

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case No. 11-N-12866-DFM  
)  
LUCIO GASCON CALUNGCAGIN, JR., ) **DECISION AND ORDER OF**  
) **INVOLUNTARY INACTIVE**  
Member No. 134519, ) **ENROLLMENT**  
)  
A Member of the State Bar. )  
\_\_\_\_\_ )

Respondent Lucio Gascon Calungcagin, Jr. (Respondent), was charged with failing to comply with California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys). When he failed to participate, either in person or through counsel, his default was entered. The Office of the Chief Trial Counsel (State Bar) then filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<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>

Having concluded that the requirements of rule 5.85 have been satisfied, the court 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 the practice of law in California on June 14, 1988, and has been a member of the State Bar since then.

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

Respondent had actual notice of this disciplinary proceeding. On June 3, 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 the mail item was not claimed. Thereafter, on July 26, 2011, the State Bar mailed a copy of the NDC to Respondent at his membership records address by regular mail. Three days later, on July 29, 2011, Respondent telephoned the State Bar and stated that he had received the copy of the NDC which the State Bar mailed to him on July 26, 2011; that he would not be filing a response to the NDC; and that he planned to resign.<sup>3</sup>

Thereafter, Respondent failed to file a response to the NDC. On August 5, 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 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 his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on August 23, 2011. The order entering

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<sup>3</sup> Respondent thereafter tendered his resignation with disciplinary charges pending. However, on April 11, 2012, the Supreme Court filed an order declining to accept Respondent's resignation.

Respondent's default was served on Respondent at his membership records address by certified mail, return receipt requested.<sup>4</sup> 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). He has remained on inactive enrollment since then.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days after order entering default is served to file motion to set aside default].) Thus, on March 28, 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) it has had no contact with Respondent since August 2011; (2) Respondent does not have any other disciplinary investigations pending against him; (3) Respondent has two records of prior discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct. Respondent has not responded to the petition or moved to set aside or vacate the default. The case was submitted for decision on April 25, 2012.

Respondent has been disciplined on two prior occasions.<sup>5</sup> In accordance with an order filed on January 29, 2009, Respondent was suspended for one year, execution of which was stayed, and he was placed on probation for two years on conditions, including an actual suspension for ninety days. This prior case involved a single client matter, and the misconduct included Respondent's failure to perform services competently and to deposit two checks totaling \$6,167.92 into his client trust account. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law, and disposition in that matter.

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<sup>4</sup> On August 25, 2011, the court received a return receipt from the Postal Service which establishes that the service copy of the court's order entering Respondent's default was delivered to Respondent's membership records address on August 24, 2011, where it was "signed for" by Marilyn Calungcagin.

<sup>5</sup> The court takes judicial notice of the pertinent State Bar Court records regarding these two prior records of discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

In an order filed on December 10, 2010, the Supreme Court revoked the two-year probation it imposed on Respondent in its January 29, 2009 order and suspended Respondent from the practice of law for one year because he failed to comply with three of the conditions of his probation. The Supreme Court also ordered Respondent to comply with California Rules of Court, rule 9.20.

**The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a 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 and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

**Case Number 11-N-12866 (Rule 9.20 Matter)**

Count One – Respondent violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance as required by rule 9.20(c) as ordered by the Supreme Court in its December 10, 2010 Order.

**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) Respondent had actual notice of this proceeding prior to the entry of his default because he acknowledged receiving the copy of the NDC that the State Bar mailed to him on July 26, 2011;
- (3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of Respondent's 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.

### **RECOMMENDATIONS**

#### **Disbarment**

The court recommends that respondent **Lucio Gascon Calungcagin, Jr.**, 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 Lucio Gascon Calungcagin, Jr., State Bar Number 134519, 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: June \_\_\_\_, 2012.

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**DONALD F. MILES**  
Judge of the State Bar Court