

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-11081-DFM
)	(13-O-12008; 13-O-12317;
JOHN VARGAS,)	13-O-12588; 13-O-13702);
)	13-O-13929 (Cons.)
Member No. 270181,)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

Respondent **John Vargas** (Respondent) was charged with 27 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to appear at the trial of this case 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.²

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 the attorney fails to have the default set aside or vacated

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

² Unless otherwise indicated, all references to rules are to this source.

within 45 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 practice law in California on June 1, 2010, and has been a member since then.

Procedural Requirements Have Been Satisfied

On November 19, 2013, the State Bar properly filed and served a first notice of disciplinary charges on Respondent (First NDC) in case Nos. 13-O-11081 (13-O-12008; 13-O-12317; 13-O-12588; 13-O-13702). The First NDC notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation.

On January 23, 2014, the State Bar properly filed and served on Respondent a notice of disciplinary charges (Second NDC) in case No. 13-O-13929. The Second NDC also notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation.

The two matters were consolidated on February 10, 2014. Respondent filed his responses to the First NDC on March 5, 2014, and to the Second NDC on March 13, 2014.

On June 16, 2014, the State Bar filed a First Amended NDC in case Nos. 13-O-11081 (13-O-12008; 13-O-12317; 13-O-12588; 13-O-13702). On June 24, 2014, the State Bar served this First Amended NDC on Respondent by certified mail, return receipt requested, at his

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(F)(2).)

membership records address. The First Amended NDC again notified Respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation.

By order filed July 17, 2014, the trial was set to start on November 12, 2014. The order setting the trial date was served on Respondent's membership records address by first-class mail, postage paid. (Rule 5.81(A).) The State Bar appeared for trial but Respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered Respondent's default by order filed November 14, 2014. 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.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On January 2, 2015, the State Bar properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar had one contact with Respondent since his default was entered when Deputy Trial Counsel Timothy G. Byer spoke on the phone with Respondent on December 3, 2014 about another disciplinary matter; (2) Respondent has other investigations pending; (3) Respondent has one record of prior discipline;⁴ and (4) the Client

⁴ The State Bar submitted Respondent's fee arbitration matter as his second prior record of discipline. Because fee arbitration award enforcement proceedings are administrative in nature, the order granting motion for involuntary inactive enrollment under Business and Professions Code section 6203, subdivision (d), in case No. 14-AE-02342, is not a disciplinary record (Exhibit 2 attached to the State Bar's January 2, 2015 petition for disbarment). (Rules Proc. of State Bar, rule 5.360 et seq.) In fact, the award and determinations are not admissible in any action or proceeding. (Bus. & Prof. Code, § 6204, subd. (e).) Therefore, Respondent's fee arbitration matter, case No. 14-AE-02342, is not admitted into evidence or considered as aggravation evidence.

Security Fund (CSF) has not paid any claims as a result of Respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on February 5, 2015.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on June 26, 2014, Respondent was suspended for two years, the execution of which was stayed, and placed on probation for two years subject to conditions including that he be actually suspended from the practice of law for the first 60 days of probation. The misconduct involved three client matters. Respondent failed to obey a court order to pay sanctions, failed to cooperate with the State Bar, failed to properly withdraw from employment, and failed to perform services competently.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the First Amended NDC and the Second NDC (NDCs) 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 NDCs 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(F)(1)(d).)

First Amended NDC

1. Case No. 13-O-11081 (Contreras Matter)

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to file a proper bankruptcy petition on behalf of his client, and thereafter performing no services for Lilia Contreras, which led to the court's dismissal of the action.

Count 2 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development) by failing to respond to reasonable client status inquiries between April and July 2012.

Count 3 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to inform Contreras that he was withdrawing from employment on April 12, 2012, and failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client upon the termination of his employment.

Count 4 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar’s letters of April 17 and May 16, 2013, as requested by the State Bar investigator.

2. Case No. 13-O-12008 (Randle Matter)

Count 5 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform legal services with competence including, but not limited to, failing to file a bankruptcy petition until five months after he was employed by Kelly Randle, filing the petition without the requisite schedules, and thereafter performing no services for his client, which led to the court's dismissal of the action.

