

PUBLIC MATTER

FILED

JUL 07 2015

STATE BAR COURT
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LOS ANGELES



STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 14-O-01388 (14-O-01391)
)	
NORBERTO FIDEL REYES III,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 158569,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent **Norberto Fidel Reyes III** (Respondent) was charged with five counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He 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.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, if an attorney's default is entered for failing to respond to the notice of disciplinary charges

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.



(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.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

Jurisdiction

Respondent was admitted to practice law in this state on June 9, 1992, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 19, 2014, the State Bar filed and properly served the Notice of Disciplinary Charges (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.) A return card was received by the State Bar on September 22, 2014, with an illegible signature.

Thereafter, the deputy trial counsel (DTC) assigned to this matter (1) checked the investigator's attempts to communicate with Respondent; (2) requested an internet person report; (3) attempted to reach Respondent by telephone at various numbers identified in the internet person report; (4) sent an email, with the NDC attached, to several email addresses which were potentially used by Respondent, including two that were identified as official email addresses;⁴ and (5) sent a letter with a courtesy copy of the NDC to various addresses where, according to

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).)

⁴ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

the internet person report, Respondent might receive mail, informing Respondent of the DTC's intent to pursue the default motion due on November 14, 2014, and seek Respondent's disbarment.

Despite the efforts of the DTC, Respondent failed to file a response to the NDC. On November 14, 2014, 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. (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 still did not file a response to the motion, and his default was entered on December 8, 2014. 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 he has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served on Respondent at his membership records address by certified mail, return receipt requested, and by first-class mail, postage prepaid on December 8, 2014.

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 March 24, 2015, the State Bar filed and properly served a petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address.⁵ As required by rule 5.85(A), the DTC reported in the petition that: (1) he received an email from Respondent on February 19, 2015, informing the DTC that Respondent wished to submit his resignation from the bar and asking the DTC if he

⁵ A courtesy copy of the NDC was also served on Norberto (Jo Jo) Reyes, Insider Productions, at the same street address as Respondent's membership records address.

could send Respondent something to sign or asking how he could resign from the bar;⁶ (2) there are other investigations and disciplinary charges pending against Respondent; (3) Respondent has prior records of discipline; and (4) the Client Security Fund has not made any payments as a result of Respondent's conduct.⁷ 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 April 23, 2015.

Prior Record of Discipline

Respondent has three prior records of discipline.⁸ Pursuant to an order of the State Bar Court filed on December 18, 1995, Respondent was privately reprovved, with conditions attached, for one year. Respondent stipulated in that matter to failing to communicate significant events to his client.

Pursuant to an order of the Supreme Court filed on September 23, 2004, Respondent was suspended for one year; the execution of which was stayed, and placed on probation for two years subject to probation conditions. Respondent stipulated in that matter that he deposited/commingled personal funds in a client trust account; failed to properly maintain his client trust account and protect client funds; and failed to maintain client funds in a trust account.

Pursuant to an order of the Supreme Court filed on September 11, 2013, Respondent was suspended for one year, the execution of which was stayed, and placed on probation for two years subject to conditions including that he be suspended from the practice of law for the first 90 days of his probation. Respondent stipulated in that matter that he failed to keep his client

⁶ The DTC called Respondent after receiving the email and spoke to him about this disciplinary matter. The DTC explained that Respondent was in default and that the State Bar's petition for disbarment was imminent

⁷ However, under Evidence Code section 452(h), the court takes judicial notice of State Bar records which reflect that, as of May 15, 2015, the Client Security Funds has paid claim(s) against Respondent.

⁸ The court admits into evidence the certified copies of Respondent's prior records of discipline attached to the March 24, 2015 petition for disbarment.

reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services.

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, except as otherwise noted, and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 14-O-01388 (Crey Matter)

Count One – The court does not find Respondent culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) as the facts deemed admitted as a result of the entry of Respondent's default do not support a finding by clear and convincing evidence that Respondent intentionally or recklessly failed to perform legal services with competence.

Count Two – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to promptly refund unearned fees) by failing to promptly refund, upon his termination of employment, any part of the \$5,000 advanced fee paid by his client which was not earned, as Respondent performed no services of value on behalf of his client.

Count Three – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate) by failing to provide a substantive response to two letters from the State Bar received by Respondent and requesting his response to the allegations of misconduct being investigated in case No. 14-O-01388.

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Case No. 14-O-01391 (Court Order Matter)

Count Four – Respondent willfully violated section 6103 (failure to obey a court order) by failing to comply with the January 16, 2014 order in *In re: David Brian Fee*, United States Bankruptcy Court, Central District of California (Northern Division), case No. 9:11-bk-14420-RR, which ordered Respondent to disgorge attorney fees.

Count Five – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two letters from the State Bar received by Respondent and requesting his response to the allegations of misconduct being investigated in case No. 14-O-01391.

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 his 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.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent **Norberto Fidel Reyes III**, State Bar number 158569, 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 Toni Crey in the amount of \$5,000, plus 10 percent interest per year from August 26, 2013, or to the Client Security Fund to the extent of any payment from the fund to Toni Crey, in accordance with Business and Professions Code section 6140.5. 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 **Norberto Fidel Reyes III**, State Bar number 158569, 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: July 7, 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 July 7, 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:

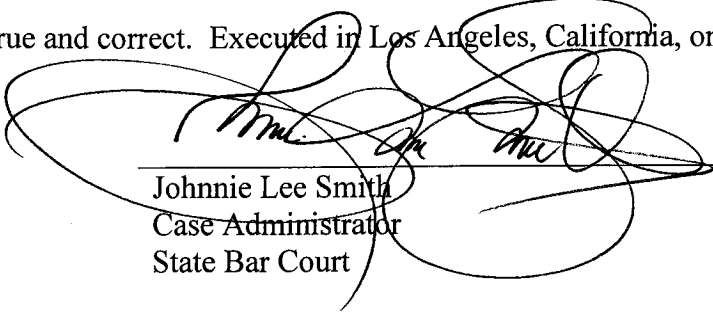
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**NORBERTO F. REYES III
REYES LAW GROUP, APLC
3460 WILSHIRE BLVD STE 1005
LOS ANGELES, CA 90010**

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

ROSS E. VISELMAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 7, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court