

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>13-N-16233-RAP; 13-O-10946</b>
	)	(13-O-11334; 13-O-11424;
	)	13-O-11471; 13-O-11942;
<b>JAMES MICHAEL POWELL,</b>	)	13-O-12165; 13-O-12209;
	)	13-O-12515; 13-O-12517;
	)	13-O-12684; 13-O-12778;
<b>Member No. 165639,</b>	)	13-O-12955; 13-O-13163;
	)	13-O-13172; 13-O-13193;
	)	13-O-13376; 13-O-13515)
A Member of the State Bar.	)	
	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
	)	

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Respondent James Michael Powell (respondent) was charged with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with rule 9.20 and with 38 counts of violations of the Rules of Professional Conduct and the Business and Professions Code<sup>1</sup> involving 17 different clients. He failed to appear at the trial of this case 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.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>3</sup>

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 August 6, 1993, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On November 18, 2013, the State Bar filed and properly served a notice of disciplinary charges (NDC) on respondent. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. On January 6, 2014, respondent filed his response to the NDC.

By order filed December 13, 2013, the trial was set to start on March 24, 2014. The order setting the trial date was served on respondent's membership records address by first-class mail, postage paid. (Rule 5.81(A).) By order filed March 18, 2014, at the pretrial conference, the trial date was rescheduled to March 25, 2014. The pretrial conference order was served on

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were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

<sup>3</sup> 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).)

respondent's membership records address by first-class mail, postage paid. The State Bar appeared for trial but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed March 25, 2014. The order notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On July 3, 2014, the State Bar filed an amended petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since his default was entered on March 25, 2014; (2) there are other investigations or disciplinary charges pending against respondent; (3) respondent has two records of prior discipline; and (4) the Client Security Fund (CSF) 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 July 30, 2014.

Respondent has been disciplined on two prior occasions. Pursuant to a Supreme Court order filed on July 12, 2012, respondent was suspended for one year, the execution of which was stayed, and placed on probation for one year. The misconduct involved four client matters. Respondent failed to return a client file, failed to refund unearned fees, failed to avoid interests adverse to a client, and failed to perform. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on June 26, 2013, respondent was suspended for two years, the execution of which was stayed, and placed on probation for two years subject to

conditions including that he be suspended from the practice of law for a minimum of the first six months of probation and until he makes specified restitution. The misconduct involved four client matters. Respondent failed to perform, failed to communicate, improperly withdrew from employment, failed to render an accounting, failed to cooperate with the State Bar, and failed to refund unearned fees. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a 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 here support the conclusion that respondent is culpable of violating a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **1. Case Number 13-N-16233 (Rule 9.20 Matter)**

Count 1 - respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance as required by rule 9.20(c), as ordered by the Supreme Court in its June 26, 2013 order in case No. S210084.

#### **2. Case Number 13-O-10946 (Jimenez Matter)**

Count 2 – respondent willfully violated section 6106 (moral turpitude) by making misrepresentations to his client, Manuel Jimenez, that he had filed a petition and that a hearing was set for the petition when he knew or was grossly negligent in not knowing that those statements were false.

Count 3 - respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to competently perform legal services on behalf of his client.

Count 4 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any part of the \$3,500 in unearned advanced attorney fees paid by Jimenez upon his termination of employment on April 5, 2013.

**3. Case Number 13-O-11334 (Jones Matter)**

Count 5 - 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 his client's status inquiries.

Count 6 - respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide an accounting of funds received from the client, John Jones.

Count 7 - respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to promptly release to his client, upon the client's request, the client's property and papers.

**4. Case Number 13-O-11424 (Galvan Matter)**

Count 8 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

Count 9 - respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly release to his client, upon the client's request, the client's property and papers.

Count 10 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund any part of the \$2,500 advanced fee that had not been earned upon his termination of employment on April 17, 2013. Respondent had earned \$975 (\$325 x 3 hours). Thus, he still owes Ascension Galvan \$1,525 (\$2,500 - \$975) in unearned fees.

