

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **10-C-06324;**
) **12-N-12339 (Cons.)-RAP**
KIMBERLY L. McALPIN,)
) **DECISION AND ORDER OF**
Member No. 124814,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)

Respondent Kimberly L. McAlpin (respondent) was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving while privilege revoked or suspended), a misdemeanor violation which may or may not involve moral turpitude or constitute other misconduct warranting discipline. After finality of the conviction, the Review Department of the State Bar Court issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violation involved moral turpitude or other misconduct warranting discipline.

In a separate proceeding, respondent was charged with willfully violating California Rules of Court, rule 9.20, by disobeying or violating a court order.

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These matters were thereafter consolidated. Respondent failed to appear at the trial in the consolidated matter, and her default was entered. 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.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 within 90 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 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 December 11, 1986, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On April 30, 2012, the State Bar Court filed and properly served the notice of hearing on conviction (NOH) in case No. 10-C-06324 on respondent by certified mail, return receipt requested, to her membership records address. The NOH notified respondent that her failure to appear at trial would result in a disbarment recommendation. (Rule 5.345.) The NOH was returned unclaimed to the State Bar Court.

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

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).)

On May 22, 2012, the State Bar filed and properly served the notice of disciplinary charges (NDC) on respondent by certified mail, return receipt requested, to her membership records address. The NDC notified respondent that her failure to appear at trial would result in a disbarment recommendation. (Rule 5.41.) On July 12, 2012, respondent filed her response to the NDC.³

By order filed May 31, 2012, case No. 10-C-06324 and case No. 12-N-12339 were consolidated, and trial was set to start on September 4, 2012. The order setting the trial date was served on respondent's membership records address⁴ by first-class mail, postage paid, on May 31, 2012. (Rule 5.81(A).)

Respondent appeared at the pretrial conference in this consolidated matter on August 28, 2012.

The State Bar appeared for trial on September 4, 2012, but respondent did not. However, on that day, respondent filed a request for continuance of the trial in the consolidated matter. Respondent's request for a continuance was denied by the court.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed September 4, 2012. The order notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment.⁵ 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 she has remained inactively enrolled since that time.

³ The proof of service attached to the response in case No. 12-N-12339 reflects that a response in case No. 10-C-06324 was personally served on the deputy trial counsel; however, no response in case No. 10-C-06324 was filed with the court.

⁴ This was also the address in respondent's response to the NDC in case No. 12-N-12339.

⁵ The order was properly served on respondent on September 4, 2012, by certified mail, return receipt requested, to respondent's membership records address. The return receipt reflects that the order was received by K. Nam on September 5, 2012.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On January 11, 2013, the State Bar filed the petition for disbarment.⁶ As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since September 5, 2012, the day after her default was entered;⁷ (2) there are no other disciplinary matters pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on February 12, 2013.

Respondent has a prior record of discipline. Pursuant to a Supreme Court order filed on August 31, 2011, respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for three years subject to conditions, including that she be suspended for the first 90 days of probation. Respondent stipulated in this matter that the facts and circumstances surrounding her March 28, 2006 conviction of violating Vehicle Code section 23152, subdivision (b) and her December 27, 2007 conviction of violating Vehicle Code section 23103 pursuant to section 23103.5 did not involve moral turpitude but did involve other misconduct warranting discipline.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the State Bar's First Amended Pretrial Statement in case No. 10-C-06324 and in the NDC in case No. 12-N-12339 are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82; cf. rule 5.345(C).) As set forth below in greater detail, respondent's conviction for driving

⁶ The petition was properly served on respondent on January 11, 2013, by certified mail, return receipt requested, addressed to respondent at her membership records address.

⁷ There is no evidence regarding the nature of this contact.

while her driving privilege was revoked or suspended, and the factual allegations in the NDC, supports the conclusion that respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

1. Case Number 10-C-06324 (Conviction Matter)

Respondent was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving while privilege revoked or suspended). On April 25, 2010, a police officer observed respondent's vehicle failing to come to a complete stop at a posted stop sign. Respondent, who was driving the vehicle at the time, was contacted. Respondent admitted that her license was suspended when she was asked if she had a valid driver's license. Respondent was issued a citation and released, and her vehicle was towed. Driving when the privilege to do so has been revoked or suspended is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the fact and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude but do constitute other misconduct warranting discipline. Conviction of a crime involving other misconduct warranting discipline is grounds for discipline. (*Young v. State Bar* (1990) 50 Cal.3d 1204.)

2. Case Number 12-N-12339 (9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of the Supreme Court's August 31, 2011 order requiring compliance with California Rules of Court, rule 9.20.

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Disbarment is Recommended

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

- (1) the NOH and the NDC were properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this consolidated proceeding and of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; and
- (4) respondent's conviction, and the factual allegations in the State Bar's First Amended Pretrial Statement and 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 the trial of this consolidated 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 Kimberly L. McAlpin be disbarred from the practice of law in the State of California and that her 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.

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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 Kimberly L. McAlpin, State Bar Number 124814, 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: April 26, 2013

RICHARD A. PLATEL
Judge of the State Bar Court