

PUBLIC MATTER

FILED

MAY 08 2018



STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

**STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO**

In the Matter of)	Case Nos. 17-O-03498-PEM
)	
NICOLAS JOSON GOMEZ, JR.,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 144361.)	ENROLLMENT
)	

In this matter, respondent Nicolas Joson Gomez, Jr. (Respondent) was charged with a single count of misconduct alleging his failure to comply with disciplinary probation conditions. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (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 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 OCTC will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless 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).)



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 December 11, 1989, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 10, 2017, the OCTC properly filed and served an NDC on Respondent by United States Postal Service Priority Express International mail,³ 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.) According to the tracking number and the United States Postal Service website, the NDC was delivered on August 17, 2017.⁴

In addition, reasonable diligence was used to notify Respondent of this proceeding. The OCTC made several attempts to contact Respondent without success. These efforts included calling Respondent at his membership records telephone number, emailing a copy of the NDC to Respondent at his membership records email address, sending an email to Respondent at his membership records email address, conducting a LexisNexis search for additional contact information, calling Respondent at a possible alternative telephone number identified in the LexisNexis search, emailing Respondent at possible alternative email addresses identified in the LexisNexis search, conducting a Google search, and contacting the Office of Probation of the

³ Respondent's membership records address is outside the United States.

⁴ The declaration in the OCTC's default motion appears to contain a typographical error in numbered paragraph 4. Based on the proof of service attached to the NDC, it appears that this paragraph should have stated that the NDC (rather than a Notice of Intent to Issue an NDC) was mailed by United States Postal Service Priority Express International mail on August 10, 2017.

State Bar of California to see if Respondent's assigned probation deputy could provide any additional contact information.

Respondent did not appear at the initial status conference and failed to file a response to the NDC. On September 27, 2017, the OCTC filed and properly served a motion for entry of Respondent's default. The motion included a supporting declaration of reasonable diligence by the Deputy Trial Counsel declaring the additional 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 on November 2, 2017. The order entering default was served on Respondent at his membership records address by United States Postal Service Registered Mail. 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 also 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 9, 2018, the OCTC filed the petition for disbarment. The OCTC reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has a prior record of 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 April 17, 2018.

Respondent has been disciplined on two prior occasions. Effective May 4, 1996, Respondent was privately reprovved with conditions in State Bar Court case No. 93-O-13449. In this matter, Respondent stipulated to a single count of failing to maintain client funds in trust.

Pursuant to a Supreme Court order filed on April 29, 2016, in case No. S232216 (State Bar Court case Nos. 14-O-04493, et al.), Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years, including a one-year period of actual suspension. In this matter, Respondent stipulated to ten counts of misconduct in three matters, including failing to perform legal services with competence, failing to keep a client informed of significant developments, failing to promptly notify a client of receipt of settlement funds, failing to promptly disburse client funds, failing to maintain client funds in trust (two counts), misappropriating \$3,385.50 in client funds, misappropriating an additional \$3,650 in client funds, commingling personal funds in his client trust account, and failing to promptly respond to his client's reasonable status inquiries.

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. 17-O-03498

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to: (1) correct errors in his July 10, 2016 and July 10, 2017 quarterly reports; (2) timely submit proof completion of

State Bar Ethics School; and (3) timely submit proof of completion of the State Bar Client Trust Accounting School.

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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Nicolas Joson Gomez, Jr. 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.

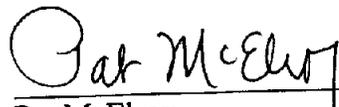
Costs

The court further recommends that costs be awarded to the OCTC 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 Nicolas Joson Gomez, Jr., State Bar number 144361, 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: May 8, 2018



Pat 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 Court Specialist 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 May 8, 2018, 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:

NICOLAS J. GOMEZ JR
PO BOX 1177
QUEZON CITY CPO
QUEZON CITY 1100, PHILIPPINES

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

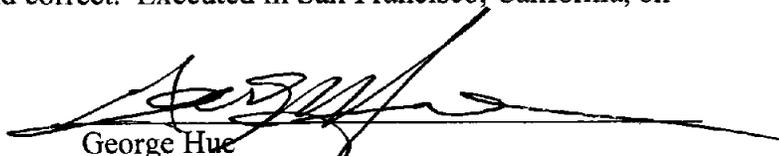
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Duncan C. Carling, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 8, 2018.


George Hue
Court Specialist
State Bar Court