

FILED

SEP 22 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 14-O-01245-DFM (14-O-02020;
)	14-O-02696; 14-O-02763;
)	14-O-03400; 14-O-03419;
FLOYD GEORGE BELSITO,)	14-O-03775)
Member No. 103635,)	
)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar.</u>)	ENROLLMENT

Respondent **Floyd George Belsito** (Respondent) is charged here with a total of fifteen counts of misconduct involving seven separate client matters. He failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) has now 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

¹ Unless otherwise indicated, all references to rules are to this source.

(NDC) 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

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 July 8, 1982, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 17, 2014, the State Bar filed and properly served the NDC on Respondent's attorney, who is Aldo A. Flores (Attorney Flores), by certified mail, return receipt requested, to Attorney Flores's membership records address.³ The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On December 19, 2014, the State Bar received the return receipt from the United States Postal Service. The receipt was signed by Rebecca Leon.

Respondent had actual notice of this disciplinary proceeding. His attorney appeared in court at a duly noticed status conference held on January 20, 2015. At that status conference, this court notified the attorney of the need to file a response to the NDC. Even though Attorney Flores initially stated that Respondent would file a response to the NDC, Attorney Flores subsequently sent the assigned deputy trial counsel (DTC) an email on January 22, 2015, stating that Respondent was electing to "permit default to be entered against him" in this proceeding. This was consistent with the Attorney Flores's comments to this court during the initial status

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).)

³ Rule 5.25(D) allows for service of the NDC on authorized counsel for a member.

conference, during which he indicated that his client wished to stipulate to disbarment in the pending cases, including a previously filed case then pending to commence trial on April 1, 2015. As discussed below, Respondent's default has also been taken in that matter due to his failure to appear for the scheduled trial.

Consistent with his announced intent of allowing these matters to result in his disbarment, Respondent failed to file a response to the NDC in this matter. On January 28, 2015, the State Bar filed and properly served a motion for entry of default on Respondent by serving the motion on Attorney Flores by certified mail, return receipt requested, to Attorney Flores's membership-records address. The motion complied with the requirements for a default, including a supporting declaration from the DTC. (Rule 5.80.) The motion 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 for entry of default, and his default was entered on February 27, 2015. The order entering the default was properly served on Respondent by serving the order on Attorney Flores by certified mail, return receipt requested, to Attorney Flores's membership records address. 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)⁴ effective three days after service of the order. He has remained inactively enrolled since that time. The return receipt was returned to the State Bar Court showing that the order was delivered to Attorney Flores's membership records address on March 2, 2015. The receipt was signed by Liliana Leon.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On June 3, 2015, the State Bar filed and properly served the petition for disbarment on Respondent by serving the petition on

⁴ Unless otherwise indicated, all statutory references are to the Business and Professions Code.

Attorney Flores by certified mail, return receipt requested, to Attorney Flores's membership records address.

As required by rule 5.85(A), the State Bar reported in the petition that (1) the State Bar continued to have contact with Respondent's attorney regarding case number 13-O-14743, the previously-filed State Bar Court case pending against Respondent, until April 1, 2015, when Respondent's default was entered in that case as a result of his failure to appear for the scheduled trial⁵; (2) in addition to the present case and case number 13-O-14743, there are 51 other disciplinary matters pending against Respondent; (3) Respondent has no record of prior 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 July 7, 2015.

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 violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 14-O-01245 (Kannan Matter)

Count One – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct (prohibition on practicing law in another jurisdiction in violation of that jurisdiction's professional regulations) by engaging in the practice of law in Nevada in violation of the Nevada Rules of Professional Conduct.

⁵ Unlike this matter, Respondent had filed a written response to the NDC in the previously-filed proceeding.

Count Two – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by charging and collecting from his client a fee of \$3,500 that was illegal because Respondent was not entitled to practice law in Nevada.

Case Number 14-O-02020 (Ramirez Matter)

Count Three – Respondent willfully violated Civil Code section 2944.7, subdivision (a)(1), by charging and collecting \$2,995 in advanced fees from his clients before completing all services in a home mortgage loan modification or forbearance matter. Respondent’s violation of Civil Code section 2944.7 is made disciplinable by section 6106.3, subdivision (a).