**5. Case Number 13-O-11471 (Quintanilla Matter)**

Count 11 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**6. Case Number 13-O-11942 (Leon Matter)**

Count 12 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

Count 13 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any part of the \$825 unearned fee paid by Esperanza Leon upon his termination of employment on May 3, 2012.

**7. Case Number 13-O-12165 (Flores Matter)**

Count 14 - respondent willfully violated section 6068, subdivision (m), by failing to keep his clients informed of significant developments.

**8. Case Number 13-O-12209 (Castro Matter)**

Count 15 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

Count 16 - respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly release to his client, upon the termination of his employment, the client's property and papers.

Count 17 - respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide an accounting of funds received from the client.

**9. Case Number 13-O-12515 (Ascensio Matter)**

Count 18 - respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly release to his clients, upon the termination of his employment, the clients' property and papers.

Count 19 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any part of the \$2,700 unearned fee paid by Alberto Moran and Norma Ascensio upon his termination of employment on May 30, 2013.

Count 20 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his clients' status inquiries.

**10. Case Number 13-O-12517 (Boyd Matter)**

Count 21 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**11. Case Number 13-O-12684 (Rubio Matter)**

Count 22 – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client and thereafter failing to inform the client that he was withdrawing from employment.

Count 23 – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly release to his client, upon the termination of his employment, the client's property and papers.

Count 24 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**12. Case Number 13-O-12778 (Gonzalez Matter)**

Count 25 – there is no clear and convincing evidence that respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct.

Count 26 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any part of the \$4,000 unearned fee paid by Hilario Gonzalez upon his termination of employment on April 1, 2013.

Count 27 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**13. Case Number 13-O-12955 (Monterroso Matter)**

Count 28 - respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide an accounting of funds received from the client.

Count 29 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**14. Case Number 13-O-13163 (Ortega Matter)**

Count 30 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any part of the \$7,830 unearned advanced fees paid by Maria Ortega upon his termination of employment on May 1, 2013.

Count 31 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**15. Case Number 13-O-13172 (Cartagena Matter)**

Count 32 – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client and thereafter failing to inform the client that he was withdrawing from employment.

Count 33 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**16. Case Number 13-O-13193 (Balmares Matter)**

Count 34 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his clients' status inquiries.

Count 35 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any part of the \$1,840 unearned advanced fees paid by Lorena and Ernesto Balmares upon his termination of employment on May 1, 2013.

**17. Case Number 13-O-13376 (Bass Matter)**

Count 36 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**18. Case Number 13-O-13515 (Sanchez Matter)**

Count 37 – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client and thereafter failing to inform the client that he was withdrawing from employment.

Count 38 - respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any part of the \$6,100 unearned advanced fees paid by Tyrone Sanchez upon his termination of employment on May 1, 2013.

Count 39 - respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries.

**Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; 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 appear for the trial of this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent James Michael Powell 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 make restitution to the following payee:

- (1) Manuel Jimenez in the amount of \$3,500 plus 10 percent interest per year from April 5, 2013;
- (2) Ascension Galvan in the amount of \$1,525 plus 10 percent interest per year from April 17, 2013;
- (3) Esperanza Leon in the amount of \$825 plus 10 percent interest per year from May 3, 2012;
- (4) Alberto Moran and Norma Ascensio in the amount of \$2,700 plus 10 percent interest per year from May 30, 2013;
- (5) Hilario Gonzalez in the amount of \$4,000 plus 10 percent interest per year from April 1, 2013;
- (6) Maria Ortega in the amount of \$7,830 plus 10 percent interest per year from May 1, 2013;
- (7) Lorena and Ernesto Balmares in the amount of \$1,840 plus 10 percent interest per year from May 1, 2013; and

- (8) Tyrone Sanchez in the amount of \$6,100 plus 10 percent interest per year from May 1, 2013.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**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 Michael Powell, State Bar Number 165639, 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: October 14, 2014

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RICHARD A. PLATEL  
Judge of the State Bar Court