

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-O-16683;
)	11-N-18892 (Cons.)-DFM
MANUEL ORTEGA,)	
)	DECISION AND ORDER OF
Member No. 79519,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

This is a consolidation of two separate disciplinary actions filed against Respondent Manuel Ortega (Respondent). The first action, case No. 11-N-18892, arises out of Respondent's filing of an untimely and deficient declaration of compliance with California Rules of Court, rule 9.20. In the second proceeding, case No. 11-O-16683, Respondent was charged with willfully engaging in the unauthorized practice of law (Bus. & Prof. Code, § 6068, subdivision (a)) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar of California.

Respondent was properly served in both of the above matters, and his counsel appeared at the in person status conference in each matter. However, no response to the Notice of Disciplinary Charges (NDC) was filed by or on behalf of Respondent in either matter. As a result, Respondent's default was entered in both matters, and the matters were thereafter consolidated. The State Bar thereafter filed a petition for disbarment under rule 5.85 of the Rules

of Procedure of the State Bar.¹ Respondent has filed no motion seeking to have his defaults set aside.

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

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 May 11, 1978, and has been a member since then.

Procedural Requirements Have Been Satisfied

Case No. 11-N-18892

On March 9, 2012, the State Bar filed and properly served the NDC in this matter on Respondent by certified mail, return receipt requested, at his membership records address. The return receipt was not received by the State Bar. A courtesy copy of the NDC was also served on James Kellner, an attorney who had represented Respondent in the past, at Mr. Kellner's membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rules 5.41 & 5.345.)

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).)

On April 5, 2012, Deputy Trial Counsel Kim Kasreliovich (DTC Kasreliovich) telephoned Mr. Kellner to determine whether he was acting as Respondent's attorney in this case. Mr. Kellner confirmed that he was Respondent's counsel and that he would be present at the initial status conference.

Respondent's counsel appeared at an in person status conference in this matter on April 9, 2012. Respondent did not appear at the status conference. At the status conference, the court granted Respondent's counsel an additional two weeks to file a response to the NDC. The court filed an order on April 12, 2012, extending the time for Respondent to file a response to the NDC to April 23, 2012. The order was served by first-class mail, postage prepaid, at the membership records address of both Respondent and his counsel.

On April 11, 2012, DTC Kasreliovich emailed Respondent's counsel at his membership records email address to discuss meeting about this matter. Mr. Kellner replied to the email that same day with his availability and stating that he would call to set a meeting. On April 17, 2012, Respondent's counsel called DTC Kasreliovich's office requesting a meeting to discuss settlement. DTC Kasreliovich informed Respondent's counsel that she was still awaiting the response. Mr. Kellner informed DTC Kasreliovich that he would file a response in two days.

On April 26, 2012, a courtesy copy of the NDC was sent to Respondent by first-class mail to Respondent's membership records address and to 13571 Hewes Avenue, Santa Ana, CA 92705-2215 which was an address found on www.lexis.com. An additional copy of the NDC was sent to Mr. Kellner at his membership records address.

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Also on April 26, 2012, DTC Kasreliovich sent an email regarding the pending matters to Respondent at a private email address provided to the State Bar,³ with a courtesy copy to Mr. Kellner at Mr. Kellner's membership records email address.

DTC Kasreliovich also contacted the probation deputy assigned to Respondent's current probation to ascertain whether Respondent's profile contained any other address.

Nevertheless neither Respondent nor his counsel filed a response to the NDC. On May 9, 2012, the State Bar filed and properly served on Respondent a motion for entry of Respondent's default. A courtesy copy of the motion was also served on Mr. Kellner by regular mail. 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 June 8, 2012. The order entering Respondent's default was served on the membership records addresses of Respondent and his counsel by certified mail, return receipt requested.⁴ 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.

Case No. 11-O-16683

On April 19, 2012, the State Bar filed and properly served the NDC in this matter on Respondent and Mr. Kellner by certified mail, return receipt requested, at their membership records addresses. The State Bar received a signed return receipt for the NDC served on Mr.

³ 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).)

⁴ The order served on Respondent was returned unclaimed to the State Bar Court.

Kellner dated April 20, 2012. The State Bar received a signed return receipt from Respondent's law office dated May 7, 2012, but the signature on the receipt was illegible. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rules 5.41 & 5.345.)

On May 24, 2012, DTC Kasreliovich telephoned Mr. Kellner to remind him about the May 29, 2012 in person status conference. Mr. Kellner telephoned DTC Kasreliovich on May 29, 2012, and informed her that he would be present at the hearing, but Respondent would not. Mr. Kellner also inquired as to whether Respondent could resign from the practice of law.

Mr. Kellner appeared at the May 29, 2012 in person status conference; however, Respondent did not appear. Respondent's counsel's request for an extension of time to file a response was denied by the court. On May 29, 2012, the court filed an order which stated "Respondent needs to file an immediate written response in this matter. Counsel for the State Bar is directed to file a prompt motion for entry of default in the event of Respondent's failure to do so." The order was served on Respondent's counsel by first-class mail with a courtesy copy to Respondent.

