

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 13-O-10636-PEM (13-O-11470)
)	
NICOLE ROSIE GALLEGOS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 231744,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Nicole Rosie Gallegos was charged with (1) engaging in the unauthorized practice of law in another jurisdiction; (2) charging an illegal fee; (3) failing to cooperate in a State Bar investigation; (4) violating Business and Professions Code, section 6106.3(a);¹ (5) failing to cooperate in a State Bar investigation; (6) failing to respond to client status inquiries; (7) failing to perform legal services with competence; and (8) aiding in the unauthorized practice of law. Respondent failed to file a response to the notice of disciplinary charges (NDC), and her 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.²

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,

¹ Unless otherwise indicated, all further references to section(s) refer to the provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

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.³

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 the practice of law in California on June 30, 2004, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On October 22, 2013, the State Bar properly served the NDC on respondent by certified mail, return receipt requested, at her membership records address; the NDC was filed with the Hearing Department of the State Bar Court on October 23, 2013. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt was returned to the State Bar on October 29, 2013, with an illegible signature.

The State Bar took several steps to provide respondent with actual notice of the proceeding. On December 12, 2013, a courtesy copy of the NDC was sent to respondent by regular first class mail at her membership records address. The NDC was not returned by the U.S. Postal Service. The State Bar deputy trial counsel (DTC) assigned to respondent's case contacted respondent's probation deputy to ascertain whether respondent's profile contained any other address. As respondent did not have a telephone number listed in her official membership

³ 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).)

records, the assigned DTC twice attempted to reach respondent on December 12, 2013, at another phone number contained in the case file. However, on each occasion a recording advised that the person being called was “unavailable.” On December 12, 2013, the assigned DTC also sent a courtesy copy of the NDC to respondent’s private email address, which was on file with the State Bar.

In response to the DTC’s December 12th email communication, respondent contacted the DTC by telephone. Respondent acknowledged receipt of the NDC and confirmed that her address was as listed in the State Bar membership records. She further confirmed that she had received mail from the State Bar. The DTC advised respondent that the State Bar intended to file a motion for entry of default unless the State Bar was immediately served with respondent’s response to the NDC.

Despite having actual notice of this proceeding, respondent did not file a response to the NDC by December 18, 2013, as required.

On December 18, 2013, the State Bar properly served on respondent a motion for entry of her default by certified mail, return receipt requested at respondent’s membership records address.⁴ The motion was filed with the Hearing Department of the State Bar Court on December 19, 2013. The motion complied with 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 she did not timely move to set aside her default, the court would recommend her disbarment.

⁴ The State Bar received the return receipt for the Motion of Entry of Default, which was signed on December 20, 2013, by “Hilary Jaeger.”

Respondent did not file a response to the default motion, and her default was entered on January 3, 2014. The order entering the default was served on respondent at her 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 she has remained inactively enrolled since that time. The State Bar Court received the return receipt for the Order of Entry of Default and Order Enrolling Inactive, which was signed on January 6, 2014, by "N. Gallegos."

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On August 12, 2014, the State Bar filed and properly served a petition for disbarment on respondent by certified mail, return receipt requested. 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) there are no other disciplinary matters pending against respondent; (3) respondent has one prior record of discipline; and (4) the Client Security Fund has made payments to six claimants resulting from respondent's conduct and there is still one matter 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 September 15, 2014.

Respondent has one prior record of discipline. Pursuant to an order filed on March 7, 2013, respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for two years subject to conditions, including that she be suspended for a minimum of the first nine months of probation and will remain suspended until she makes specified restitution and, if she remains suspended for two or more years, she must provide proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the

general law before her suspension will be terminated. Respondent stipulated in this prior disciplinary matter that she had engaged in the unauthorized practice of law in other jurisdictions (six matters); had charged and collected illegal fees (six matters); had failed to update her membership records address and membership records phone number; and had violated Business and Professions Code section 6106.3 by violating sections 2944.6(a) and 2944.7(a)(1) of the California Civil Code.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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 of the rule and statutory violations as charged, except as otherwise noted, 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 13-O-10636 (Wylie Matter)

Count One – respondent willfully violated rule 1-300(B) of the California Rules of Professional Conduct (prohibition against practicing law in violation another jurisdiction's professional regulations) by practicing law in the State of New Jersey by accepting employment with clients in New Jersey, collecting an advance fee from them, and negotiating with the clients' home mortgage loan lender, when to do so was in violation of the regulations of the profession in New Jersey, specifically rule 5.5(B) of New Jersey's Rules of Professional Conduct.

