

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 12-J-17506-YDR (12-J-17508;
)	14-J-00556)
NANCY KIM PETERSEN,)	
)	DECISION AND ORDER OF
Member No. 141850,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Between 2011 and 2013, the Presiding Disciplinary Judge of the Supreme Court of Arizona disciplined Respondent Nancy Kim Petersen (“Respondent”) on three separate occasions for professional misconduct she committed in Arizona. As a result, the Office of the Chief Trial Counsel of the State Bar of California (“California State Bar”) initiated this expedited, streamlined disciplinary proceeding against Respondent in California. (Cal. Bus. & Prof. Code, § 6049.1;¹ Rules Proc. of Cal. State Bar, rule 5.350 et seq.)

Under California section 6049.1, a certified copy of a final order made by a court of record of the United States or a state or territory of the United States or the District of Columbia determining that a member of the State Bar of California committed professional misconduct in such other jurisdiction, is conclusive evidence that that member is culpable of professional misconduct in California. However, such a final order is not conclusive evidence of a member’s misconduct in California if the member establishes (1) that the misconduct found in the final

¹ All further references to California sections (Cal. §) are to the California Business and Professions Code.

order would not warrant the imposition of discipline in California under the laws and rules of California in effect at the time of the misconduct or (2) that the disciplinary proceedings in the other jurisdiction lacked fundamental constitutional protection.

Respondent failed to participate in this California State Bar Court proceeding either in person or through counsel, and her default was entered. The California State Bar filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the California State Bar. Rule 5.85 sets forth the procedure to follow when an attorney fails to participate in a State Bar Court 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"), and the attorney fails to have the default set aside or vacated within 90 days, the California State Bar will file a petition requesting the State Bar Court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 of the Rules of Procedure of the California State Bar 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 the State of California on October 25, 1989, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On June 30, 2014, the California State Bar properly filed and served an NDC on Respondent at her membership records address by certified mail, return receipt requested. The NDC notified Respondent that her failure to participate in the proceeding would result in a

² If the State Bar 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. (Rules Proc. of Cal. State Bar, rule 5.85(E)(2).)

disbarment recommendation. (Rules Proc. of Cal. State Bar, rule 5.41.) On June 30, 2014, the California State Bar also mailed a courtesy copy of the NDC to Respondent at her membership records address by first class mail, regular delivery. On August 4, 2014, the copy of the NDC that was served on Respondent was returned to the State Bar as “Unclaimed.” The courtesy copy of the NDC that was sent by first class mail was not returned as undeliverable.

Thereafter, the California State Bar (1) mailed a second courtesy copy of the NDC to Respondent at her membership records address by first class mail, regular delivery; (2) emailed courtesy copies of the NDC to Respondent at her membership records email address and at a private email address that she had on file with the State Bar;³ and (3) mailed a courtesy copy of the NDC to Respondent at an alternate address that the State Bar found for Respondent through an Internet search by first class mail, regular delivery. The California State Bar attempted to reach Respondent by telephone at her membership records telephone number and at an alternate telephone number that the California State Bar found for Respondent through an Internet search. The California State Bar caused voicemail messages to be left for Respondent, notifying her that the California State Bar intended to seek her default because she had not filed a response to the NDC. None of the courtesy copies of the NDC was returned as undeliverable.

On August 21, 2014, Respondent telephoned the assigned Deputy Trial Counsel (DTC) and acknowledged that she received the NDC. During that telephone conversation, the DTC told Respondent that the California State Bar was in the process of seeking her default and that she should immediately serve a response to the NDC on the California State Bar.

Even though Respondent had actual notice of the NDC, she failed to file a response to the NDC. On August 22, 2014, the California State Bar filed and properly served a motion for entry

³ As of February 1, 2010, all California attorneys are required to maintain with the State Bar of California a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the DTC declaring the additional steps taken to provide notice to Respondent. (Rules Proc. of Cal. State Bar, 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 for entry of default or to the NDC, and her default was properly entered on September 12, 2014. The order entering default was properly served on Respondent at her membership records address by certified mail, return receipt requested. However, on November 7, 2014, the order was returned undelivered to the State Bar Court marked "Return to Sender [¶] Unclaimed [¶] Unable to Forward."

