

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: <b>11-C-19652-LMA</b>
	)	11-C-19655; 11-C-19653;
<b>SAMUEL SAENZ PRENDEZ, JR.,</b>	)	11-C-19654 (Cons.)
	)	
<b>Member No. 249192,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
A Member of the State Bar.	)	<b>ENROLLMENT</b>
_____	)	

Respondent Samuel Saenz Prendez, Jr. (respondent) was convicted on four separate criminal matters. His convictions included violating Penal Code sections 591 (obstructing a utility line), a misdemeanor; 148, subdivision (a)(1) (resisting arrest), a misdemeanor; 242 (battery), a misdemeanor; and 166, subdivision (a)(4) (disobeying a court order), a misdemeanor; and Vehicle Code section 23103 pursuant to section 23103.5 (reckless driving–alcohol related), a misdemeanor, violations which may or may not involve moral turpitude or constitute other misconduct warranting discipline. Upon finality of the convictions, the review department issued orders referring these matters to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violations involved moral turpitude or other misconduct warranting discipline. Respondent failed to participate either in person or through counsel in any of these matters, and his default

was entered. The State Bar filed petitions 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 notice of hearing on conviction, and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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 1, 2007, and has been a member since then.

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

On February 15, 2012, the State Bar Court filed and properly served two notices of hearing on conviction (for case nos. 11-C-19652 and 11-C-19655) on respondent by certified mail, return receipt requested, at his membership records address.<sup>3</sup> The two notices of hearing on conviction notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.)

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source. Rule 5.345(C) makes the default procedures in rules 5.80-5.86, with certain exceptions, applicable in conviction proceedings.

<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(E)(2).)

<sup>3</sup> Case nos. 11-C-19652 and 11-C-19655 were subsequently consolidated.

Thereafter, Deputy Trial Counsel Christine Souhrada (DTC Souhrada) attempted to reach respondent by (1) leaving a message on his membership records telephone number; (2) sending an email message to respondent's email address included in his membership records data;<sup>4</sup> (3) sending the two notices of hearing on conviction to five possible alternate addresses; (4) calling an alternate telephone number respondent had provided to membership records; (5) sending a letter to respondent by fax at his membership records fax number; (6) calling two alternate telephone numbers for respondent found through a records search; and (7) calling respondent's former employer.

Respondent failed to file a response to the two notices of hearing on conviction. On March 14, 2012, the State Bar properly filed and served a motion for entry of respondent's default.<sup>5</sup> The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the 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, and his default was entered on April 2, 2012. 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.<sup>6</sup>

On May 31, 2012, the State Bar Court filed and properly served two additional notices of hearing on conviction (for case nos. 11-C-19653 and 11-C-19654) on respondent by certified

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<sup>4</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

<sup>5</sup> The motion was also served upon respondent by mail at eight alternate addresses.

<sup>6</sup> On July 19, 2012, the court issued orders vacating and reinstating respondent's default due to incorrect language contained in the court's April 2, 2012 default order.

mail, return receipt requested, at his membership records address. The two notices of hearing on conviction notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.)

On July 11, 2012, DTC Souhrada spoke to respondent on the telephone. DTC Souhrada informed respondent that two additional disciplinary matters had been filed against him in the State Bar Court, that his response to those matters was overdue, and that she would be filing a motion for his default. Respondent provided his current address and DTC Souhrada sent him copies of the two additional notices of hearing on conviction.

Respondent failed to file a response to the two additional notices of hearing on conviction. On July 13, 2012, the State Bar properly filed and served motions for the entry of respondent's default.<sup>7</sup> The motions complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motions 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 motions, and his default was entered on July 31, 2012. The orders entering the default were 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, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated in any of these cases. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On February 21,

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<sup>7</sup> The motions were also served upon respondent by mail at the address he provided DTC Souhrada on July 11, 2012.

