STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

JAY ALLEN PETERSON

A Member of the State Bar

[No. 87-O-17586]

Opinion on Motion for Late Filing—Filed September 28, 1990

SUMMARY

In a published order, the review department modified its opinion to delete a finding that respondent had violated section 6068 (a) of the Business and Professions Code. This modification neither accomplished nor justified a change in the review department's recommendation to the Supreme Court.

The review department also denied respondent's motion to set aside default and two accompanying alternative motions. Under rule 555.1(b) of the Transitional Rules of Procedure, the time for respondent to seek to set aside his default as a matter of right had expired. This 75-day time period is not jurisdictional; however, once it has run, a greater showing must be made to justify setting aside the default.

Respondent contended that he did not learn of the review department's opinion until after it appeared in a legal newspaper, and that he did not receive other documents about these proceedings because he did not promptly notify the State Bar when he repeatedly moved his office. In denying respondent's motion to set aside the default, the review department concluded that respondent's failure to comply with his duties to notify the State Bar promptly of any change of his address of record did not justify granting the requested relief, and was not excused by respondent's claimed former alcohol problems.

COUNSEL FOR PARTIES

For Office of Trials: Russell G. Weiner

For Respondent: Ellen A. Pansky

HEADNOTES

[1] **101 Procedure—Jurisdiction**
130 Procedure—Procedure on Review
The State Bar Court retains jurisdiction over a matter until it transmits the record to the Supreme Court.

Editor's note: The summary, headnotes and additional analysis section are not part of the opinion of the Review Department, but have been prepared by the Office of the State Bar Court for the convenience of the reader. Only the actual text of the Review Department's opinion may be cited or relied upon as precedent.

[2 a, b] **105 Procedure—Service of Process**
107 Procedure—Default/Relief from Default
192 Due Process/Procedural Rights

Where an attorney had failed to comply with the statutory duty to maintain a current address on the State Bar's member records and to notify the State Bar within 30 days of any address change, the attorney failed to show good cause for relief from default even though he did not receive notice of the State Bar proceedings until the review department's opinion was published. Because the address requirement is reasonable, an attorney receives reasonable notice of documents properly sent to the attorney's address of record with the State Bar.

[3] **107 Procedure—Default/Relief from Default**
125 Procedure—Post-Trial Motions
135 Procedure—Rules of Procedure

Under rule 555.1(b), Transitional Rules of Procedure, a respondent has until 75 days after the entry of his default to file, as a matter of right, a motion to set aside the default. This 75-day time period is not jurisdictional; however, after it has run, a much greater showing must be made to justify setting aside the default.

[4] **107 Procedure—Default/Relief from Default**
192 Due Process/Procedural Rights
211.00 State Bar Act—Section 6002.1
213.90 State Bar Act—Section 6068(i)
214.00 State Bar Act—Section 6068(j)

Respondent's claimed alcoholism did not excuse him from his statutory duties to notify the State Bar promptly of any change of his address of record, and to participate in State Bar disciplinary proceedings against him.

ADDITIONAL ANALYSIS

[None.]

ORDER MODIFYING OPINION AND DENYING MOTION TO PERMIT LATE FILING OF APPLICATION TO SET ASIDE DEFAULT

BY THE DEPARTMENT:

On May 30, 1990, we filed our opinion on review in the above matter.* **[1]** Since the record has not yet been transmitted to the Supreme Court (see Bus. & Prof. Code, § 6081) we retain jurisdiction over the matter.

It is ordered that our opinion be modified in section 2 d. at page 10, last paragraph, line 4 of the typed opinion, to delete the reference to subdivision (a) of Business and Professions Code section 6068 so that that line reads as follows: "Professions Code section 6068, subdivision (i). For the". [Editor's note: see *ante*, p. 79.]

Our modification is on the authority of *Sands* v. *State Bar* (1989) 49 Cal.3d 919, 931 and *Baker* v. *State Bar* (1989) 49 Cal.3d 804, 814-815 and does not accomplish or justify a change in our judgment or in our recommendation to the Supreme Court.

We have considered respondent's Application For Order Setting Aside Default And For Hearing De Novo, Or Alternatively, For Leave To Present Additional Evidence, Or Alternatively, For Order Vacating Submission And To Augment The Record On Appeal, presented to our clerk's office on August 23, 1990, and the State Bar examiner's response filed August 28. On May 2, *1989*, respondent's default was entered for his failure to answer the notice to show cause. His August 23, *1990* application is his first appearance in this formal proceeding. In essence, respondent now seeks to be heard for the first time to present evidence in mitigation either before the hearing referee by our granting his request for a hearing de novo or by our considering his evidence ourselves.

Respondent contends he did not learn of our opinion until just after it appeared in the Los Angeles Daily Journal's Daily Appellate Report on about August 15, 1990, and he claims he did not receive other important documents about this proceeding. Respondent states that he relocated his office four times between 1988 and 1989 and did not promptly update his membership records address.

[2a] We conclude that respondent has failed to present good cause for our granting relief. **[3]** The time for respondent to seek to set aside his default as a matter of right expired on July 17, 1989, 75 days after the May 2, 1989 default, and more than a year before his current motion. (Rules Proc. of State Bar, rule 555.1(b).) While rule 555.1(b) is not jurisdictional, a much greater showing must be made to justify setting aside his default after the 75 days have run. **[2b]** No sufficient showing has been made. Throughout this proceeding, respondent had a statutory duty to maintain a current address on the State Bar's member records and to notify the State Bar within 30 days of any address change. (Bus. & Prof. Code, §§ 6002.1 (a); 6068 (j).) In *Powers* v. *State Bar* (1988) 44 Cal.3d 337, 341, our Supreme Court used the following language in deeming that address requirement reasonable: "Powers further contends that he was not afforded reasonable notice. This claim depends upon the reasonableness of the requirement that an attorney keep the State Bar informed of his current address. We believe that requirement to be reasonable, and Powers provides no cogent argument to the contrary."

[4] While we are not unsympathetic to the problems of alcoholism which respondent claims to have suffered earlier and now recovered from, we see nothing in his showing which excused him from having to comply with the minimum duties binding on all attorneys to notify the State Bar promptly of any change of address of record and to participate in this proceeding, especially after the December 17, 1987, date of his claimed start of continued abstinence. (Bus. and Prof. Code, § 6068 (i).)

Respondent's motion is denied.

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* Editor's note: See *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

J. WILLIAM CONROY

A Member of the State Bar

[No. 87-O-15117]

Filed June 8, 1990

[Editor's note: Review granted, Nov. 15, 1990 (S016863); State Bar Court Review Department opinion superseded by *Conroy* v. *State Bar* (1991) 53 Cal.3d 495.]