

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 California on November 27, 2003, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 30, 2013, the State Bar properly filed and served the NDC on Respondent by certified mail, return receipt requested, to his membership records address in Ventura, California. 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.

On July 24, 2013, the State Bar filed a motion for entry of Respondent's default. His default was entered on August 22, 2013, and this matter was submitted on May 9, 2014.

However, on June 24, 2014, this court found that the default was not properly entered as the State Bar's declarations failed to establish "that the deputy trial counsel acted with reasonable diligence to notify the member of the proceedings." (Rules Proc. of State Bar, rule 5.80(B).) Accordingly, this court issued an order (1) vacating order entering default and order enrolling Respondent inactive; (2) vacating order submitting default matter for decision; and (3) finding petition for disbarment moot.

On June 25, 2014, the State Bar properly filed and served the NDC on Respondent by certified mail, return receipt requested, to his membership records address in Janesville, Wisconsin. On the same day, the State Bar attempted to contact Respondent by fax, by email and by telephone. Respondent did not respond. On July 23, 2014, the return receipt was returned to the State Bar and signed by someone. But when the NDC was later returned to the

State Bar as unclaimed and unable to forward, the State Bar found out that the return receipt had been signed in error.

On July 29, 2014, the State Bar sent another email to Respondent, informing him of the filing of the NDC and the need for a response.

On July 30, 2014, the State Bar properly re-served the NDC on Respondent by certified mail, return receipt requested, to his membership records address in Janesville, Wisconsin. The return card was returned to the State Bar signed by "Sara Peters." The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

On July 30, 2014, the State Bar sent Respondent another fax, informing him that his response to the NDC was due. On August 21, 2014, the State Bar again attempted to telephone Respondent and received a recorded message that the number "is no longer in service." To date, Respondent has not contacted the State Bar.

Respondent failed to file a response to the NDC. On August 25, 2014, the State Bar properly filed and 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 October 3, 2014. 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. He has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].)

On January 2, 2015, the State Bar properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are three disciplinary matters pending against Respondent; (3) Respondent has no record of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on May 5, 2015.

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(F)(1)(d).)

1. Case Number 12-O-15658 (Rexrode Matter)

Count 1 – Respondent willfully violated section 6103 (failure to comply with court order) by failing to file a case management conference statement, by failing to appear at an order to show cause hearing, and by failing to pay the \$1,500 sanctions order issued by the Alameda County Superior Court in *Robert Rexrode v. Oil Changer, Inc., et al.*, case No. RG-10523250.

Count 2 – Respondent willfully violated section 6068, subdivision (o)(3) (failure to report judicial sanctions), by failing to report the \$1,500 court sanctions ordered by the Alameda County Superior Court in the Rexrode action.

Count 3 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to respond to the State Bar's October 10 and November 27, 2012 letters.

2. Case Number 13-O-10283 (Berg Matter)

Count 4 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to present his client's wrongful termination claim to Gary Berg's employer.

Count 5⁴ – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to respond to reasonable client status inquiries between May 2012 and March 2013.

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) 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;
- (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.

⁴ The NDC incorrectly numbered count five as count six.

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 his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent **James Jeffery Peters**, State Bar number 227842, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to pay court sanctions in the amount of \$1,500 in *Robert Rexrode v. Oil Changer, Inc., et al.*, Alameda County Superior Court, case No. RG-10523250.

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

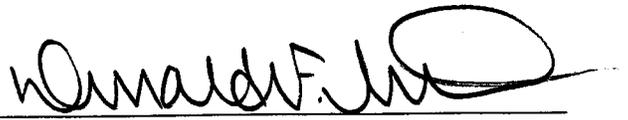
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **James Jeffery Peters**, State Bar number 227842, 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: July 20, 2015



DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 21, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES JEFFERY PETERS
PETERS LAW GROUP, APC
PO BOX 2075
JANESVILLE, WI 53547

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 21, 2015.



Rose M. Luthi
Case Administrator
State Bar Court