

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-O-12419-RAH
)	
EIRENE ALVAREZ ANTHONY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 107511,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Eirene Alvarez Anthony (respondent) was charged with violations of the Rules of Professional Conduct in connection with one client matter. She failed to file a response to the notice of disciplinary charges (NDC), and her default was entered. The Office of the Chief Trial Counsel (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 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 January 24, 1983, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 11, 2011, a 20-day letter was mailed to respondent at an address found by a State Bar investigator. The address was that of respondent's son and had been confirmed by respondent's daughter-in-law as an address at which respondent could be reached.

On July 12, 2011, respondent and Supervising Trial Counsel Dane Dauphine (STC Dauphine) spoke by telephone and discussed the allegations in the NDC.³ During their conversation, STC Dauphine confirmed that respondent could receive mail at her son's home, 3317 Via San Delano, Montebello, California, 90640 (Via San Delano address).⁴

On August 1, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at her membership records address and at the Via San Delano address. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The United States Postal Service

³ STC Dauphine had returned respondent's call at the telephone number respondent had provided.

⁴ The actual address, however, is 3317 Via San Delarro, Montebello, California, 90640 (Via San Delarro address). Nevertheless, respondent confirmed the Via San Delano address with STC Dauphine on July 12, 2011.

(USPS) returned the NDC served at respondent's membership records address. The NDC served at the Via San Delano address was not returned by the USPS.⁵

Respondent failed to timely file a response to the NDC. On September 1, 2011, the State Bar attempted to reach respondent by telephone at the number at which STC Dauphine had successfully reached respondent on July 12, 2011.

As respondent had failed to file a response to the NDC, on September 12, 2011, the State Bar filed and properly served a motion for entry of respondent's default.⁶ The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar supervising trial counsel then-assigned to this matter declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on September 28, 2011. The order entering the default was served on respondent at her membership records address by certified mail, return receipt requested.⁷ 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 she has remained inactively enrolled since that time. The USPS returned to the State Bar Court the order served by certified mail on respondent's membership records address. The order served on respondent at the Via San Delano address was not returned.

⁵ See footnote 3. The court, however, finds the address error to be de minimis, as the NDC served at the Via San Delano address was not returned by the USPS.

⁶ The motion was served via certified mail, return receipt requested, to respondent's membership records address and by regular mail to the Via San Delano address.

⁷ The order was also served on respondent by first-class mail to the Via San Delano address.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On May 8, 2012, the State Bar filed the petition for disbarment.⁸ As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the default was entered; (2) there are two non-public disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund 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 June 5, 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 rule violations 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-O-12419 (Pittman Matter)

Count One - respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by not pursuing her client's case from April 2007 to December 2009.

Count Two – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by abandoning her law practice in December 2009 without informing her client or withdrawing from representation in her client's case.

Count Three – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing, upon abandoning her

⁸ The petition was served on respondent by certified mail, return receipt requested, to both respondent's membership records address and to the Via San Delarro address.

representation of her client, to account to her client for the \$2,500 advanced fees paid by the client.

Count Four – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund any of the \$2,500 in unearned fees to her 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 proceeding prior to the entry of her default, as a 20-day letter was mailed to respondent at an address at which the State Bar had confirmed that respondent could be reached; respondent and STC Dauphine spoke by telephone and discussed the allegations in the NDC; the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at her membership records address and at the Via San Delano address; and the State Bar attempted to reach respondent by telephone at a number at which respondent had been successfully reached earlier;

(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 her disbarment.

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RECOMMENDATION

Disbarment

The court recommends that respondent Eirene Alvarez Anthony be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payee:

- (1) Sophia Pittman in the amount of \$2,500 plus 10 percent interest per year from November 30, 2006.

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 Eirene Alvarez Anthony, State Bar number 107511, 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. (Rule 5.111(D).)

Dated: August _____, 2012

RICHARD A. HONN
Judge of the State Bar Court