

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 13-O-12631-LMA
)	
KRISTINE MARGARET AWALT,)	
)	DECISION AND ORDER OF
Member No. 74426,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent Kristine Margaret Awalt (respondent) was charged with seven counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ 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.²

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)

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² 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.

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.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on June 28, 1977, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 19, 2013, the State Bar filed and properly served the 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 NDC sent to her official address was returned by the U.S. Postal Service as undeliverable.

Courtesy copies of the NDC were also sent to her official address by regular first class mail and to an alternative address at 9370 Sparks Way, Sacramento. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Copy of the NDC sent to her official address was returned by the U.S. Postal Service as undeliverable. The NDC sent to the alternative address was not returned.

On October 18, 2013, the State Bar also attempted to contact respondent at her official membership records telephone number and at another telephone number provided in the case file; but the numbers were disconnected/no longer in service.

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).)

On September 28, 2013, the State Bar emailed to respondent a copy of the NDC. The email did not bounce back as undeliverable. But on October 18, 2013, when the State Bar again attempted to email respondent, the email failed as the email box was full.

To date, respondent has not contacted the State Bar.

Respondent failed to file a response to the NDC. On October 28, 2013, 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 State Bar senior 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 November 13, 2013. 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. She has remained inactively enrolled since that time.

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 May 20, 2014, the State Bar properly filed and served the petition for disbarment on respondent at her official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since her default was entered; (2) there are no other investigations or disciplinary charges pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct. 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 June 17, 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).)

Case Number 13-O-12631 (The Tomai Matter)

Count One – Respondent willfully violated 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by performing no legal services of value on behalf of her client, Rosemary Tomai.

Count Two – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of her client in that she failed to take any action on behalf of Tomai after faxing a notice of claim to Black Oak Casino on June 2, 2008, and thereafter she failed to inform the client that she was withdrawing from employment.

Count Three – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to promptly release to her client, upon the client's request, the client's property and papers.

Count Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$8,000 unearned attorney fees to her client or to Marvin Rezac.

Count Five – Respondent willfully violated section 6106 (moral turpitude) by making multiple misrepresentations to her client and Marvin Rezac that she was working on Tomai's case when she was not.

Count Six – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (acceptance of fees from a non-client) by accepting a total of \$8,000 in advanced attorney fees paid by Marvin Rezac on behalf of her client without obtaining the client's informed written consent.

Count Seven – Respondent willfully violated section 6068, subdivision (j) (failure to update membership address), by failing to notify the State Bar of the change in her address and telephone number when she moved out of her office in October 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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, as the NDC was served on respondent at her membership records address and the State Bar attempted to reach respondent by telephone and by email;
- (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 must recommend her disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Kristine Margaret Awalt 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 Marvin Rezac in the amount of \$8,000 plus 10 percent interest per year from November 3, 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).

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 Kristine Margaret Awalt, State Bar number 74426, 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 _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court