

PUBLIC MATTER

FILED

JUN 27 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 15-O-13950- DFM
)	
ABEL HERNANDEZ,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 159902.)	ENROLLMENT
_____)	

Respondent Abel Hernandez (Respondent) is charged with failing to comply with probation conditions attached to a disciplinary probation imposed on him under Supreme Court order S208860 (State Bar Court case No. 12-H-13870). That discipline, in turn, arose from Respondent's prior failure to comply with the conditions of reprobation ordered by this court in case No. 10-O-10687. Even though Respondent had notice of the trial date, he failed to appear and his default was entered. Thereafter, the Office of 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 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 the attorney fails to have the default set aside or vacated

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

within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on October 14, 1992, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On March 17, 2016, the State Bar filed and properly served a Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, at his membership records address. A courtesy copy of the NDC was also sent to Respondent by regular U.S. mail at his membership records address. The NDC notified Respondent that his failure to appear at trial in the proceeding would result in a disbarment recommendation. (Rule 5.41)

Respondent filed a response to the NDC on May 2, 2016.³ Since that date, Respondent's default has been taken on two separate occasions for failure to appear for scheduled trials in the proceeding, despite Respondent's having had actual notice of both those scheduled trials. Respondent waited to file his motions for relief from both defaults until after the State Bar had filed its petitions for disbarment pursuant to rule 5.85 and after this court had submitted the default matters for decision.

Respondent's first default in these proceedings was entered on July 13, 2016, after Respondent failed to appear at trial on that date. On October 25, 2016, Respondent filed a motion to set aside his default, which motion was opposed by the State Bar. Thereafter, on November 8, 2016, this court granted Respondent's motion for relief, vacated the default, and

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).)

³ Respondent's official membership records address is also the address provided by Respondent in his response to the NDC.

notified the parties that they were required to participate in a status conference on November 28, 2016.

Both Respondent and the assigned State Bar deputy trial counsel appeared at the November 28, 2016 status conference. At that status conference, the court scheduled a telephonic pretrial conference for February 21, 2017, and a new date of February 27, 2017, for the commencement of trial. These dates were committed to a formal order, filed on November 29, 2016, and properly served on Respondent by first-class mail, postage prepaid, sent to his official membership records address.(Rule 5.81(A).)

On February 21, 2017, the pretrial conference took place as scheduled. Both Respondent and the assigned deputy trial counsel participated. At that pretrial conference, Respondent indicated to the court that he had just submitted a resignation with charges pending and that, as a result, he did not intend to stipulate to any facts or the admission of any documents at trial, contending that the trial should not go forward because of his submitted resignation. In response, the court indicated to Respondent repeatedly that the court was not going to abate the case or delay the trial; that Respondent needed to appear for trial on February 27, 2017; and that his default would be taken if he failed to appear. On that same day, the court issued an written order reiterating that trial would commence on February 27, 2017, at 9:30 a.m., as previously scheduled. This minute order was properly served on Respondent by first-class mail, postage prepaid, at his membership records address. There was no indication by Respondent during the pretrial conference, either by word or action, that he was unable to participate in the trial, scheduled for the next week, because of any mental or physical impairment.

On February 27, 2017, when the case was called for trial, the State Bar appeared but Respondent did not. As a result and as Respondent had been warned, the court entered Respondent's default in an order on February 27, 2017. That order was properly served by

certified mail, return receipt requested, addressed to Respondent at his membership records address. (Rule 5.81(B).) This order also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. This 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 he has remained inactively enrolled since that time.

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 April 25, 2017, the State Bar filed a petition for disbarment. The petition for disbarment was served on Respondent by certified mail, return receipt requested, and by first-class mail at his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar had not received any contact from Respondent since his default was entered; (2) there were no other investigations or disciplinary charges pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct. Respondent did not respond to the petition for disbarment or timely move to set aside or vacate the default. As a result, the case was submitted for decision on May 26, 2017. A copy of that submission order was properly served on Respondent.

On May 30, 2017, Respondent filed a motion to set aside his default. In his motion he claimed that his failure to appear for the scheduled trial resulted from excusable neglect resulting from "untreated, debilitating mental illness" – to wit, depression. In his motion, however, he stated that his condition had been diagnosed at The Center for Health Care Services based on intake interviews and analysis there on January 27, 2017. This was, of course, well before both the scheduled trial and the February 21, 2017 pretrial conference, at which Respondent

participated without any apparent difficulty and during which he made no indication of not being able to participate in the trial scheduled to commence the following week.

On June 8, 2017, the State Bar filed an opposition to Respondent's motion. On June 9, 2017, Respondent filed an Amended Motion to Set Aside his default, attaching copies of several of the prescription labels for the medicines prescribed for him. Significantly, in neither of Respondent's filed motions did he attach a medical record or declaration of any medical professional indicating that he was unable to work or fully participate in the February trial.

On June 15, 2017, this court issued an order denying Respondent's motion to set aside his default.

Prior Records Of Discipline

Respondent has two prior records of discipline.

Case No. 10-O-10687

Effective December 26, 2011, Respondent was privately reprovved with conditions attached to the reprovval for one year. Respondent stipulated in that matter that his misconduct consisted of a violations of rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) and Business and Professions Code section 6068, subdivision (m) (failing to respond to reasonable client status inquiries).

Case No. 12-H-13870

Respondent's second discipline resulted from his stipulated failure to comply with the conditions attached to his prior reprovval, in willful violation of rule 1-110 of the State Bar Rules of Professional Conduct. Pursuant to Supreme Court order S208860, effective May 24, 2013, Respondent was suspended for two years, stayed, and placed on probation for two years subject to certain conditions, including that he be actually suspended for the first 90 days of probation.

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. 15-O-13950 (Probation Violation Matter)

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation), by failing to comply with conditions attached to his disciplinary probation in State Bar Court case No. 12-H-13870. Specifically, Respondent failed to: (1) timely file seven quarterly reports; (2) ever file one quarterly report; (3) file the final report, which was due by May 24, 2015; and (4) attend Ethics School by May 24, 2014.

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 properly served with notice of the trial, as required by rule 5.81(A)(2) and had actual notice of the trial date prior to the entry of his 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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Abel Hernandez**, State Bar number 159902, 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 **Abel Hernandez**, State Bar number 159902, 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: June 27, 2017


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 June 27, 2017, 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:

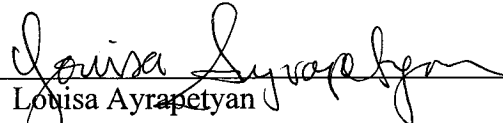
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ABEL HERNANDEZ
11703 HUEBNER RD # 106-288
SAN ANTONIO, TX 78230

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

SHATAKA A. SHORES-BROOKS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 27, 2017.



Louisa Ayrapetyan
Case Administrator
State Bar Court