

**PUBLIC MATTER**  
**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT - LOS ANGELES**

**FILED**  
**AUG 11 2016**  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of	)	Case No.: <b>14-O-04728-DFM (14-O-06174)</b>
	)	
<b>JERRY A. LaCUES</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 77088,</b>	)	<b>ENROLLMENT</b>
	)	
A Member of the State Bar.	)	
_____	)	

Respondent Jerry A. LaCues (Respondent) was charged in 10 counts with violations of the Business and Professions Code.<sup>1</sup> 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.<sup>2</sup>

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 (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.<sup>3</sup>

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.



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

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>3</sup> 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**

### **Jurisdiction**

Respondent was admitted to practice law in California on December 21, 1977, and has been a member since then.

### **Procedural Requirements Have Been Satisfied**

On August 12, 2015, the State Bar mailed correspondence to Respondent at his then current official membership records address. In its correspondence, the State Bar informed Respondent of its intention to file a Notice of Disciplinary Charges against Respondent. On August 20, 2015, the August 12<sup>th</sup> mailing was returned by the United States Postal Service to the State Bar with a notation that Respondent had moved and left no forwarding address. On August 21, 2016, the State Bar emailed a copy of the its August 12<sup>th</sup> letter to Respondent at his membership records email address.

On August 28, 2015, the deputy trial counsel (DTC) assigned to this matter received an email from Respondent acknowledging his receipt of the State Bar's August 21<sup>st</sup> email and the August 12<sup>th</sup> letter which was sent as an attachment to the email. Respondent also requested an Early Neutral Evaluation Conference (ENEC), which was scheduled. However, on October 9, 2015, Respondent requested that the ENEC be cancelled. Consequently, the ENEC was cancelled by the court.

On November 17, 2015, the State Bar emailed a copy of the Notice of Disciplinary Charges for case Nos. 14-O-04728 and 14-O-06174 to Respondent at his membership records email address. That email informed Respondent that the NDC would be filed that day. Respondent replied with a responsive email to the State Bar that day, requesting that the State Bar delay the filing of the charges for one week. The deputy trial counsel assigned to the matter granted Respondent's request.

The following week, on November 24, 2016, the deputy trial counsel sent another email to Respondent inquiring about the status of case Nos. 14-O-04728 and 14-O-06174. Respondent did not respond to the November 24<sup>th</sup> email.

On November 25, 2015, 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.) The return receipt card was not returned to the State Bar.

On December 29, 2015, the State Bar emailed a copy of the NDC, as well as a copy of the court's Notice of Assignment and Notice of Initial Status Conference, which had been filed on December 4, 2015, to Respondent at his membership records email address. The email informed Respondent that his response to the NDC was overdue and if it was not filed by January 4, 2016, the State Bar would file a motion for entry of his default.

Respondent did not appear at the initial status conference on January 4, 2016. But, Respondent did send a reply email to the State Bar, which was received on January 5, 2016. In his email, Respondent stated that he would be serving and filing an answer to the NDC on that same day, i.e., January 5<sup>th</sup>. However, as the assigned DTC received nothing further from Respondent, she emailed him again on January 6, 2016, to inform him that she had not received an answer to the NDC.

Respondent failed to file a response to the NDC. On January 7, 2016, the State Bar properly filed and 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 State Bar deputy trial counsel, declaring the steps taken to provide notice to Respondent. (Rule 5.80.) The motion also 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, and his default was entered and served on January 26, 2016. 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 May 9, 2016, the State Bar filed and properly served a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered on January 26, 2016; (2) there are seven other disciplinary matters pending against Respondent; (3) Respondent has four prior records of discipline; and (4) the Client Security Fund has not made any payments as a result of Respondent's misconduct.

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 June 7, 2016.

### **Prior Record of Discipline**

Respondent has been disciplined on four prior occasions.

Pursuant to an order of the State Bar Court, effective August 10, 2004, Respondent was privately reproved with conditions for failing to perform legal services competently by failing to maintain his client trust account properly and by failing to adequately supervise his staff regarding the proper maintenance of his client trust account. Respondent entered into a stipulation in this prior disciplinary matter.

In his second prior disciplinary matter, pursuant to a Supreme Court order filed on June 4, 2012, effective July 4, 2012, Respondent was suspended for three years, 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 30 days of probation. Respondent stipulated to two violations of Rules of Professional Conduct in two client matters. The violations included failing to maintain the balance of funds received for the benefit of a client in his client trust account and failing to perform legal services with competence.

