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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of)	Case Nos.: 12-O-17175-DFM
)	(13-O-12680; 13-O-14526;
KIMBERLY RENAE BURKE,)	13-O-17375); 14-N-03376;
)	14-O-00765 (14-O-01236) (Cons.)
Member No. 248051,)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
_____)	

In this matter, respondent **Kimberly Renae Burke** (Respondent) was charged with 20 counts of misconduct stemming from seven consolidated matters. Respondent failed to participate, either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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 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(F)(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 January 4, 2007, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 24, 2014, the State Bar properly filed and served an amended NDC, in case Nos. 12-O-17175, et al., on Respondent by certified mail, return receipt requested, at her membership records address.³ The NDC notified Respondent that her failure to participate in the proceedings would result in a disbarment recommendation. (Rule 5.41.) The NDC was returned to the State Bar by the U.S. Postal Service as undeliverable.

On October 7, 2014, the State Bar properly filed and served an NDC in a second case, case Nos. 14-O-00765, et al., on Respondent by certified mail, return receipt requested, at her membership records address. This second NDC also contained the warning that failure to participate in the proceedings would result in a disbarment recommendation. (Rule 5.41.) The second NDC was also returned to the State Bar by the U.S. Postal Service as undeliverable.

In addition to the above service, which was effective pursuant to statute, Respondent had actual notice of this proceeding. On November 24, 2014, the deputy trial counsel assigned to this matter called and spoke with Respondent. Respondent stated that she would not be ready to deal with her State Bar Court matters until the next week because she had recently given birth. Trial counsel warned Respondent that her failure to file a response to the two NDCs would result in the entry of default against her and ultimately her disbarment if she did not move to set aside

³ The original version of this NDC was filed and served two days earlier, but was missing an attachment.

the default. Trial counsel informed Respondent that a status conference was set to take place on December 8, 2014, at 10:30 a.m., and that her appearance was ordered by the court. Trial counsel also told Respondent that, given her condition, the State Bar would not object if she were to request a telephonic appearance at the upcoming status conference.

Respondent, however, did not appear at the December 8, 2014 status conference. Respondent also failed to file a response to either NDC. On January 7, 2015, the State Bar filed and properly served a motion for entry of Respondent's default. Respondent did not file a response to the motion, and her default was entered on January 23, 2015. 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, and she has remained inactively enrolled since that time.

Respondent has not sought to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On June 10, 2015, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since before the default was entered; (2) Respondent has two other disciplinary matters pending; (3) Respondent has one 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 July 20, 2015.

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Prior Record of Discipline

Respondent has one prior record of discipline.⁴ Pursuant to a Supreme Court order filed on February 24, 2014, in case No. S215195 (State Bar Court case No. 12-O-14208), Respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for three years, including a one-year period of actual suspension. In that matter, Respondent was found culpable on three counts, including failing to maintain client funds in trust, misappropriating over \$37,000 in client funds through gross negligence, and failing to perform legal services with competence by not properly supervising her employee.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations in the NDCs 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 NDCs 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(F)(1)(d).)

Case Number 12-O-17175 – The Liu Matter

Count One – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by charging a total of \$19,500 on her client's credit card for Respondent's own purposes without her client's consent, knowledge, or authorization.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by causing written statements and documents to be submitted to American Express falsely indicating that the \$19,500 in credit card charges were authorized by her client when Respondent knew or was grossly negligent in not knowing that the charges were not authorized and the submitted written statements and documents were false.

⁴ The court admits into evidence the certified copies of Respondent's prior record of discipline attached to the June 10, 2015 petition for disbarment.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by causing written statements and documents to be submitted to the State Bar, falsely indicating that the \$19,500 in credit card charges were authorized by her client when Respondent knew or was grossly negligent in not knowing that the charges were not authorized and the submitted written statements and documents were false.

Case Number 13-O-12680 – The Augustinus Matter

Count Four – Respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by disobeying a court order requiring Respondent to appear for trial in the Orange County Superior Court.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (o)(3) (failure to report judicial sanctions), by failing to timely report to the State Bar judicial sanctions against Respondent in the amount of \$1,001.

Count Six – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation), by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

Case Number 13-O-14526 – The Musharbash Matter

Count Seven – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to perform the legal services for which she was retained.

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform her client that Respondent moved her law office and did not file her client's bankruptcy petition.

Count Nine – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund unearned advanced fees.

Case Number 13-O-17375 – The Tridiimas Matter

Count Ten – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform her client that the San Bernardino Superior Court had ordered her client to personally appear for five separate hearings.

Count Eleven – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation), by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

Case Number 14-N-03376 – The Rule 9.20 Matter

Count Twelve – Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned, or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

Case Number 14-O-00765 – The Garcia Matter

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries), by failing to respond to her client's reasonable status inquiries.

Count Two – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform her client that Respondent moved her law office and was suspended from the practice of law.

Count Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by constructively terminating her employment without notice.

Count Four – Respondent willfully violated section 6068, subdivision (j) (failure to update membership address), by vacating her office and failing to update her State Bar official membership records address within 30 days thereafter.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation), by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

Case Number 14-O-01236 – The Salvaggio Matter

Count Six – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund unearned advanced fees.

Count Seven – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide her client with an accounting.

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a disciplinary investigation), by failing to provide a substantive response to the allegations in a disciplinary investigation after being contacted by the State Bar.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) 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;

(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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **Kimberly Renae Burke**, State Bar number 248051, 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) Lucy Musharbash in the amount of \$1,259 plus 10 percent interest per year from September 25, 2013; and
- (2) Richard Salvaggio in the amount of \$2,500 plus 10 percent interest per year from March 7, 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 (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 **Kimberly Renae Burke**, State Bar number 248051, 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 6, 2015



DONALD F. MILES
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 August 6, 2015, 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:

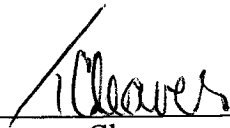
**KIMBERLY R. BURKE
LAW OFFICE OF KIMBERLY R BURKE
387 N 2ND AVE
UPLAND, CA 91786**

**KIMBERLY RENAE BURKE
13692 PETALUMA RD
VICTORVILLE, CA 92302**

- 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 August 6, 2015.



Tammy Cleaver
Case Administrator
State Bar Court