

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 12-O-15175-RAP
)	(12-O-15400; 13-O-10408)
JUAN JOSE GONZALEZ,)	
)	DECISION AND ORDER OF
Member No. 243647,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

In this matter, respondent Juan Jose Gonzalez was charged with sixteen counts of misconduct stemming from three client matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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), 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

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).)

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 19, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 13, 2013, the State Bar properly filed and served an 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.) On June 20, 2013, the certified mail return receipt was received by the State Bar, signed by Eric Martinez.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included calling him at his membership records telephone number, conducting internet and Lexis/Nexis searches for alternative contact information, calling him at possible alternative telephone numbers, sending an email to him at his official State Bar email address, sending an email to him at an alternative email address, checking for alternative contact information with his State Bar probation deputy, and sending a copy of the NDC by first class mail to his official State Bar membership records address and an alternative address.

Respondent failed to file a response to the NDC. On July 16, 2013, 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 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 August 6, 2013. 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 February 11, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has no other disciplinary matters pending; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. 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 March 11, 2014.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on April 10, 2013, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for three years, including a two-year minimum period of actual suspension and until he provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. In this matter, respondent stipulated to culpability in six matters, including aiding the unauthorized practice of law (four counts), failing to refund unearned fees (four counts), improper withdrawal, failing to account (three counts), failing to perform legal services with competence (two counts), failing to respond to reasonable status inquiries, failing to return a client file, failing to obey a court order,

making a misrepresentation constituting moral turpitude, failing to inform a client of significant developments, and failing to comply with Civil Code sections 2944.6 and 2944.7.³

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).)

Case Number 12-O-15175 – The Belmares Matter

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to perform the legal services for which he was retained.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate) by failing to respond to his client's reasonable status inquiries.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

Count Four – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide his client with an accounting.

Count Five – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over his client's papers and property upon termination of employment.

³ Civil Code sections 2944.6 and 2944.7 apply to loan modification matters.

Case Number 12-O-15400 – The Bernal Matter

Count Six – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to perform the substantive legal services for which he was retained.

Count Seven – respondent willfully violated Business and Professions Code section 6106.3, subdivision (a) (violation of Civil Code section 2944.7), by failing to provide his clients adequate notice that they can deal directly with their lender and that it is not necessary to pay a third party to negotiate a loan modification matter.

Count Eight – respondent willfully violated Business and Professions Code section 6106.3, subdivision (a) (violation of Civil Code section 2944.7), by collecting advanced fees prior to completing all services in a loan modification matter.

Count Nine – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to communicate significant developments), by failing to promptly inform his client of significant developments in a matter in which respondent had agreed to provide legal services.

Count Ten – respondent willfully violated Business and Professions Code section 6068, subdivision (c) (maintaining an unjust action), by filing an incomplete bankruptcy petition for the sole purpose of delaying an unlawful detainer case and without any intention of obtaining a bankruptcy discharge.

Count Eleven – respondent willfully violated Business and Professions Code section 6068, subdivision (d) (employing means inconsistent with truth), by employing, for the purposes of maintaining the causes confided in him, means which are inconsistent with truth and seeking to mislead the bankruptcy court and the court in the unlawful detainer action.

Count Twelve – respondent willfully violated rule 1-300(A) of the Rules of Professional Conduct (aiding the unauthorized practice of law) by allowing a non-attorney to prepare a legal document and give legal advice to a client without attorney supervision.

Case Number 13-O-10408 – The Ziai Matter

Count Thirteen – respondent willfully violated Business and Professions Code section 6068, subdivision (d) (seeking to mislead a judge) by knowingly making false representations to the superior court.

Count Fourteen – respondent willfully violated Business and Professions Code section 6103 (failure to obey court orders) by failing to comply with the superior court’s orders to appear, show cause, and pay sanctions.

Count Fifteen – respondent willfully violated section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to report two \$1,500 judicial sanctions to the State Bar.

Count Sixteen – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar investigator’s letters or otherwise cooperating in the State Bar’s investigation.

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 properly served him with the NDC and made various efforts to locate respondent, including: calling him at his membership records telephone number, conducting internet and Lexis/Nexis searches for alternative contact information, calling him at possible alternative telephone numbers, sending an email to him at his official State Bar email

address, sending an email to him at an alternative email address, checking for alternative contact information with his State Bar probation deputy, and sending a copy of the NDC by first class mail to his official State Bar membership records address and an alternative address;

(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 disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Juan Jose Gonzalez 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 Ernesto and Lorena Belmares in the amount of \$3,500 plus 10 percent interest per year from May 12, 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).⁴

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

⁴ The record is silent as to whether there are any outstanding unearned or illegal fees in the Bernal matter. Accordingly, the court does not recommend restitution in that matter.

(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 Juan Jose Gonzalez, State Bar number 243647, 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: April 1, 2014

RICHARD A. PLATEL
Judge of the State Bar Court