In his third disciplinary matter, pursuant to a Supreme Court order filed on November 6, 2012, effective December 6, 2012, Respondent was suspended for two years, the execution of which was stayed, and placed on probation for three years subject to conditions including that he be suspended from the practice of law for the first 30 days of probation. The misconduct in this third disciplinary matter occurred during the same time period as the occurrence of the misconduct in his second disciplinary matter. Respondent stipulated to one violation of Rules of Professional Conduct in a client matter by failing to promptly pay as requested by his client the settlement proceeds, which were in Respondent's possession and to which the client was entitled.

In his fourth disciplinary matter, pursuant to a Supreme Court order filed on November 17, 2015, effective December 17, 2015, 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 suspended from the practice of law for the first year of probation. Respondent stipulated to two violations of Rules of Professional Conduct in a single client matter. The violations included: (1) committing acts involving moral turpitude by making representations to his client that he knew were false; and (2) failing to cooperate and participate in a State Bar disciplinary investigation.

#### **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(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. 14-O-04728 (Morales Matter)**

Count One – Respondent willfully violated section 6104 (appearing for party without authority) by appearing as the attorney for William Morales (Morales) without authority when Respondent filed an answer to the complaint in an action entitled, *CPC-Crossroads, LP v. Jerry LaCues, et al.*, San Bernardino County Superior Court, case No. UDRS1302596, (*CPC Crossroads* matter) on December 16, 2013.

Count Two – Respondent willfully violated section 6068, subdivision (d) (seeking to mislead a judge), by filing an answer to the complaint in the *CPC Crossroads* matter on December 16, 2013, on behalf of Morales, although Respondent knew that Morales had not authorized Respondent to file an answer to the complaint in the action; and, by so doing Respondent sought to mislead the judge in the *CPC Crossroads* matter.

Count Three – Respondent willfully violated section 6106 (moral turpitude) when Respondent filed and served an answer to the complaint in the *CPC Crossroads* matter on behalf of Morales, thereby falsely representing to the court and to CPC Crossroads, LP (CPC) and its counsel that Respondent was authorized to appear in the action on behalf of Morales, although Respondent knew or was grossly negligent in not knowing that he was not so authorized.

Count Four – Respondent willfully violated section 6106 (moral turpitude) by simulating Morales's signature on a settlement agreement in the *CPC Crossroads* matter on January 21, 2014, or causing the signature of Morales to be simulated on the settlement agreement, when Respondent knew or was grossly negligent in not knowing that he did not have Morales's authorization or consent to sign a settlement agreement in the matter on Morales's behalf.

Count Five – Respondent willfully violated section 6106 (moral turpitude – misrepresentation) by misrepresenting to CPC and its counsel that Morales had agreed to provide

CPC and its counsel a written settlement agreement, when Respondent knew or was grossly negligent in not knowing that Morales had neither signed such a settlement agreement nor authorized Respondent to enter into such a settlement agreement on his behalf.

Count Six – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to State Bar’s letter of October 21, 2014, which letter he received and which requested his response to allegations of misconduct being investigated in case No. 14-O-04728.

**Case No. 14-O-06174 (*Guillen v. Centex Matter*)**

Count Seven – Respondent willfully violated section 6103 (failure to obey a court order) by failing to comply with the October 17, 2014 sanctions order in *Edward Guillen v. Centex Homes, et al.*, Riverside County Superior Court, case No. RIC10010749 (*Guillen v. Centex matter*), when he failed to pay the \$500 sanctions to the clerk of the court, as ordered.

Count Eight – Respondent willfully violated section 6103 (failure to obey a court order) by failing to comply with the October 17, 2014 sanctions order in the *Guillen v. Centex matter*, when he failed to pay the \$1,000 sanctions to the clerk of the court, as ordered.

Count Nine – Respondent, who had knowledge of the \$1,000 monetary sanction order imposed on him on October 17, 2014, by the court in the *Guillen v. Centex matter*, willfully violated section 6068, subdivision (o)(3) (failure to report judicial sanctions), by failing to report the imposition of that order in writing to the State Bar within 30 days of the time he had knowledge of its imposition.

Count Ten – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to State Bar’s letters of February 2, 2015 and March 24, 2015, which he received and which requested his response to allegations of misconduct being investigated in case No. 14-O-06174.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and that 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.
- (5) 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 **Jerry A. LaCues**, State Bar number 77088, 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 **Jerry A. LaCues**, State Bar number 77088, 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, 2016



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 August 11, 2016, 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:

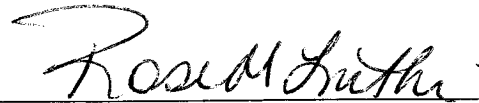
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JERRY A LACUES  
LAW OFC JERRY A LACUES  
1925 SCENIC RIDGE DR  
CHINO HILLS, CA 91709

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

WILLIAM TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 11, 2016.



Rose M. Luthi  
Case Administrator  
State Bar Court