

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 09-O-10572 (09-O-10587)-LMA
)	
CYNTHIA ANN THOMAS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 96180,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Cynthia Ann Thomas (respondent) was charged with three counts of violations of the Business and Professions Code.¹ She failed to file a timely response to the Notice of Disciplinary Charges and failed to have the default set aside or vacated within the time prescribed. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

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 further references to section(s) refer to provisions of the Business and Professions Code.

² 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.³

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.⁴

Procedural Requirements Have Been Satisfied

In June 2011, Deputy Trial Counsel Manuel Jimenez (DTC Jimenez) and respondent exchanged email communications.⁵

In July 2011, DTC Jimenez sent correspondence to respondent's membership records address and three additional addresses, giving notice of the State Bar's intent to file a NDC.

On August 11, 2011, respondent contacted DTC Jimenez by facsimile transmission regarding these cases, stating that she believed she had resigned from the State Bar but acknowledging that she had just learned that her resignation had not been accepted. DTC Jimenez thereafter sent respondent (1) correspondence to her membership records address and to an alternate address, giving notice of the State Bar's intent to file a NDC; and (2) a message to her membership records email address with a .pdf copy of correspondence giving notice of the State Bar's intent to file a NDC.

³ 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).)

⁴ Respondent tendered her resignation with charges pending on April 28, 2009. However, on June 8, 2011, the Supreme Court filed an order declining to accept the resignation.

⁵ 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).)

On October 4, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by first-class 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.) Each NDC was returned by the U.S. Postal Service (USPS) as refused.

Thereafter, the State Bar attempted to reach respondent twice by telephone at her membership records telephone number and by sending respondent an email message. The State Bar also called two telephone numbers obtained from directory assistance and conducted an internet search for any additional addresses for respondent.

Respondent failed to file a response to the NDC. On November 1, 2011, the State Bar filed and properly served a motion for entry of respondent's default by certified mail, return receipt requested, at her membership records address, and by regular mail to her membership records address and to three other address. The motion complied with all the requirements for a default, including supporting declarations 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 November 17, 2011. The order entering the default was served on respondent at her membership records address by certified mail, return receipt requested. 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 May 22, 2012, the State Bar filed

and served the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the default was entered on November 17, 2011; (2) there are 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 June 19, 2012.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on February 21, 2007, respondent was suspended for six months, the execution of which was stayed, and she was placed on probation for one year on conditions including that she be actually suspended for 30 days. The misconduct involved one client matter. Respondent stipulated to a violation of section 6068, subdivision (m).

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).)

Case Number 09-O-10572 (Unauthorized Practice of Law Matter)

Count One – respondent willfully violated section 6068, subdivision (a) (attorney's duty to support Constitution and laws of United States and California) by arguing her client's matter before the California Supreme Court, and by holding herself out as entitled to practice law in California when she knew, or should have known, that she was not entitled to practice law in California in willful violation of sections 6125 and 6126.

///

Case Number 09-O-10587 (Unauthorized Practice of Law Matter)

Count Two – respondent willfully violated section 6068, subdivision (a) by continuing to act as her client’s attorney, and by using the phrase “Attorney at Law” in her correspondence with the client, when she was not entitled to practice law in California in willful violation of sections 6125 and 6126.

Count Three – respondent willfully violated section 6068, subdivision (m) (failing to inform client of significant developments) by failing to inform her client of her suspension.

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 NDC⁶ was served on respondent by certified mail and first class mail; the State Bar attempted to reach respondent by telephone and email and conducted an internet search for additional 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 file a response. As set forth in the Rules of Procedure of the State Bar, the court must recommend her disbarment.

⁶ Prior to the filing of the NDC, respondent and DTC Jimenez exchanged email communications; DTC Jimenez sent correspondence to respondent at several addresses; respondent contacted DTC Jimenez regarding these cases; DTC Jimenez sent correspondence to respondent’s membership records address and to an alternate address and also sent respondent another email message, along with a .pdf copy of correspondence.

RECOMMENDATION

Disbarment

The court recommends that respondent Cynthia Ann Thomas 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 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, 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 Cynthia Ann Thomas, State Bar number 96180, 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: September _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court