

**FILED**

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**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of )  
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 )  
**PAUL ERNEST VALLONE,** )  
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 )  
**Member No. 168395,** )  
 )  
 )  
A Member of the State Bar. )  
 )

Case No.: **13-N-14219-PEM**

**ORDER DENYING PETITION FOR  
DISBARMENT; SETTING ASIDE DEFAULT;  
TERMINATING INVOLUNTARY INACTIVE  
ENROLLMENT UNDER BUS. & PROF. CODE,  
§ 6007, SUBD. (e)(1); GRANTING MOTION TO  
SET ASIDE DEFAULT; AND FILING  
PROPOSED RESPONSE TO NDC**

This matter is before the court on the State Bar's Office of the Chief Trial Counsel's (State Bar) February 13, 2015 revised petition for disbarment after default for failure to file a timely response to the notice of disciplinary charges (NDC). (Rule 5.85.)<sup>1</sup> In response, respondent Paul Ernest Vallone filed a motion for relief from default and submitted a proposed response to the NDC on April 28, 2015. (Rule 5.85(D).)<sup>2</sup> The State Bar filed an opposition to respondent's motion on May 12, 2015.

The evidence shows that, on September 10, 2013, the State Bar properly filed and served the NDC on respondent at his membership-records address by certified mail, return receipt

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<sup>1</sup> All references to rules are to the Rules of Procedure of the State Bar that were in effect from January 1, 2011, through June 30, 2014. A number of the rules of procedure, including the rules governing defaults, were amended effective July 1, 2014. Nonetheless, because respondent's default was entered before July 1, 2014, the operative rules in this matter are those that were in effect before July 1, 2014.

<sup>2</sup> Under rule 5.85(D), respondent's motion was due by March 10, 2015. Accordingly, it was filed 49 days late.

requested. (Rules 5.25, 5.85(E)(1)(a).) However, the NDC that was served on respondent was returned to the State Bar undelivered.

After respondent failed to file a response to the NDC, the State Bar filed and properly served a motion for entry of default on Respondent at his membership-records address by certified mail, return receipt requested, on November 22, 2013. On its face, the motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence from the assigned Deputy Trial Counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.)

Respondent did not file a response to the motion for entry of default, and his default was properly entered on December 11, 2013. The order entering respondent's default was properly served on Respondent at his membership-records address by certified mail, return receipt requested. In its December 11, 2013 order, this court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California in accordance with Business and Professions Code section 6007, subdivision (e). Respondent's inactive enrollment under that order became effective three days after the order was served and has continued since that time.

The evidence presented with respondent's motion to set aside the default establishes that respondent did not have actual notice of this proceeding until June 11, 2014, which was 212 days *after* his default was entered. Moreover, in light of that same evidence, the court concludes that the State Bar has failed to carry its burden to establish in its revised petition for disbarment that it used reasonable diligence to notify respondent of the proceeding *before* the entry of his default. (Rule 5.85(E)(1)(b).)

In other words, the State Bar failed to establish in its revised petition for disbarment that, after the NDC served on respondent was returned undelivered, it took those additional steps a

reasonable person would have taken under the circumstances to provide respondent with actual notice the proceeding. (Rules Proc. of State Bar, rule 5.80(B)(2); *Jones v. Flowers* (2006) 547 U.S. 220, 238 [Under the United States Constitution, “ ‘when notice is a person’s due ... [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.’ (Citation.)”].) In fact, the evidence presented with respondent’s motion to set aside the default establishes that there were a number of reasonable steps that the State Bar could have taken that would have provided respondent with actual notice of this proceeding *before* the entry of his default. For example, the State Bar could have contacted respondent’s former wife or searched for respondent’s email address on gmail.com.

Moreover, the fact that respondent waited about 10 months after he learned of this proceeding in June 2014 before he filed his motion for relief from default does not vitiate the State Bar's failure, in the first instance, to take the additional steps that a reasonable person would have taken under the circumstances to provide respondent with actual notice of the proceeding.<sup>3</sup> (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 833 [“A deprivation of due process is no less a deprivation merely because the person deprived has a remedy. [Defendant] had a statutory and due process right to respond to the complaint before a default was entered. [Defendant] was denied this right and no post hoc remedy can change that fact.”]; see also *Mennonite Bd. of Missions v. Adams* (1983) 462 U.S. 791, 799 [“party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation” to give proper notice to the party in the first instance].)

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<sup>3</sup> As noted *ante*, respondent’s motion was 49 days late (not 10 months late) under rule 5.85(D). Furthermore, the State Bar has not always acted timely in this proceeding. Respondent updated his membership-records email address on April 7, 2014, but the State Bar did not send respondent an email about this proceeding until June 10, 2014. In addition, the revised petition for disbarment was not filed until February 13, 2015, which was 94 days after this court’s November 11, 2014 order vacating the submission of the original petition for disbarment and granting leave to file an amended petition.

In sum, the court must deny the State Bar's petition for disbarment; set aside the entry of respondent's default; and terminate his inactive enrollment under section 6007, subdivision (e)(1). (Rule 5.85(E)(2).) In addition, the court will grant respondent's motion for relief from default and order respondent's proposed response to the NDC filed.

**Order**

The court orders that the State Bar's February 13, 2015 revised petition for disbarment after default for failure to file a timely response is DENIED; that the court's entry of respondent's default on December 11, 2013, is SET ASIDE; and that respondent's involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (e)(1) pursuant to this court's December 11, 2013 order is TERMINATED FORTHWITH.<sup>4</sup>

The court further orders that respondent's April 28, 2015 motion for relief from default is GRANTED and that the proposed response to the notice of disciplinary charges that the court received from respondent on April 28, 2015, is ordered FILED as of the date this order is filed.

**PAT MCELROY**

Dated: June 4, 2015.

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**PAT McELROY**  
Judge of the State Bar Court

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<sup>4</sup> This order does not affect respondent's ineligibility to practice law that has resulted or that may hereafter result from any other cause.

**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 San Francisco, on June 4, 2015, I deposited a true copy of the following document(s):

**ORDER DENYING PETITION FOR DISBARMENT; SETTING ASIDE DEFAULT; TERMINATING INVOLUNTARY INACTIVE ENROLLMENT UNDER BUS. & PROF. CODE, § 6007, SUBD. (e)(1); GRANTING MOTION TO SET ASIDE DEFAULT; AND FILING PROPOSED RESPONSE TO NDC**

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 San Francisco, California, addressed as follows:

PAUL E. VALLONE  
109 TRAVERS DR  
MARTINEZ, CA 94553

by certified mail, No. \_\_\_\_\_, with return receipt requested, through the United States Postal Service at \_\_\_\_\_, California, addressed as follows:

by overnight mail at \_\_\_\_\_, California, addressed as follows:

by fax transmission, at fax number \_\_\_\_\_. No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Susan Chan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 4, 2015.



George Hue  
Case Administrator  
State Bar Court