

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 07-O-14411(08-O-13712;
	)	09-O-12878; 09-O-12885;
	)	09-O-17705; 09-O-17938;
	)	09-O-18396; 09-O-18765;
JAMES EDWARD CURTIS IV,	)	09-O-18771; 09-O-19170;
	)	10-O-03529; 10-O-05260;
	)	10-O-05894; 10-O-06890;
	)	10-O-07318; 10-O-10696;
Member No. 140709,	)	10-O-11236; 11-O-11238;
	)	11-O-11440; 11-O-11451)
)	
	)	DECISION AND ORDER OF
A Member of the State Bar.	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
)	

Respondent James Edward Curtis IV (respondent) was charged with 36 counts of violations of the Rules of Professional Conduct (RPC) and the Business and Professions Code.¹ He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.²

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

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

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

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 180 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

Respondent was admitted to practice law in this state on June 7, 1989, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 27, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address and at an alternate address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The certified mail return receipt for the NDC served at respondent's membership records address was received by the State Bar signed by James Curtis.

In addition, reasonable diligence was also used to notify respondent of this proceeding. Prior to the filing of the NDC in this matter, the State Bar attempted to reach respondent by telephone at his official membership records telephone number and left a message for respondent on his voice mail. The State Bar also attempted to reach respondent at his cellular telephone number, but the cellular telephone mailbox was full and a message could not be left. A State Bar investigator also spoke with respondent's mother by telephone, and she informed the investigator

³ 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).)

that she would give respondent the message that the investigator was trying to reach him. A few days later, the senior trial counsel assigned to this matter also spoke with respondent's mother by telephone. Respondent's mother informed the senior trial counsel that she would give respondent the message that the senior trial counsel was trying to reach him which she saw him. After the NDC was filed in this matter, the State Bar called directory assistance for the area which includes respondent's official membership records address and asked for all telephone listings for respondent, but directory assistance had no listing for respondent. The State Bar also checked Parker's directory, but it did not have any address for respondent that the State Bar was not already aware.

Respondent failed to file a response to the NDC. On June 29, 2011, 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 State Bar senior 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 July 18, 2011. The order entering the default was served on respondent at his membership records address and to an alternate 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 also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On January 17, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the

petition that: (1) After the entry of his default, respondent emailed the senior trial counsel assigned to this matter and informed her that he had received the court's Order re: Trial Date;⁴ thereafter, respondent and the senior trial counsel exchanged emails⁵ and had a telephone conference concerning the specifics of the order entering respondent's default, what the Rules of Procedure required to vacate the default, and settlement of the matter; (2) respondent has three disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund (CSF) has not made payments resulting from 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 February 17, 2012.

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.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable of the as charged, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

1. Case Number 07-O-14411 (The Harris Matter)

Count One - respondent willfully violated rule 3-110(A) of the RPC (failing to perform legal services with competence) by failing to provide his client any legal services of value.

Count Two – respondent willfully violated rule 3-700(D)(2) of the RPC (failing to promptly refund unearned fees) by failing to refund the unearned attorney fees to his client upon her demand.

⁴ The order had been filed and properly served on respondent on June 21, 2011, prior to the entry of respondent's default.

⁵ 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).)

2. Case Number 08-O-13712 (The Jones Matter)

Count Three – respondent willfully violated rule 3-110(A) of the RPC by failing to perform any further legal services on behalf of his client subsequent to filing a civil complaint.

3. Case Number 09-O-18765 (The Anderson Matter)

Count Four – respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value.

Count Five – respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund the unearned attorneys fees to his client upon her demand.

4. Case Number 09-O-19170 (The Boykin Matter)

Count Six – respondent willfully violated rule 3-110(A) of the RPC by failing to provide any legal services of value on behalf of his client.

Count Seven – respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund the unearned advanced fees to his client despite her demand to do so.

5. Case Number 10-O-03529 (The Reynolds Matter)

Count Eight – respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value on behalf of his client.

Count Nine - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund the unearned attorney fees to his client despite her demand to do so.

6. Case Number 10-O-05894 (The Runyon Matter)

Count Ten – respondent willfully violated rule 3-700(D)(1) of the RPC (failing to promptly release client papers/property at request of client) by failing to return his client's file to his client.

Count Eleven – respondent violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing a written response to the allegations or otherwise cooperating in the investigation of the Runyon matter.

7. Case Number 09-O-12878 (Insufficient Funds Check Matter)

Count Twelve – respondent violated section 6106 (commission of act of moral turpitude, dishonesty or corruption) by repeatedly issuing checks drawn upon insufficient funds in his client trust account.

