

PUBLIC MATTER

FILED

AUG 24 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES



STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-14806-YDR; 14-O-01234
)	(14-O-02121) (Cons.)
BRENDA LYNN McCUNE,)	
)	DECISION AND ORDER OF
Member No. 186945,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	
_____)	

Respondent Brenda Lynn McCune (respondent) was charged with 10 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ She failed to appear at the trial of this case 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

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 this source.



within 45 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 California on December 16, 1996, and has been a member since then.

Procedural Requirements Have Been Satisfied

On July 14, 2014, the State Bar properly filed and served a first notice of disciplinary charges on respondent (First NDC) and her attorney, John W. Nelson, in case No. 13-O-14806. The First NDC notified respondent that her failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent's attorney, John 'Jack' W. Nelson, filed a response to the First NDC on respondent's behalf on July 28, 2014.

On November 20, 2014, the State Bar properly filed and served on respondent and her attorney, John W. Nelson, a notice of disciplinary charges (Second NDC) in case Nos. 14-O-01234 (14-O-02121). The Second NDC also notified respondent that her failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent's attorney, John 'Jack' W. Nelson, filed a response to the Second NDC on respondent's behalf on December 2, 2014.⁴

The two matters were consolidated on February 10, 2015.

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(F)(2).)

⁴ The State Bar's petition for disbarment incorrectly stated that respondent's counsel substituted out of this matter without having filed an answer on behalf of respondent.

By orders filed November 14, 2014, and February 10, 2015, the trial was set to start on March 9, 2015. The November 2014 order setting the trial date was served on respondent's counsel by first-class mail, postage paid. (Rule 5.81(A).) The February 2015 order setting the trial date was served on respondent's counsel and on respondent at her membership records address by first-class mail, postage paid.

On February 10, 2015, respondent's counsel, Nelson, filed a substitution of attorney, thereby substituting out of this matter.

On March 9, 2015, the State Bar appeared for trial but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed March 9, 2015. The order notified respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. The order also placed respondent on involuntary inactive status 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. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On May 4, 2015, 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 two other disciplinary matters pending against respondent; (3) respondent has one record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on June 3, 2015.

Respondent has been disciplined on one prior occasion.⁵ On September 11, 2013, respondent was publicly reprimanded for failing to perform legal services with competence, failing to return unearned fees, and failing to render accounts of client funds in one client matter. Respondent and the State Bar entered into a stipulation in this matter.

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(F)(1)(d).)

1. Case No. 13-O-14806 (Espinoza Matter)

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to timely prepare a stipulated judgment and by failing to provide status updates and accountings in a marital dissolution matter.

Count 2 – 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 \$2,500 unearned attorney fees to her client, Elvia Espinoza, upon the termination of her employment on June 17, 2013.

Count 3 – 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.

⁵ The court admits into evidence the certified copy of respondent's prior record of discipline that was attached to the State Bar's May 4, 2015 petition for disbarment after default.

Count 4 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide an accounting for the legal fees and costs paid to respondent.

Count 5 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar's letters of September 10 and September 16, 2013, as requested by the State Bar.

2. Case No. 14-O-01234 (Krueger Matter)

Count 1 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any portion of the \$5,000 unearned attorney fees to her client, James Krueger, upon the termination of her employment on November 21, 2013.

Count 2 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide an accounting for the legal fees paid to respondent.

Count 3 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's letters of May 27 and June 25, 2014, as requested by the State Bar.

3. Case No. 14-O-02121 (McGorrin Matter)

Count 4 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide an accounting to her client, Miriam McGorrin, for the legal fees of \$5,000 paid to respondent.

Count 5 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar's letters of June 5 and June 25, 2014, as requested by the State Bar.

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) 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 and had adequate notice of the trial date prior to the entry of her default.
- (3) The default was properly entered under rule 5.81.
- (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.
- (5) Despite adequate notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends her disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent **Brenda Lynn McCune**, State Bar number 186945, 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 the following payees:

- (1) Elvia Espinoza in the amount of \$2,500 plus 10 percent interest per year from June 17, 2013; and
- (2) James Krueger in the amount of \$5,000 plus 10 percent interest per year from November 21, 2013.

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 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 Brenda Lynn McCune, State Bar number 186945, 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 24, 2015


YVETTE D. ROLAND
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 August 24, 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:

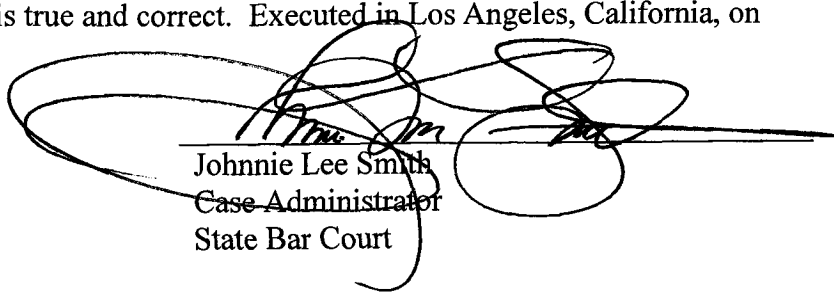
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**BRENDA L. MCCUNE
LAW OFFICE OF BRENDA MCCUNE
4676 LAKEVIEW AVE STE 103
YORBA LINDA, CA 92886**

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 24, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court