

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case Nos.: **12-O-17060 (12-O-18207;**  
 ) **13-O-10409)**  
**SUSAN KATHLEEN HOLLIDAY,** )  
 ) **DECISION AND ORDER OF**  
**Member No. 96472,** ) **INVOLUNTARY INACTIVE**  
 ) **ENROLLMENT**  
A Member of the State Bar. )

---

Respondent Susan Kathleen Holliday (respondent) was charged with (1) failing to refund unearned fees (two counts); (2) engaging in act(s) of moral turpitude (two counts); (3) failing to comply with probation conditions; (4) failing to perform legal services with competence; (5) failing to pay client funds promptly; and (6) failing to cooperate in a State Bar investigation. She failed to file a response to the notice of disciplinary charges (NDC), 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 NDC and the attorney fails to have

---

<sup>1</sup> Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

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>

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 30, 1980. She resigned with disciplinary charges pending effective March 12, 1993. Respondent was reinstated to the practice of law pursuant to a Supreme Court order filed on August 31, 2001. She was returned to active membership status on September 13, 2001, and has been a member since then.<sup>3</sup>

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

On May 30, 2013, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by first-class mail, 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.) The return receipt was returned to the State Bar with an illegible signature and was undated.

Respondent had actual notice of this proceeding, as she participated in an in-person status conference held on July 2, 2013. At the time of the status conference, the court ordered

---

<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).)

<sup>3</sup> The court takes judicial notice of the State Bar's membership records pursuant to Evidence Code section 452, subdivision (h), which reflects that after her resignation with disciplinary charges pending, respondent became an active member of the State Bar of California again on September 13, 2001.

respondent to file her response to the NDC by July 12, 2013.<sup>4</sup> However, respondent failed to do so.

Deputy Trial Counsel Charles Calix (DTC Calix) sent an email to respondent on August 21, 2013, reminding her that she had not filed her response to the NDC and that a settlement conference was set for August 28, 2013.

On August 23, 2013,<sup>5</sup> respondent and DTC Calix spoke for 45 minutes regarding the disciplinary proceeding. At the conclusion of this conversation, respondent informed DTC Calix that she had decided that she (1) was not going to file a response to the NDC; (2) was going to allow her default to be entered; (3) was moving that weekend; and (4) did not anticipate updating her official membership address with the State Bar. That same date, DTC Calix sent an email to respondent memorializing respondent's above decisions. Although respondent had informed DTC Calix that she would respond to the email confirming her decision, as of August 26, 2013, respondent had not done so.<sup>6</sup>

As respondent failed to file a response to the NDC and had advised the State Bar that she was not going to file a response to the NDC and was going to allow her default to be entered, on August 26, 2013, the State Bar filed and properly served on respondent a motion for entry of her default by both certified mail, return receipt requested, and first-class mail, to respondent's membership records address. The motion complied with the requirements for a default,

---

<sup>4</sup> An order pursuant to the status conference was filed and properly served on respondent by first-class mail, postage prepaid, on July 10, 2013. The order advised respondent that a response to the NDC was due by July 12, 2013. The order was not returned to the court by the U. S. Postal Service as undeliverable or for any other reason.

<sup>5</sup> Although DTC Calix's declaration sets forth this date as August 25, 2013, a review of DTC Calix's email to respondent dated August 25, 2013 (Exhibit 1 attached to the State Bar's motion for the entry of respondent's default), and DTC Calix's email to courtroom D at the State Bar Court on August 26, 2013 (Exhibit 2 attached to the State Bar's motion for the entry of respondent's default), reflect that the conversation occurred on Friday, August 23, 2013, rather than Sunday, August 25, 2013.

<sup>6</sup> However, DTC Calix did not receive a message that his email was undeliverable.

including a supporting declaration reflecting that respondent had actual notice of the disciplinary proceeding, and that she advised DTC Calix that she was not going to file a response to the NDC and was going to allow her default to be entered. (Rule 5.80.)<sup>7</sup> 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 September 17, 2013. The order entering the default was 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. The order was returned by the U.S. Postal Service as unclaimed.

Respondent 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 April 24, 2014, the State Bar filed and properly served a petition for disbarment on respondent by certified mail, return receipt requested, and by first-class mail, to her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with respondent since the default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's conduct as set forth in the NDC. 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 May 20, 2014.

///

---

<sup>7</sup> As set forth in the State Bar's petition for disbarment filed on April 24, 2014, the return receipt for the NDC was returned to the State Bar by the U.S. Postal Service with an illegible signature and was undated.

