

PUBLIC MATTER

FILED

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 18-O-16416-MC
)	
EDWARD LOUIS ESPOSITO,)	
)	DECISION AND ORDER OF
State Bar No. 166089.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
_____)	

Respondent Edward Louis Esposito was charged with a violation of Business and Professions Code section 6068(k). 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 (OCTC) 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 NDC and the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

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(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

Jurisdiction

Respondent was admitted to practice law in this state on November 23, 1993, and has since been a licensed attorney of the State Bar.

Procedural Requirements Have Been Satisfied

On October 23, 2018, OCTC properly served Respondent with the NDC by certified mail, return receipt requested, at his official State Bar record address. A courtesy copy was sent by U.S. first-class mail to Respondent's official State Bar record address as well. The NDC was filed with the State Bar Court on the same date. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt, signed by Tracey Chan, was received on October 29, 2018.

On November 19, 2018, Respondent confirmed receipt of the NDC via a telephone conversation with the deputy trial counsel (DTC) assigned to this matter and advised that he would not contest the charges. Respondent reiterated that he did not plan to contest the NDC despite the DTC's warning that the OCTC will file a motion for entry of default.

Despite OCTC's efforts, Respondent failed to file a response to the NDC.³ On December 4, 2018, the OCTC filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of

³ At the November 26, 2018 initial status conference, Respondent answered the court clerk's telephone call and participated telephonically. He was ordered to file a response by December 3, 2018. The court ordered OCTC to file a default motion on December 4, 2018, following at least one attempt to meet and confer before the filing. Respondent did not respond to the DTC's December 3, 2018 telephone call and voice message reminding him that his response was due.

reasonable diligence by 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. This motion was sent by certified mail, return receipt requested, and by regular U.S. first-class mail, addressed to Respondent at his official State Bar record address.

Respondent did not file a response to the motion and his default was entered on December 20, 2018. The court also ordered Respondent's involuntary inactive enrollment as a licensed attorney of the State Bar pursuant to Business and Professions Code section 6007, subdivision (e), 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 by certified mail, return receipt requested, addressed to Respondent at his official State Bar record address. The return receipt, signed by Tracey Chan, was received on December 26, 2018.

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 May 29, 2019, OCTC properly filed and served a petition for disbarment on Respondent.⁴ As required by rule 5.85(A), OCTC reported in the petition that: (1) Respondent has not contacted OCTC since the entry of his default; (2) there are no other investigations or disciplinary matters pending against Respondent; (3) Respondent has two prior records of 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 June 25, 2019.

⁴ OCTC had filed and served a prior petition for disbarment on April 4, 2019. This petition was denied without prejudice and the April 30, 2019 order submitting the matter for decision was vacated as the supporting declaration of the petition failed to comply with rule 5.85.

Prior Record of Discipline

Respondent has two prior records of discipline.⁵ On February 22, 2002, the Supreme Court filed an order suspending Respondent from the practice of law for three months, staying execution of that suspension, and placing Respondent on probation for two years subject to the conditions of probation as per the order approving stipulation filed on October 3, 2001. (Supreme Court case No. S102620; State Bar case No. 00-O-14649.) Respondent stipulated that he willfully violated (1) rule 3-110(A) of the Rules of Professional Conduct, by failing to perform with competence, the legal services for which he was employed; (2) section 6068, subdivision (m), of the Business and Professions Code, by failing to respond to his client's status inquiries and failing to inform the client of significant developments with regard to the matter he had agreed to provide legal services; and (3) rule 3-700(A)(2) of the Rules of Professional Conduct, by improperly withdrawing from employment.

Pursuant to the Supreme Court order filed on May 26, 2015, Respondent was ordered suspended from the practice of law for three years, execution of suspension was stayed, and he was placed on probation for three years with the condition that he be actually suspended for the first two years of probation. He was ordered to comply with other conditions of probation as per the order approving stipulation filed on January 27, 2015, as well as to comply with California Rules of Court, rule 9.20, within a specified time frame. (Supreme Court case No. S225254; State Bar case No. 14-C-02641.) In this criminal conviction matter, Respondent stipulated that his misdemeanor conviction for violating Insurance Code section 750(a) (unlawful offer or receipt of consideration by claims handlers for referral or procurement of clients) involved moral turpitude. Respondent was disciplined for splitting fees and accepting personal injury case referrals from non-attorneys.

⁵ The court admits into evidence the certified copies of Respondent's prior record of discipline attached to the May 29, 2019 petition for disbarment.

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 No. 18-O-16416 (Failure to Comply with Probation Conditions)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to (1) timely contact the Office of Probation to schedule a required meeting to discuss Respondent's probation requirements; (2) submit proof of attendance and completion of State Bar Ethics School to the Office of Probation; and (3) timely submit a final report to the Office of Probation by its due date, as required by the conditions of Respondent's disciplinary probation in Supreme Court case No. S225254 (State Bar case No. 14-C-02641).

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) Respondent had actual notice 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 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.

RECOMMENDATIONS

Disbarment

It is recommended that Edward Louis Esposito, State Bar Number 166089, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended 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 imposing discipline in this proceeding.⁶

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a licensed attorney of the State Bar who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

⁶ For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Edward Louis Esposito, State Bar number 166089, be involuntarily enrolled as an inactive attorney of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: July 22, 2019


MANJARI CHAWLA
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 Court Specialist 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 July 22, 2019, 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:

EDWARD L. ESPOSITO
501 W GLENOAKS BLVD #543
GLENDALE, CA 91202

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at, California, addressed as follows:

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Roy S. Kim, Enforcement - LA

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 22, 2019.


George Hue
Court Specialist
State Bar Court