In the order entering default, the court also ordered that Respondent be involuntarily enrolled as an inactive member of the State Bar of California under California section 6007, subdivision (e), effective three days after service of the order. Respondent has continuously been enrolled inactive under that order since that time.

Respondent did not seek to have her default set aside or vacated. (Rules Proc. of Cal. State Bar, rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On January 16, 2015, the California State Bar properly served a petition for disbarment after default on Respondent at her membership records address by certified mail, return receipt requested. Thereafter, the California State Bar filed its petition for disbarment on January 20, 2015.⁴

⁴ On page 2 of its petition for disbarment the State Bar states: "The [NDC] was mailed to Respondent's address in the State Bar's membership records by certified mail, return receipt requested, as required by rule 5.25 for service of an initial pleading. On August 5, 2014, the return receipt [for the service copy of the NDC] was returned to the State Bar signed by Sung Kom." Those statements are misleading because they imply that the service copy of the NDC was actually received by Respondent or one of her agents at her membership records address when the United States Postal Service returned the service copy of the NDC to the State Bar on August 4, 2014.

As required by rule 5.85(A) of the Rules of Procedure of the California State Bar, the California State Bar reported in the petition that: (1) Respondent contacted the California State Bar about an unrelated disciplinary investigation on October 6, 2014, which was after Respondent's default was entered in the present matter; (2) Respondent has one disciplinary investigation pending against her; (3) Respondent has no prior record of discipline in California; and (4) the California 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 the default. The case was submitted for decision on February 24, 2015.

Respondent's Arizona Misconduct Warrants the Imposition of Discipline in California

The court admits into evidence the certified copies of the three Arizona disciplinary orders and underlying findings that are attached to the NDC as exhibits 1, 2, 4, 5, 7, and 8. (Cal. § 6049.1, subd. (d); Cal. rule 5.353.) The court also admits into evidence the copies of various Arizona rules and statutes attached to the NDC as exhibits 3, 6, and 9.

Case Number 12-J-17506 – The August 24, 2012, Arizona Disciplinary Order

On August 24, 2012, the Presiding Judge Disciplinary Judge of the Supreme Court of Arizona filed an order suspending Respondent from the practice of law in Arizona for one year. The presiding judge imposed that discipline on Respondent in accordance with an agreement for discipline by consent that Respondent and the State Bar of Arizona filed in the presiding judge's office on August 7, 2012. In that agreement, Respondent stipulated that her conduct in two counts violated rules 31(b) and (c); 42; 54(a), (c), and (d); and 72 of the Rules of the Supreme Court of Arizona (Arizona Supreme Court Rules) and Ethical Rules 1.4; 3.3; 3.4(c); 4.1; 5.5; 8.1(b); and 8.4(a), (c), and (d) of the Arizona Rules of Professional Conduct (Arizona Ethical Rules).

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In the NDC, the State Bar charges, without analysis or explanation, that Respondent's stipulated to culpability for violating those 16 Arizona rules "indicates that the following California statutes and rules have been violated or warrant the filing of this Notice of Disciplinary Charges: [California] Business and Professions Code sections 6068(a) (based on violations of [California] sections 6125 and 6126), 6068(d), 6103, and 6106, and rules 3-110(A) and 3-700(A)(2) of the [California State Bar] Rules of Professional Conduct." The NDC does not comply with either the letter or the spirit of Rules of Procedure of the California State Bar, rule 5.351(B). Rule 5.351(B) provides as follows:

Notice. A notice of disciplinary charges issued under these rules may state that its only basis is the findings and final order of the other jurisdiction that imposed discipline on the member. The notice must give sufficient detail to permit identification of the foreign disciplinary proceeding. The notice of disciplinary charges must also cite the California statutes or rules allegedly violated or that warrant the proposed action. ...

