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SEP 23 2016 *AK*

STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 15-O-12570 (15-O-15304)-YDR
)	
FRANK FRANCIS BARILLA,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 103282,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Frank Francis Barilla (Respondent), is charged with four ethical violations. Respondent failed to appear at trial, and his default was entered. Thereafter, the Office of Chief Trial Counsel (OCTC) 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and if the attorney fails to have the default set aside or vacated within 45 days, then the OCTC will file a petition requesting that the State Bar Court recommend the attorney's disbarment.²



¹ Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

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 all of 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 the practice of law in California on June 10, 1982, and has been a member of the State Bar of California since that date.

Procedural Requirements Have Been Satisfied

On December 14, 2015, the OCTC filed and properly served a notice of disciplinary charges (NDC) on Respondent's attorney in case numbers 15-O-12570 and 15-O-15304. The OCTC served the NDC on Respondent's attorney by certified mail, return receipt requested at his attorney's office address. On January 8, 2016, Respondent's counsel filed an answer to the NDC.

On January 25, 2016, the court held a status conference at which Respondent's attorney appeared on behalf of Respondent. The court set trial for three days, commencing on April 5, 2016, at 10:00 a.m. On January 28, 2016, the court filed an order setting forth the foregoing trial dates in this matter. The order was properly served on Respondent's attorney.

On March 24, 2016, Respondent's counsel filed a substitution of attorney that substituted Respondent into the case as the attorney of record.³ On March 28, 2016, the court held a pretrial conference, which Respondent did not attend. Respondent's counsel was removed as counsel of record and the April 5, 2016 trial date was vacated. The trial was rescheduled for two days, commencing on April 6, 2016, at 10:00 a.m. On April 1, 2016, the order was properly served on Respondent by first-class mail, postage prepaid, at Respondent's membership records address.

³ The March 24, 2016 substitution of attorney was executed by Respondent and Respondent's counsel, Dick R. Runels, Esq., on February 23, 2016.

Senior Trial Counsel, William Todd, Esq. of the OCTC, appeared for trial on April 6, 2016, but Respondent failed to appear. The court entered Respondent's default in an order filed on April 6, 2016. The order was properly served on Respondent at his membership records address by certified mail, return receipt requested. (Rule 5.81(B).) The order notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and Respondent has remained inactively enrolled since that date.

Respondent did not timely seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) On June 1, 2016, the OCTC filed and properly served the petition for disbarment on Respondent at his membership records address. As required by rule 5.85(A), the OCTC reported in the petition that: (1) the OCTC has had no contact with Respondent since the default was entered; (2) there are four disciplinary matters and disciplinary investigations pending against Respondent; (3) Respondent has three prior records of discipline; and (4) the Client Security Fund has not paid out any claims 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 June 30, 2016.

Prior Record of Discipline

Respondent has three prior records of discipline. In his first discipline proceeding, Respondent received a private reproof for misconduct in two client matters. In both matters, Respondent stipulated that he failed to provide the California State Bar with notice that he employed a disbarred attorney, and that he failed to adequately supervise the disbarred attorney.

Respondent's misconduct did not involve any aggravating circumstances. His 28 years of discipline-free practice, candor and cooperation, and changes made to his practice were mitigating factors.

In Respondent's second prior, on June 26, 2014, the Supreme Court filed an order suspending Respondent for one year, stayed, and placed him on probation for two years with conditions, including a 30-day period of actual suspension. Respondent stipulated to misconduct in three client matters: (1) failing to provide his client with a separate written statement pursuant to Civil Code section 2944.6 before he entered into a fee agreement for loan modification services with the client (two counts); and (2) charging and collecting a fee for loan modification services before fully performing all services he contracted for, in violation of Civil Code section 2944.7(a)(1) (three counts). Respondent's prior record of discipline, client harm and multiple acts of wrongdoing were aggravating circumstances. The mitigating factors were Respondent's good character and entering into a pretrial stipulation.

In Respondent's third prior, on September 23, 2015, the Supreme Court filed an order suspending Respondent for one year, stayed, and placed him on probation for two years with conditions, including a 90-day period of actual suspension. Respondent was also to remain suspended until he made restitution. Respondent stipulated to misconduct in two client matters. In both matters, Respondent charged and collected fees for loan modification services before fully performing all services he contracted for, in violation of Civil Code section 2944.7(a)(1). Respondent's prior discipline record, failure to make restitution and multiple acts of misconduct constituted the aggravating factors. Entering into a pretrial stipulation was the sole mitigating circumstance.

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 No. 15-O-12570 (The Moreland Matter)

Count One – Respondent willfully violated rule 3-310(C)(1) of the Rules of Professional Conduct (representing clients with potential conflict) by failing to obtain the informed written consent from clients, who were the driver and passenger of a vehicle involved in an auto collision, where the clients' interests were in potential conflict.

Count Two – Respondent willfully violated rule 3-310(E) of the Rules of Professional Conduct (representing parties with adverse interests) by accepting employment adverse to his clients, without the clients' informed written consent, where by reason of Respondent's representation, Respondent obtained confidential information material to that employment.

Case No. 15-O-15304 (The Probation Matter)

Count Three – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to: (1) submit two quarterly reports to the Office of Probation; (2) timely complete State Bar Ethics School; and (3) comply with the Rules of Professional Conduct.

Count Four – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by filing a quarterly report with the Office of Probation declaring under penalty of perjury that he had complied with all provisions of the Rules of Professional Conduct when he knew or was grossly negligent in not knowing that was false.

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 this proceeding and was properly given notice of the trial date before the entry of the default;
- (3) the default was properly entered under rule 5.81; 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 appear for trial 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 Frank Francis Barilla, State Bar number 103282, 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.

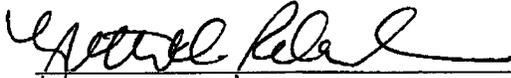
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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 Frank Francis Barilla, State Bar number 103282, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: September 22, 2016.



YVETTE D. ROLAND
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 23, 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:

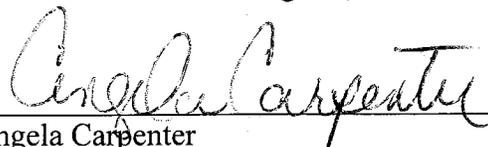
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

FRANK FRANCIS BARILLA
2107 N BROADWAY #101
SANTA ANA, CA 92706

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

William S. Todd, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 23, 2016.



Angela Carpenter
Case Administrator
State Bar Court