

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-17282-DFM
)	
HENRY ALAN PATTIZ,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 44073,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Henry Alan Pattiz (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 29, 1967, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 3, 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 returned to the State Bar by the United States Postal Service stamped “REFUSED.”

Thereafter, the State Bar took further steps to notify Respondent of these proceedings. Among other things, on December 12, 2012, the assigned deputy trial counsel telephoned Respondent at his official membership records telephone number. Respondent answered the telephone call and stated that he had refused service of the NDC because he wanted no business with the State Bar. The deputy trial counsel informed Respondent of the December 28, 2012, due date for the response to the NDC, and her intention to file a motion for entry of default if Respondent failed to file a response.

Despite having actual notice of this proceeding, Respondent failed to file a response to the NDC. On January 14, 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 6, 2013. The order entering the default was properly served on Respondent at his membership records address by certified mail, return receipt requested. The order served on Respondent at his membership records address 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 August 15, 2013, the State Bar properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address.³ 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 6, 2013, the date the order entering his default was filed and served; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has paid \$24,000 in claims resulting from Respondent’s prior 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 September 16, 2013.

³ The petition for disbarment was filed on August 12, 2013. The court notes that although the caption of the petition properly states Respondent’s name, there is a reference in page 1 to another Respondent. However, the court finds that this error appears to be merely a typographical error and Respondent had sufficient due process.

Respondent has two prior records of discipline.⁴ Pursuant to a Supreme Court order filed on April 13, 2011, 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 that he be suspended for the first 90 days of probation. Respondent stipulated in the prior disciplinary matter to culpability and discipline for engaging in the unauthorized practice of law and failing to cooperate and participate in the State Bar investigation.

Pursuant to a Supreme Court order filed on July 24, 2012, Respondent's probation was revoked and he was suspended from the practice of law for one year. The court found that Respondent failed to comply with certain conditions attached to his earlier disciplinary probation.

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 24, 2012, Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

⁴ The court admits into evidence the certified copy of Respondent's prior records of discipline that are attached as exhibits 1 and 2 to the State Bar's August 12, 2013, petition for disbarment after default.

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 this proceeding as Respondent spoke with the assigned deputy trial counsel who informed Respondent of the due date for filing a response to the NDC and her intention to file a motion for entry of default if Respondent failed to file a response;
- (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 Henry Alan Pattiz 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 Henry Alan Pattiz, State Bar number 44073, 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: December _____, 2013

DONALD F. MILES
Judge of the State Bar Court