Implicit in rule 5.351(B) is the basic due process requirement that the NDC specify which Arizona rule or rules establish each of the charged violations of the California Business and Professions Code and California State Bar Rules of Professional Conduct. To the extent that the court can readily ascertain how or which violations of Arizona rules establish a violation of a charged California statute or rule, the court will find a violation of the California statute or rule. Otherwise, the court will dismiss charged California violations.

California Sections 6068, Subdivision (a), 6125, and 6126

Respondent's violations of Arizona Supreme Court Rule 31 and Arizona Ethical Rules 3.4(c) and 5.5 for engaging in the unauthorized practice of law (UPL) in Arizona by filing pleadings (e.g., notices of appearance) and appearing for clients in Arizona courts and holding herself out to the public as being admitted to practice law in Arizona while she was suspended from the practice of law in the state of Arizona, in that state clearly establish that Respondent

willful violated California State Bar Rule of Professional Conduct 1-300(B) (which provides that “A member [of the State Bar of California] shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction”). However, the NDC does not charge Respondent with violating California rule 1-300(B). (Rules Proc. of Cal. State Bar, rule 5.351(B).) Nor does the NDC charge that California rule 1-300(B) otherwise supports the imposition of California discipline on Respondent for her violations of Arizona Supreme Court Rule 31 and Arizona Ethical Rule 5.5. (Rules Proc. of Cal. State Bar, rule 5.351(B).)

At best, the NDC charges that Respondent willfully violated California sections 6068, subdivision (a), which requires that California attorneys support the Constitutions and laws of the United States and California or that Respondent willfully violated California sections 6125 and 6126, which prohibit and criminalize the practice of law in California by anyone who is not an active member of the State Bar of California. But none of the 16 violations of the Arizona rules establish that Respondent is culpable of failing to support the United States’ or California’s Constitution or laws or that Respondent engaged in UPL in California in violation of California sections 6125 or 6126.

The charge that Respondent violated California sections 6068, subdivision (a), 6125 and 6126 or that those three California sections warranted the filing of the NDC in this proceeding is **DISMISSED** with prejudice.

California Section 6103

Respondent’s violation of Arizona Supreme Court Rule 54(c) by violating one or more provisions of the Arizona court order prohibiting her from practicing law and directing her to immediately give notice of her suspension to her client and others, and by violating an Arizona court order directing her to immediately contact the Arizona State Bar regarding her status as

attorney conclusively establishes that Respondent willfully violated California section 6103 (duty to obey court orders).

California sections 6106 and 6068, subdivision (d)

Respondent's violations of Arizona Ethical Rules 1.4, 3.3, 4.1, and 8.4(c) by failing to inform her client that she was suspended from the practice of law and by falsely stating to a judicial officer and others in open court that she was on active status and no longer suspended conclusively establish that Respondent engaged in acts involving moral turpitude and dishonesty in willful violation of California section 6106 and that Respondent willfully violated her duty, under California section 6068, subdivision (d), to employ means consistent with truth.

California Rules 3-110(A) and 3-700(A)(2)

The unexplained charged violations of California State Bar Rules of Professional Conduct, rules 3-110(A) and 3-700(A)(2) are **DISMISSED** with prejudice for want of proof.

Case Number 12-J-17508 – The June 6, 2011, Arizona Disciplinary Order

On June 6, 2011, the Presiding Judge Disciplinary Judge of the Supreme Court of Arizona filed an order suspending Respondent from the practice of law in Arizona for 90 days. The presiding judge imposed that discipline on Respondent in accordance with an agreement for discipline by consent that Respondent and the State Bar of Arizona filed in the presiding judge's office on June 3, 2011. In that agreement, Respondent stipulated that her conduct in three counts/client matters violated a total of 13 Arizona Supreme Court Rules and Arizona Ethical Rules.

