

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>10-O-10600 (10-O-11023;</b>
	)	<b>11-O-11401)</b>
<b>MICHAEL T. PINES,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 77771,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
A Member of the State Bar.	)	

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Respondent Michael T. Pines (respondent) was charged with 18 counts of violations of the Rules of Professional Conduct and the Business and Professions Code. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.<sup>1</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 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</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(E)(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 21, 1977, and has been a member since then.

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

On June 10, 2011, the State Bar filed and properly served the NDC on respondent, pursuant to rule 5.234, by overnight delivery at his membership records address. The NDC was also served on respondent by regular mail at his membership records address and via email to michaeltpines@gmail.com. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual knowledge of this disciplinary proceeding, as respondent and the assigned supervising trial counsel (STC) exchanged email communications. During these email exchanges, the STC advised respondent that no response or answer had been filed in this matter; clarified to respondent that this case is separate and distinct from another matter involving respondent; and that the court had ordered the STC to file a motion for entry of default. Respondent advised that a response and another document pertaining to another matter were filed, and that all of this was sent to another State Bar attorney.

Respondent, however, failed to file a response to the NDC. On August 2 and 4, 2011, the State Bar properly served and filed, respectively, 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 STC 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.

Thereafter, in an email exchange on August 8, 2011, the STC advised respondent that a motion to enter respondent's default for failing to file a response to the NDC in this matter was filed on August 4, 2011. Respondent replied to the email within the hour and advised that he had not received the motion.

Nevertheless, despite having actual knowledge of this proceeding and the motion for entry of default, respondent did not file a response to the motion, and his default was entered on August 18, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.<sup>3</sup> 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 180 days to file motion to set aside default].) On February 21, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) On February 13, 2012, the STC received an email message from respondent in which he: (a) included a draft of a motion seeking the State Bar's default in another matter involving respondent and in this related proceeding; and (b) advised the STC, among other things, that he intended to file a lawsuit against the State Bar and one of its attorneys assigned to the Office of General Counsel;<sup>4</sup> (2) respondent has other disciplinary and investigation matters

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<sup>3</sup> Respondent failed to update his membership records address or to properly request that service be made to a new or different address as set forth in rule 5.26.

<sup>4</sup> Since the filing of the NDC in this matter, respondent has communicated with representatives of the State Bar's Office of General Counsel regarding matters other than this proceeding.

pending; (3) respondent has no 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.<sup>5</sup> The case was submitted for decision on March 20, 2012.

### **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(E)(1)(d).)

#### **1. Case Number 11-O-11401 (Valenzuela Matter)**

Count One - respondent willfully violated Business and Professions Code section 6106<sup>6</sup> (commission of act of moral turpitude, dishonesty or corruption) by threatening the new property owner of his client's former property, refusing to leave the property when instructed, violating terms of temporary restraining orders, and otherwise resorting to extra judicial means to interfere with the new property owner's right to possess certain property formerly owned by respondent's clients.

Count Two – respondent willfully violated section 6068, subdivision (a) (attorney's duty to support Constitution and laws of United States and California) by committing trespass in violation of Penal Code section 602, subdivision (m).

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<sup>5</sup> On March 5, 2012, respondent attempted to file a Petition for Summary Review Without Transcripts, Consolidation and Points and Authorities bearing the case numbers of this proceeding, as well as the case number of an earlier related proceeding. However, the document was rejected for filing, and respondent was advised of the reason for the pleading's rejection, and that he could correct the error and re-file and re-serve the pleading.

<sup>6</sup> Unless otherwise indicated, all further reference to section(s) refer to provisions of the Business and Professions Code.

Count Three – respondent willfully violated section 6068, subdivision (a) by committing the crime of making criminal threats in violation of Penal Code section 422.<sup>7</sup>

Count Four – respondent willfully violated section 6103 (violation of court order) by violating temporary restraining orders of the superior court.

