

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-O-17222-DFM
)	
M. IRENE DANIEL,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 163403,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent M. Irene Daniel (Respondent) was charged with four 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 8, 1992, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 4, 2013, the State Bar properly served³ the NDC on Respondent by certified mail, return receipt requested, to her membership records address and to an address on Fair Oaks Avenue, South Pasadena, California (Fair Oaks address), provided by Respondent to the State Bar during the State Bar investigation. A courtesy copy of the NDC was also served by regular mail to the Fair Oaks 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 for the NDC served by certified mail to the Fair Oaks address was returned to the State Bar.

Respondent had actual notice of this proceeding. On April 25, 2013, the assigned deputy trial counsel called and left a voice message for Respondent informing her that she needed to file a response to the NDC to avoid having her default being entered. Later, the assigned deputy trial counsel sent an email informing Respondent of the previously placed voice message and reiterating the need for Respondent to file a response to the NDC. On April 29, 2013, Respondent sent an email to the assigned deputy trial counsel, requesting that the State Bar give her ““another week”” before filing a motion for entry of default and allow her to file the response to the NDC by May 3, 2013. On April 30, 2013, the assigned deputy trial counsel sent an email

³ The NDC was filed on April 5, 2013.

to Respondent, informing her that if a response to the NDC was not filed by May 3, 2013, that the State Bar would file a motion for entry of default.

Respondent failed to file a response to the NDC. On May 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 and her Fair Oaks 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 June 7, 2013. The order entering the default was properly served on Respondent at her membership records address by certified mail, return receipt requested. The order was also served on Respondent at the Fair Oaks address. 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 did not seek to have her default set aside or vacated.⁴ (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 12, 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.⁵ The petition for disbarment was also

⁴ The Declaration of Anand Kumar attached to the State Bar's petition for disbarment states that on June 27, 2013, he received an email from Respondent with an attached courtesy copy of a motion to set aside her default which Respondent intended to file and personally serve on the State Bar that day. Later, he unexpectedly encountered Respondent who informed him that she wanted to amend the motion and would file the amended motion no later than July 4, 2013. Respondent failed to file any motion to set aside the default.

⁵ By this time, Respondent had changed her membership address to 1107 Fair Oaks Ave., #11, South Pasadena, California, 91030.

served on Respondent at her membership records address by first-class mail. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent had contact with the State Bar on June 27, 2013, and July 11, 2013, after her default was entered on June 7, 2013;⁶ (2) there are other investigations or disciplinary charges 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 January 8, 2014.

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 an adequate dissolution judgment package for the client's marital dissolution case and by failing to complete the dissolution.

Count Two – Respondent willfully violated section 6068, subdivision (m), of the Business and Professions Code (failure to communicate) by failing to respond to her client's reasonable status inquiries in the matter in which Respondent had agreed to provide legal services.

⁶ The State Bar's contact with Respondent on June 27, 2013, was the previously described events relating to Respondent's motion to set aside her default. The State Bar's contact with Respondent on July 11, 2013, was an email from Respondent to the assigned deputy trial counsel cancelling a previously scheduled in-person meeting.

Count Three - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return the \$4,000 in unearned advanced fees paid by her client.

Count Four - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render appropriate accounts) by failing to provide any accounting after January 2012.

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 requested an extension of time to respond to the NDC and stated that she intended to file a response to the NDC by May 3, 2013; and sent a copy of her motion to set aside the default to the assigned deputy trial counsel, but did not file said motion since she intended file an amended motion, but never did so;
- (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.

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RECOMMENDATION

Disbarment

The court recommends that Respondent **M. Irene Daniel**, Member No. 163403, 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 William Fitzpatrick in the amount of \$4,000, plus 10 percent interest per year from May 29, 2008. 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 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 **M. Irene Daniel**, Member No. 163403, 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

DONALD F. MILES
Judge of the State Bar Court