Nevertheless neither Respondent nor his counsel filed a response to the NDC. On June 1, 2012, the State Bar filed and properly served on Respondent and Respondent's counsel a motion for entry of Respondent's default by certified mail, return receipt requested, to their membership records addresses. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring that the State Bar received a signed return receipt for the NDC from Respondent's counsel and a signed return receipt for the NDC from Respondent's law office, but the signature was illegible on the return receipt. (Rule 5.80.) The declaration also set forth the involvement of Respondent's counsel in this matter. 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 June 20, 2012. The order entering Respondent's default was served on Respondent and his counsel at their membership records addresses by certified mail, return receipt requested.⁵ 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.

Case Nos. 11-N-18892 & 11-O-16683 (Cons.)

Thereafter, the court consolidated case Nos. 11-N-18892 and 11-O-16683.

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].) The State Bar filed a petition for disbarment on January 4, 2013.⁶ As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since his default was entered in case No. 11-O-16683 on June 20, 2012; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has a record of two prior impositions of discipline;⁷ and (3) the Client Security Fund has made payment on five reimbursement applications filed against Respondent. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The consolidated case was submitted for decision on February 6, 2013.

⁵ The order served on Respondent was returned unclaimed to the State Bar Court.

⁶ The petition was served on Respondent's counsel by certified mail, return receipt requested, to his membership records address.

⁷ Respondent, however, has three prior records of discipline. The court admits into evidence the certified copies of Respondent's prior record of discipline in Supreme Court matters S044006 (State Bar Court Nos. 92-O-14924, etc.) and S192654 (State Bar Court Nos. 08-O-10494, etc.) that are attached to the State Bar's disbarment petition. In addition, the court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of the pertinent State Bar Court records in Supreme Court matter S044006 (State Bar Court No. 95-PM-17575), admits them into evidence and directs the Clerk to include copies in the record of this case.

Respondent has been disciplined on three prior occasions. Pursuant to a Supreme Court order filed on March 1, 1995, Respondent was suspended for 12 months, the execution of which was stayed, and he was placed on probation for 12 months, subject to conditions, including a two-month actual suspension. Respondent stipulated in this matter that he willfully violated Business and Professions Code section 6106 (three matters) and rules 4-100(A) (three matters) and 4-100(B)(4) (two matters) of the Rules of Professional Conduct and former rules 8-101(A) and 8-101(B)(4) of the Rules of Professional Conduct.

Pursuant to a Supreme Court order filed on January 7, 1997, Respondent was suspended for 30 days, the execution of which was stayed, and he was placed on probation for one year with conditions. Respondent stipulated that he willfully violated Business and Professions Code section 6068, subdivision (k).

Pursuant to a Supreme Court order filed on July 8, 2011, Respondent was suspended for five years, the execution of which was stayed, and he was placed on probation for five years, subject to conditions, including a suspension from the practice of law for a minimum of two years and until he makes specified restitution and provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. Respondent stipulated in this matter that he commingled funds belonging to Respondent in a client trust account; aided a person or entity in the unauthorized practice of law; failed to promptly refund an unearned fee; failed to render appropriate accounts to a client (two matters); recklessly, intentionally, or repeatedly failed to perform legal services with competence (four matters).

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's defaults, the factual allegations set forth in the NDCs are deemed admitted and no further proof is required to establish the truth of such facts. (Rules 5.345(C) & 5.82.) As set forth below in greater detail, the factual allegations in the NDCs

support the conclusion that Respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

1. Case Number 11-N-12532 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of the Supreme Court's order filed on July 8, 2011, requiring compliance with California Rules of Court, rule 9.20.

2. Case Number 11-O-16683 (Unauthorized Practice of Law Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (attorney's duty to support Constitution and laws of United States and California) by holding himself out as entitled to practice law and actually practicing law when he was not an active member of the State Bar of California in violation of Business and Professions Code sections 6125 and 6126.

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 in the rule 9.20 matter, as the State Bar (1) filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address; (2) served a copy of the NDC on James Kellner, Respondent's past counsel; (3) the deputy trial counsel confirmed in a telephone conversation with Mr. Kellner that Mr. Kellner was Respondent's counsel in this matter; (4) Mr. Kellner appeared at an in person status conference

in this matter; (5) the deputy trial counsel and Mr. Kellner exchanged emails and spoke in April 2012; (6) the NDC was also sent to Respondent by first-class mail to his membership records address and to another address; (7) an additional copy of the NDC was sent to Mr. Kellner; (8) the deputy trial counsel sent an email to Respondent with a copy to Mr. Kellner; and (9) the deputy trial counsel contacted the probation deputy assigned to Respondent's current probation matter. In the unauthorized practice of law matter, reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default, as the State Bar (1) filed and properly served the NDC on Respondent and Mr. Kellner by certified mail, return receipt requested, at their respective membership records address; (2) a signed return receipt for the NDC served on Mr. Kellner was received; (3) a signed return receipt was received from Respondent's law office containing an illegible signature; (4) the deputy trial counsel and Mr. Kellner spoke by telephone in May 2012, and Mr. Kellner inquired as to whether Respondent could resign from the practice of law; and (5) Mr. Kellner appear at the in person status conference in this matter;

(3) the defaults were properly entered under rule 5.80; and

(4) the factual allegations in the NDCs, deemed admitted by the entry of the defaults, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity with respect to both matters, Respondent failed to participate in this consolidated disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

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RECOMMENDATION

Disbarment

The court recommends that Respondent Manuel Ortega be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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 Manuel Ortega, State Bar number 79519, 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: May _____, 2013

DONALD F. MILES
Judge of the State Bar Court