

**FILED**

DEC 12 2012 *Yc*

STATE BAR COURT  
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES **PUBLIC MATTER**

In the Matter of )  
IVAN PEDRO C. PORTO, )  
Member No. 129629, )  
A Member of the State Bar. )

Case Nos.: 11-O-13256 (11-O-13819;  
11-O-15428)-DFM

**DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT**

Respondent Ivan Pedro C. Porto (respondent) was charged with (1) violating Civil Code section 2944.7, subdivision (a)(1) (two counts); (2) illegal fee (three counts); (3) failing to perform with competence; and (4) unauthorized practice of law in another jurisdiction. 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>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),



<sup>1</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>2</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 October 15, 1987, and has been a member since then.

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

On December 28, 2011, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. No return receipt was received by the State Bar. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, the State Bar attempted to reach Respondent by calling and leaving a voicemail message at his membership records telephone number and by sending an email message to Respondent.<sup>3</sup>

Respondent failed to file a response to the NDC. On February 10, 2012, 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>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).)

<sup>3</sup> 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).)

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 March 8, 2012. 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 September 11, 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) the State Bar has not had any contact with Respondent since his default was entered; (2) there are three investigations pending against Respondent; (3) Respondent has no prior record of discipline;<sup>4</sup> and (4) the Client Security Fund has paid out \$3,000 on a reimbursement application against Respondent. 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 October 12, 2012.

Respondent has been disciplined on two prior occasions. Pursuant to a Supreme Court order filed on February 18, 2011, Respondent was suspended for one year, the execution of that suspension was stayed, and he was placed on probation for two years, subject to certain conditions. Respondent stipulated in that matter that he failed to perform legal services with competence in two matters.

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<sup>4</sup> Although the State Bar reported that respondent has no prior record of discipline, this is incorrect. The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of respondent's official membership records which reflect that respondent has two prior records of discipline. The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

Pursuant to a Supreme Court order filed on December 13, 2011, Respondent's probation in his prior disciplinary matter was revoked, and Respondent was placed on probation for two years subject to certain conditions, including that he be suspended from the practice of law for the first year of his probation, with credit for his period if involuntary inactive enrollment. Respondent did not participate in this matter. Respondent was found culpable of failing to comply with certain conditions of probation imposed in his prior disciplinary matter.

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

**1. Case Number 11-O-13256 (Gonzalez Matter)**

Count One – Respondent willfully violated section 6106.3, subdivision (a) of the Business and Professions Code (violating Civil Code section 2944.7, subdivision (a)(1)) by negotiating, arranging or offering to perform a loan modification for a client and receiving \$1,570 from the client in advance fees when he had not completed all loan modification services to be performed under the fee agreement, thereby violating section 2944.7, subdivision (a)(1) of the Civil Code.

Count Two – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by entering an agreement for, charging, and collecting a \$1,570 advance fee from his client for the purposes of performing loan modification services.

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**2. Case Number 11-O-13819 (Cooper Matter)**

Count Three – Respondent willfully violated section 6106.3, subdivision (a) of the Business and Professions Code by negotiating, arranging or offering to perform a loan modification for a client and receiving \$1,977.50<sup>5</sup> from the client in advance fees when he had not completed all loan modification services to be performed under the fee agreement, thereby violating section 2944.7, subdivision (a)(1) of the Civil Code.

Count Four – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal service with competence) by failing to provide any services of value to his client with respect to the client's loan modification.

Count Five – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by entering into an agreement for, charging, and collecting a \$1,977.50 advance fee from his client for the purposes of performing loan modification services.

**3. Case Number 11-O-15428 (Unauthorized Practice of Law in Washington)**

Count Six – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct (prohibition on practicing law in violation of other jurisdiction's professional regulations) by accepting employment with Washington residents in order to perform legal services in connection with their loan modification, thereby effectively holding himself out as entitled to practice law in Washington without complying with the rules describing exceptions under which an attorney not entitled to practice law in Washington may legally do so.

Count Seven – Respondent willfully violated rule 4-200(A) by collecting \$3,600 from his clients to represent them in seeking a loan modification regarding a Washington property when he was not entitled to practice in Washington.

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<sup>5</sup> Although the NDC alleges this amount as \$3,495, there is no evidence that respondent received any funds over \$1,977.50.

## **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 State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address, and attempted to reach Respondent by telephone and 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 Ivan Pedro C. Porto 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 payees:

- (1) Yadiralia Gonzalez in the amount of \$1,570 plus 10 percent interest per year from July 14, 2011;

(2) Kadidia Cooper in the amount of \$1,977.50 plus 10 percent interest per year from October 6, 2010; and

(3) John and Marie McDonald in the amount of \$3,600 plus 10% interest per year from November 15, 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).

**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.

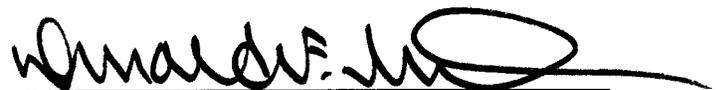
**Costs**

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 Ivan Pedro C. Porto, State Bar number 129629, 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: December 12, 2012

  
DONALD F. MILES  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 12, 2012, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**IVAN PEDRO C PORTO  
5225 FIORE TER D110  
SAN DIEGO, CA 92122**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**HUGH RADIGAN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 12, 2012.



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Tammy Cleaver  
Case Administrator  
State Bar Court