

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>11-O-12996-PEM</b>
	)	
<b>GREGORY MICHAEL CZARKOWSKI,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 213070,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<b>A Member of the State Bar.</b>	)	

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Respondent Gregory Michael Czarkowski (respondent) was charged with six counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> 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 rule 5.85 of the Rules of Procedure of the State Bar.<sup>2</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),

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<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

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

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>3</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.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 4, 2001, and has been a member since then.

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

On September 6, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The certified mail return receipt was signed "Czarkowski."

The State Bar also attempted to contact respondent at his official membership records telephone number and at another telephone number found through a directory listing. The State Bar left messages on both of the numbers. The State Bar attempted to reach respondent at an email address found by a State Bar investigator.

Respondent failed to file a response to the NDC. On October 6, 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

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<sup>3</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).)

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 October 24, 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), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent 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 March 16, 2012, respondent telephoned the State Bar and left a voice mail message, requesting a response by phone or email. On the same day, the State Bar sent a reply to respondent by email, forwarding the State Bar's earlier email to respondent and informing him of the State Bar's intent to file a petition for disbarment. The email was not returned as undeliverable.

On April 24, 2012, the State Bar properly filed and served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has had contact with respondent since the default was entered; on March 16, 2012, respondent left a voice mail message with the State Bar and the State Bar immediately replied by email; (2) respondent has no disciplinary matters pending; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct; but, there is one CSF claim pending related to this matter. 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 May 22, 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.<sup>4</sup> (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-O-12996 (The Rodriguez Matter)**

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to appear in court on behalf of his client in two traffic cases and by failing to perform any legal services for his client.

Count Two – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to inform his client of his withdrawal from employment and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client.

Count Three – respondent willfully violated section 6106 (moral turpitude) by misrepresenting to his client: (1) that the notices of failure to appear in court had been resolved and that the Department of Motor Vehicles had been notified; and (2) that he had appeared in court and had transferred the cases to another attorney to handle.

Count Four – respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by

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<sup>4</sup> On page 5 of the petition for disbarment, the State Bar stated that respondent was culpable of certain violations that were not alleged in the NDC. The errors are inconsequential. The culpability findings must be based on the violations as charged in the NDC.

failing to return the client's phone messages and by failing to inform the client that the client's driving license was suspended.

Count Five – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$1,451 unearned attorney fees to his client.

Count Six – respondent willfully violated section 6068, subdivision (i) (failure to cooperate/participate in a disciplinary investigation) by failing to respond to the State Bar letters and to participate in the State Bar investigation.

### **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; and the State Bar attempted to reach respondent by telephone at two telephone numbers and by email;
- (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 Gregory Michael Czarkowski 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 the following payee:

- (1) Timotie Rodriguez in the amount of \$1,451 plus 10 percent interest per year from April 8, 2010.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **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 Gregory Michael Czarkowski, State Bar number 213070, 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: July \_\_\_\_\_, 2012

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PAT McELROY  
Judge of the State Bar Court