2013, the State Bar filed and served petitions for disbarment.<sup>8</sup> As required by rule 5.85(A), the State Bar reported in the petitions that (1) respondent had not been in contact with the State Bar since July 19, 2012, the date the order entering his default was served; (2) respondent had one non-public criminal conviction referral case awaiting finality of the underlying criminal matter; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petitions for disbarment or move to set aside or vacate the default. The cases were consolidated and submitted for decision on March 19, 2013.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations set forth in the State Bar's statements of facts and circumstances surrounding respondent's convictions are deemed admitted and no further proof is required to establish the truth of such facts. (Rules 5.345(C) & 5.82.) As set forth below in greater detail, respondent's convictions support the conclusion that respondent violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **1. Case Number 11-C-19652**

Respondent was convicted of violating Penal Code section 591 (obstructing a utility line). On September 8, 12, and 14, 2011, respondent retaliated against his neighbors—who previously called in a noise complaint against respondent—by shutting off their utilities, including their power, telephone access, air conditioning, and water. On September 16, 2011, respondent pled no contest to a violation of Penal Code section 591.

Obstructing a utility line is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the

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<sup>8</sup> The State Bar filed three petitions because, at this point, all these matters had yet to be consolidated.

conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude, but do constitute other misconduct warranting discipline.

Conviction of a crime involving other misconduct warranting discipline is grounds for discipline.

(*Young v. State Bar* (1990) 50 Cal.3d 1204.)

## **2. Case Number 11-C-19655**

Respondent was convicted of violating Vehicle Code section 23103 pursuant to section 23103.5 (reckless driving—alcohol related). On February 8, 2009, respondent was stopped by the police while driving the wrong way on a one-way street without his headlights on at approximately 2:00 a.m. Respondent's subsequent blood test revealed a blood alcohol level of .08%. On August 11, 2011, respondent pled no contest to a violation of Vehicle Code section 23103 pursuant to section 23103.5.

Alcohol-related reckless driving is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude, but do constitute other misconduct warranting discipline.

## **3. Case Number 11-C-19653**

Respondent was convicted of violating Penal Code sections 148, subdivision (a)(1) (resisting arrest), and 242 (battery).<sup>9</sup> On October 8, 2011, at approximately 12:30 a.m., respondent became combative and failed to respond to the verbal commands of officers who were responding to a noise disturbance complaint. At least three officers had to physically restrain respondent. Respondent resisted being physically restrained, tried to break the officers' grips on him, yelled and screamed, and repeatedly tried to flee. Eventually, the officers were

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<sup>9</sup> Respondent was convicted on two counts of resisting arrest.

forced to use a taser on him. During his attempts to flee the officers, respondent pushed over and injured the person who made the noise complaint. On January 10, 2012, respondent pled no contest to violations of Penal Code sections 148, subdivision (a)(1), and 242.

Resisting arrest and battery are crimes that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude, but do constitute other misconduct warranting discipline.

#### **4. Case Number 11-C-19654**

Respondent was convicted of violating Penal Code section 166, subdivision (a)(4) (contempt of court). On October 12, 2011, respondent, who had already been evicted from the apartment building where he shut off his former neighbors' utilities (see above), parked his car within 30 yards of his former neighbors' apartment. This violated a restraining order taken out by his former neighbors. On January 10, 2012, respondent pled no contest to a violation of Penal Code section 166, subdivision (a)(4).

Contempt of court for violating a restraining order is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude, but do constitute other misconduct warranting discipline.

#### **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 notices of hearing on conviction were properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the earlier proceedings prior to the entry of his default, as he was properly served with notices of hearing on conviction and the State Bar made various efforts to locate respondent, including: calling his membership records telephone number; emailing his membership records email address; mailing copies of the notices of hearing on conviction to him at five additional possible addresses; sending a letter to respondent by fax at his membership records fax number; calling three alternative telephone numbers; and calling his former employer.

In addition, respondent had actual notice of the proceedings prior to the entry of his default in the later matters, as he was properly served with notices of hearing on conviction and communicated via telephone with the State Bar;

(3) the defaults were properly entered under rule 5.80; and

(4) the factual allegations in the statements of facts and circumstances surrounding respondent's convictions 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 or 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 Samuel Saenz Prendez, Jr., 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 Samuel Saenz Prendez, Jr., State Bar number 249192, 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: June \_\_\_\_\_, 2013

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LUCY ARMENDARIZ  
Judge of the State Bar Court