Count 6 – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's reasonable status inquiries (over 100 telephone calls, emails, and text messages) between September 2012 and April 2013.

Count 7 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the

rights of his client and thereafter failing to inform the client that he was withdrawing from employment on February 12, 2013.

Count 8 – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to promptly release to his client, upon the client’s request on April 5, 2013, the client’s property and papers.

Count 9 – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to pay funds to client) by failing upon the client's request on April 5, 2013, to refund the advanced costs of \$300 for a civil complaint that Respondent never filed.

Count 10 – Respondent willfully violated section 6103 (failure to comply with court order) by failing to comply with the \$1,000 sanctions order issued by the U.S. Bankruptcy Court on February 19, 2013.

Count 11 – Respondent willfully violated section 6068, subdivision (o)(3) (failure to report judicial sanctions) by failing to report the \$1,000 court sanctions ordered by the U.S. Bankruptcy Court on February 19, 2013 (case No. 6:13-bk-12327).

Count 12 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters of June 14 and July 9, 2013, as requested by the State Bar investigator.

3. Case No. 13-O-12317 (Madriga Matter)

Count 13 – Respondent willfully violated section 6103 by failing to comply with a \$1,000 sanctions order issued by the Riverside County Superior Court on April 12, 2013 (case No. RID 233 863).

Count 14 – Respondent willfully violated section 6068, subdivision (o)(3), by failing to report the \$1,000 court sanctions ordered by the Riverside County Superior Court on April 12, 2013.

Count 15 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters of June 14, July 9, and August 22, 2013, as requested by the State Bar investigator.

4. Case No. 13-O-12588 (Alonso Matter)

Count 16 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform legal services with competence including, but not limited to, failing to appear for his client's preliminary hearing in a criminal matter on March 27, 2013, and thereafter performing no services for Abraham Alonso.

Count 17 – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries between April and July 2012.

Count 18 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client and thereafter failing to inform the client that he was withdrawing from employment.

Count 19 – Respondent willfully violated rule 1-300(A) (aiding in the unauthorized practice of law) by allowing Eugenio Montenegro, who is not licensed to practice law in California, to accept the representation of Alonso on his behalf and to determine the legal fee to be charged to his client.

Count 20 – Respondent willfully violated rule 1-320(A) (sharing legal fees with a non-lawyer) by sharing legal fees with Montenegro, a non-lawyer, in Alonso's criminal matter.

Count 21 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters of June 14 and July 1, 2013, as requested by the State Bar investigator.

5. Case No. 13-O-13702 (Medina Matter)

Count 22 – Respondent willfully violated section 6103 by failing to comply with a sanctions order issued by the Los Angeles County Superior Court on January 29, 2013 (case No. BC 480 073).

Count 23 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters of August 2 and August 22, 2013, as requested by the State Bar investigator.

Second NDC

Case No. 13-O-13929 (Zamora Matter)

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform legal services with competence including, but not limited to, appearing on Greg Zamora's behalf on February 6, 2013, in a marital dissolution matter but thereafter performing no other services for Zamora.

Count 2 – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's status inquiries in March 2013.

Count 3 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client and thereafter failing to inform the client that he was withdrawing from employment.

Count 4 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters, as requested by the State Bar investigator.

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and Respondent's disbarment is recommended. In particular:

(1) The NDCs were properly served on Respondent under rule 5.25.

(2) Respondent had actual notice of this proceeding. In addition, he had adequate notice of the trial date prior to the entry of his default.

(3) The default was properly entered under rule 5.81.

(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.

(5) Despite adequate notice and opportunity, Respondent failed to appear for the trial of 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 **John Vargas**, State Bar number 270181, 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 Kelly Randle in the amount of \$300 plus 10 percent interest per year from April 5, 2013. 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, 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 **John Vargas**, State Bar number 270181, 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 ____, 2015

DONALD F. MILES
Judge of the State Bar Court