

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No.: **11-O-16644-RAH; 12-O-16606**
) **(Cons.)**
KENNETH PETER FERIA,)
) **DECISION AND ORDER OF**
Member No. 221685,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)
)
_____)

Respondent Kenneth Peter Feria (respondent) was charged in two notices of disciplinary charges with 11 counts of violations of the State Bar Rules of Professional Conduct or the Business and Professions Code. Even though respondent had notice of the trial dates, he failed to appear at the trial, and his default was entered. Thereafter, 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 appear at trial after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to appear at trial and if the attorney fails to have the default set aside or

¹ Unless otherwise indicated, all references to rules refer to the Rules of Procedure of the State Bar of California.

vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that all of 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 OF FACT AND CONCLUSIONS OF LAW

Respondent was admitted to the practice of law in California on December 3, 2002, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On October 19, 2012, the State Bar properly served on respondent and filed a notice of disciplinary charges (First NDC). On February 19, 2013, the State Bar properly served on respondent and filed a second notice of disciplinary charges (Second NDC). The NDCs notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed a response to each of the NDCs with which he had been served.

On or about January 22, 2013, respondent retained John Alan Cohan (Cohan) as his counsel. On January 29, 2013, respondent appeared and participated in a settlement conference in this matter. Thereafter, respondent was represented at status conferences by his counsel, Cohan.

On March 13, 2013, a pretrial conference was held. Although respondent did not appear, Cohan appeared at the pretrial conference to represent respondent. The court ordered that the previously set trial dates of March 27 and March 28, 2013, were to remain on calendar. On

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).)

March 18, 2013, a minute order setting forth the March 27 and March 28, 2013 trial dates, as well as the time of trial, was filed and properly served on respondent's counsel, Cohan, via first-class mail, postage prepaid. (Rule 5.81(A).)

On March 26, 2013, a status conference order adding a trial date of April 4, 2013 was added; the trial date of March 28, 2013, remained on calendar for 9:30 a.m., and the March 27, 2013 date was vacated.

On March 27, 2013, during the afternoon before the scheduled trial date, Cohan filed a motion for continuance, supported by his declaration informing the court that respondent would not appear because he had informed Cohan that he was "in attendance in the matter of *United States of America v. Kenneth Feria*, Case No. 5:11-MJ, pending in the United States District Court of the Northern District of New York." In addition to the motion for a continuance, Cohan filed a motion to be relieved as counsel for respondent. With both the DTC and Cohan present, the court contacted the Assistant United States Attorney and respondent's criminal defense counsel, both of whom are counsel in *United States of America v. Kenneth Feria*. The court learned that nothing was pending in the district court that week in respondent's criminal case, that the federal district court was dark, and that the federal judge hearing respondent's criminal matter and his clerk were on vacation. This court's call to the clerk of the federal court corroborated that the federal district court was dark as a voice mail left by the federal clerk indicated that the court was dark between March 28 and April 8, 2013.

On March 28, 2013, the State Bar appeared by and through deputy trial counsel (DTC) Meredith McKittrick; attorney Cohan appeared for respondent. Respondent did not appear, despite having been properly served with a notice to appear. Although the State Bar was prepared to proceed with the four witnesses in attendance, it requested that this court enter respondent's default since he had failed to comply with the notice to appear as a witness at trial

with which he had been served by the State Bar. This court found that no good cause existed for respondent's failure to appear at trial and entered his default in an order filed on November 28, 2013. (Rule 5.100.)

The order was properly served on respondent by certified mail, return receipt requested, at his membership records address³ and by certified mail on attorney Cohan. (Rule 5.81(B).) The order notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status 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. The return receipt for the November 28, 2013 certified mailing was received on April 4, 2013, by the State Bar Court, bearing an illegible signature.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On July 23, 2013, the State Bar filed and properly served upon respondent 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 contact with respondent since the default was entered; (2) respondent has no other disciplinary matters pending against him; (3) respondent has two prior records of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's misconduct; however there are two pending applications pending with the Client Security Fund. 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 August 20, 2013.

³ A copy of the default order was also served on respondent by certified mail, return receipt requested, at the address provided in his Response to the Notice of Disciplinary Charges filed on March 13, 2013.

