

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-N-12146-RAP
)	
WENDY ALICIA HARTE,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 243230,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Wendy Alicia Harte (respondent) was charged with willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with California Rules of Court, rule 9.20. 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 an amended 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

¹ 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.

(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

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 June 6, 2006, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 14, 2013, the State Bar filed and properly served an amended NDC on respondent by certified mail, return receipt requested, to her membership records address.³ The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt bore "the name and signature 'Jason Douglas'"⁴ and reflected a delivery date was June 17, 2013.

Respondent had actual notice of this proceeding. Deputy Trial Counsel Sue K. Hong (DTC Hong) emailed respondent at respondent's official membership records email address on July 11, 2013. In the email, DTC Hong advised respondent that (1) a NDC had been filed regarding respondent; (2) respondent was served with a copy of it and her response was overdue; and (3) if her response was not filed by July 14, 2013, the State Bar would file a motion for entry of her default.

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).)

³ This matter was originally assigned to the Honorable Richard A. Honn. However, effective May 9, 2014, this matter was reassigned to the undersigned judge.

⁴ Declaration of Deputy Trial Counsel Sue K. Hong attached to the State Bar's motion for entry of respondent's default, numbered paragraph 5, line 20.

Respondent replied via email on July 15, 2013, acknowledging receipt of DTC Hong's email; advising that she currently lives in another state; and asking how she could file an extension with the courts to answer the charges.

DTC Hong replied on July 15, 2013, noting that she had already extended the deadline to file the response,⁵ and that she would proceed with the filing of a motion for the entry of respondent's default.

Respondent replied on July 15, 2013, advising DTC Hong, among other things, that she would seek counsel and would seek to have any defaults vacated.

As respondent failed to file a response to the NDC, on July 30, 2013, the State Bar filed and properly served a motion for entry of respondent's default on respondent by certified mail, return receipt requested, to her membership records address.⁶ 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 and reflecting that respondent had actual notice of this proceeding. (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 August 15, 2013. The order entering the default was properly served on respondent at her membership records address by certified mail, return receipt requested.⁷ The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar

⁵ As the amended NDC was filed on June 14, 2013, respondent should have filed her response within 20 days after service of the amended NDC. (Rule 5.43.) DTC Hong, however, had advised respondent that if the response was not filed by July 14, 2013, the State Bar would file a motion for entry of respondent's default.

⁶ The return receipt for the motion was signed on July 31, 2013, by K. Thomas.

⁷ The return receipt reflects that it was received by "Jason Douglas" and was delivered on August 16, 2013.

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 April 24, 2014, the State Bar filed and properly served an amended petition for disbarment.⁸ As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has not had any contact with respondent since her default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a 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 May 20, 2014.

Respondent has two prior records of discipline.⁹ Pursuant to a Supreme Court order filed on December 30, 2010, respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for one year, subject to certain conditions. Respondent stipulated that she held herself out as an attorney when she was not entitled to practice law and gave legal advice and performed legal services on a client's behalf when she was not entitled to practice law. Respondent also stipulated that she knowingly failed to disclose a material fact in connection with her application for admission to the State Bar.

⁸ A disbarment petition had previously been filed by the State Bar and served on respondent on February 26, 2014, and the matter was submitted for decision on March 25, 2014. However, the declaration attached to the disbarment petition did not fully comply with rule 5.85(A). Accordingly, Judge Honn filed an order on April 23, 2014, vacating the submission of this matter and directing the State Bar to file an amended disbarment petition correcting the defect in the declaration.

⁹ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

Pursuant to a Supreme Court order filed on December 31, 2012, respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for two years, subject to conditions, including that she be suspended for the first 90 days of probation. Respondent participated in this prior disciplinary matter and did not deny the charge. Respondent was found culpable of failing to comply with certain probation conditions as ordered by the Supreme Court in her prior disciplinary matter.

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 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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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 the Supreme Court's December 31, 2012 order requiring compliance with California Rules of Court, rule 9.20.

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 respondent and DTC Hong exchanged email communications regarding the matter;

(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 Wendy Alicia Harte 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 Wendy Alicia Harte, State Bar number 243230, 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 8, 2014

RICHARD A. PLATEL
Judge of the State Bar Court