



PUBLIC MATTER

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MAY 15 2018

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No. 17-O-04158-DFM
)	
JOSEPH WALCH,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 56192.)	ENROLLMENT
_____)	

Respondent Joseph Walch (Respondent) is charged, in a single count, with violating Business and Professions Code¹ section 6068, subdivision (k) [failure to comply with conditions of probation]. He failed to participate, either in person or through counsel in this proceeding, and his default was entered. The State Bar's Office of Chief Trial Counsel (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

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

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¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² 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, OCTC will file a petition requesting the court to recommend the attorney's disbarment.³

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 California on June 29, 1973, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 10, 2017, OCTC properly filed and served a notice of disciplinary charges (NDC) on Respondent at his membership records address by certified mail, return receipt requested. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Thereafter, the NDC was returned as "Unclaimed, Unable to Forward." (*Simmons Creek Coal Co. v. Doran* (1892) 142 U.S. 417, 437 [one " 'has no right to shut his eyes or his ears to the inlet of information, and then say he is . . . without notice' "]; *Baca v. State Bar* (1990) 52 Cal.3d 294, 302 [An attorney in a State Bar Court disciplinary proceeding cannot defeat service by refusing to accept delivery of his or her mail.])

On November 3, 2017, OCTC attempted to reach Respondent by telephone at his membership records telephone number, and left a message on Respondent's voicemail asking Respondent to return its call.

On November 9, 2017, OCTC mailed a courtesy copy of the NDC to Respondent at his membership records address by first class mail, regular delivery. That courtesy copy was not

³ 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).)

returned. On November 9, 2017, OCTC also sent an email with a courtesy copy of the NDC attached to it to Respondent at his membership records email address.

Respondent failed to file a response to the NDC. On November 20, 2017, OCTC properly filed and served a motion for entry of default on Respondent at his membership records address by certified mail, return receipt requested. Thereafter, the motion was returned as “Unclaimed, Unable to Forward.” The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the assigned State Bar Deputy Trial Counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also 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 or the NDC, and his default was properly entered on December 6, 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 section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

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 March 19, 2018, OCTC properly filed and 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), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are no other investigations or disciplinary charges pending against Respondent; (3) Respondent has three prior records of discipline; and

(4) no payments have been made by the Client Security Fund as a result of Respondent's present misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on April 16, 2018.

Prior Records of Discipline

Respondent has been disciplined on three prior occasions.

State Bar Court case No. 96-O-02896, etc.

Pursuant to a Supreme Court order filed on July 26, 2001, Respondent was placed on five years' stayed suspension and five years' probation on conditions, including his suspension from the practice of law for a minimum of the first eighteen months of probation and continuing until Respondent established his rehabilitation, fitness to practice, and learning and ability in the general law in accordance with former standard 1.4(c)(ii) (now standard 1.2(c)(1)) of the Standards for Attorney Sanctions for Professional Misconduct.⁴ Respondent's misconduct in that prior proceeding involved 12 separate client matters and stemmed from Respondent's reckless or grossly negligent failure to supervise the operations of his law office. Respondent stipulated to culpability on 35 counts of misconduct, including misrepresentation and numerous acts of misappropriation. In aggravation, Respondent stipulated to failing to account, significant client harm, multiple acts of misconduct, and failing to make a greater effort to pay restitution. The stipulated mitigation was Respondent's 20 years of misconduct free practice and Respondent's emotional and health issues (i.e., Crohn's Disease), which contributed to his misconduct.

The conditions of Respondent's probation in that prior matter also required, among other things, that Respondent pay restitution totaling more than \$27,000 (plus interest) in five client

⁴ The standards are found in title IV of the Rules of Procedure of the State Bar. All further references to standards are to this source.

matters. Initially, Respondent was required to make minimum monthly restitution payments of at least \$50 and to pay the more than \$27,000 in restitution (plus interest) during the first four years of his probation. But, over the years, Respondent made and the State Bar Court granted numerous motions extending the time for Respondent to pay the restitution and interest. Despite those extensions, Respondent failed to comply with his obligations to make restitution, resulting in his second and third disciplines, discussed below.

State Bar Court case No. 15-PM-13017

Pursuant to Supreme Court order No. S097699, filed on December 16, 2015, Respondent's probation under the Supreme Court's July 26, 2001, order was revoked, and Respondent was placed on a new five-year stayed suspension and a new five-year probation with conditions, including a two-year actual suspension continuing until Respondent complied with standard 1.2(c)(1). Respondent's probation conditions under the Supreme Court's December 16, 2015, order required, among other things, that Respondent pay restitution totaling more than \$10,000 (plus interest) to the heirs of two former clients and more than \$54,300 to the Client Security Fund for payments it made to Respondent's former clients. Respondent was required to make minimum monthly restitution payments of at least \$250. This discipline was imposed on Respondent because the State Bar Court found that he willfully violated the restitution probation conditions imposed on him under the Supreme Court's July 26, 2001, order, as they were thereafter modified and extended by the State Bar Court. Respondent's failure to make any restitution payments after March 2015 was a significant aggravating circumstance. Also, in aggravation, Respondent had one prior record of discipline and committed multiple acts of misconduct. No mitigating circumstances were found.

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State Bar Court case No. 16-PM-16899

Pursuant to Supreme Court order filed on March 16, 2017, Respondent's probation under the Supreme Court's December 16, 2015, order was revoked; Respondent was suspended from practice for a minimum of five years and until he complies with standard 1.2(c)(1); and Respondent was again placed on a new five-year probation on conditions, including that Respondent pay restitution totaling more than \$10,000 (plus interest) to the heirs of two former clients and more than \$54,300 to the Client Security Fund for payments it made to Respondent's former clients. Respondent was again required to make minimum monthly restitution payments of at least \$250. The Supreme Court imposed this discipline on Respondent in accordance with a decision of this court finding Respondent culpable of willfully violating the restitution conditions of the new five-year probation that was imposed on him under the Supreme Court's December 16, 2015, order. Specifically, this court found that, during the first nine months of Respondent's probation under the Supreme Court's December 16, 2015, order, Respondent failed to provide proof that he made any of the required \$250 minimum monthly restitution payments. Further, no payments had been made by Respondent to the Client Security Fund. Respondent's two prior records of discipline and his failure to appear and participate in the that proceeding were aggravating circumstances. No mitigating circumstances were found.

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 No. 17-O-04158 (Probation Violations Matter)

Count 1 – Respondent willfully violated section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with all of the conditions of the five-year probation imposed on him under the Supreme Court's March 16, 2017, order, to wit, failing to schedule a meeting with his probation deputy, failing to file his first quarterly report, and failing to make and provide proof of making the required \$250 minimum monthly restitution payments for the first four months of his probation.

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 his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Joseph Walch**, State Bar number 56192,

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 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 Joseph Walch, State Bar number 56192, 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. (rule 5.111(D).)

Dated: May 15, 2018.



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 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 Los Angeles, on May 15, 2018, 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:

JOSEPH WALCH
1160 NO. OGDEN DR. 111
LOS ANGELES, CA 90046

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

SCOTT D. KARPF, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 15, 2018.



Mazie Yip
Court Specialist
State Bar Court