

FILED

NOV 23 2015

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

In the Matter of	)	Case No.: 13-O-16008-PEM
	)	
<b>JESSICA MARIE VIENNA,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 225174,</b>	)	<b>ENROLLMENT</b>
	)	
A Member of the State Bar.	)	
_____	)	

Respondent **Jessica Marie Vienna** (respondent) was charged with four counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> 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.<sup>2</sup>

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

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

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.



(NDC) and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>3</sup>

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 June 3, 2003, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

##### *Notice of Disciplinary Charges*

On April 22, 2014, the State Bar filed and served the NDC on respondent. Respondent did not file a response to the NDC. On May 27, 2014, the State Bar filed and served a motion for entry of respondent's default. Respondent did not file a response to the motion, and her default was entered on June 12, 2014. The order entering the default was served on respondent at her membership records address by certified mail, return receipt requested. A receipt signed by "C Velez" was returned to the court. 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.

Respondent did not seek to have her default set aside or vacated.<sup>4</sup> (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].)

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<sup>3</sup> 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).)

<sup>4</sup> On June 24, 2014, respondent contacted the State Bar and indicated that she wanted to move to set aside the default. On September 15 and 17, 2014, respondent again communicated with the State Bar indicating that she was working on her motion to set aside the default. But respondent did not file any motion to set aside the default.

On December 18, 2014, the State Bar filed a petition for disbarment. And on January 13, 2015, the case was submitted.

However, on March 23, 2015, the court found that the NDC was not properly served on respondent, that respondent did not have actual knowledge or that the State Bar did not use reasonable diligence to notify respondent of this proceeding before her default was entered, and that the motion for entry of respondent's default was not properly served on respondent. Thus, the court denied the petition for disbarment, vacated the default, terminated respondent's inactive enrollment, and granted leave to amend the NDC. (Rule 5.85(F)(2).)

*First Amended Notice of Disciplinary Charges*

Accordingly, on March 27, 2015, the State Bar properly filed and served the First Amended NDC (Amended NDC) on respondent by certified mail, return receipt requested, to her membership records address. The Amended NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The mailing was returned as undeliverable. On April 1, 2015, a courtesy copy of the Amended NDC was sent to respondent by regular first class mail to her membership records address. The mailing was not returned.

On April 8, 2015, the State Bar sent an email to respondent but it was bounced back as undeliverable. Thereafter, the State Bar attempted to reach respondent by telephone on several occasions (April 21 through April 24), but was unsuccessful. Furthermore, on April 21, 2015, the State Bar attempted to contact respondent by phone at an alternate telephone number and by mail at an alternate address. The State Bar left a voice message but did not receive a return call. And, the mailing was not returned by the U.S. Postal Service. To date, respondent has not contacted the State Bar.

Respondent failed to file a response to the Amended NDC. On April 24, 2015, the State Bar properly filed and 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 deputy 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 May 12, 2015. 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 90 days to file motion to set aside default].)

On August 20, 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 disciplinary investigations pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund 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 September 16, 2015.

#### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the Amended 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 Amended 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).)

**Case Number 13-O-16008 (Latlip 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 prepare and file a default judgment on behalf of her client, Kimberly Latlip.

Count 2 – 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 on May 11, 2013, the client’s property and papers.

Count 3 – 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 \$125 unearned attorney fees to her client upon the termination of her employment on May 10, 2013.

Count 4 – 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 November 27 and December 12, 2013 letters.

**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 Amended 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;
- (3) The default was properly entered under rule 5.80; and
- (4) The factual allegations in the Amended 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 her disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent **Jessica Marie Vienna**, State Bar number 225174, 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 Kimberly Latlip in the amount of \$125 plus 10 percent interest per year from May 10, 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**

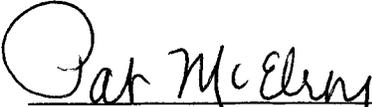
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Jessica Marie Vienna**, State Bar number 225174, 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: November 23, 2015

  
PAT McELROY  
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 San Francisco, on November 23, 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 San Francisco, California, addressed as follows:

JESSICA M. VIENNA  
LAW OFFICE OF JESSICA M. VIENNA  
PO BOX 7001  
SAN DIEGO, CA 92167

- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- by overnight mail at , California, addressed as follows:

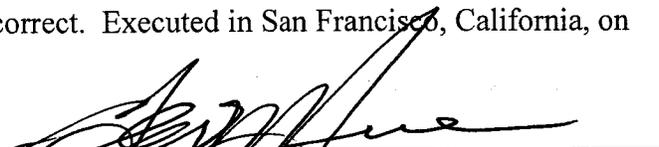
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

- 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 November 23, 2015.

  
George Hue  
Case Administrator  
State Bar Court