17, 2017. 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 subsequently 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 August 22, 2017, the State Bar filed and properly served the petition for disbarment on Respondent at his membership records address by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has not had any contact with Respondent since his default was entered; (2) there are no other investigations or disciplinary charges pending against Respondent; (3) Respondent has two records of prior discipline; and (4) the Client Security Fund has not paid out any claims as a result of 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 October 10, 2017.

### **Prior Record**

Respondent has two prior records of discipline.

On May 4, 2004, the State Bar Court filed an order imposing on Respondent a public reproof with conditions for two years based on his willful violation of rules 4-100(A),

4-100(B)(4), and 3-110(A) of the California Rules of Professional Conduct. Respondent entered into a stipulation as to facts, conclusions of law and disposition in that prior disciplinary matter.

On February 18, 2016, the Supreme Court filed an order suspending Respondent for one year, the execution of which was stayed, and placing him on probation for one year with conditions, including that he be suspended for the first 60 days of probation. (State Bar case No. 15-O-11893.) Respondent stipulated in that matter that he willfully violated section 6106 of the Business and Professions Code by reporting under penalty of perjury to the State Bar that he was in compliance with the MCLE requirements, when he was grossly negligent in not knowing that he was not in compliance with the MCLE requirements.

#### **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 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 17-O-01374 (Probation Violation Matter)**

Respondent failed to comply with certain conditions attached to the disciplinary probation in State Bar case No. 15-O-11893 in willful violation of Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by: (1) failing to contact the Office of Probation to schedule a meeting within thirty days of the effective date of discipline; (2) failing to file required quarterly reports which were due on July 10, 2016, October 10, 2016, and January 10, 2017; (3) failing to file the required final report due on March 19, 2017; and (4) failing to provide satisfactory proof of attendance at State Bar Ethics School by a date certain.

### **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 and 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 disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Paul Francis Smith, State Bar number 42384, 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 Paul Francis Smith, State Bar number 42384, 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: October 31, 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 October 31, 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:

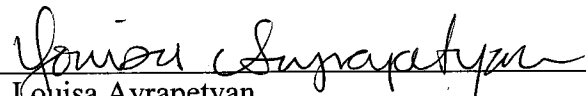
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PAUL FRANCIS SMITH  
6847 ADOBE RD  
TWENTYNINE PALMS, CA 92277

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

DREW D. MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 31, 2017.

  
Louisa Ayrapetyan  
Case Administrator  
State Bar Court