

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 11-O-18088 (11-O-18782)-RAH
)	
DAVID GLENN CURRIE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 153669,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent David Glenn Currie (respondent) was charged with (1) the unauthorized practice of law in another jurisdiction; (2) entering into an agreement for, charging, or collecting an illegal fee; (3) accepting fees from a non-client without the client's informed written consent; (4) failing to maintain client funds in a trust account; (5) moral turpitude for misappropriation of funds; (6) moral turpitude for misrepresentation; (7) failing to pay client funds promptly; and (8) failing to release a file. 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.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 notice of disciplinary charges (NDC),

¹ 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.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 June 18, 1991, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 12, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address.³ The NDC was returned by the United State Postal Service.⁴ 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 telephoned directory assistance for the area which includes respondent's official membership records address and conducted on-line skip-trace searches for possible current telephone numbers and addresses for respondent.

Respondent failed to file a response to the NDC. On May 22, 2012, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all

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).)

³ Respondent's abandonment of this address led the State Bar to initiate proceedings in superior court under Business and Professions Code section 6190, et seq.

⁴ Upon the State Bar's ex parte application, the San Bernardino County Superior Court filed an order to show cause (OSC) and interim orders assuming jurisdiction over respondent's law practice on March 8, 2012. On May 8, 2012, the superior court filed a permanent order assuming jurisdiction over respondent's law practice pursuant to Business and Professions Code section 6190, et seq.

the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar senior 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 11, 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 January 3, 2013, 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 33 investigations pending against respondent and one disciplinary matter pending against respondent which appears to be abated; (3) respondent has a prior record of discipline;⁵ and (4) the Client Security Fund has not made any payments resulting from respondent's misconduct in 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 January 29, 2013.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on September 29, 2009, 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

⁵ The court admits into evidence the certified copy of respondent's prior record of discipline that is attached as exhibit 1 to the State Bar's January 3, 2013 petition for disbarment after default.

conditions, including that he be suspended for the first 30 days of probation. Respondent stipulated in that matter that he failed to perform legal services with competence, failed to refund unearned fees, and failed to keep a client reasonably informed of significant developments in a matter in which he had agreed to provide legal services.

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-18088 (Andrade Matter)

Count One – 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 of a client in a criminal matter pending in Nevada and holding himself out as entitled to practice law in Nevada, a jurisdiction where he is not admitted to practice law, thereby willfully violating the regulations of the profession in that jurisdiction.

Count Two – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by entering into an agreement for, charging, and collecting fees from a client's sister for representation of the client in a criminal matter pending in Nevada when respondent was not licensed to practice law in Nevada.

Count Three – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (accepting fees from a non-client) by failing to obtain his client's informed written consent to accept compensation from the client's sister for the representation of the client.

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2. Case Number 11-O-18782 (Vazquez Matter)

Count Four – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to maintain in his client trust account at least \$89,902.94 that his client had deposited into respondent's client trust account pending settlement of the client's divorce.

Count Five – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by misappropriating \$89,875.82 of his client's funds.

Count Six – Respondent willfully violated Business and Professions Code section 6106 by making a misrepresentation to his client regarding his Social Security disability funds.

Count Seven – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (promptly pay/deliver client funds) by failing to promptly deliver the client's \$89,902.94 to his client or his client's new attorney as requested by his client's new attorney.

Count Eight – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing, after his employment was terminated, to promptly provide the client's file to the client or to the client's new attorney as requested by the client's new attorney.

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) 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 by certified mail, return receipt requested, at his membership records address; (2) telephoned

directory assistance for the area which includes respondent's official membership records address; (3) and conducted on-line skip-trace searches for possible current telephone numbers and addresses for respondent;

(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 recommends his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent David Glenn Currie 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) Alejandra Andrade in the amount of \$16,500 plus 10 percent interest per year from June 2, 2010; and

(2) Hector Vasquez in the amount of \$89,902.94 plus 10 percent interest per year from June 21, 2011.

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

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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 David Glenn Currie, State Bar number 153669, 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

RICHARD A. HONN
Judge of the State Bar Court