

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-16898-DFM
)	
JONATHAN ORBETA SARTE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 250743,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent **Jonathan Orbeta Sarte** (Respondent) was charged with violating California Rules of Court, rule 9.20, by willfully failing to comply with rule 9.20 as ordered by the Supreme Court. Respondent failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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. A portion of the rules were revised on July 1, 2014. For the purposes of this decision, the court applies the rules as written prior to the July 1, 2014 revisions.

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 October 13, 2007, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 11, 2012, the State Bar properly filed and served a Notice of Disciplinary Charges (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 NDC was not returned to the State Bar by the United States Postal Service.

On February 1, 2013, 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 had actual notice of these proceedings. On or about February 4, 2013, Respondent communicated with the State Bar by email and telephone. Respondent acknowledged receiving a copy of the NDC and subsequent default motion. On March 4, 2013, Respondent filed an opposition to the entry of default. This opposition, however, was not accompanied by the required response to the NDC. Respondent thereafter failed to file a

response to the NDC, and his default was entered on June 4, 2014.³ The June 4, 2014 order entering default was served on Respondent at his membership records address and his aforementioned alternative address by United Parcel Service International 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.

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 December 26, 2014, 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 no other disciplinary matters pending; (3) Respondent has a 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 petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on February 19, 2015.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on May 21, 2012, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for four years subject to conditions including his suspension from the practice of law for one year. In that matter, Respondent stipulated to a total of twelve counts of misconduct in five matters, including failing to perform legal services with competence (four counts); failing to refund unearned fees (four counts); aiding the unauthorized practice of law (three counts); and failing to obey a court order (one count).

³ On April 14, 2014, a previous order entering Respondent's default was vacated based on the court's concerns relating to whether the State Bar had emailed information to Respondent, as ordered. In the April 14, 2014 order vacating default, the court ordered Respondent to file and serve his response to the NDC by June 1, 2014. A copy of the April 14, 2014 order was properly served on Respondent at his membership records address. An additional copy of this order was mailed to him at the address listed in his opposition to the entry of default.

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 No. 12-N-16898 (The Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned, or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, 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) Respondent had actual notice of the proceedings prior to the entry of his default, as he communicated with the State Bar and filed a motion in opposition to the entry of 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 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 **Jonathan Orbeta Sarte**, State Bar number 250743, 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 **Jonathan Orbeta Sarte**, State Bar number 250743, 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: May _____, 2015

DONALD F. MILES
Judge of the State Bar Court

