

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-O-14621-LMA
)	
VICTORIA MARGARET WALTER,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 187805,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Victoria Margaret Walter (respondent) was charged with failing to comply with probation conditions imposed pursuant to a Supreme Court order. She 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.¹

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 90 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 all of 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 the practice of law in California on April 18, 1997, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On September 26, 2012, the State Bar filed and properly served the notice of disciplinary charges (NDC) in this matter on respondent by certified mail, return receipt requested, and by regular mail, to her membership records address. On November 29, 2012, respondent filed her response to the NDC.

By order filed on June 10, 2013, trial was set to commence on August 27, 2013,³ at 9:30 a.m., for three days. The order setting the trial date was served on respondent at her membership records address by first-class mail, postage paid, on June 10, 2013.⁴ (Rule 5.81(A).)

The State Bar appeared for trial on August 27, 2013, 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 on August 27, 2013. The order notified respondent that if she did not timely move to set aside her default, the court would recommend her disbarment. The order properly 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 order also placed respondent on involuntary inactive status under Business and Professions Code

³ Respondent's default had earlier been entered for her failure to appear at trial in January 2013. However, respondent moved to set aside her default which was granted by the court on May 28, 2013.

⁴ Respondent was also served with notice of the trial in an order filed and served on respondent at her membership records address on July 1, 2013.

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 90 days after order entering default is served to file motion to set aside default].) On December 2, 2013, the State Bar properly filed and served 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 August 27, 2013, the date her default was entered and the order entering her default was served; (2) there are no other disciplinary matters pending against respondent; (3) respondent has two prior records discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's conduct. 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 December 30, 2013.

Respondent has been disciplined on two prior occasions.⁵ Pursuant to an order of the State Bar Court filed on April 27, 2007, respondent was publicly reprovved with conditions for possession of drug paraphernalia, possession of methamphetamine, being under the influence of a controlled substance, and possession of a hypodermic needle and/or syringe. Respondent stipulated that the facts and circumstances surrounding her violations did not involve moral turpitude but did involve other misconduct warranting discipline. She also acknowledged that by committing the criminal violations, she failed to uphold the laws of the State of California. Respondent entered into a stipulation in this prior disciplinary matter.

Pursuant to a Supreme Court order filed on November 25, 2008, respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for

⁵ The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), that respondent has two prior records of discipline, admits the relevant records into evidence, and directs the Clerk to include copies in the record of this case.

three years subject to conditions,⁶ including that she be suspended for the first 90 days of probation. Respondent stipulated in this prior disciplinary matter to culpability and discipline for failing to comply with specified conditions of her public reproof.

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).)

Case Number 12-O-14621 (Probation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with specified probation conditions imposed by the Supreme Court in its November 25, 2008, Order, as modified by orders filed on March 24 and November 30, 2010.

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 and adequate notice of the trial date prior to entry of the default;

⁶ The court, however, does not base culpability in this matter on respondent's alleged failure to provide the Office of Probation with screening reports containing an analysis of respondent's blood and/or urine for any time period after March 24, 2010, as the court issued an order on March 24, 2010, modifying the testing condition to allow the laboratory to conduct saliva and breathalyzer testing instead of blood and urine testing. Furthermore, the court does not base culpability on respondent's alleged failure to respond to the Office of Probation's January 24, 2012, request as respondent's probation would have expired on December 25, 2011.

(3) the default was properly entered under rule 5.81; 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 appear for the trial of 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 Victoria Margaret Walter 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 Victoria Margaret Walter, State Bar Number 187805, 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

LUCY ARMENDARIZ
Judge of the State Bar Court