

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of ) Case No.: **11-N-10306; 11-O-11362 (Cons.)**  
)  
**JOHN ALROY PETTIS,** ) **DECISION AND ORDER OF**  
) **INVOLUNTARY INACTIVE**  
**Member No. 51334,** ) **ENROLLMENT**  
)  
A Member of the State Bar. )

Respondent John Alroy Pettis was charged with (1) disobeying or violating a court order by failing to comply with a court order requiring him to comply with California Rules of Court, rule 9.20, and violating rule 9.20(c); and (2) failing to comply with all conditions attached to a disciplinary probation. He failed to participate either in person or through counsel and his default was entered. 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.<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 disciplinary charges (NDC), 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>

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<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(E)(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 the practice of law in this state on January 5, 1972, and has been a member of the State Bar of California at all times since that date.

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

On March 4 and 7, 2011, respectively, the State Bar properly served and filed the NDC on respondent by certified mail, return receipt requested, and by regular mail at 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.) Neither the NDC, nor the certified mail receipt, was returned by the U.S. Postal Service (USPS) to the State Bar.<sup>3</sup> The NDC sent by regular mail was not returned either.

On April 21, 2011, the State Bar attempted to reach respondent at his membership records telephone number and attempted to locate a current telephone number for respondent through directory assistance. Additionally, the State Bar sent three letters to respondent at an address believed to be respondent's last known home address.

On April 22, 2011, DTC Liang sent an email message to respondent at the email address listed in his membership records.<sup>4</sup> On April 28, 2011, the State Bar received an email response from that email address sent by a person identifying herself as Sarah B. Allen (Allen), stating,

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<sup>3</sup> The declaration of Deputy Trial Counsel Wonder Liang (DTC Liang) made in support of the Second Notice of Motion and Motion for Entry of Default stated that a search of the USPS internet site confirmed that the NDC that had been sent to respondent via certified mail was delivered on March 5, 2011.

<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).)

among other things, that respondent was ill, but it was hoped that he would be able to contact the Deputy Trial Counsel the following week.

Respondent failed to file a response to the NDC. On September 8, 2011, the State Bar properly served respondent with its Second Notice of Motion and Motion for Entry of Default. The motion was filed on September 9, 2011. 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 September 27, 2011. 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, 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)(1) [attorney has 180 days to file motion to set aside default].) On May 4, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has six disciplinary matters pending; (3) respondent has a record of prior discipline; and (4) as of May 2, 2012, there was one matter pending with the Client Security Fund (CSF) resulting from 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 May 30, 2012.

Respondent has been disciplined on three prior occasions. Pursuant to a Supreme Court order filed on June 7, 1996, respondent was suspended for one-year, the execution of which was

stayed, and he was placed on probation for two years subject to conditions, including an actual suspension from the practice of law for 60 days. Respondent stipulated that he engaged in fee-splitting with non-attorneys for a period of over five years.

On February 4, 2004, respondent was privately reprimanded for withdrawing funds from his client trust account prior to the resolution of a dispute with his clients over respondent's right to receive the funds. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order, filed on October 26, 2010, respondent was suspended for four years, the execution of which was stayed, and he was placed on probation for five years subject to conditions, including that he be suspended from the practice of law for a minimum of the first two years of probation and that he remain suspended until the State Bar Court grants a motion to terminate his suspension. In the matter, involving two clients, the parties stipulated that respondent committed acts of moral turpitude by misappropriating client funds, failed to maintain client funds in trust, failed to render an appropriate accounting to a client, failed to competently perform legal services, failed to communicate, and engaged in further acts of moral turpitude by diverting client funds to himself and by gross mismanagement of client funds.

### **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).)

**1. Case Number 11-N-10306 (Rule 9.20 Matter)**

Respondent violated California Rules of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) and Business and Professions Code section 6103 (violation of court order) by not filing proof of compliance as required by rule 9.20(c) as ordered by the Supreme Court in its October 26, 2010 order.

**2. Case Number 11-O-11362 (Probation Matter)**

Respondent violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing, as alleged in the NDC, to comply with certain specified probation conditions attached to the disciplinary probation ordered by the Supreme Court in its order filed on October 26, 2010.

**Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be 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, as the NDC was served on respondent at his membership records address by both certified and regular mail; the State Bar attempted to contact respondent by telephone, regular mail and email; and the State Bar contacted directory assistance;
- (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 must recommend his disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent John Alroy Pettis 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 John Alroy Pettis, State Bar number 51334, 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: September \_\_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court