

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 11-N-16661-LMA
)	
DENNIS E. POWELL,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 68376,)	ENROLLMENT
)	
A Member of the State Bar.)	

Respondent Dennis E. Powell (respondent) was charged with violating Business and Professions Code section 6103 and California Rules of Court, rule 9.20, subdivision (c), by willfully disobeying and violating a court order requiring compliance with California Rules of Court, rule 9.20. 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.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 notice of disciplinary charges (NDC),

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

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.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 practice law in this state on April 30, 1976, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 18, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular mail, to 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.) The State Bar did not receive a return receipt.

Thereafter, the State Bar took further steps to notify respondent of these proceedings. As respondent is currently on disciplinary probation, Deputy Trial Counsel Maria Oropeza (DTC Oropeza) contacted the assigned probation deputy to ascertain whether respondent's profile contained any other address. She also attempted to reach respondent by telephone at respondent's official membership records telephone number. She reached a recording and left a message for respondent. DTC Oropeza also sent an e-mail to the e-mail address respondent provided to the State Bar for State Bar purposes.³ A State Bar investigator also conducted an internet search for respondent in an attempt to locate alternative or additional addresses for him,

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).)

³ 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).)

but no additional addresses in Washington were located for respondent. On November 16, 2011, the State Bar properly served on respondent a motion for entry of his default. On June 22, 2012, the State Bar properly served a petition for disbarment on respondent; however, the petition was returned by the U.S. Postal Service as refused.⁴ DTC Oropeza also sent an email to respondent on October 29, 2011, at the email address he had provided to the State Bar for State Bar purposes.

Despite these efforts at notifying respondent of this proceeding, respondent failed to file a response to the NDC. On October 29, 2012, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, to his membership records address. 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 November 20, 2012. The order entering the default was properly served on respondent at his membership records address by certified mail, return receipt requested. The order was returned to the State Bar Court by the U.S. Postal Service as unclaimed and unable to forward. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under

⁴ Respondent's default was entered on December 7, 2011, and he was thereafter enrolled as an inactive member of the State Bar under Business and Professions Code section 6007, subdivision (e). Thereafter, on June 22, 2012, the State Bar filed a disbarment petition, and this matter was submitted for decision on July 24, 2012. However, on September 4, 2012, the court filed an order vacating, nunc pro tunc, respondent's entry of default and involuntary inactive enrollment and the submission of this matter for decision. The order also rescinded the motion for entry of default, the disbarment petition, and the order entering default. The order also gave respondent 20 days from service of the order (plus 10 days' service time) to file and serve a response to the NDC.

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 also 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 30, 2013, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) as of May 30, 2013, respondent has not contacted the deputy trial counsel or the State Bar since November 20, 2012, the date the order entering his default was filed and served; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline;⁵ and (4) the Client Security Fund has not made any payments 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 July 2, 2013.

Respondent has two prior records of discipline.⁶ Effective April 13, 2009, respondent was privately reprovved in discipline case No. 05-O-05001. Respondent stipulated that he repeatedly and recklessly failed to perform legal services with competence.

Pursuant to a Supreme Court order filed on March 30, 2011, respondent was suspended for one year, the execution of which was stayed subject to certain conditions, including that he be suspended for a minimum of 60 days and that he remain suspended until the court grants a

⁵ Although DTC Oropeza's declaration refers to only one prior record of discipline, the court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of respondent's State Bar membership records which reflect that respondent has two prior records of discipline.

⁶ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

motion to terminate his suspension.⁷ Respondent did not participate in this prior disciplinary matter and his default was entered. The court found that respondent failed to comply with certain conditions attached to his earlier private reproof.

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).)

Case Number 11-N-16661 (Violation of Court Order & Rule 9.20(c))

Respondent willfully violated Business and Professions Code section 6103 (violation of court order) and California Rules of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys – compliance affidavit) by failing to submit a timely rule 9.20(c) compliance affidavit in willful violation and disobedience of a court order requiring compliance with rule 9.20.

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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (1) filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular mail, to his membership records address;

⁷ This order also provided that if respondent remained suspended for 90 days or more, he must comply with California Rules of Court, rule 9.20, and perform the acts set forth in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the order.

(2) contacted respondent's assigned probation deputy; (3) attempted to reach respondent by telephone at respondent's official membership records telephone number; (4) sent two e-mails to the e-mail address respondent provided to the State Bar for State Bar purposes; (5) conducted an internet search for respondent; (6) properly served on respondent a motion for entry of his default; and (7) properly served a petition for disbarment on respondent.

(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 disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Dennis E. Powell 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 Dennis E. Powell, State Bar number 68376, 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: October ____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court