

PUBLIC MATTER FILED

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STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-C-16497-PEM
)	
MARY ALICE NOLAN,)	
)	DECISION AND ORDER OF
Member No. 108907,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
_____)	

Respondent Mary Alice Nolan (respondent) was convicted of violating title 18 United States Code section 2511(1)(a) (interception of communication), a felony which may or may not involve moral turpitude, and title 26 United States Code section 7201 (tax evasion), a felony that provides probable cause to believe it involves moral turpitude based on the record of conviction.¹ Upon finality of the conviction, the review department 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 violations involved moral turpitude or other misconduct warranting discipline. Respondent failed to appear at the trial of this case 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

¹ Respondent was placed on interim suspension as a result of her conviction, effective December 24, 2013.

² Unless otherwise indicated, all references to rules are to this source.



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 45 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 California on July 1, 1983, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 17, 2014, the State Bar Court filed and properly served the notice of hearing on conviction (NOH) on respondent by certified mail, return receipt requested, at her membership records address. The NOH notified respondent that her failure to appear at the State Bar Court trial would result in a disbarment recommendation.

On October 8, 2014, the court filed an order abating this proceeding as respondent was in federal custody and setting a status conference on September 28, 2015.

At the September 28, 2015 status conference, respondent was represented by attorney Richard Guadagni. The trial was set for February 17, 2016. The order setting the trial date was served on respondent's counsel. (Rule 5.81(A).)

Respondent filed a response to the NOH on October 15, 2015.

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(F)(2).)

By order filed October 28, 2015, the California Supreme Court declined to accept respondent's resignation which was tendered on October 8, 2013.

On February 17, 2016, the State Bar appeared for trial but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed February 17, 2016. 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.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On April 28, 2016, the State Bar properly filed and served the petition for disbarment on respondent's counsel at his official business address. 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 are no other disciplinary matters pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct.

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 May 24, 2016.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rules Proc. of State Bar, rules 5.346 and 5.82.) As set forth below in greater detail, respondent's conviction for

interception of communication and tax evasion supports the conclusion that respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rules Proc. of State Bar, rule 5.85.)

Case No. 12-C-16497 (Conviction Matter)

Respondent was convicted of violating one felony count of title 18 United States Code section 2511(1)(a) (interception of communication), and four felony counts of title 26 United States Code section 7201 (tax evasion). Respondent attempted to evade income tax due and owing to the United States for the years 2005 through 2008 by filing false and fraudulent U.S. Individual Income Tax Returns. She was ordered to make restitution of \$468,918.01 to the Internal Revenue Service. Moreover, in August and September 2007, respondent procured another person to intercept a wire, oral, or electronic communication and her staff accessed a listening device on multiple occasions for the purpose of eavesdropping on conversations.

Respondent pleaded guilty to the five felony counts and was sent to imprisonment for 24 months effective March 6, 2014.

The court finds that the facts and circumstances surrounding respondent's conviction of tax evasion and interception of communication involved moral turpitude. Conviction of a crime involving moral turpitude is cause for discipline. (Bus. & Prof. Code, § 6101, subd. (a).)

Disbarment Is Recommended

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

- (1) The NOH was properly served on respondent under rule 5.25.
- (2) Respondent had actual notice of this proceeding and had adequate notice of the trial date prior to the entry of her default.
- (3) The default was properly entered under rule 5.81.

(4) The factual allegations in the statement of facts and circumstances surrounding respondent's conviction 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.

(5) Despite adequate notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding.

As set forth in the Rules of Procedure of the State Bar, the court recommends her disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Mary Alice Nolan, State Bar number 108907, 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, 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 Mary Alice Nolan, State Bar number 108907, 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: August 8, 2016


PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 8, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

RICHARD GUADAGNI
LAW OFFICES OF RICHARD GUADAGNI
1650 TRAILSIDE CIR
CONCORD, CA 94518

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

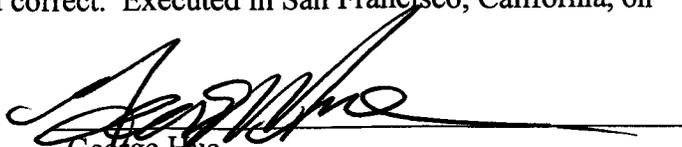
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Sherrie B. McLetchie, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 8, 2016.


George Hue
Case Administrator
State Bar Court