

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

FILED

JUN 15 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)
) Case No.: 13-J-13336-DFM
)
) **GEORGIA ANN MATHERS,**) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
) **Member No. 154840,**) **ENROLLMENT**
)
)
) A Member of the State Bar.)

Respondent **Georgia Ann Mathers** (Respondent) was ordered disciplined by the Supreme Court of Missouri upon facts that established her culpability for acts of professional misconduct in that jurisdiction. As a result, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding against Respondent on April 14, 2014. (Bus. & Prof. Code, § 6049.1; ¹ Rules Proc. of State Bar, rules 5.350-5.354.)

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the Missouri proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of Respondent's misconduct in Missouri; and (3) whether the Missouri proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

¹ Unless otherwise indicated, all statutory references are to the Business and Professions Code.



Respondent bears the burden of establishing that the conduct for which she was disciplined in Missouri would not warrant the imposition of discipline in California and/or that the Missouri proceedings lacked fundamental constitutional protection. Unless Respondent establishes one or both of these, the record of discipline in the Missouri proceeding is conclusive evidence of Respondent's culpability of misconduct in California. (Section 6049.1, subdivisions (a) and (b).)

Respondent failed to participate in the California State Bar Court proceeding, either in person or through counsel, and her default was entered. The State Bar filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.² Rule 5.85 provides the procedure to follow when an attorney fails to participate in a State Bar Court 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.³

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.

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² Unless otherwise indicated, all references to rules in this Decision and Order are to the Rules of Procedure of the State Bar in effect from January 1, 2011 through June 30, 2014. Although there were amendments to those rules, effective July 1, 2014, Respondent's default was entered prior to the effective date of those amendments.

³ 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).)

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to practice law in this state on December 16, 1991, and has been a member since then.

Procedural Requirements Have Been Satisfied

On April 14, 2014, the State Bar properly filed and served a Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, at 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/signature card was not received by the State Bar.

In addition, reasonable diligence was also used to notify Respondent of this proceeding. The State Bar made several attempts to contact Respondent. On May 20, 2014, the day after Respondent failed to appear at the Initial Status Conference in this matter, the Deputy Trial Counsel (DTC) assigned to this matter by the State Bar, instructed a State Bar investigator to perform a Lexis/Nexis People Search for Respondent. On that same date the investigator provided the DTC with a report identifying six possible addresses for Respondent.

On May 23, 2014, the State Bar sent a courtesy copy of the NDC to Respondent at her membership records address by regular first class mail. That NDC was not returned by the U.S. Postal Service. Additionally, courtesy copies of the NDC were mailed via first class mail to Respondent at each of the six addresses identified in Lexis/Nexis report.⁴ As of June 2, 2014, the date on which the State Bar's Notice of Motion and Motion for Entry of Default was filed and served on Respondent, she had not responded to any of the letters containing the courtesy copies of the NDC.

⁴ The addresses were located in Missouri, Nevada, and California.

On May 23, 2014, the DTC attempted to reach Respondent by telephone at her membership records telephone number. However, there was no ringtone and no voicemail message could be left.

The DTC also sent an email to Respondent at her membership records email address, advising that the NDC had been served on Respondent and that she had failed to submit a response. Attached to the email was a copy of the NDC. The email further advised that if the State Bar did not receive a response to the NDC, the State Bar would file a motion for entry of default.

Respondent did not file a response to the NDC. On June 2, 2014, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the DTC 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 25, 2014. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under section 6007, subdivision (e), effective three days after service of the order. Respondent has remained inactively enrolled since that time. The orders entering the default and enrolling Respondent inactive were properly served on Respondent at her membership records address by certified mail, return receipt requested. The return receipt/signature card was received by the State Bar Court, bearing an unclear signature but showing a delivery date of June 30, 2014.

On July 10, 2014, the DTC assigned to this matter received a voicemail message from Respondent at the DTC's membership records telephone number. In the voicemail message, Respondent stated that she had just learned about the default that had been entered. Respondent

provided an alternate telephone number at which she stated she could be reached and requested a return call at that number from the DTC. On July 11, 2014, the DTC called Respondent at the alternate number that Respondent had provided in her July 10th voicemail. Respondent did not pick up the phone. Therefore, the DTC left a voicemail message for Respondent, stating that she had received Respondent's message and was returning her call. The DTC provided Respondent with the DTC's membership records telephone number for a return call. As of February 27, 2015, the date of the filing of the Petition for Disbarment, the DTC had not heard back from Respondent.

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 February 27, 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) Respondent had left a voicemail message for the DTC on July 10, 2014, after her default had been entered; but, Respondent, thereafter, did not respond to the July 11th return message left for her by the DTC; nor did Respondent otherwise contact the State Bar subsequent to having left the July 10th message for the DTC; (2) there are no other disciplinary investigations pending against Respondent; (3) Respondent does not have a 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 April 7, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

The court finds that Respondent's culpability in the Missouri proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this state at the time of Respondent's misconduct in the Missouri proceeding, as follows:

Case No. 13-J-13336 – The May 9, 2013, Missouri Disciplinary Order (SC93269)

On May 9, 2013, the Supreme Court of Missouri filed Missouri Supreme Court order No. SC93269, requiring that Respondent be “suspended from the practice of law [in Missouri] and that no petition for reinstatement [would] be entertained for a period of two years from the date” of that Missouri Supreme Court order. The Missouri Supreme Court imposed that discipline on Respondent in accordance with the “Statement of Acceptance of Disciplinary Hearing Panel Decision, filed on April 1, 2013,” in the Supreme Court of Missouri. The Missouri Supreme Court concluded that Respondent had violated the various rules of the Supreme Court of Missouri, Supreme Court Rules of Professional Conduct, including rule 4-1.15(c). This rule provides that a lawyer shall keep property of clients or third persons that is in a lawyer’s possession separate from the lawyer’s own property.

The NDC filed by the State Bar of California in the instant proceeding alleges that Respondent’s misconduct in the Missouri matter reflects violations of the prohibition of Rule 4-100(A) of the California Rules of Professional Conduct against commingling. This court agrees. This allegation is deemed admitted upon the entry of Respondent’s default in this proceeding and is amply supported by the stipulated facts giving rise to Respondent’s discipline in Missouri. Those facts show that Respondent used her client trust account as an operating account and routinely allowed her earned fees to remain in the trust account without withdrawing them from the account at the earliest reasonable time after her interest in those funds became fixed.

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) reasonable diligence was used to notify Respondent 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 adequate 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 **Georgia Ann Mathers**, State Bar number 154840, 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 **Georgia Ann Mathers**, State Bar number 154840, 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: June 15, 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 June 15, 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:

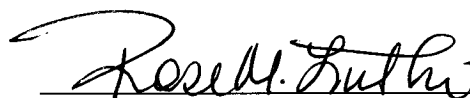
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

GEORGIA A. MATHERS
343 HUNTERS RUN
JEFFERSON CITY, MO 65109

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

LARA BAIRAMIAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 15, 2015.



Rose M. Luthi
Case Administrator
State Bar Court