Respondent has two prior records of discipline. Pursuant to an order filed on September 5, 2007, respondent was suspended for 18 months, the execution of which was stayed, and respondent was placed on probation for two years, subject to conditions of probation.

Respondent stipulated in this prior disciplinary matter that he failed to perform legal services with competence (three matters) and failed to respond to numerous client status inquiries (three matters).

Pursuant to an order filed on April 30, 2010, respondent was suspended for one year, the execution of which was stayed, and respondent was placed on probation for one year subject to conditions of probation. Respondent stipulated that he had failed to timely comply with certain specified conditions of his probation in his prior disciplinary matter, S154335.

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).)

First NDC

1. Case Number 11-O-16644 (Peabody Matter)

Count One – respondent willfully violated section Business and Professions Code section 6068, subdivision (o)(3) (failing to report judicial sanctions) by not reporting to the State Bar the imposition of a sanctions order against him in the amount of \$3,843.25.

Count Two – respondent willfully violated section 6103 of the Business and Professions Code (violation of a court order) by failing to appear for the hearing re sanctions pursuant to an

order to show cause (OSC) and by failing to pay the \$3,843.25 in sanctions as thereafter ordered by the court.

Count Three – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by re-filing a complaint that had already been adjudicated against his client and dismissed, and which offered no new facts or law, and was without merit.

Count Four – respondent violated section 6106 of the Business and Professions Code (commission of act of moral turpitude, dishonesty or corruption) by misrepresenting to his client and her husband that he had been successful in having the default judgment, which had previously been entered against her by the court, set aside when in truth the court had not set aside the judgment against her.

Count Five – respondent is charged in Count Five with committing an act or acts of moral turpitude by willfully failing to obey a court order and report judicial sanctions to the State Bar and by filing a final probation report with the State Bar that contained misrepresentations. The court declines to find respondent culpable of willfully violating section 6106 of the Business and Professions Code by failing to obey a court order and report judicial sanctions to the State Bar as charged in this count, as no clear and convincing evidence is alleged, which shows that respondent's failure to obey the court order and report judicial sanctions rises to the level of moral turpitude.

However, the court finds that by misrepresenting in his final probation report that he was in compliance with the State Bar Act and Rules of Professional Conduct when he knew or should have known that he was not, respondent committed an act of moral turpitude in violation of section 6106.

Count Six - respondent violated section 6106 of the Business and Professions Code by misrepresenting to the State Bar investigator that he had been instructed by his client to dismiss the action referred to as *Peabody III*, although at the time he made that statement to the investigator, respondent knew that his statement was untrue.

Second NDC

1. Case Number 12-O-16606 (Fuentes Matter)

Count One – after having been being retained by the client to prepare and file a bankruptcy petition on the client’s behalf, respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to file a bankruptcy petition on his client’s behalf.

Count Two –after receiving a letter from his client, requesting a full and immediate refund of the fees which he had advanced to respondent, respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund to his client any part of the \$1099 advanced, unearned fees, despite having failed to perform the services for which he had been retained.

Count Three – respondent violated section 6106 of the Business and Professions Code by informing his client on numerous occasions that he had filed a bankruptcy petition on the client’s behalf, when respondent knew that he had never filed a bankruptcy petition on behalf of the client and thus also knew that his statements to his client were false.

Count Four – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not responding to the State Bar investigator’s letters requesting that respondent provide the State Bar with a response to the allegations under investigation in the *Fuentes* matter.

Count Five – respondent violated section 6068, subdivision (j) (failure to update membership address) by failing to update his office address on the official membership records of the State Bar to reflect the fact that his office address was changed in October 2012.

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 NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and adequate notice of the trial dates prior to entry of the default;
- (3) the default was properly entered under rule 5.81; 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 appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Kenneth Peter Feria 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) Robert Fuentes in the amount of \$1,099 plus 10 percent interest per year from September 6, 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 and that the costs be 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 Kenneth Peter Feria, State Bar Number 221685, 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: November _____, 2013

RICHARD A. HONN
Judge of the State Bar Court