Respondent has a prior record of discipline; resigned with disciplinary charges pending; was reinstated to the practice of law; and has a second prior record of discipline.<sup>8</sup>

Pursuant to a Supreme Court order filed on April 1, 1992, respondent was suspended for three years, the execution of which was stayed, and she was placed on probation for three years, on condition that she be suspended for two years and until she makes specified restitution and provides proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law. Respondent stipulated that she willfully violated rules 3-110(A) (five counts), 3-700(A)(2) (five counts) and 3-700(D)(1) (two counts) and former rules 2-111(A)(2) (four counts) and 6-101(A)(2) (four counts) of the State Bar Rules of Professional Conduct and Business and Professions Code section 6068, subdivision (m) (six counts).<sup>9</sup>

Pursuant to a Supreme Court order filed on February 10, 1993, the Supreme Court accepted respondent's voluntary resignation with disciplinary charges pending. Respondent's resignation was effective March 12, 1993.

Pursuant to an order of the Supreme Court filed on August 31, 2001, respondent was ordered reinstated as a member of the State Bar of California upon payment of the fees and taking the oath required by law. Respondent's was returned to active membership status in the State Bar of California effective September 13, 2001.

Pursuant to a Supreme Court order filed on May 22, 2012, respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for two years, subject to certain conditions, including that she be suspended from the practice of law for the

---

<sup>8</sup> The court takes judicial notice of the pertinent State Bar court records regarding this prior discipline and respondent's resignation and reinstatement, admits them into evidence and directs the clerk to include copies in the record of this case.

<sup>9</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

first four months of probation. Respondent stipulated that she failed to promptly refund a fee paid in advance that had not been earned.

### **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 of the rule and statutory violations as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **1. Case Number 12-O-17060 (Jacquot Matter)**

Count One - respondent willfully violated rule 3-700(D)(2) of the State Bar Rules of Professional Conduct (failing to refund unearned fees) by failing to refund \$1,488 in unearned fees to her client.

Count Two – respondent willfully violated section 6106 (moral turpitude) by issuing a check to her client when she was at least grossly negligent in not knowing that there were insufficient funds in her bank account to pay the check.

#### **2. Case Number 12-O-18207 (Probation Violation Matter)**

Count Three – respondent willfully violated section 6068, subdivision (k) (failure to comply with probation conditions), by (1) failing to timely submit one quarterly report; (2) failing to timely submit satisfactory proof of restitution to the Office of Probation which was due by October 10, 2012, January 10, 2013, and April 10, 2013; and (3) failing to make certain specified restitution payments.

#### **3. Case Number 13-O-10409 (Luna Matter)**

Count Four – respondent willfully violated rule 3-110(A) of the State Bar Rules of Professional Conduct (failing to perform legal services with competence) by recklessly and

repeatedly failing to prepare a recordable deed in lieu of foreclosure on behalf of her clients and by failing to prepare and file a bankruptcy petition on behalf of her clients.

Count Five - respondent willfully violated rule 3-700(D)(2) of the State Bar Rules of Professional Conduct by failing to refund \$1,800 in unearned fees to her clients.

Count Six – respondent willfully violated rule 4-100(B)(4) of the State Bar Rules of Professional Conduct (promptly pay/deliver client funds) by failing to refund to her clients the \$400 in unused filing fees received from her clients.

Count Seven – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to a State Bar investigator’s letters.

**4. Case Numbers 12-O-17060 & 13-O-10409 (9.20 Declaration Matter)**

Count Eight – respondent willfully violated section 6106 by declaring, under penalty of perjury, in her declaration pursuant to California Rules of Court, rule 9.20(c), that she had returned all client papers and had earned all fees paid to her at the time she filed such declaration when she was at least grossly negligent in not knowing that such statements were false.

**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 the proceedings prior to the entry of her default, as she participated at an in-person status conference, and she advised DTC Calix that she had decided that she was not going to file a response to the NDC and was going to allow her default to be entered;

(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 Susan Kathleen Holliday 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 also recommends that respondent be ordered to make restitution to the following payees:

- (1) Margarita Jacquot in the amount of \$1,488 plus 10 percent interest per year from July 29, 2011;
- (2) Janis McCoy in the amount of \$1,400 plus 10 percent interest per year from May 1, 2011;<sup>10</sup> and
- (3) Eduardo and Ruth Luna in the amount of \$2,200 plus 10 percent interest per year from January 27, 2013.

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

---

<sup>10</sup> This restitution results from respondent's violation of section 6068, subdivision (k), in count three for failing to pay restitution in a prior disciplinary matter.

(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 Susan Kathleen Holliday, State Bar number 96472, 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: August 7, 2014

---

RICHARD A. PLATEL  
Judge of the State Bar Court