



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

FILED

NOV 03 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No.: 13-O-16762-DFM
)	
VICENTA E. MONTOYA-TORRES,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 97192,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent **Vicenta E. Montoya-Torres** (Respondent) was charged with failing to comply with probation conditions attached to her disciplinary probation. She failed to participate, either in person or through counsel, and her 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 and the attorney fails to have the default set aside or vacated within 90 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(F)(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

Jurisdiction

Respondent was admitted to the practice of law in California on April 1, 1981, and has been a member of the State Bar of California at all times since that date.

Procedural Requirements Have Been Satisfied

On May 5, 2014, the State Bar filed with this court and sought to serve on Respondent a Notice of Disciplinary Charges (NDC) in the above-entitled matter. When Respondent subsequently failed to file a response to the NDC, the State Bar filed and purportedly served a motion for the entry of Respondent's default on June 19, 2014. Respondent's default was thereafter entered on July 15, 2014. And, on October 17, 2014, the State Bar filed a petition seeking Respondent's disbarment pursuant to rule 5.85 of the Rules of Procedure of the State Bar of California.

However, after reviewing and considering the papers filed in this matter, this court found that both the NDC and the State Bar's motion for the entry of Respondent's default had been sent to an incorrect addressee and an incorrect address.³ The court also noted that the petition for disbarment filed by the State Bar failed to comply with rule 5.85(B) of the Rules of Procedure of the State Bar of California, as it failed to include Respondent's prior records of discipline. Consequently, on January 29, 2015, this court vacated the July 15, 2014 order entering Respondent's default and enrolling her inactive, nunc pro tunc to July 15, 2014. The court also

³ The declarations of service attached to the NDC and the motion for the entry of Respondent's default reflect that both the NDC and the motion were served on Vincenta E. Montoya-Torres at 300 E. Charleston Blvd., Suite 200, Las Vegas, NV 89104, rather than Vicenta E. Montoya-Torres at 330 E. Charleston Blvd., Suite 200, Las Vegas, NV 89104.

deemed moot the State Bar's October 17, 2014 petition for disbarment, since it was vacating the order entering Respondent's default. Additionally, the court vacated the November 17, 2014 order submitting this default matter for decision. Finally, the court ordered the State Bar to file proof of proper service of the NDC in this matter by February 6, 2015.

On January 29, 2015, the State Bar timely complied with the court's order and properly re-served Respondent with the NDC by certified mail, return receipt requested, at her membership records address. As ordered, the State Bar then filed proof of proper service of the NDC.

The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The mailing containing the NDC was returned to the State Bar by the U.S. Postal Service as "unclaimed – unable to forward." The State Bar received the returned envelope and its contents on February 10, 2015.

Reasonable diligence was also used to notify Respondent of this proceeding. On April 16, 2015, the deputy trial counsel (DTC) assigned to this matter did a Google search for any addresses or phone numbers at which Respondent could be reached. The search revealed an address at "320 Charleston Blvd., Ste. 202, Las Vegas NV 89104." On April 16, 2015, the assigned DTC sent a letter to Respondent at the newly found address, as well as to Respondent at her current membership records address. Enclosed with each of the letters was a courtesy copy of the NDC and the proof of service thereof. The letter advised Respondent that her response to the NDC was due on February 23, 2015, and that if the response to the NDC was not filed by April 24, 2015, a motion for entry of default would be filed on that date.

On April 16, 2015, the assigned DTC also telephoned Respondent at her membership records telephone number, but received a recording saying that the number was no longer in service. Additionally, the DTC emailed a copy of the April 16th letter and the

enclosures/attachments thereto to Respondent at her membership records email address. The DTC also made three attempts to send the letter and attachments to Respondent via facsimile transmission at the fax number listed in her membership records information. But, the fax line failed to connect in response to each attempt. Thus, as of April 27, 2015, the date on which the DTC executed his declaration in support of the State Bar's motion for entry of default, he had received no response from Respondent.

Respondent did not file a response to the NDC. On April 27, 2015, 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 DTC assigned to this matter. (Rule 5.80.) The motion notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion; and, her default was entered on May 19, 2015. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order; and, she has remained inactively enrolled since that time.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On August 31, 2015, the State Bar filed and properly served a petition for disbarment on Respondent by certified mail, return receipt requested, at her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent has not contacted the State Bar since her default was entered on May 19, 2015; (2) Respondent has no other disciplinary matters pending; (3) Respondent has a prior record of discipline; and (4) no payments from the Client Security Fund have been made as a result of 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 October 2, 2015.

Prior Record of Discipline

Respondent has been disciplined on three prior occasions. Effective March 13, 1997, Respondent was privately reprovved with conditions in State Bar Court case Nos. 95-O-143747 (95-O-16029; 95-O-17734). In this matter, Respondent stipulated to failing to perform services competently and failing to inform the client of significant developments in each of the three client matters. Respondent also stipulated to failing to cooperate and participate in a disciplinary investigation in one client matter.

Effective September 16, 2009, Respondent was publicly reprovved with conditions in case No. 05-J-03259. In this matter, Respondent stipulated to failing to perform legal services competently and failing to inform the client of significant developments in his case.

Pursuant to a Supreme Court order filed on October 19, 2011, in case No. S195361 (State Bar Court case No. 10-H-08935), Respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for three year with conditions, including that she comply with the conditions of probation recommended by the State Bar Court in its Order Approving Stipulation filed on June 23, 2011. In that June 23, 2011 Order Approving Stipulation, Respondent stipulated to failing to comply with the conditions of her public reprovval in case No. 05-J-03259.

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(2).) 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(F)(1)(d).)

Case No. 13-O-16762 The Disciplinary Probation Matter

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to comply with conditions attached to her disciplinary probation in State Bar Court case No. 10-H-08935.

Specifically, Respondent failed to: (1) timely submit one quarterly report by its due date and (2) submit four quarterly reports, which were due to be filed on April 10, July 10, and October 10, 2013, and January 10, 2014.

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 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 her default;
- (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 **Vicenta E. Montoya-Torres**, State Bar number 97192, 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 **Vicenta E. Montoya-Torres**, State Bar number 97192, 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: November 3, 2015


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 3, 2015, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

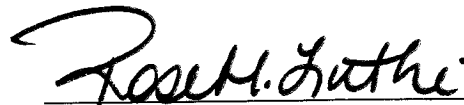
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

VICENTA E. MONTOYA-TORRES
330 E CHARLESTON BLVD STE 200
LAS VEGAS, NV 89104

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 3, 2015.



Rose M. Luthi
Case Administrator
State Bar Court