



**FILED**

**MAR 23 2015**

**STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	Case No.: <b>13-O-16008-PEM</b>
	)	
<b>JESSICA MARIE VIENNA,</b>	)	<b>ORDER DENYING PETITION FOR</b>
	)	<b>DISBARMENT, VACATING DEFAULT,</b>
<b>Member No. 225174,</b>	)	<b>TERMINATING INACTIVE ENROLLMENT,</b>
	)	<b>AND GRANTING LEAVE TO AMEND THE</b>
<b>A Member of the State Bar.</b>	)	<b>NDC</b>

This matter is before the court on the State Bar's Office of the Chief Trial Counsel's December 18, 2014 petition for disbarment after default for failure to file a timely response to the notice of disciplinary charges (NDC). (Rule 5.85.)<sup>1</sup> Respondent Jessica Marie Vienna did not file an response to the petition for disbarment.

The evidence fails to show that the NDC<sup>2</sup> was served on respondent properly. (Rule 5.85(E)(1)(a).) The evidence also fails to show either that respondent had actual notice of this proceeding before the entry of her default or that reasonable diligence was used to notify respondent of the proceeding before the entry of her default. (Rule 5.85(E)(1)(b).) Moreover,

<sup>1</sup> All references to rules are to the Rules of Procedure of the State Bar that were in effect from January 1, 2011, through June 30, 2014. A number of the rules of procedure, including the rules governing defaults, were amended effective July 1, 2014. Nonetheless, because respondent's default was entered before July 1, 2014, the operative rules in this matter are those that were in effect before July 1, 2014.

<sup>2</sup> The court notes that neither count one nor count three in the NDC state a disciplinable offense. In addition, neither of those two counts provide respondent with the minimum notice to which she is entitled under Business and Professions Code section 6085 and due process of law. As the review department made clear 25 years ago in *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, the NDC must allege sufficient factual detail to provide the respondent with a reasonable opportunity to prepare and present a defense and to prevent the respondent from being taken by surprise by the evidence offered at trial.

the evidence fails to establish that the respondent's default was properly entered. (Rule 5.85(E)(1)(c).) Therefore, the court will, inter alia, deny the petition for disbarment and vacate respondent's default. (Rule 5.85(E)(2).)

**No Proper Service is Shown**

The evidence establishes that, on April 22, 2014, the State Bar incorrectly served the NDC on respondent, by certified mail, return receipt requested, addressed as follows:

LAW OFFICE OF JESSICA M. VIENNA  
1144 13TH ST., # 102-10  
IMPERIAL BEACH, CA 91932

The evidence also establishes that on May 22, 2014, the State Bar incorrectly served the motion for entry of default on respondent, by certified mail, return receipt requested, at the same address. The foregoing address was respondent's membership-records address from February 2, 2103, until March 12, 2014, when respondent changed it to the following to delete the # sign from the second line:

LAW OFFICE OF JESSICA M. VIENNA  
1144 13TH ST 102-10  
IMPERIAL BEACH, CA 91932

When the State Bar incorrectly served the NDC on respondent at her old membership-records address, which had the # sign in the second line, respondent did not receive the NDC. The NDC was returned undelivered to the State Bar bearing the postal notation "Moved, left no address." However, when the State Bar Court served the order entering respondent's default on respondent at her current membership-records address, the address without the # sign in the second line, the order was actually delivered to respondent's membership-records address and signed for by C. Velez on June 18, 2014.

The next day, on June 19, 2014, respondent changed her membership-records address in Imperial Beach to an address in Carlsbad. On June 24, 2014, respondent contacted the State Bar indicating that she wanted to move to set aside her default. On September 15, 2014, respondent

sent the State Bar an email stating that she was working on a motion to set aside her default. Respondent, however, never filed such motion. Of course, respondent's failure to file a motion to set aside her default does not cure the improper service of either the NDC or the motion for entry of default. (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 833 ["A deprivation of due process is no less a deprivation merely because the person deprived has a remedy. [Defendant] had a statutory and due process right to respond to the complaint before a default was entered. [Defendant] was denied this right and no post hoc remedy can change that fact."]; see also *Mennonite Bd. of Missions v. Adams* (1983) 462 U.S. 791, 799 ["party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation" to give proper notice to the party in the first instance].)

