

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-N-10076-LMA
)	
JOSEPH EUGENE PETRILLO,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 58010,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Joseph Eugene Petrillo (respondent) was charged with violating Business and Professions Code section 6103 and California Rules of Court, rule 9.20(c). 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), 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

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(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 practice law in this state on December 19, 1973, and has been a member since then.

Procedural Requirements Have Been Satisfied

On January 24, 2012, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, 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.) The United States Postal Service returned the NDC as undeliverable.

Thereafter, the State Bar, knowing respondent was on disciplinary probation, contacted his probation deputy in an effort to locate an alternative address. The State Bar attempted to reach respondent by telephone at his official membership records telephone number and emailed respondent at his membership records email address³ and at a second email address.⁴ The State Bar also called a telephone number located through directory assistance and spoke to a woman who identified herself as respondent's ex-wife. This woman told the State Bar that she had no knowledge of respondent's whereabouts, but believed he had moved out of the country five years ago. The State Bar also conducted internet people searches through LexisNexis and Zabasearch.

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).)

⁴ The State Bar previously communicated with respondent at the second email address in October 2010.

The State Bar located a possible address in Florida and sent a courtesy copy of the NDC to that address.

Respondent failed to file a response to the NDC. On February 24, 2012, the State Bar 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 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 March 13, 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, 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 September 19, 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) there are no other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made 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 October 18, 2012.

Respondent has been disciplined on one prior occasion.⁵ Pursuant to a Supreme Court order filed on June 27, 2011, respondent was suspended for one year, the execution of which was stayed, and he was suspended from the practice of law for 30 days and until: (1) he pays judicial sanctions; and (2) the State Bar Court grants a motion to terminate his suspension. In this default matter, respondent was found culpable of disobeying a court order and failing to participate in a disciplinary investigation.

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 12-N-10076 (Rule 9.20 Matter)

Respondent violated Business and Professions Code section 6103 (failure to obey a 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 declaration as ordered by the Supreme Court in its June 27, 2011 order.

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;

⁵ 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.

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar properly served him with the NDC and made various efforts to locate respondent, including: calling his membership records telephone number; emailing his membership records email address and a possible alternative email address; mailing a courtesy copy of the NDC to him at an additional possible address; conducting LexisNexis, Zabasearch, and directory assistance searches; and calling a telephone number located through directory assistance and speaking to a woman who identified herself as respondent's ex-wife;

(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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Joseph Eugene Petrillo 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 Joseph Eugene Petrillo, State Bar number 58010, 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: January _____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court