

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of)	Case No.: 12-O-10946-PEM
)	
MARSHA NOREEN HONDA,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 100894,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Marsha Noreen Honda (respondent) was charged with failing to comply with conditions of probation and failing to obey a court order. 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.¹

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), 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.²

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).)

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 December 1, 1981, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 8, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular first-class mail, at her membership records address. The return receipt was received by the State Bar on March 13, 2012, unsigned. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, the State Bar emailed a copy of the NDC to respondent at her email address;³ contacted the probation deputy assigned to respondent to ascertain whether respondent's profile contained any other address; and attempted to reach respondent by telephone at her official membership records telephone number,⁴ at an alternate telephone number, and at a telephone number for Kevin Honda that respondent had put on correspondence to the probation unit in October 2010.

Respondent failed to file a response to the NDC. On January 9 and 10, 2012, the State Bar properly served and filed, respectively, on respondent at her membership records address, a

³ 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).)

⁴ The voice mail message greeting stated "Marsha Honda" and to leave a message. Acting Senior Trial Counsel Erica L. M. Dennings (ASTC Dennings) left a message indicating that because respondent had not filed an answer, ASTC Dennings would file a motion for default.

motion for entry of respondent's default.⁵ The motion was also sent to respondent's email address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar acting 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 May 1, 2012. The order entering the default was properly 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 November 6, 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 on May 1, 2012; (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 the default. The case was submitted for decision on December 5, 2012.

///

///

///

⁵ The motion was served by certified mail, return receipt requested. The State Bar's disbarment petition sets forth that the return receipt was signed by respondent on April 11, 2012.

Respondent has a record of two prior impositions of discipline.⁶ Pursuant to a Supreme Court order filed on December 15, 2009, respondent was suspended for two years, the execution of which was stayed, and respondent was placed on probation for three years subject to certain conditions. Respondent stipulated in this matter that the facts and circumstances surrounding her violation of Penal Code section 12025(a)(2) [carrying a concealed firearm] did not involve moral turpitude but did involve other misconduct warranting discipline. Respondent's conviction resulted from discharging a firearm at an inhabited dwelling.

Pursuant to a Supreme Court order filed on August 27, 2010, respondent's probation was revoked; she was suspended for two years, the execution of which was stayed, and she was placed on probation for three years subject to certain conditions including that she be suspended for a minimum of the first year of her probation (with credit for the period of involuntary inactive enrollment) and until she complies with certain other conditions. Respondent did not participate in this matter. Respondent was found culpable in this matter of failing to comply with certain conditions of her disciplinary probation.

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 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).)

///

///

⁶ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

Case Number 12-O-10946 (Probation Violations)

Count One – respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to submit specified quarterly reports and by failing to declare compliance with underlying criminal probation in those quarterly reports as ordered by the Supreme Court in its Order filed on August 27, 2010.

Count Two – respondent willfully violated Business and Professions Code section 6103 (failing to obey/violating court order) by failing to comply with specified probation conditions as set forth in the Supreme Court’s August 27, 2010 Order.

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) 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 filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular first-class mail, at her membership records address; emailed a copy of the NDC to respondent at her email address; contacted the probation deputy assigned to respondent; and attempted to reach respondent by telephone at her official membership records telephone number and at two other telephone numbers;

(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 must recommend her disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Marsha Noreen Honda 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 Marsha Noreen Honda, State Bar number 100894, 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

PAT McELROY
Judge of the State Bar Court