In sum, the NDC and the motion for entry of default were served on respondent improperly (i.e., at the wrong address).

**No Actual Knowledge or Reasonable Diligence is Shown**

The evidence does not establish that respondent had actual knowledge of this proceeding before her default was entered. Moreover, the evidence does not establish that reasonable diligence was used to notify respondent of this proceeding before her default was entered. After the NDC was returned to the State Bar undelivered and marked "Moved, left no address," the State Bar (1) attempted to reach respondent by telephone at her membership-records telephone number on three separate occasions, but her voicemail was full each time; (2) called directory assistance for the area that includes respondent's membership-records address, but it did not have an additional telephone number listed for respondent; (3) checked respondent's listing in "Parker's directory," but it did not have an additional address listed for respondent;<sup>3</sup> and (4) sent  
///

---

<sup>3</sup> The State Bar's reliance on the Parker Directory of California Attorneys is misplaced as it has not been published for more than six years.

respondent an email at an email address that respondent had previously used, but the email was returned to the State Bar because the address was no longer good.

It is clear that “ ‘when notice is a person’s due ... [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.’ [Citation.]” (*Jones v. Flowers* (2006) 547 U.S. 220, 238.) The court concludes that someone who actually wanted to alert respondent that she was in danger of being disbarred would have done more than that which was done here and that there was more that reasonably could have been done to give respondent notice. (*Ibid.*)

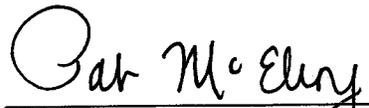
#### **Motion for Entry of Default Not Properly Served**

As note *ante*, the motion for entry of respondent’s default was not served on respondent at her current membership-records address. Accordingly, respondent’s default was not properly entered.

#### **Order**

The court orders that the State Bar's December 18, 2014 petition for disbarment after default for failure to file a timely response is DENIED and that the court’s entry of respondent’s default on June 12, 2014, is VACATED nunc pro tunc to June 12, 2014. The court further orders that respondent Jessica Marie Vienna’s involuntary inactive enrollment under the court’s June 12, 2014 order is TERMINATED nunc pro tunc to June 12, 2014.<sup>4</sup> Finally, the court orders that, within 20 days after the service of this order by mail, the State Bar may file and serve on respondent an amended NDC that corrects the deficiencies noted in footnote 2, *ante*.

Dated: March 23, 2015.

  
\_\_\_\_\_  
PAT McELROY  
Judge of the State Bar Court

<sup>4</sup> This order does not affect respondent’s ineligibility to practice law that has resulted or that may hereafter result from any other cause.

**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 San Francisco, on March 23, 2015, I deposited a true copy of the following document(s):

ORDER DENYING PETITION FOR DISBARMENT, VACATING DEFAULT, TERMINATING INACTIVE ENROLLMENT, AND GRANTING LEAVE TO AMEND THE NDC

in a sealed envelope for collection and mailing on that date as follows:

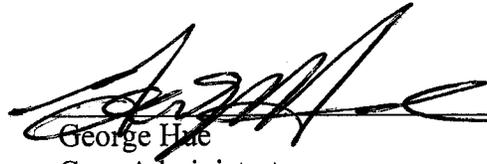
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JESSICA M. VIENNA  
LAW OFFICE OF JESSICA M. VIENNA  
300 CARLSBAD VILLAGE DR  
SUITE 108A-206  
CARLSBAD, CA 92008

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

Drew D. Massey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 23, 2015.

  
George Hae  
Case Administrator  
State Bar Court