8. Case Number 10-O-10696 (The DiMaio Matter)

Count Thirteen – respondent willfully violated rule 3-700(D)(1) of the RPC by failing to return his client’s documentation.⁶

9. Case Numbers 09-O-12885 & 09-O-18396 (Home Defense Group Matter)

Count Fourteen – the court does not find respondent culpable of willfully violating rule 1-310 of the RPC (forming a partnership with a non-lawyer if practice of law is an activity of the partnership), as there is no clear and convincing evidence that respondent formed a partnership with Home Defense Group (HDG).

Count Fifteen – respondent willfully violated rule 3-200(A) of the RPC (prohibited objectives of employment – malicious prosecution) by filing identical non-meritorious complaints to merely forestall foreclosure.

Count Sixteen – respondent willfully violated rule 3-110(A) of the RPC by failing to provide his clients with any legal services of value.

10. Case Number 09-O-17705 (The Rodriguez Matter)

Count Seventeen - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

⁶ The court will not base culpability in this matter on respondent’s failure to return his client’s consultation fee, as such conduct is covered by another rule of professional conduct.

Count Eighteen - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

11. Case Number 09-O-17938 (The Magana Matter)

Count Nineteen - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Count Twenty - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

12. Case Number 09-O-18771

Count Twenty-One - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Count Twenty-Two - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

13. Case Number 10-O-05260 (The Llamas Matter)

Twenty-Three - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Twenty-Four - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

14. Case Number 10-O-06890 (The Caceras Matter)

Count Twenty-Five - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Count Twenty-Six - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

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15. Case Number 10-O-07318 (The Anaya Matter)

Count Twenty-Seven - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Count Twenty-Eight - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

16. Case Number 10-O-11236 (The Rios Matter)

Count Twenty-Nine - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Count Thirty - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

17. Case Number 11-O-11238 (The Magallanes Matter)

Count Thirty-One - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Count Thirty-Two - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

18. Case Number 11-O-11440 (The Martinez Matter)

Count Thirty-Three - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Count Thirty-Four - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

19. Case Number 11-O-11451

Count Thirty-Five - respondent willfully violated rule 3-110(A) of the RPC by failing to perform any legal services of value in the representation of his client.

Count Thirty-Six - respondent willfully violated rule 3-700(D)(2) of the RPC by failing to refund any portion of the unearned advanced fees paid by his client.

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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar attempted to reach respondent by telephone at his official membership records telephone number and at his cellular telephone number; a State Bar investigator and the senior trial counsel assigned to this matter contacted respondent's mother; the NDC was served on respondent at his membership records address and to an alternate address by certified mail; the return receipt for the NDC served on respondent at his membership address was returned to the State Bar signed by James Curtis; and the State Bar contacted directory assistance and checked Parker's directory for additional contact information. Respondent also had actual notice of this proceeding, as after his default was entered, he exchanged emails with the assigned senior trial counsel and had a telephone conference with her at which settlement, among other things, was discussed;

(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 must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent James Edward Curtis IV 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 payees:

- (1) Monique Harris in the amount of \$5,000 plus 10 percent interest per year from October 30, 2007;
- (2) Wongetta Anderson in the amount of \$5,000 plus 10 percent interest per year from August 24, 2009;
- (3) Lenore Boykin in the amount of \$2,500 plus 10 percent interest per year from September 10, 2009;
- (4) Jackie Reynolds in the amount of \$850 plus 10 percent interest per year from January 1, 2010;
- (5) Margielen Rodriguez in the amount of \$1,450 plus 10 percent interest per year from August 1, 2009;
- (6) Adriana Magana in the amount of \$9,450 plus 10 percent interest per year from October 15, 2009;
- (7) Jose Olguin in the amount of \$3,950 plus 10 percent interest per year from August 1, 2009;
- (8) Esperanza Llamas in the amount of \$10,800 plus 10 percent interest per year from February 1, 2010;

- (9) Leticia Caceras in the amount of \$2,800 plus 10 percent interest per year from November 1, 2009;
- (10) Joan Anaya in the amount of \$2,700 plus 10 percent interest per year from October 1, 2009;
- (11) Gabino Rios in the amount of \$16,400 plus 10 percent interest per year from October 1, 2010;
- (12) Emma Magallanes in the amount of \$22,950 plus 10 percent interest per year from April 1, 2010;
- (13) Jose Martinez in the amount of \$27,700 plus 10 percent interest per year from December 1, 2010; and
- (14) Jose Hernandez in the amount of \$6,750 plus 10 percent interest per year from January 1, 2010.

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

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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.

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ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that James Edward Curtis IV, State Bar number 140709, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: April _____, 2012

DONALD F. MILES
Judge of the State Bar Court