



PUBLIC MATTER FILED

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**STATE BAR COURT CLERK'S OFFICE
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of)	Case No. 16-O-12015 (16-O-12431;
)	16-O-16706; 16-O-17741; 17-O-00988;
GABRIEL GERARDO CASTILLO,)	17-O-02067)
)	
A Member of the State Bar, No. 256748.)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT

Respondent Gabriel Gerardo Castillo (Respondent) is charged with numerous ethical violations in six matters. 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 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. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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 9, 2008, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On September 29, 2017, OCTC filed and properly served a notice of disciplinary charges (NDC) on Respondent in case numbers 16-O-12015, 16-O-12431, 16-O-16706, 16-O-17741, 17-O-00988, 17-O-02067. OCTC served the NDC on Respondent by certified mail, return receipt requested at his membership records address. Respondent filed an answer to the NDC on October 20, 2017.

On November 6, 2017, the court held a status conference attended by Respondent and OCTC. The court set the trial for four days, commencing on February 6, 2018, at 10:00 a.m. On November 6, 2017, the court filed an order setting forth the foregoing trial date in this matter. The order was properly served on Respondent.

OCTC was present for trial on February 6, 2018, but Respondent failed to appear. The court entered Respondent's default in an order filed on February 6, 2018. 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 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 10, 2018, OCTC filed and properly served the petition for disbarment on Respondent at his membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) OCTC has had no contact with Respondent since the default was entered; (2) there are other disciplinary investigations pending against Respondent; (3) Respondent has one prior record 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 May 8, 2018.

Prior Record of Discipline

Respondent has one prior record of discipline. On September 15, 2016, 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 stipulated to misconduct in three client matters. He was culpable of failing to perform with competence (two counts), failing to communicate (two counts), failing to refund unearned fees (three counts), an act of moral turpitude, and the improper withdrawal from employment. Indifference and multiple acts of wrongdoing were the aggravating factors. Respondent's misconduct was mitigated by community service and his pretrial stipulation.

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. 16-O-12015 – The Barbosa Matter

Count One (A) – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (accepting fees from a non-client) by accepting \$2,000 from a third party as compensation for representing a client without obtaining the client’s informed written consent.

Count One (B) – The court does not find Respondent culpable of willfully violating section 6068, subdivision (m) (failing to respond to reasonable status inquiries), as the facts deemed admitted as a result of the entry of Respondent’s default do not support a finding by clear and convincing evidence that Respondent was required to respond to the mother of a client.

Count One (C) – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render an accounting) by failing to provide his client with an accounting of the \$2,000 in advanced fees that Respondent received from a third party on behalf of his client.

Count One (D) – Respondent willfully violated rule 3-700(D)(2) (failure to refund unearned fees) by failing to promptly refund, upon termination of his employment, any part of the unearned \$2,000 advanced fees paid on his client’s behalf, as the charges against the client were dismissed and Respondent’s services were never required for the case.

Count One (E) – Respondent willfully violated section 6068, subdivision (i), (failure to cooperate) by failing to provide a substantive response to an OCTC letter that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 16-O-12015.

Case No. 16-O-12431 – The Torres Matter

Count Two (A) – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct by accepting \$5,000 from a third party as compensation for representing a client without obtaining the client’s informed written consent.

Count Two (B) – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide his client with an accounting of the \$5,000 in advanced fees that Respondent received from a third party on behalf of his client.

Count Two (C) – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to an OCTC letter that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 16-O-12431.

Case No. 16-O-16706 – The Soto Matter

Count Three (A) – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct by accepting \$3,000 from a third party as compensation for representing a client without obtaining the client’s informed written consent.

Count Three (B) – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform with competence) by intentionally or recklessly failing to perform with competence when he failed to appear for a scheduled court date; failed to file a motion to reduce a felony to a misdemeanor pursuant to Penal Code section 17(b); and failed to file a motion for expungement pursuant to Penal Code section 1203.4.

Count Three (C) – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client’s reasonable status inquiries over a two-year period.

Count Three (D) – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to an OCTC letter that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 16-O-16706.

Case No. 16-O-17741 – The Rumbo Matter

Count Four (A) – Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file with the U.S. Immigration Court, notice that he informed opposing counsel in an adversary proceeding about his suspension pursuant to California Rules of Court, rule 9.20 and in conformity with the requirements of rule 9.20(a)(4), as required by Supreme Court order number S235196.

Count Four (B) – Respondent willfully violated section 6106 (moral turpitude – dishonesty) by stating in writing, under penalty of perjury in his November 28, 2016 California Rules of Court, rule 9.20 declaration that he had notified all clients and opposing counsel in pending litigation matters about his suspension. Respondent asserted that he filed notices with the courts handling the matters, when he knew the statement was false.