Count Five – respondent willfully violated section 6068, subdivision (b) (duty to maintain respect due to courts and judicial officers) by acting in contravention of the superior court judge’s order and without lawful authority and by otherwise creating disturbances intended to thwart the right of the new owner of his client’s former property to possess the property.

Count Six – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by advising his clients that they had a legal right to possess certain property when he knew or was grossly negligent in not knowing that his clients did not have a legal right to possess the property.

Count Seven – respondent willfully violated rule 3-210 of the Rules of Professional Conduct (advising the violation of a law, rule or ruling of a tribunal) by advising his clients that they had a legal right to enter, remain at and/or re-take possession of, their former home, in the absence of a legal ruling giving them that right.

## **2. Case Number 10-O-11023 (Zepeda Matter)<sup>8</sup>**

Count Eight – respondent willfully violated section 6106 by assisting, advising and actively encouraging his client to break into his former residence when respondent knew his client had no legal right to possession; by resorting to extrajudicial means to interfere with the right of the lawful owner of the property; by encouraging his client not to listen to police warnings; and by scheming to have his client arrested.

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<sup>7</sup> The criminal threats included that respondent would force an armed confrontation and an armed conflict over his clients’ former property.

<sup>8</sup> There is a pending criminal conviction matter in the State Bar Court stemming from the Zepeda matter, but no discipline has been recommended or imposed in that matter at this time.

Count Nine – respondent willfully violated section 6068, subdivision (a) by committing trespass in violation of Penal Code section 602, subdivision (m).

Count Ten – respondent willfully violated section 6068, subdivision (a) by aiding and abetting vandalism in violation of Penal Code section 594.

Count Eleven – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by advising his client that he had a legal right to re-take possession of certain property when, in fact, respondent knew, or was grossly negligent in not knowing, that there was no judicial finding to that effect.

Count Twelve – respondent willfully violated rule 3-210 of the Rules of Professional Conduct by advising his client that he had a legal right to re-take possession of certain property in the absence of a legal ruling giving him that right.

### **3. Case Number 10-O-10600 (Earl Matter)**

Count Thirteen – By helping his clients move back into their former home, among other things, and resorting to extrajudicial means to interfere with the lawful owner's right to possess certain property, respondent willfully violated section 6106 by advising, assisting, and actively encouraging his clients to break into certain property when he knew, or was grossly negligent in not knowing, that they had no legal right to possession.

Count Fourteen – respondent willfully violated section 6068, subdivision (a) by committing trespass in violation of Penal Code section 602, subdivision (m).

Count Fifteen – respondent willfully violated section 6068, subdivision (a) by being in contempt of court by violating Code of Civil Procedure section 1210 by instigating, orchestrating, aiding and joining the break-in of the property with his clients and by violating Code of Civil Procedure section 1209(a)(8) by interfering with the court's earlier writ of possession.

Count Sixteen – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by advising his clients that they had a legal right to possess certain property when he knew, or was grossly negligent in not knowing, that his clients did not have a legal right to possess the property.

Count Seventeen – respondent willfully violated rule 3-210 of the Rules of Professional Conduct by advising his clients that they had a right to re-take possession of certain property in the absence of a legal ruling giving them that right, thereby advising the violation of a law, rule, or ruling of a tribunal without believing in good faith that the law, rule, or ruling was invalid.

Count Eighteen – respondent willfully violated section 6106 by harming: (1) his clients by, among other things, exposing his clients to civil and criminal liabilities by encouraging his clients to trespass, ignore police warnings and vandalize property; (2) the public by using up police time responding to his actions and depriving legitimate homeowners and potential buyers of the use and enjoyment of certain properties; and (3) the legal profession as a whole by being unwilling or unable to obey court orders and decisions and to follow the laws of this state.

### **Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding prior to the entry of his default, as respondent and the assigned supervising trial counsel (STC) exchanged email communications;
- (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 must recommend his disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Michael T. Pines be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 Michael T. Pines, State Bar number 77771, 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: June \_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court