

PUBLIC MATTER

FILED *R*
JUL 21 2015

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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case No.: 14-O-04014-LMA |
| |) | |
| JACK A. SCHWARTZ, |) | DECISION AND ORDER OF |
| |) | INVOLUNTARY INACTIVE |
| Member No. 80644, |) | ENROLLMENT |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

Respondent **Jack A. Schwartz** (respondent) was charged with willfully failing to obey a court order in willful violation of Business and Professions Code¹ section 6103. 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.²

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

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

²Unless otherwise indicated, all references to rules are to this source.

(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.³

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

Jurisdiction

Respondent was admitted to practice law in this state on June 23, 1978, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 24, 2014, the State Bar filed and properly served the 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.) A return card, received by the State Bar on October 29, 2014, was signed by "Jaryd Neiman"⁴ and dated October 27, 2014. However, the sealed envelope was also returned to the State Bar on November 3, 2014, by the United States Postal Service stamped "Return to Sender, Not Deliverable as Addressed, Unable to Forward."⁵

Thereafter, the State Bar (1) sent a copy of the NDC, as well as the Notice of Assignment and the Notice of Initial Status Conference to respondent's membership records address by

³If 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).)

⁴ See declaration of Deputy Trial Counsel Drew Massey (DTC Massey) attached to the State Bar's motion for the entry of respondent's default.

⁵ See declaration of DTC Massey attached to the State Bar's motion for the entry of respondent's default.

regular first-class mail; (2) emailed respondent at an email address privately maintained by the State Bar, informing respondent of the pending matter and the date and time of the initial status conference;⁶ (3) conducted an internet search to locate contact information for respondent;⁷ and (4) sent a letter to respondent at the Northern Nevada Correctional Center⁸ which informed respondent of this matter and which enclosed a copy of the NDC, the Notice of Assignment and the Notice of Initial Status Conference.

Despite the efforts of the State Bar, respondent failed to file a response to the NDC. On December 1 and December 3, 2014, the State Bar properly served and filed, respectively, a motion for entry of respondent's default.⁹ The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel. (Rule 5.80.) The motion notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent still did not file a response to the motion, and his default was entered on December 23, 2014. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time. The order entering the default and enrolling respondent inactive was served on respondent at his membership records address by certified mail, return receipt requested, on December 23, 2014.

⁶ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

⁷ An alternate address for respondent was located. In addition, it was discovered that respondent was incarcerated in the Northern Nevada Correctional Center.

⁸ This letter was also copied to the alternate address discovered in the internet search.

⁹ The motion was served on respondent at his membership records address by certified mail, return receipt requested. A courtesy copy was also sent to respondent at an inmate address in Carson City, Nevada.

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 April 1 and April 3, 2015, the State Bar served and filed, respectively, a petition for disbarment on respondent by certified mail, return receipt requested, at his membership records address.¹⁰ As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the order entering respondent's default was served;¹¹ (2) there is one other disciplinary matter pending against respondent; (3) respondent has a prior record 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 May 5, 2015.

Prior Record of Discipline

Respondent has a prior record of discipline.¹² Pursuant to an order of the State Bar Court filed on August 3, 1995, respondent was publicly reprovved with conditions for one year. Respondent stipulated in that matter to failing to keep a client informed and, in two client matters, failing to perform.

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(2).) 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).)

¹⁰A courtesy copy of the petition was also served on respondent at the aforementioned inmate address.

¹¹ This is also the date that respondent's default was entered.

¹²The court admits into evidence the certified copies of respondent's prior record of discipline attached to the April 3, 2015 petition for disbarment.

Case Number 14-O-04014 (Failure to Obey Court Order)

Respondent willfully violated section 6103 (failure to obey a court order) by failing to timely file with the clerk of the State Bar Court a declaration of compliance with California Rules of Court, rule 9.20 in conformity with the requirements of rule 9.20(c) as required by the State Bar Court Review Department's July 22, 2013 order.

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.

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 disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Jack A. Schwartz**, State Bar number 80644, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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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.

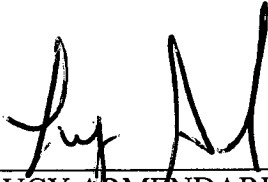
Costs

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 **Jack A. Schwartz**, State Bar number 80644, 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 21, 2015



LUCY ARMENDARIZ
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 San Francisco, 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:

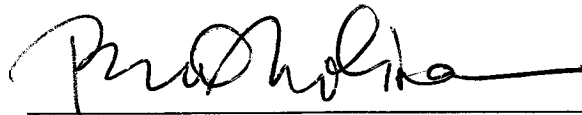
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JACK A. SCHWARTZ
18124 WEDGE PARKWAY #250
RENO, NV 89511

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

DREW D. MASSEY, Enforcement, Los Angeles

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



Bernadette C.O. Molina
Case Administrator
State Bar Court