

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-O-17367-PEM (12-O-10618)
)	
JOSEPH EDWARD SHEERIN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 219244,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Joseph Edward Sheerin is charged with multiple violations of the Business and Professions Code and the Rules of Professional Conduct in connection with three separate client matters. Respondent failed to appear at the trial, and his default was entered. Thereafter, the 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 90 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 May 24, 2002, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On June 13, 2012, the State Bar filed and properly served upon respondent, by certified mail, return receipt requested, a notice of disciplinary charges (NDC) in case numbers 11-O-17367 (12-O-10618). Respondent filed an answer to the NDC on July 30, 2012.

Respondent participated in status conferences on July 16, 2012; July 23, 2012; August 13, 2012; September 24, 2012; October 22, 2012; and November 5, 2012. Respondent also participated in a settlement conference on August 27, 2012.

At a status conference on November 26, 2012, the trial was set for January 10, 2013, at 10:00 a.m. On November 28, 2012, the court filed an order setting forth the January 10, 2013, trial date in this matter. The order was properly served upon respondent by first-class mail, postage prepaid, at the address provided in his response to the NDC, which is also respondent's membership records address. (Rule 5.81(A).) The order was also mailed to respondent at an alternative address.

² 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(E)(2).)

On January 10, 2013, the State Bar appeared for trial, but respondent did not. The court entered respondent's default in an order filed on January 10, 2013. The order was properly served upon respondent by certified mail, return receipt requested, at respondent's membership records address. (Rule 5.81(B).) The order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e),³ effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On April 23, 2013, the State Bar filed and properly served upon respondent the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with respondent since the default was entered; (2) respondent has one non-public disciplinary matter pending against him; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's misconduct. 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 June 4, 2013.

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(E)(1)(d).)

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

Case Number 11-O-17367

Lu Matter

Count One -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to prepare adequate discovery responses, repeatedly failing to timely serve discovery responses, permitting monetary and evidentiary sanctions to be issued against his client, and failing to take any action after about March 6, 2011, to pursue his client's matter.

Count Two -- respondent willfully violated section 6103 (violation of court order) by failing to pay \$1,000 in court-ordered sanctions.

Collicott Matter

Count Three -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to prepare and serve discovery responses, failing to timely serve discovery responses, permitting sanctions to be issued against his client, and failing to take any action on behalf of his client.

Case Number 12-O-10618 (Morgan Matter)

Count Four -- respondent willfully violated section 6103 by failing to pay \$2,000 in court-ordered sanctions.

Count Five -- respondent willfully violated section 6068, subdivision (o)(3) (failing to report sanctions) by not reporting, to the State Bar, two \$1,000 sanctions orders.

Count Six -- respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation), by not responding to the State Bar's letters requesting that respondent participate and cooperate in disciplinary investigations by providing written responses to the allegations under investigation in this matter and the Lu matter.

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Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) 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 notice of the trial date prior to the entry of the default;
- (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.

RECOMMENDATION

Disbarment

The court recommends that respondent Joseph Edward Sheerin 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 Joseph Edward Sheerin, State Bar Number 219244, is 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: August _____, 2013.

PAT McELROY
Judge of the State Bar Court