**FILED OCTOBER 23, 2013**

# STATE BAR COURT OF CALIFORNIA

**HEARING DEPARTMENT – LOS ANGELES**

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| In the Matter of**JAY CURTIS COX,****Member No. 147858,**A Member of the State Bar. | **)****)****)****)****)****)****)** |  | Case Nos.: | **12-O-14005 (12-O-16400)-LMA** |
| **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT** |

 Respondent Jay Curtis Cox (respondent) was charged with failing to cooperate in a State Bar investigation in two matters and with failing to support the Constitution and laws of the United States and California. 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]](#footnote-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]](#footnote-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 September 9, 1990, and has been a member since then.

**Procedural Requirements Have Been Satisfied**

On November 13, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. No signed return receipt was returned to the State Bar. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual notice of this proceeding. The deputy trial counsel (DTC) assigned to this matter spoke to respondent by telephone on December 10, 2012, and respondent indicated that he would file a response to the NDC on or before December 14, 2012. Thereafter, the assigned DTC received a voicemail message from respondent stating, in part, that he would file a response to the NDC on or before December 17, 2012.

Nevertheless, respondent failed to file a response to the NDC. On December 18, 2012, the State Bar properly served a motion for entry of respondent’s default by certified mail, return receipt requested, on respondent at his membership records address. The motion was filed on December 19, 2012. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar DTC 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 January 4, 2013. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.[[3]](#footnote-3) 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 July 23, 2013, the State Bar filed the petition for disbarment.[[4]](#footnote-4) As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since January 4, 2013, the date the default order was filed and served on respondent; (2) there is one investigation matter pending against respondent; (3) respondent has four prior records 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 August 14, 2013.

 Respondent has four prior records of discipline.[[5]](#footnote-5) Pursuant to a Supreme Court order filed on May 15, 2001, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years on condition that he be actually suspended for one year and until he shows proof of his rehabilitation, fitness to practice and learning and ability in the general law. This matter involved four criminal matters. Respondent stipulated in this prior disciplinary matter that (1) his two separate convictions of violating Health and Safety Code section 11377 [possession of a controlled substance (methamphetamine)] did not involve moral turpitude but did involve other misconduct warranting discipline; (2) his conviction of violating Vehicle Code section 23103.5 [reckless driving-alcohol related] did not involve moral turpitude but did involve other misconduct warranting discipline; and (3) his conviction of violating Vehicle Code section 14601.5 [driving while privilege was suspended/revoked due to refusal to take chemical tests or excessive blood alcohol] did not involve moral turpitude but did involve other misconduct warranting discipline.

 Pursuant to an order filed on January 7, 2010, respondent was publicly reproved as a result of his conviction of violating Vehicle Code sections 23152(a) [willfully and unlawfully driving a vehicle while being under the influence of an alcoholic beverage], 23152(b) [willfully and unlawfully driving a vehicle with 0.08 percent or more, by weight of alcohol in his blood] and 14601.1(a) [driving with a suspended license]. Respondent stipulated that by violating these Vehicle Code sections, he committed other misconduct warranting discipline but did not commit an act of moral turpitude.

 Pursuant to a Supreme Court order filed on May 19, 2011, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to probation conditions. Respondent stipulated in this matter to failing to comply with conditions attached to a public reproval.

 Pursuant to a Supreme Court order filed on October 15, 2012, respondent’s earlier probation was revoked, and he was placed on probation for two years subject to certain conditions, including that he be suspended for the first year of his probation. Respondent did not participate in this prior disciplinary matter. Discipline was imposed based on respondent’s failure to comply with certain conditions of probation.

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**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).)

 **1. Case Number 12-O-14005 (Failing to Cooperate in State Bar Investigation)**

Count One – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to a State Bar investigation.

 **2. Case No. 12-O-16400 (Duty to Support Constitution & Laws of U.S. & California)**

Count Two **-** respondent willfully violated section 6068, subdivision (a) (attorney’s duty to support Constitution and laws of United States and California) by engaging in acts constituting the practice of law while he was not entitled to practice law in willful violation of Business and Professions Code sections 6125 and 6126.

 Count Three – respondent willfully violated section 6068, subdivision (i) by failing to respond to a State Bar investigation.

**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 the respondent spoke by telephone with the assigned DTC; indicated that he would file a response to the NDC on or before December 14, 2012; and, thereafter, the assigned DTC received a voicemail message from respondent stating that he would file a response to the NDC on or before December 17, 2012;

(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 Jay Curtis Cox 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.

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**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Jay Curtis Cox, State Bar number 147858, 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).)

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| Dated: October \_\_\_\_\_, 2013 | LUCY ARMENDARIZ |
|  | Judge of the State Bar Court |

1. Unless otherwise indicated, all references to rules are to this source. [↑](#footnote-ref-1)
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).) [↑](#footnote-ref-2)
3. The order was returned to the court by the U.S. Postal Service as unclaimed. [↑](#footnote-ref-3)
4. The disbarment petition was served on respondent by certified mail, return receipt requested, to his membership records address on July 19, 2013. [↑](#footnote-ref-4)
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. [↑](#footnote-ref-5)