

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-17278-RAH
)	
ALEXANDER JOHN PECCEL,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 167229,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Alexander John Pecel (respondent) was charged with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or 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), 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 13, 1993, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 27, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, 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 NDC was forwarded by the U.S. Postal Service to an address in Castaic, California, but the NDC was returned to the State Bar, bearing the stamp “Refused,” as well as the word “Refuse,” written across the front of the envelope.³

Thereafter, the State Bar (1) sent a courtesy copy of the NDC by first-class mail to respondent’s official membership records address; (2) sent a courtesy copy of the NDC by first-class mail to respondent at the address in Castaic, California, which was verified through a public records search; (3) sent an email, with the NDC as an attachment, to respondent at his private membership records email address;⁴ (4) sent a copy of the NDC by facsimile transmission to respondent’s official membership records facsimile number; (5) attempted to reach respondent five times by telephone, including at his membership records telephone number and four other numbers located through a public records search; (6) conducted an online search

³ Declaration of Meredith A. McKittrick attached to the State Bar’s motion for entry of respondent’s default.

⁴ 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).)

for a new or different address or telephone number for respondent; and (7) contacted the assigned probation deputy to ascertain whether respondent's profile contained any other address.

Respondent failed to file a response to the NDC. On January 31, 2013, 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 February 20, 2013. 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 United States 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 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 October 15, 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) respondent has not contacted the State Bar since February 20, 2013, when respondent's default was entered; (2) there are other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of 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 November 14, 2013.

Respondent has four prior records of discipline.⁵ Pursuant to an order of the State Bar Court filed on March 4, 2003, respondent was privately reprovved with conditions for failing to respond promptly to his client's reasonable status inquiries in the matter in which respondent had agreed to provide legal services. Respondent entered into a stipulation in this prior disciplinary matter.

Pursuant to a Supreme Court order filed on October 18, 2005, respondent was suspended for six months, the execution of which was stayed, and he was placed on probation for three years subject to conditions. Respondent stipulated in this prior disciplinary matter to culpability and discipline for failing to perform legal services with competence in two matters.

Pursuant to a Supreme Court order filed on October 19, 2011, respondent was suspended for two years, execution of which was stayed, and he was placed on probation for three years subject to conditions. Respondent stipulated in this prior disciplinary matter to culpability and discipline for (1) failing to perform legal services with competence in one matter; (2) failing to respond to reasonable client inquiries in one matter; and (3) failing upon termination to promptly release client papers upon request in one matter.

Pursuant to Supreme Court order filed on July 16, 2012, respondent's probation was revoked and he was suspended from the practice of law for two years and until he provided proof of his rehabilitation, fitness to practice and learning and ability in the general law. The court found that respondent failed to comply with certain conditions attached to his earlier disciplinary probation. Respondent failed to participate in this disciplinary proceeding.

⁵ The court admits into evidence the certified copy of respondent's prior records of discipline that are attached to the State Bar's October 15, 2013, petition for disbarment after 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).)

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Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file 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 the July 16, 2012, 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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, since (a) the NDC was properly served on respondent at his membership records address, (b) courtesy copies of the NDC were sent by first-class mail to a forwarding address, by fax, and by email; (c) a search was conducted for alternate addresses and telephone numbers for respondent; (d) attempts to reach respondent by telephone were made; and (e) the probation deputy assigned to respondent was contacted to verify that there were no other addresses for respondent;

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(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 Alexander John Pecel 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 Alexander John Pecel, State Bar number 167229, 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 _____, 2014

RICHARD A. HONN
Judge of the State Bar Court