

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-10866-RAP
)	
JANET MARIE HERRING,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 110676,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Janet Marie Herring (respondent) was charged with three counts of misconduct. She did not 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 12, 1983, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 23, 2013, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, to her membership records address. A courtesy copy of the NDC was also sent to respondent's official address by regular mail. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The U. S. Postal Service (USPS) did not return either NDC as undeliverable or for any other reason.³

On October 15, 2013, the State Bar investigator assigned to this matter did a reverse search of respondent's membership records telephone number and confirmed that it belonged to respondent. On that same date, she called that number and left a voicemail for respondent to return her call. The call was not returned to the investigator or to the deputy trial counsel (DTC) assigned to the matter.

Respondent did not file a response to the NDC. On October 21, 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. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar investigator and DTC declaring the additional steps taken to provide notice to respondent. (Rule

³ The return receipt was not returned to the State Bar.

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 November 8, 2013. The order entering the default was properly served on respondent at her membership records address by certified mail, return receipt requested.⁴ 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 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 June 13, 2014, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, to her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) respondent has not contacted the State Bar since the date the order entering her default was served; (2) there are no other disciplinary matters 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 July 11, 2014.

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).)

⁴ This correspondence was returned as undeliverable to the State Bar Court by the USPS bearing a stamp stating: "Return to sender. Unclaimed. Unable to forward."

Count One - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Respondent willfully violated section 6106 by intentionally or grossly negligently breaching her fiduciary duty as trustee to a trust beneficiary.

Count Two - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. This count is dismissed with prejudice as duplicative of Count One.

Count Three - (§ 6068, subd. (i) [Failure to Cooperate])

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. Respondent willfully violated section 60608, subdivision (i), by not responding to the State Bar investigator's March 20 and April 4, 2013 letters seeking her written response to allegations of misconduct in the trust matter.

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, as the State Bar (a) filed and properly served the NDC on respondent by certified mail, return receipt requested, to her membership records address; (b) sent a courtesy copy of the NDC to respondent at her membership records email address; and (c) the State Bar investigator left a voicemail for

respondent at her membership records telephone number after verifying that it was hers;

- (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.

RECOMMENDATION

Disbarment

The court recommends that respondent Janet Marie Herring 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.

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ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Janet Marie Herring, State Bar number 110676, 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: September 23, 2014

RICHARD A. PLATEL
Judge of the State Bar Court