

# PUBLIC MATTER

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STATE BAR COURT  
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 12-O-13214-RAH
	)	
DIANE M. TRZCINSKI,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
Member No. 78199,	)	ENROLLMENT
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Diane M. Trzcinski (respondent) was charged with failing to cooperate with a State Bar investigation and failing to update her membership records address. 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.<sup>1</sup>

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.<sup>2</sup>

<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> 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 21, 1977, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On October 4, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, to her membership records address. A courtesy copy was also served by regular mail to respondent's residence address. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC served by certified mail, return receipt requested, was returned "'RTS.'"<sup>3</sup> The NDC served by regular mail was not returned by the U.S. Postal Service.

Respondent had actual notice of this proceeding. On November 19, 2012, a State Bar investigator visited respondent at her residence address and delivered a copy of the NDC to respondent. The State Bar investigator also personally read to respondent the warnings located on the first page of the NDC. Respondent confirmed, to the State Bar investigator, receipt of the NDC served earlier by the State Bar, and that she understood the warnings on the first page of the NDC.

Nevertheless, respondent failed to file a response to the NDC. On December 10, 2012, 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.<sup>4</sup> The return receipt was

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<sup>3</sup> See Declaration of Ashod Mooradian attached to the State Bar's motion for entry of respondent's default.

<sup>4</sup> The motion was also served on respondent by regular mail at her residence address.

signed by respondent on December 11, 2012. 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 January 2, 2013. The order entering the default was properly served on respondent at her membership records address by certified mail, return receipt requested, and a courtesy copy was served on respondent by first-class mail at her residence address. The order served on respondent at her membership records address was returned to the State Bar Court by the U.S. Postal Service as "UNCLAIMED" and "UNABLE TO FORWARD." The copy served on respondent's residence address was not returned by the U.S. Postal Service. 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 August 27, 2013, the State Bar 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 has not contacted the State Bar since January 2, 2013, the date the order entering her default was filed and served; (2) there are no other disciplinary matters pending against respondent; (3) respondent has no prior record of 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 September 27, 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 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).)

### **Case Number 12-O-13214**

Count One – Respondent willfully violated section 6068, subdivision (i) of the Business and Professions Code<sup>5</sup> (failure to cooperate in a State Bar investigation), by failing to provide a written response to the allegations in the MCLE matter or otherwise cooperating in the investigation of the MCLE matter.

Count Two - Respondent willfully violated section 6068, subdivision (j) (failure to maintain current membership records address), by failing to change her State Bar membership records address even though she no longer maintained an office at her membership records address, and after being advised of her obligation to do so by the State Bar investigator.

### **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) respondent had actual notice of this proceeding, as she confirmed receipt of the NDC to the State Bar investigator, and a State Bar investigator personally hand delivered a copy of the NDC to respondent;

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<sup>5</sup> Unless otherwise indicated, all further references to section(s) refer to the provisions of the Business and Professions Code.

(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 Diane M. Trzcinski 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**

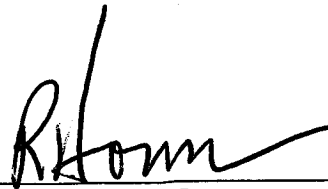
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Diane M. Trzcinski, State Bar number 78199, 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: December 9, 2013

  
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RICHARD A. HONN  
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 Los Angeles, on December 9, 2013, 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 Los Angeles, California, addressed as follows:

**DIANE M TRZCINSKI  
3699 WILSHIRE BLVD STE 500  
LOS ANGELES, CA 90010**

**Courtesy copy:**

**DIANE M TRZCINSKI  
5544 MCCULLOCH AVE., APT #9  
TEMPLE CITY, CA 91780**

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

**Ashod Mooradian, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 9, 2013.



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Paul Barona  
Case Administrator  
State Bar Court