Count Two – respondent willfully violated rule 4-200(A) of the California Rules of Professional Conduct (prohibition against entering an agreement for, charging and/or collecting

an illegal or unconscionable fee) by charging and/or collecting a fee from her New Jersey clients for legal services, when she was not then licensed to practice law in New Jersey.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation), by failing to respond to the State Bar’s letter, which she received, requesting a response to the allegations of misconduct being investigated in case No. 13-O-10636.

2. Case Number 13-O-11470 (Jacoby Matter)

Count Four –respondent willfully violated section 6106.3 (engaging in conduct in violation of Civil Code section 2944.6) by failing to provide a borrower /loan modification client with a separate statement containing the warning language required by Civil Code section 2944.6, prior to entering a fee agreement with her client, in violation of Civil Code section 2944.6.

Count Five –respondent willfully violated section 6106.3 (engaging in conduct in violation of Civil Code section 2944.7) by entering an agreement with her client to negotiate a home mortgage loan modification for a fee and by receiving a fee from her client, prior to having fully performed the legal services, which she had contracted to perform, in violation of Civil Code section 2944.7.

Count Six – respondent willfully violated Business and Professions Code section 6068, subdivision (i), by failing to respond to the State Bar’s letter, which she received, requesting a response to the allegations of misconduct being investigated in case No. 13-O-11470.

Count Seven – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to respond to client inquiries), by failing to respond to numerous telephonic and written status inquiries, which she received, including six written status inquiries

made by her client between May 2010 and September 2, 2010, regarding a matter in which respondent had agreed to provide legal services

Count Eight – the State Bar has not shown by clear and convincing evidence that respondent willfully violated rule 3-110(A) of the California Rules of Professional Conduct (failing to perform legal services with competence). Rule 3 110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The State Bar charges that respondent willfully violated rule 3- 110(A) “by failing to provide any legal services of value” on behalf of his client. However, rule 3 110(A) does not require that an attorney provide legal services of value. The fact that legal services, which have been provided by an attorney, are of no value to the client does not, in and of itself, provide clear and convincing evidence that the attorney intentionally, recklessly, or repeatedly failed to perform legal services competently.

As the NDC alleges nothing more than the fact that the services provided by respondent were of no value to the client, no violation of rule 3 110(A) has been shown by clear and convincing evidence.

Accordingly, Count Four is dismissed with prejudice.

Count Nine – respondent willfully violated rule 1-300(A) of the Rules of Professional Conduct (aiding the unauthorized practice of law) by delegating to two members of her office staff, who were not licensed to practice law in California, client intake responsibilities, which included knowingly allowing them to provide legal advice to the client.

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 the proceedings prior to the entry of her default, as she had a telephone conversation with the DTC on December 12, 2013, in which she acknowledged, among other things, that she had received the NDC, that the membership address currently listed for her with the State Bar is the address at which she receives mail, and that she had received mail from the State Bar. In that December 12, 2012 phone conversation, the DTC advised respondent that the State Bar intended to file a motion for entry of default unless the State Bar was immediately served with respondent's response to the NDC.

(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 actual 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.

RECOMMENDATION

Disbarment

The court recommends that respondent Nicole Rosie Gallegos be disbarred from the practice of law in the State of California and that her 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 Nicole Rosie Gallegos, State Bar number 231744, 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: January _____, 2015

PAT E. McELROY
Judge of the State Bar Court