

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No. 09-O-16986; 09-O-17598;
	)	09-O-18499
THOMAS EDWIN CUMMINGS,	)	
	)	DECISION AND ORDER OF
Member No. 237925,	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
A Member of the State Bar.	)	
	)	

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Respondent Thomas Edwin Cummings was charged with 12 counts of misconduct in three client matters. 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.<sup>1</sup>

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 180 days, the State Bar will file a petition requesting the court to recommend the attorney’s disbarment.<sup>2</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.

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.  
<sup>2</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).)

## FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on November 8, 2005, and has been a member since then.

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

On February 25, 2011, the State Bar filed and properly served the NDC on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

The certified mail receipt was returned by the Post Office with a notation indicating that respondent was not at the address. Thereafter, the State Bar called respondent at the telephone number listed in his membership records. The number was no longer in service. The State Bar also sent an email to respondent at the address listed in his membership records.<sup>3</sup> Respondent did not respond to the email. The State Bar also searched other sources and found a potential additional address and telephone number for respondent. The State Bar sent a copy of the NDC to this other address and called the other telephone number. These additional efforts to contact respondent were not successful.

Respondent failed to file a response to the NDC. On April 18, 2011, the State Bar filed a motion for entry of his default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar 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 or vacate his default, the court would recommend his disbarment. Respondent did not file a response to the motion and his default was entered on May 2, 2011. The order entering the default was served on respondent at

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<sup>3</sup> 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).)

his membership records address by certified mail, return receipt requested. The certified mail receipt was returned by the Post Office with a notation indicating that respondent was not at the address. 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), and he has remained inactively enrolled since then.

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 December 27, 2011, the State Bar filed the 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 the default was entered; (2) respondent has two additional matters pending against him in investigation; (3) respondent has no record of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of respondent's misconduct.

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 23, 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 as charged in the NDC 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 09-O-16986 (Montoya Matter)**

Count One – respondent violated Business and Professions Code section 6068, subdivision (m) (duty to communicate), by not responding to Montoya's attempts to communicate with him.

Count Two - respondent violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services competently) by failing to file Montoya's bankruptcy petition.

Count Three – respondent violated rule 4-100(B)(3) of the Rules of Professional Conduct (maintain records of client property/render appropriate accounts) by failing to provide an accounting to Montoya of the client funds in his possession.

Count Four - respondent violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing refund \$1,700 in unearned fees to Montoya.

Count Five - respondent violated Business and Professions Code section 6068, subdivision (i) (duty to cooperate with the State Bar), by failing to respond to the State Bar's investigation letters regarding the Montoya matter.

**2. Case Number 09-O-17598 (Chaure Matter)**

Count Six - respondent violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any services in Chaure's personal injury matter except sending a letter of representation to the claims adjuster.

Count Seven - respondent violated Business and Professions Code section 6068, subdivision (m), by not responding to Chaure's attempts to communicate with him.

Count Eight - respondent violated Business and Professions Code section 6068, subdivision (i), by failing to respond to the State Bar's investigation letters in the Chaure matter.

**3. Case Number 09-O-18499 (Torres Matter)**

Count Nine - respondent violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform services in Torres' personal injury matter, which resulted in its dismissal.

Counts Ten and Eleven - respondent violated section 6068, subdivision (m) , by not responding to Torres' attempts to communicate with him and by not informing Torres of significant developments in the case.

Count Twelve - respondent violated section 6068, subdivision (i), by failing to respond to the State Bar's investigation letters in the Torres matter.

**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 NDC was served on respondent at his membership records address; the State Bar attempted to contact him at the telephone number and email address listed in his membership records; and the State Bar searched for alternative contact information for respondent and attempted to reach him at a telephone number and address obtained from the search;

(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 Thomas Edwin Cummings 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 further recommends that respondent be required to make restitution to Celeste L. Montoya in the amount of \$1,700, plus interest of 10 percent per year from November 28, 2009; or reimburse the Client Security Fund to the extent of any payment from the Fund to her, in accordance with Business and Professions Code section 6140.5.

**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.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Thomas Edwin Cummings, State Bar number 237925, 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: February \_\_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court