

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-13512-DFM
)	
BARRY JAY POST,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 72286,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent **Barry Jay Post** (Respondent) was charged with failing to comply with probation conditions attached to his disciplinary probation. He failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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 90 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(F)(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 22, 1976, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 5, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, at 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 receipt for the NDC was not returned to the State Bar.

Thereafter, on July 9, 2014, a courtesy copy of the NDC and a letter warning Respondent to respond immediately to the NDC in order to avoid default were sent to Respondent by certified mail at a San Pedro address located through a public records search. A return receipt was received by the State Bar, although the name of the signatory was that of someone other than Respondent.

Also, on July 9, 2014, another courtesy copy of the NDC and a letter warning Respondent to immediately respond to the NDC to avoid default were sent to Respondent by certified mail at a Santa Monica address located through a public records search. To date that mailing has not been returned to the State Bar and Respondent has not otherwise responded to it.

Additionally, on July 9, 2014, another courtesy copy of the NDC and a letter warning Respondent to immediately respond to the NDC to avoid default were sent to Respondent by

certified mail at a Los Angeles address located through a public records search. To date that mailing has not been returned to the State Bar, and Respondent has not otherwise responded to it.

Finally, on July 9, 2014, a courtesy copy of the NDC and a letter warning Respondent to immediately respond to the NDC in order to avoid default were sent to Respondent by certified mail at a second San Pedro address located through a public records search. To date that mailing has not been returned to the State Bar, and Respondent has not otherwise responded to it.

The State Bar deputy trial counsel (DTC) assigned to this matter also contacted Respondent's probation deputy to ascertain whether Respondent's profile contained any addresses for Respondent other than those at which the State Bar had attempted to contact Respondent. Respondent's profile contained no additional address for Respondent.

On July 7, 2014, the assigned DTC attempted to reach Respondent at his membership records telephone number. As there was no answer, the DTC left a voicemail message requesting that Respondent return his call and/or file a response to avoid default. Respondent did not return the call or otherwise respond to the message.

On July 1 and July 9, 2014, the DTC attempted to reach Respondent at his membership records email address. The emails sent to Respondent's membership records email address warned that the response to the NDC was overdue and that Respondent should immediately file a response to avoid default. A copy of the NDC was attached to each of the emails. No response to any of the emails was received by the State Bar.

On July 9, 2014, the DTC attempted to reach Respondent at two additional alternate email addresses. The emails warned that Respondent's response to the NDC was overdue and that he should immediately file a response to avoid default. A copy of the NDC was attached to each of the emails. No response to any of the emails was received by the State Bar.

As of July 23, 2014, Respondent's official membership records facsimile number was disconnected.

Respondent failed to file a response to the NDC. On July 23, 2014, the State Bar filed and properly 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 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 August 19, 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, and 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 December 10, 2014, the State Bar filed and properly served a petition for disbarment on Respondent by certified mail, return receipt requested at his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent had not contacted the State Bar after his default was entered on August 19, 2014; (2) there are no other disciplinary investigations pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has made payments totaling \$4,700 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 January 7, 2015.

Respondent has two prior records of discipline.

Pursuant to Supreme Court order S080580 (State Bar Court case Nos. 95-O-12548 et al. [29 captioned cases]), filed on September 22, 1999, Respondent was suspended from the practice of law for five years and until he provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law, the execution of which was stayed, and he was placed on probation for five years subject to conditions,³ including that he be actually suspended for 18 months. In that prior disciplinary matter, Respondent was disciplined for failing to: (1) adequately communicate with clients; (2) competently perform legal services; and (3) refund unearned fees to clients. Respondent entered into a stipulation in that prior disciplinary matter.

Pursuant to Supreme Court order S196645, filed on November 30, 2011, Respondent was suspended from the practice of law in California for five years, the execution of which was stayed, and he was placed on probation for four years subject to conditions, including that he be actually suspended from the practice of law for the first three years of probation and must remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice law and learning and ability in the general law. In that matter, Respondent was found culpable of violating section 6068, subdivision (k), by failing to comply with conditions attached to a disciplinary probation imposed in Supreme Court order No. S080580 (State Bar Court case Nos. 95-O-12548 etc.), discussed above.

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(2).) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that

³ On June 10, 2004, the Supreme Court of California filed another order, i.e., S080580 (State Bar Court case Nos. 95-O-12548 et al.). That Order "extended the period of probation imposed on Barry Jay Post for three years" and required that he "make the restitution payments outlined in the parties' stipulation to modify conditions of probation, approved by the Hearing Department of the State Bar Court on March 30, 2004."

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).)

Case Number 13-O-13512 (The Probation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k), by failing to comply with specified probation conditions imposed by the Supreme Court in its November 30, 2011 order. More specifically:

- Respondent failed to comply with all conditions of his Lawyer Assistance Program (LAP) Participation Plan/Agreement by failing to timely submit the weekly e-mail report for February 5, 2012;
- Respondent failed to comply with all conditions of his LAP Participation Plan/Agreement by failing to attend the required number of self-help meetings between July 1, 2012 and September 30, 2012;
- Respondent failed to comply with all conditions of his LAP Participation Plan/Agreement by failing to attend a LAP group therapy session on November 21, 2012; and
- Respondent failed to submit four quarterly reports by their due dates of July 10, 2013, October 10, 2013, January 10, 2014 and April 10, 2014.

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.

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RECOMMENDATIONS

Disbarment

The court recommends that Respondent **Barry Jay Post**, State Bar number 72286, 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 **Barry Jay Post**, State Bar number 72286, 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 by mail. (Rule 5.111(D).)

Dated: April _____, 2015

DONALD F. MILES
Judge of the State Bar Court