Again, the NDC does not comply with Rules of Procedure of the California State Bar, rule 5.351(B) because it charges, without analysis or explanation, that Respondent's stipulated culpability for violating 13 Arizona rules "indicates that the following California statutes and rules have been violated or warrant the filing of this Notice of Disciplinary Charges: [California]

Business and Professions Code sections 6068(m) and 6106; and rules 3-110(A), 3-700(D)(1), and 4-100(A) of the [California State Bar] Rules of Professional Conduct.”

California Section 6106

Respondent’s violations of Arizona Ethical Rule 8.4(c) by falsely representing to her client that she had filed and served request to modify and falsely representing to the State Bar of Arizona on her 2009 membership fee statement that she complied with Arizona’s trust account rules conclusively establishes that Respondent engaged in acts involving moral turpitude and dishonesty in willful violation of California section 6106.

California State Bar Rule of Professional Conduct 4-100(A)

Respondent’s violation of Arizona Ethical Rule 1.15(a) and Arizona Supreme Court Rule 43(a) by failing to deposit funds she held belonging to a client or third person into her trust account conclusively establishes that Respondent willfully violated California State Bar Rule of Professional Conduct 4 100(A) (failure to maintain client funds in trust account).

California Section 6068, Subdivision (m) & California Rules 3-110(A) and 3-700(D)(1)

The unexplained charged violations of California section 6068, subdivision (m) and California State Bar Rules of Professional Conduct 3-110(A) and 3-700(A)(2) are **DISMISSED** with prejudice for want of proof.

Case Number 14-J-00556 – The April 30, 2013, Arizona Disciplinary Order

On April 30, 2013, the Presiding Judge Disciplinary Judge of the Supreme Court of Arizona filed an order disbaring Respondent from the practice of law in the State of Arizona because in an Arizona disciplinary proceeding, which proceeded by way of default, Respondent was found culpable of violating a total of eight Arizona Supreme Court Rules and Arizona Ethical Rules.

Again, the NDC does not comply with Rules of Procedure of the California State Bar, rule 5.351(B) because it charges, without analysis or explanation, that Respondent's culpability for violating eight Arizona rules "indicates that the following California statutes and rules have been violated or warrant the filing of this Notice of Disciplinary Charges: [California] Business and Professions Code sections 6068(a) (based on violations of [California] sections 6125 and 6126), 6068(i), 6103, and 6106, and rule 3-110(A) of the [California State Bar] Rules of Professional Conduct."

California Section 6068, Subdivision (i)

Respondent's violations of Arizona Supreme Court Rules 42 and 54(d) and Arizona Ethical Rule 8.1 by failing to respond to a State Bar of Arizona screening investigation conclusively establishes that Respondent willfully violated California section 6068, subdivision (i) (failed to cooperate in a disciplinary investigation).

California Section 6106

Respondent's violations of Arizona Ethical Rule 8.4(c) by falsely representing to her client the reasons Respondent was unable to attend court, misrepresenting her client's signature on court filings, and misleading her client to believe Respondent was admitted to practice in Arizona conclusively establish that Respondent engaged in acts involving moral turpitude and dishonesty in willful violation of California section 6106.

California sections 6068, 6125, 6126, and 6103 and California rule 3-110(A)

The unexplained charged violations of California sections 6068, 6125, 6126, and 6103 and of California State Bar Rule of Professional Conduct 3-110(A) are **DISMISSED** with prejudice for want of proof.

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Disbarment is Appropriate Under the Rules of Procedure of the California State Bar

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

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of the proceedings prior to the entry of her default, as she acknowledged that she received a copy of the NDC and the DTC advised her that she should promptly file a response to the NDC because the California State Bar would be requesting the entry of her default;
- (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 actual notice and opportunity, Respondent failed to participate in this disciplinary proceeding. Thus, in accordance with the Rules of Procedure of the California State Bar, the court recommends her disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that Respondent Nancy Kim Petersen 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 California Business and Professions Code section 6007, subdivision (c)(4), the court orders that Nancy Kim Petersen, State Bar number 141850, 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 Cal. State Bar, rule 5.111(D).)

Dated: May 14, 2015.

YVETTE D. ROLAND
Judge of the State Bar Court