

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos.: **11-O-12215-PEM**
) (13-O-13170); 13-O-11274 (Cons.)
MICHAEL PAOA AKANA,)
) **DECISION AND ORDER OF**
Member No. 80882,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)

In this matter, respondent Michael Paoa Akana was charged with six counts of misconduct stemming from three matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.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

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).)

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 29, 1978, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 18, 2013, the State Bar properly filed and served an NDC, in case nos. 11-O-12215 (13-O-13170), on respondent by certified mail, return receipt requested, at his membership records address. On November 18, 2013, the State Bar properly filed and served a second NDC, in case no. 13-O-11274, on respondent by certified mail, return receipt requested, at his membership records address. The NDCs notified respondent that his failure to participate in the proceedings would result in a disbarment recommendation. (Rule 5.41.) The NDCs were both returned to the State Bar by the U.S. Postal Service as undeliverable.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included calling him and leaving a message at his membership records telephone number, checking with the Office of Probation of the State Bar of California (Office of Probation) for alternative contact information for respondent, sending an email to respondent at his official membership records email address, conducting various internet searches for alternative contact information, and calling possible alternative telephone numbers identified in the State Bar's internet searches.

Respondent failed to file a response to the NDCs. On December 26, 2013, 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 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 January 13, 2014. 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), 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 August 1, 2014, 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 one other disciplinary matter pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any 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 September 15, 2014.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDCs 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 NDCs support the conclusion that respondent is culpable 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(E)(1)(d).)

Case No. 13-O-13170 – The Agreement in Lieu of Discipline Matter

Count One – respondent willfully violated Business and Professions Code section 6068, subdivision (l) (failure to comply with conditions of agreement in lieu of discipline), by failing to timely submit four quarterly reports and failing to promptly report his change of address to the Office of Probation.

Case No. 11-O-12215 – The Lawson Matter

Count Two – respondent willfully violated Rules of Professional Conduct, rule 3-110(A) (failure to perform legal services with competence) by failing to supervise his non-attorney employee and permitting this employee to provide legal advice to respondent’s client.

Count Three – the court does not find respondent culpable of willfully violating Business and Professions Code section 6068, subdivision (m) (failure to inform client of significant developments), as there is no clear and convincing evidence that respondent failed to inform a client of a significant development.³

Case No. 13-O-11274 – The Lee Matter

Count One – the court does not find respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as there is no clear and convincing evidence that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.⁴

³ The State Bar’s allegation that respondent failed to give adequate or complete legal advice does not constitute a “significant development.”

⁴ The State Bar merely alleged that respondent “performed no legal services of value.” This allegation is vague and arbitrary and does not establish, by clear and convincing evidence, that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count Two – respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(2) (failure to refund unearned fees) by performing no legal services of value and failing to promptly refund his client’s unearned advanced fees.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (j) (failure to update membership address), by failing to notify the State Bar of the change in respondent’s address within 30 days of said change.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment is recommended. In particular:

- (1) the NDCs were 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 properly served him with the NDCs and made various efforts to contact respondent, including calling him and leaving a message at his membership records telephone number, checking with the Office of Probation for alternative contact information, sending an email to respondent at his official membership records email address, conducting various internet searches for alternative contact information, and calling possible alternative telephone numbers identified in the State Bar’s internet searches;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDCs 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 recommends disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Michael Paoa Akana 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 Yvonne Lee in the amount of \$1,200 plus 10 percent interest per year from February 1, 2012. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, 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 Michael Paoa Akana, State Bar number 80882, be involuntarily enrolled as an

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inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: November _____, 2014

Pat McElroy
Judge of the State Bar Court