

PUBLIC MATTER

FILED *ll*

AUG 11 2015

STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)
)
JOSE CASTILLO ESCANO,)
)
Member No. 204718,)
)
)
)
A Member of the State Bar.)

Case No.: 14-O-01548-PEM
**DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT**

In this matter, respondent Jose Castillo Escano (respondent) was charged with two counts of misconduct. Respondent 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.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

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.



¹Unless 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).)

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 7, 1999, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 29, 2014, the State Bar properly filed and served a Notice of Disciplinary Charges (NDC), in case No. 14-O-01548, on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceedings would result in a disbarment recommendation. (Rule 5.41.) The State Bar did not receive the return receipt that was attached to the NDC. The NDC, however, was not returned as undeliverable.

In addition, respondent had actual notice of this proceeding. On November 20, 2014, respondent telephoned the deputy trial counsel (DTC) assigned to this matter. During their telephone conversation respondent acknowledged that he had received the NDC and told the DTC that he was working on filing a response. Respondent requested of the DTC that she not file a motion for entry of his default. The DTC informed respondent that she would not file the motion for entry of default for respondent's failure to file a timely response to the NDC prior to December 1, 2014, i.e., the date of the Initial Status Conference, which previously had been scheduled by the court.

Thereafter, respondent appeared telephonically at the December 1, 2014, Initial Status Conference, which was held in this matter.

On December 9, 2014, the assigned DTC sent a letter to respondent by regular first class mail at respondent's membership records address. Enclosed with the letter was a courtesy copy of the NDC. Neither the letter nor the enclosed copy of the NDC was returned as undeliverable. In addition, the DTC emailed her December 9, 2014 letter, which included as an attachment a

courtesy copy of the NDC, to the private email address of respondent that was on file with the membership records department of the State Bar. That email did not “bounce back” as undeliverable.

Respondent subsequently failed to file a response to the NDC. On December 16, 2014, the State Bar properly served a motion for entry of respondent’s default; and, on December 17, 2014, the State Bar filed that motion for entry of respondent’s default in case No. 14-O-01548 in the Hearing Department of the State Bar Court. Respondent did not file a response to the motion, and his default was entered on January 14, 2015. The order entering the default was served on respondent at his 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 he has remained inactively enrolled since that time.

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 April 28, 2015, the State Bar filed the petition for disbarment.³ As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent met with the DTC assigned to this matter on February 18, 2015, subsequent to the entry of respondent’s default, at the State Bar’s Offices, during which meeting the DTC apprised respondent of the nature and status of the instant proceeding against him, and informed respondent that because his default had been entered the State Bar would file a petition for his disbarment unless respondent served the State Bar with a motion to vacate or set aside his default within the period set forth in rule 5.83;⁴ (2) there are no other investigations or disciplinary charges pending against respondent; (3) respondent has no prior record of discipline; and (4) the

³ The petition for disbarment was properly served on respondent on April 24, 2015.

⁴ As of the date of the filing of the Petition for Disbarment, respondent had not served the State Bar with a motion to set aside or vacate the default.

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 May 22, 2015.

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.) 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 Number 14-O-01548 – The MCLE Compliance Matter

Count One – respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by falsely reporting to the State Bar, under penalty of perjury, that he had fully complied with his minimum continuing legal education (MCLE) requirements for the period of February 1, 2010 to January 31, 2013, when respondent knew or was grossly negligent in not knowing that he had failed to complete the MCLE requirements for that period.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation) by failing to provide substantive responses to the State Bar's letters and email correspondence of April 8, June 4, July 10, and August 18, 2014, which were received by respondent and which requested respondent's response to the allegations of misconduct being investigated in case No. 14-O-01548.

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 actual notice of the proceedings prior to the entry of his default, as (a) on November 20, 2014, he telephoned the assigned DTC in this matter and informed the DTC that he had received the NDC and was working on a response; (b) during the November 20th phone conversation with respondent, the DTC advised respondent of her intent to file a motion for entry of respondent's default if respondent failed to file the response prior to the December 1, 2014 Initial Status Conference that previously had been scheduled by the court; and (c) the record shows that respondent attended the December 1, 2014 Initial Status Conference, which was held in this matter. Additionally, the DTC took additional steps to reach respondent on December 9, 2014, by sending a letter to him by regular mail and another letter via email at his private email address as listed in his State Bar membership records, in which letters the DTC advised respondent that he needed to serve and file an immediate response to the NDC to avoid the filing by the State Bar of a motion for entry of 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 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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Jose Castillo Escano be disbarred from the practice of law in the State of California and that his 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.

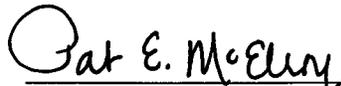
Costs

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 Jose Castillo Escano, State Bar number 204718, 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: August 11, 2015



PAT E. McELROY
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 San Francisco, On August 11, 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 San Francisco, California, addressed as follows:

JOSE C. ESCANO
4606 EAGLE ROCK BLVD
LOS ANGELES, CA 90041

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

Sherell N. McFarlane, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 11, 2015.


Lauretta Cramer
Case Administrator
State Bar Court