

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 09-N-10796; 09-O-11123 (Cons.)
)	
CHARLA RAE DUKE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 95518,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Charla Rae Duke (respondent) was charged with (1) failing to comply with all conditions attached to a disciplinary probation; and (2) disobeying and violating a court order requiring respondent to comply with rule 9.20 of the California Rules of Court (CRC) and violating rule 9.20, subdivision (c) of the CRC. She failed to participate either in person or through counsel, and her 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 5.85.¹

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),

¹ Unless otherwise indicated, all references to rules are to this source.

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.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 16, 1980, and has been a member since then.

Procedural Requirements Have Been Satisfied

A 20-day letter was mailed to respondent at her official membership records address on March 18, 2009. Thereafter, on May 20, 2009, respondent's resignation with charges pending was filed with the State Bar Court. The Supreme Court, however, filed an order on October 27, 2010, as amended by order filed November 3, 2010, declining to accept respondent's voluntary resignation with disciplinary charges pending.

On March 28, 2011, the State Bar filed the NDC in this matter. The NDC was properly served on respondent by certified mail, return receipt requested, and by regular mail at her membership records address. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) A return receipt for certified mail was returned by the U.S. Postal Service bearing an illegible signature.

The State Bar attempted to reach respondent by sending her an email message at her membership records email address.³ The State Bar received automated responses that the email

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(E)(2).)

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

message was relayed and “read.” The State Bar also called directory assistance and asked for telephone listings for respondent as a business or as a residential number in Oakland and/or Alameda County, but an automated announcement revealed that the number is not published.⁴ The State Bar also sent a copy of the motion for entry of default with exhibits by email to respondent’s membership records email address and to an alternate email address.

Respondent failed to file a response to the NDC. On May 9, 2011, the State Bar properly served a motion for entry of respondent’s default. The motion was filed with the court on May 10, 2011. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on May 25, 2011. The order entering the default was served on respondent at her membership records address by certified mail, return receipt requested. The return receipt was returned by the U.S. Postal Service bearing an illegible signature. 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 she has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On January 4, 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) it has had no contact with respondent since the default was entered; (2) there

⁴ An attempt by a Case Administrator to reach respondent for a status conference at her official membership records telephone number was unsuccessful as the number was disconnected.

are two additional pending matters against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has one pending matter regarding a claim for reimbursement 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 January 31, 2012.

Respondent has a record of prior discipline. Pursuant to a Supreme Court order filed on June 9, 1993, respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for three years subject to probation conditions including a 90-day suspension and restitution. The misconduct involved three client matters. Respondent failed to perform competently, failed to deposit entrusted funds into a client trust account, withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to a client's rights; failed to communicate; and failed to promptly refund unearned fees and deliver a client file. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on November 30, 1998, respondent was suspended for two years and until she has shown proof of her rehabilitation, fitness to practice and learning and ability in the general law, the execution of which was stayed, and she was placed on probation for three years subject to probation conditions including a 60-day suspension. Respondent was disciplined for her conviction for violating 26 U.S. C. § 7203 for failing to file tax returns for three years, conduct constituting other misconduct warranting discipline. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on August 13, 2008, respondent was suspended for three years, the execution of which was stayed, and she was placed on probation for three

years on condition that she be suspended for the first two years of probation and until she provides proof of her rehabilitation, fitness to practice, and learning and ability in the general law. Respondent stipulated to three violations of professional misconduct involving her client trust account, including commingling of client and personal funds, failing to preserve the identity of client funds, and issuing insufficiently funded checks.

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, subd. (E)(1)(d).)

1. Case Number 09-O-11123 (Probation Matter)

Count One - respondent violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with all conditions attached to the disciplinary probation ordered by the Supreme Court in its Order filed on August 13, 2008.

2. Case Number 09-N-10796 (Rule 9.20 Matter)

Count Two - respondent violated CRC, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys –proof of compliance) and Business and Professions Code section 6103 (violation of court order) by failing to submit a timely rule 9.20(c) compliance declaration as ordered by the Supreme Court in its August 13, 2008, Order.

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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, as the NDC was served on respondent at her membership records address by both certified and regular mail; the State Bar attempted to reach respondent by email at her membership records email address; the State Bar contacted directory assistance to try to obtain a telephone number for respondent; and the State Bar sent a copy of the motion for entry of default with exhibits by email to two email addresses for respondent;

(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 her disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Charla Rae Duke be disbarred from the practice of law in the State of California and that her 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.

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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 Charla Rae Duke, State Bar number 95518, 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: April _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court