

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

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| In the Matter of |) | Case No.: 12-O-15194-DFM |
| |) | |
| ESTRELITA LANE, |) | DECISION AND ORDER OF |
| |) | INVOLUNTARY INACTIVE |
| Member No. 215086, |) | ENROLLMENT |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

Respondent Estrelita Lane (Respondent) was charged with three counts of misconduct stemming from one client matter. 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 2, 2001, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 11, 2013, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, to her membership records address. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual notice of this proceeding. On April 8, 2013, the assigned deputy trial counsel faxed a letter and a copy of the NDC to Respondent's membership records fax number. Later that day, the assigned deputy trial counsel telephoned Respondent. Respondent confirmed that she received the fax. She also indicated that she wanted to hire an attorney and would contact the assigned deputy trial counsel within a day or two, to notify her when she planned to respond to the NDC. On April 12, 2013, the assigned deputy trial counsel faxed a letter to Respondent indicating her intent to file a motion for default unless she received a response to the NDC by April 15, 2013. On April 15, 2013, Respondent faxed a letter to the assigned deputy trial counsel, acknowledging receipt of the April 12, 2013, letter and requesting additional time to respond to the NDC. On April 17, 2013, the assigned deputy trial counsel caused a letter to be mailed and faxed to Respondent stating, in part, that she had left a message for Respondent on April 16, 2013, in response to Respondent's April 15, 2013, letter, and informing Respondent that the motion for entry of default would be filed since a response to the

NDC had not been filed. Later, on April 17, 2013, Respondent left a voice mail message for the assigned deputy trial counsel indicating, in part, that she was responding to the deputy trial counsel's prior message; that she had received the deputy trial counsel's April 17, 2013, fax; and that she planned to call and discuss the matter with the assigned deputy trial counsel.

Respondent did not subsequently contact the assigned deputy trial counsel. Nor did she subsequently file a response to the NDC.

On April 17, 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 May 8, 2013. 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. 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 13, 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 has not contacted the State Bar since the date the default was entered; (2) there are other disciplinary matters 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 December 11, 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).)

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Count One - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to file and serve a lawsuit on behalf of her clients.

Count Two - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return \$2,000 in unearned advanced fees paid by one of her clients.

Count Three - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate accounts) by failing to provide to her clients any accounting of the \$2,000 advanced fee.

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 assigned deputy trial counsel and later requested an extension of time to respond to the NDC;

(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 Estrelita Lane 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 Mark Halper in the amount of \$2,000, plus 10 percent interest per year from February 23, 2012.

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 **Estrelita Lane**, State Bar number 215086, 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: January _____, 2014

DONALD F. MILES
Judge of the State Bar Court