Count Four (C) – Respondent willfully violated section 6106 by concealing his upcoming suspension from a client and accepting compensation on behalf of a client from a third party when he knew that he would be ineligible to practice law.

Count Four (D) – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct by accepting \$1,500 from a third party as compensation for representing a client without obtaining the client’s informed written consent.

Count Four (E) – Respondent willfully violated section 6068, subdivision (m), by failing to inform his client that Respondent was suspended by the California Supreme Court, effective October 15, 2016; and that Respondent was suspended by the Board of Immigration Appeals, effective November 22, 2016.

Count Four (F) – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide his client with an accounting of the \$1,500 in advanced fees that Respondent received from a third party on behalf of his client.

Count Four (G) – Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund, upon termination of his employment, any part of the unearned \$1,500 advanced fees paid on his client’s behalf, as Respondent performed no services on behalf of his client for which he was retained.

Count Four (H) – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to an OCTC letter that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 16-O-17741.

Case No. 17-O-00988 – Unauthorized Practice of Law

Count Five (A) – By agreeing to represent three individuals and accepting payment for representation from two of them when Respondent was not an active member of the State Bar, Respondent held himself out as entitled to practice law, in violation of sections 6125 and 6126, and thereby willfully violating section 6068, subdivision (a) (unauthorized practice of law [UPL]).

Count Five (B) – Respondent willfully violated section 6106 by holding himself out as entitled to practice law. Respondent agreed to represent three individuals at a time he would be suspended and accepted payment for representation from two of them when he knew he was not an active member of the State Bar.

Count Five (C) – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct (UPL in another jurisdiction) when he practiced law before the U.S. Immigration Court in San Francisco from January 17, 2017, through March 1, 2017. Respondent violated his reciprocal suspension by the U.S. Department of Justice Immigration Board when he filed forms and motions in the immigration court on behalf of his clients and appeared before the immigration court on behalf of his clients.

Count Five (D) – Respondent willfully violated section 6106 by stating to the State Bar Office of Probation in writing, under penalty of perjury, that he did not practice law during the October 15, 2016, through December 31, 2016 reporting period. Respondent made the false statement on February 27, 2017, and he knew the statement was false because he held himself out as entitled to practice law when he agreed to represent three individuals at a time he would be suspended and accepted payment for that representation from two of them.

Count Five (E) – Respondent willfully violated section 6106 by holding himself out as entitled to practice law when he knew he was suspended by the California Supreme Court and the Board of Immigration Appeals, and he concealed his suspension from three individuals who he agreed to represent during his suspension and accepted payment for his representation from two of them.

Count Five (F) – Respondent willfully violated section 4-200(A) by collecting a fee to perform legal services while he was suspended and not entitled to practice law, which was illegal. Respondent collected \$1,500 from Francisca Juarez Munoz, \$3,000 from Laura Alicia Centeno-Calderon, and \$1,500 from Lucia Jimenez-Cruz.

Count Five (G) – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct by accepting compensation from a third party as compensation for representing clients without obtaining the clients' informed written consent. Respondent accepted \$3,000 from Laura Alicia Centeno-Calderon on behalf of Luis and Rigoberto Camacho, and he accepted \$1,500 from Lucia Jimenez-Cruz on behalf of Jose Juan Saucedo Hernandez.

Count Five (H) - Respondent willfully violated section 6068, subdivision (m), by failing to inform his clients, Francisca Juarez Munoz, Guillermina Juarez Munoz, Luis Felipe, Rigoberto Camacho, and Jose Juan Saucedo Hernandez that Respondent was suspended by the California

Supreme Court, effective October 15, 2016; and that Respondent was suspended by the Board of Immigration Appeals, effective November 22, 2016.

Count Five (I) – Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund, upon termination of his employment, any part of the unearned \$1,500 advanced fee paid by Lucia Jimenez-Cruz on behalf of Respondent’s client, as Respondent performed no services on behalf of the client for which Respondent was retained.

Count Five (J) – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to an OCTC letter that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 17-O-00988.

Count Five (K) – By failing to comply with the provisions of the State Bar Act and Rules of Professional Conduct when he engaged in UPL, Respondent failed to comply with certain conditions attached to the disciplinary probation in State Bar Court case numbers 15-O-10337, 15-O-12313 and 15-O-12546, in willful violation of section 6068, subdivision (k) (duty to comply with probation conditions).

Case No. 17-O-02067 – The Pacheco Matter

Count Six (A) – By agreeing to represent and accepting payment from the parent of a minor for that minor’s representation when Respondent was not an active member of the State Bar, Respondent held himself out as entitled to practice law, in violation of sections 6125 and 6126, and thereby willfully violating section 6068, subdivision (a) (unauthorized practice of law [UPL]).