Count Four – Respondent willfully violated rule 4-100(D)(4) of the Rules of Professional Conduct (failing to clearly indicate that a communication or solicitation concerns an attorney or law firm’s availability for professional employment) by making or allowing to be made a written communication to prospective clients concerning Respondent’s availability for professional employment that did not bear the word “Advertisement” or “Newsletter” or a word of similar import in 12 point print on the first page.

Count Five – Respondent willfully violated rule 3-700(D)(1) of the State Bar Rules of Professional Conduct (failing to release a file in accordance with client’s request) by failing to promptly return his clients’ file in accordance with the clients’ request after the termination of Respondent’s employment.

Case Number 14-O-02696 (Cuadras Matter)

Count Six – Respondent willfully violated Civil Code section 2944.7, subdivision (a)(1), by charging and collecting \$3,500 in advanced fees from his client before completing all services in a home mortgage loan modification or forbearance matter. Respondent’s violation of Civil Code section 2944.7 is made disciplinable by section 6106.3, subdivision (a).

Count Seven – Respondent willfully violated rule 4-100(D)(4) of the Rules of Professional Conduct by making or allowing to be made a written communication to a prospective client concerning Respondent’s availability for professional employment that did not bear the word “Advertisement” or “Newsletter” or a word of similar import in 12 point print on the first page.

Case Number 14-O-02763 (Hernandez Matter)

Count Eight – Respondent willfully violated Civil Code section 2944.7, subdivision (a)(1), by charging and collecting \$3,500 in advanced fees from his client before completing all services in a home mortgage loan modification or forbearance matter. Respondent’s violation of Civil Code section 2944.7 is made disciplinable by section 6106.3, subdivision (a).

Count Nine – Respondent willfully violated rule 3-700(D)(1) of the State Bar Rules of Professional Conduct by failing to promptly return his clients’ file in accordance with the clients’ request after the termination of Respondent’s employment.

Case Number 14-O-03400 (Mirisola Matter)

Count Ten – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by engaging in the practice of law in Florida in violation of the Florida Rules of Professional Conduct and the statutory law of Florida.

Count Eleven – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by charging and collecting from his client a fee of \$3,700 that was illegal because Respondent was not entitled to practice law in Florida.

Case Number 14-O-03419 (Penaloza Matter)

Count Twelve – Respondent willfully violated Civil Code section 2944.7, subdivision (a)(1), by charging and collecting \$3,500 in advanced fees from his client before completing all

services in a home-mortgage-loan-modification or forbearance matter. Respondent's violation of Civil Code section 2944.7 is made disciplinable by section 6106.3, subdivision (a).

Case Number 14-O-03775 (Pullman Matter)

Count Thirteen – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by engaging in the practice of law in Texas in violation of the Texas Disciplinary Rules of Professional Conduct and the statutory law of Texas.

Count Fourteen – Respondent willfully violated rule 4-100(D)(4) of the Rules of Professional Conduct by making or allowing to be made a written communication to prospective clients concerning Respondent's availability for professional employment that did not bear the word "Advertisement" or "Newsletter" or a word of similar import in 12 point print on the first page.

Count Fifteen – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by charging his clients a fee of \$3,700 and by collecting from his clients \$1,325 of the \$3,700 fee. The \$3,700 fee was illegal because Respondent was not entitled to practice law in Texas.

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) Respondent had notice of the proceeding prior to the entry of his default and indicated through his retained counsel an intent to have the pending disciplinary matters be resolved by his default and subsequent disbarment;
- (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 **Floyd George Belsito**, State Bar number 103635, 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 further recommends that Respondent be ordered to make restitution to the following payees:

- (1) Jesus and Maria Ramirez in the amount of \$2,995 plus 10 percent interest per year from October 23, 2012;
- (2) Monica Cuadras in the amount of \$3,500 plus 10 percent interest per year from December 13, 2012;
- (3) Tatiana Hernandez in the amount of \$3,500 plus 10 percent interest per year from March 21, 2013; and
- (4) Amador Penalzoza in the amount of \$3,500 plus 10 percent interest per year from June 6, 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 further 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 **Floyd George Belsito**, State Bar number 103635, 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 by mail. (Rule 5.111(D).)

Dated: September 22, 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 September 22, 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:

**ALDO A. FLORES
FLORES LAW, APLC
8141 E 2ND ST STE 625
DOWNEY, CA 90241**

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

LARA BAIRAMIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 22, 2015.



Tammy Cleaver
Case Administrator
State Bar Court