

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 10-O-05712
)	
THOMAS PATRICK CAREY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 131995,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

Respondent Thomas Patrick Carey was charged with three counts of misconduct. 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 5.85.¹

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 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.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.

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(E)(2).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 14, 1987, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 7, 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 NDC was returned by the post office bearing a stamp indicating that it was being returned to the sender and was unable to be forwarded. Thereafter, the State Bar called respondent at the telephone number listed in his membership records. The number had been disconnected. The State Bar also attempted to contact respondent at another telephone number contained in its files. A voice mail message identified the number as belonging to respondent. The State Bar left a message notifying respondent that he had missed a court date in the proceeding and requested respondent return the call. Respondent did not do so.

The State Bar also sent an email to respondent at the address listed in his membership records informing him that he had missed a court date and had not filed an answer to the charges.³ Respondent did not respond to the email. The State Bar also conducted an unsuccessful search of several sources in an effort to find an alternative address and telephone number for respondent.

On April 13, 2011, the State Bar filed 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 deputy trial counsel declaring the additional steps taken to

³ 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).)

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 April 29, 2011.

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), 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 December 15, 2011, the State Bar filed the petition for disbarment. The State Bar reports in the petition that it received an answer to the NDC from respondent dated October 7, 2011. The answer consisted of a one-sentence general denial of the charges. However, no answer was filed in the State Bar Court. As required by rule 5.85(A), the State Bar also reports that: (1) except for the October 2011 answer, it has had no contact with respondent since the default was entered; (2) respondent has one additional matter pending 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 by order filed January 11, 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.) In this case, the admitted facts show that respondent is culpable of the following as charged:

Count One - respondent violated rule 4-100(A) of the Rules of Professional Conduct (trust account violation) by failing to maintain funds received for the benefit of a client in his client trust account (CTA).

Count Two - respondent violated rule 4-100(A) of the Rules of Professional Conduct (trust account violation) by commingling personal funds in his CTA and paying personal and business expenses from the CTA.

Count Three – respondent violated rule 4-100(B)(3) of the Rules of Professional Conduct (maintain records of client funds) by failing to maintain appropriate records of client funds in his CTA.

RECOMMENDATION

Disbarment

Having found that all of the requirements of rule 5.85(E) are satisfied, the court recommends that respondent Thomas Patrick Carey be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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 Patrick Carey, State Bar number 131995, 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: January _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court