Count Six (B) – Respondent willfully violated section 6106 by holding himself out as entitled to practice law. Respondent agreed to represent and accepted payment for the representation of a minor at a time Respondent would be suspended, and when he knew he was not an active member of the State Bar.

Count Six (C) – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he practiced law by completing and filing two N-600 forms with the U.S. Citizen and Immigration Services on behalf of his client from December 5, 2016, through January 17, 2017. Respondent violated his reciprocal suspension by the U.S. Department of Justice Immigration Board.

Count Six (D) – Respondent willfully violated California Rules of Court, rule 9.20 by failing to file with the U.S. Immigration Court, notice that he informed opposing counsel in an adversary proceeding about his suspension pursuant to California Rules of Court, rule 9.20 and in conformity with the requirements of rule 9.20(a)(4), as required by Supreme Court order number S235196.

Count Six (E) – Respondent willfully violated section 6106 (moral turpitude – dishonesty) by stating in writing, under penalty of perjury in his November 28, 2016 California Rules of Court, rule 9.20 declaration that he had notified all clients and opposing counsel in pending litigation matters about his suspension. Respondent asserted he filed notices with the courts handling the matters, when he knew the statement was false.

Count Six (F) - Respondent willfully violated section 6106 by stating to the State Bar Office of Probation in writing, under penalty of perjury, that he did not practice law during the October 15, 2016, through December 31, 2016 reporting period. Respondent made the false statement on February 27, 2017, and he knew the statement was false because he held himself out as entitled to practice law when he accepted payment to represent a minor and practiced law when he completed and filed with the U.S. Citizen and Immigration Services form N-600 at a time he was suspended.

Count Six (G) – Respondent willfully violated section 6106 by holding himself out as entitled to practice law when he knew he was suspended by the California Supreme Court and

the Board of Immigration Appeals, and he concealed his suspension from the mother of a minor. Respondent accepted payment for and agreed to represent the mother and minor child.

Count Six (H) – Respondent willfully violated section 4-200(A) by collecting \$2,600 in fees from his client to perform legal services while he was suspended and not entitled to practice law, which was illegal.

Count Six (I) – Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund, upon termination of his employment, any part of the unearned \$2,600 advanced fee paid by his client on behalf of herself and her minor son, as Respondent failed to perform all of the services on behalf of his clients for which he was retained.

Count Six (J) – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's reasonable status inquiries from February 1, 2017, and March 31, 2017.

Count Six (K) – Respondent willfully violated section 6068, subdivision (m), by failing to inform his client that Respondent was suspended by the California Supreme Court, effective October 15, 2016; and that Respondent was suspended by the Board of Immigration Appeals, effective November 22, 2016.

Count Six (L) – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide his client with an accounting of the \$2,600 in advanced fees that Respondent received from his client.

Count Six (M) – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to an OCTC letter that Respondent received, which requested a response to the allegations of misconduct being investigated in case No. 17-O-02067.

Count Six (N) – By failing to comply with the provisions of the State Bar Act and Rules of Professional Conduct when he engaged in UPL, Respondent failed to comply with certain

conditions attached to the disciplinary probation in State Bar Court case numbers 15-O-10337, 15-O-12313 and 15-O-12546, in willful violation of section 6068, subdivision (k).

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 actual 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 Gabriel Gerardo Castillo State Bar number 256748, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court further recommends that Gabriel Gerardo Castillo be ordered to make restitution to the following payees:

- 1) Lluviana Ruiz in the amount of \$2,000 plus 10 percent interest per year from November 30, 2015;

- 2) Maria Ramirez in the amount of \$1,500 plus 10 percent interest per year from October 26, 2016;
- 3) Francisca Juarez Munoz in the amount of \$1,500 plus 10 percent interest per year from December 1, 2016;
- 4) Laura Alicia Centeno-Calderon in the amount of \$3,000 plus 10 percent interest per year from December 13, 2016;
- 5) Lucia Jimenez-Cruz in the amount of \$1,500 plus 10 percent interest per year from February 27, 2017; and
- 6) Blanca Pacheco in the amount of \$2,600 plus 10 percent interest per year from November 23, 2016.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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 Gabriel Gerardo Castillo, State Bar number 256748, 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 1, 2018


PAT E. 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 June 1, 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:

GABRIEL G. CASTILLO
433 TUDOR WAY
SALINAS, CA 93906 - 7245

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:

Jennifer E. Roque, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 1, 2018.


George Hue
Court Specialist
State Bar Court