

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos: 11-N-14102; 12-O-13748
)	(Cons.)-LMA
AFTON LENORE HARRINGTON,)	
)	DECISION AND ORDER OF
Member No. 155095,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

In two separate notices of disciplinary charges, respondent Afton Lenore Harrington (respondent) was charged with (1) willfully disobeying and violating a court order; (2) violating California Rules of Court, rule 9.20(c); and (3) failing to comply with probation conditions imposed on her in 2011. Even though respondent had adequate notice of the trial setting in this consolidated proceeding, respondent failed to appear at the trial, and her default was entered. Thereafter, 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 if the attorney fails to have the default set aside or

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

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 17, 1991, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On September 20, 2011, the State Bar filed and properly served upon respondent's counsel, by certified mail, return receipt requested, and by regular mail, a notice of disciplinary charges (NDC) in case No. 11-N-14102. Respondent filed an answer to the NDC on October 11, 2011.

At a pretrial conference held on May 18, 2012, the court continued the trial in this matter to July 17-20, 2012 at 9:30 a.m. A Minute Order setting forth the new trial dates was properly served upon respondent by first-class mail, postage prepaid, at her membership records address and at an alternate address on May 18, 2012.³

On May 23, 2012, the State Bar filed and properly served upon respondent, by first-class mail to her membership records address and by email, an Amended Notice of New Trial Date

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 Case No. 11-N-14102 was consolidated with case No. 11-O-16347; however, concurrently with the filing of this decision and order, the court is filing an order severing and dismissing case No. 11-O-16347 without prejudice, as the amended NDC in that matter was not properly served upon respondent. Accordingly, this decision only addresses case Nos. 11-N-14102 and 12-O-13748.

and Pretrial Deadlines in case No. 11-N-14102, setting forth that trial was continued to July 17-20, 2012 at 9:30 a.m. at the State Bar Court in San Francisco. (Rule 5.81(A).)

On June 11, 2012, the State Bar filed and properly served upon respondent by certified mail, return receipt requested, and by first-class mail and email, a NDC against respondent in case No. 12-O-13748. Respondent did not file a response to the NDC.

On June 13, 2012, a Notice in Lieu of Subpoena in case No. 11-N-14102 was served upon respondent by first-class mail to her membership records address and by email. This notice requested respondent's attendance at trial at 9:30 a.m. on July 17-20, 2012, at the State Bar Court, San Francisco.

Respondent participated in a telephonic status conference held on July 2, 2012, in case No. 12-O-13748. A status conference order in case No. 12-O-13748 was filed on that same date. In the order, the matter was set for trial on July 17-20, 2012, at 9:30 a.m., and this matter was consolidated with case No. 11-N-14102. The order was properly served upon respondent on July 2, 2012, by first-class mail, postage prepaid, to her membership records address and to an alternate address. (Rule 5.81(A).)

A status conference was also held in both case Nos. 12-O-13748 and 11-N-14102 on July 2, 2012. Respondent participated telephonically in the status conference. A status conference order was filed in case Nos. 11-N-14102 and 12-O-13748 on July 2, 2012. In the order, the matter was set for trial on July 17-20, 2012, at 9:30 a.m. The order was properly served upon respondent on July 2, 2012, by first-class mail, postage prepaid, to her membership records address and to an alternate address. (Rule 5.81(A).)

On the morning of trial on July 17, 2012, the State Bar appeared for trial, but respondent did not. The court entered respondent's default in an order filed on July 17, 2012. The order was properly served upon respondent by certified mail, return receipt requested, at respondent's

membership records address and by first-class mail to an alternate address. (Rule 5.81(B).) The order notified respondent that, if she did not timely move to set aside her default, the court would recommend her 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 she has remained inactively enrolled since that time. The order was returned unclaimed to the State Bar Court by the United States Postal Service.

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 October 29, 2012, the State Bar filed and properly served upon respondent the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact with respondent since her default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate her default. The case was submitted for decision on November 27, 2012.

Respondent has a prior record of discipline. The court grants the State Bar's July 16, 2012, request for judicial notice as to Supreme Court order No. S189734 and the Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving filed in case Nos. 08-O-13742 (08-O-14016; 09-O-10359) on November 16, 2010, and admits those records, which are attached as Exhibits 1 and 2 to the State Bar's Request for Judicial Notice, into evidence.

Pursuant to an order filed on March 24, 2011, respondent was suspended for two years, the execution of which was stayed, and respondent was placed on probation for two years subject to conditions, including that she be suspended for a minimum of the first 90 days of probation and until she makes specified restitution. Respondent stipulated in this matter that she failed to

perform, failed to refund promptly any part of a fee paid in advance which had not been earned, failed to respond to reasonable client status inquiries, failed to promptly release client property and papers, and entered into a business transaction with a client and obtained a pecuniary interest adverse to her client without satisfying the requirements of rule 3-300(A), (B) and (C) of the State Bar Rules of Professional Conduct.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the consolidated NDC's 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 consolidated NDC's 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).)

1. Case Number 11-N-14102 (Rule 9.20 Matter)

Count One - respondent willfully violated California Rules of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) and Business and Professions Code section 6103 (violation of court order) by failing to submit a timely and compliant rule 9.20(c) compliance declaration as ordered by the Supreme Court in its March 2011 Order.

2. Case Number 12-O-13748 (Probation Matter)

Count Two – respondent violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with probation conditions of quarterly reporting, medical conditions, Ethics School and Client Trust Account School as ordered by the Supreme Court in its order filed on March 24, 2011.

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) both NDCs were properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and adequate notice of the trial dates prior to entry of the default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDCs 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 consolidated 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 Afton Lenore Harrington 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.

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.

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ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Afton Lenore Harrington, State Bar Number 155095, 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: February _____, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court