

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 11-O-19021-RAP
)	
LAUREN SHAYNE HURR,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 253170,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Lauren Shayne Hurr (respondent) was charged with seven counts of violations of the Rules of Professional Conduct or the Business and Professions Code.¹ 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 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 November 7, 2007, and has been a member since then.

Procedural Requirements Have Been Satisfied

Reasonable diligence was used to notify respondent of this proceeding. On March 13, 2012, a letter was mailed to respondent at her membership records address advising her that the State Bar intended to file disciplinary charges and that she had the right to request an Early Neutral Evaluation Conference (ENEC) within a certain time period. Senior Trial Counsel Kimberly G. Anderson (STC Anderson) of the Office of the Chief Trial Counsel thereafter received an email from State Bar Court staff scheduling an ENEC for April 5, 2012.⁴ STC Anderson was directed to advise respondent of the ENEC and the time for submitting ENEC statements. Thereafter, STC Anderson attempted to give respondent notice of the April 5, 2012 ENEC by leaving a message for respondent at her membership records telephone number, emailing respondent at her membership records email address,⁵ attempting to fax a letter to

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 The ENEC was later rescheduled to April 9, 2012; however, respondent did not appear for the ENEC on either April 5 or April 9, 2012.

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).)

respondent's membership records facsimile number, and mailing a letter to respondent at her membership records address.

On April 10, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at her membership records address.⁶ The NDC was not returned as undeliverable by the United States Postal Service and the return receipt card was not picked up by respondent. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was also sent to respondent at her membership records address by regular first-class mail.

The State Bar also conducted an investigation via the internet regarding respondent's whereabouts. As a result of this investigation, STC Anderson learned that respondent may be residing with one or more family members in Newhall, California. STC Anderson contacted directory assistance and obtained a telephone number for a possible family member at a specified address in Newhall, California. STC Anderson telephoned the number and spoke with respondent's father and explained that the State Bar had a proceeding pending against respondent. Respondent's father confirmed that respondent lives with him.

On May 7, 2011, STC Anderson again attempted to reach respondent at her membership records telephone number and left a message for respondent. STC Anderson also sent respondent a letter and the NDC with a cover letter to the specified Newhall address.

Respondent failed to file a response to the NDC. On May 16, 2012, the State Bar filed and properly served a motion for entry of respondent's default on respondent at her membership records address and at two alternate addresses, including the address in Newhall, California. The

⁶ The declaration of STC Anderson sets forth that a copy of the NDC was served on respondent at her membership records address by certified mail, return receipt requested, on May 1, 2012. However, this date appears to be in error, as the declaration of service attached to the NDC sets forth that the NDC was served on respondent on April 10, 2012.

motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar senior 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 June 4, 2012. 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 December 7, 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) respondent has not contacted the State Bar since the default was entered; (2) there are no other disciplinary matters pending;⁷ (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made payments resulting from respondent's conduct as of December 7, 2012.⁸ 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 8, 2013.

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

⁷ The declaration of STC Anderson states that no other disciplinary matters are pending. The court notes, however, that the petition for disbarment states on page 4, at line 3, that there are six pending investigation matters.

⁸ This is the date STC Anderson executed her declaration attached to the disbarment petition.

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).)

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Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by (1) failing to advise her clients of the July 2011 confirmation hearing; (2) filing an Amended Chapter 13 Plan proposing an increase in the clients’ monthly payment without discussing it with them; (3) failing to instruct her clients that they needed to pay additional money per month; (4) failing to attend the July 2011 confirmation hearing; and (5) failing to tell her clients that their case had been dismissed.

Count Two – respondent willfully violated section 6068, subdivision (m) by (1) failing to advise her clients of the July 2011 confirmation hearing; (2) filing an Amended Chapter 13 Plan proposing an increase in the clients’ monthly payment without discussing it with them; (3) failing to instruct her clients that they needed to pay additional money per month; and (4) failing to tell her clients that their case had been dismissed.

Count Three – respondent willfully violated section 6106 (commission of act of moral turpitude, dishonesty or corruption) by filing an Amended Chapter 13 Plan proposing that her clients pay additional funds per month without discussing it with them and without obtaining their signatures or approval on the amended plan, and by submitting the plan with her clients’ electronic signatures to the court falsely representing that her clients had authorized the filing.

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Count Four – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing to refund \$2,500 in unearned fees to the clients at any time from August 1, 2011 to April 10, 2012.⁹

Count Five – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render appropriate accounts of client funds) by failing to account for the \$2,500 in fees from August 1, 2011 to April 10, 2012.¹⁰

Count Six – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to return his clients' file to them at any time between August 1, 2011 and April 10, 2012.¹¹

Count Seven – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing a written response to the allegations in this case or otherwise cooperating in the investigation of this matter.

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 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 State Bar mailed letters to respondent at her membership records address; left messages for her at her membership records telephone number; emailed respondent at her membership records email address; attempted to fax a letter to respondent's membership

⁹ This is the date the NDC in this matter was filed. There is no evidence in the record that respondent has returned unearned fees since the date the NDC was filed.

¹⁰ This is the date the NDC in this matter was filed. There is no evidence in the record that respondent has accounted for the fees since the date the NDC was filed.

¹¹ This is the date the NDC in this matter was filed. There is no evidence in the record that respondent has returned his clients' file since the date the NDC was filed.

records facsimile number; filed and properly served the NDC on respondent by certified mail, return receipt requested, at her membership records address; sent the NDC to respondent at her membership records address by regular first-class mail; conducted an investigation via the internet regarding respondent's whereabouts; spoke to respondent's father by telephone after obtaining his number from directory assistance; and sent respondent a letter and the NDC with a cover letter to an alternate address;

(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 recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Lauren Shayne Hurr be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to Miguel and Elaine Cruz, jointly, in the amount of \$2,500 plus 10 percent interest per year from January 28, 2011.¹² Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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¹² This is the last date fees were paid to respondent by his clients.

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, 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 Lauren Shayne Hurr, State Bar number 253170, 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: March 14, 2013

RICHARD A. PLATEL
Judge of the State Bar Court