

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-11627-DFM
)	
DANIELLE MARIE SCHERRER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 271115,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Danielle Marie Scherrer (Respondent) was charged with two counts of misconduct. 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 October 16, 2010, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 1, 2013, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, to her membership records address.³ The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt for the NDC was not returned to the State Bar, and the NDC was later returned as unclaimed.⁴

Thereafter, the State Bar (1) attempted to reach Respondent by calling a telephone number located by the assigned deputy trial counsel on the internet; (2) called directory assistance for the area which included Respondent's official membership records address and asked for all the telephone listings for Respondent; (3) checked Parker's Directory for another address for Respondent; and (4) sent an email to Respondent at her membership records email address, informing her that a default would be filed in her matter.

³ The NDC was properly served on Respondent's membership address, which at that time was 1445 Pegaso St., Encinitas, California 92024. Respondent later changed her membership address to 4027 Mira Costa St., Oceanside, California 92056, effective April 22, 2013.

⁴ The Declaration of Anthony Garcia attached to the State Bar's motion for entry of Respondent's default filed on March 28, 2013, stated the NDC had not been returned as undeliverable and that a review of the U.S. Postal Service website indicated that a notice was left for the addressee on March 11, 2013. Thereafter, the State Bar's petition for disbarment filed on December 17, 2013, stated that the return receipt was not returned to the State Bar, but that the NDC was returned to the State Bar marked "unclaimed."

Respondent failed to file a response to the NDC. On March 28, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to her membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy 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 April 25, 2013. The order entering the default was properly served on Respondent at her membership records address by certified mail, return receipt requested.⁵ 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. She has remained inactively enrolled since that time. The return receipt was returned to the State Bar showing that the order was received by "Russ Scherrer" and delivered on April 27, 2013.

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 17, 2013, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent had one contact with the State Bar on December 6, 2013, after her default was entered on April 25, 2013;⁶ (2) there are no other disciplinary matters

⁵ The order entering Respondent's default was properly served on Respondent's membership records address of 4027 Mira Costa St., Oceanside, California, 92056, which became effective on April 22, 2013.

⁶ The Declaration of Anthony Garcia, attached to the State Bar's petition for disbarment, states that on December 6, 2013, Respondent sent an email to the State Bar in response to the email that the State Bar previously sent to her on March 28, 2013. The email from Respondent stated

pending against Respondent; (3) Respondent has no record of prior discipline; and (4) the Client Security Fund has not made any 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 January 16, 2014.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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).)

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Count One - Respondent willfully violated section 6106 (moral turpitude) by misappropriating \$24,974.43 in residuals received by a decedent's estate, money that Respondent was required to distribute to the beneficiaries of the estate as part of her duties as administrator and personal representative of the decedent's estate in a probate action.

Count Two - Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation) by failing to respond to the State Bar investigator's letters pertaining to 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;

that Respondent "re-reviewed the documents you mailed to me and that are posted on the State Bar website." After this email, the State Bar had no further contact from Respondent.

(2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of her default, as the State Bar (a) filed and properly served the NDC on Respondent by certified mail, return receipt requested, at her membership records address; (b) attempted to reach Respondent using a telephone number located through an internet search; (c) called directory assistance to find another telephone number for Respondent; (d) checked Parker's Directory for a different address for Respondent; and (e) sent an email to Respondent, which Respondent later answered with her own email on December 6, 2013;

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

RECOMMENDATION

Disbarment

The court recommends that respondent **Danielle Marie Scherrer**, State Bar number 271115, 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 recommends that Respondent be ordered to make restitution to the estate of Gary Alan Epper, Sr., in the amount of \$24,974.43, plus 10 percent interest per year from October 16, 2010.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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 **Danielle Marie Scherrer**, State Bar number 271115, 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 ____, 2014

DONALD F. MILES
Judge of the State Bar Court