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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 13-O-16759-LMA
)	
SARA LYNN SHAFER,)	DECISION AND ORDER OF INVOLUNTARY
)	INACTIVE ENROLLMENT
Member No. 251533,)	
)	
<u>A Member of the State Bar.</u>)	

Respondent Sara Lynn Shafer (respondent) is charged with five counts of professional misconduct in connection with a single client matter. 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.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 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar.

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(F)(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 3, 2007, and has been a member since then.

Procedural Requirements Have Been Satisfied

On October 20, 2014, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at respondent's 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 State Bar received the return receipt for the NDC on October 31, 2014, but the signature on it is illegible.

Also, on October 20, 2014, the State Bar sent a courtesy copy of the NDC to respondent by regular first-class mail at respondent's membership-records address. The courtesy copy of the NDC was not returned to the State Bar.

Thereafter, on November 13, 2014, the assigned State Bar senior trial counsel (STC) attempted to reach respondent by telephone at respondent's membership-records telephone number and left a voicemail message for respondent advising respondent that November 14, 2014, was the last day to timely file a response to the NDC and that, if respondent did not file and serve a response on the State Bar by then, the State Bar would seek the entry of respondent's default. On November 13, 2014, the STC also sent an email containing this same information to both respondent's membership-records email address and respondent's private email address.³

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

A little later that same day, the STC received an email from respondent's membership-records email address thanking the STC for the telephone call and email and asking the STC for a short extension of time to file a response to the NDC. The STC promptly responded to respondent's request for an extension of time in another email that the STC sent to respondent on November 13, 2014. Later, on November 13, 2014, the STC received and responded to a second email from respondent. Thereafter, the STC did not hear from respondent again.

Respondent did not file a motion for extension of time to respond to the NDC. Nor did respondent file a response to the NDC. On November 17, 2014, the State Bar filed a motion for entry of respondent's default and properly served that motion on respondent at her membership-records address by certified mail, return receipt requested. On November 21, 2014, the State Bar received the return receipt for the motion for entry of default. The receipt is signed by T. Konstatindis. 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 December 3, 2014. The order entering default was served on respondent at her membership-records address by certified mail, return receipt requested. Thereafter, the State Bar Court received the return receipt for the order entering default. The receipt is signed by T. Konstatindis.

In the order entering default, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions

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Code section 6007, subdivision (e),⁴ effective three days after service of the order. Respondent has continuously been involuntarily enrolled inactive under that order 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 March 9, 2015, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has failed to contact the State Bar since her default was entered on December 3, 2014; (2) there is one disciplinary investigation pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not paid out any claims 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 April 6, 2015.

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 of the rule and statutory violations 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-16759 (Thompson Matter)

Count One – Respondent willfully violated State Bar Rules of Professional Conduct, rule 4-100(B)(1) (notify client of receipt of client funds) by failing to promptly notify her client that she had received a \$77,500 settlement check on the client's case.

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⁴ All further statutory references are to the Business and Professions Code.

Count Two – Respondent willfully violated State Bar Rules of Professional Conduct, rule 4-100(A) [client funds must be deposited into and maintained in a trust account] by failing to maintain at \$51,045.42 in client funds in her client trust account.

Count Three – Respondent willfully violated section 6106 (moral turpitude – misappropriation) by misappropriating through gross negligence \$42,045.42 in client funds.

Count Four – Respondent willfully violated State Bar Rules of Professional Conduct, rule 3-700(D)(1) [failing to release a file in accordance with client’s request] by failing to promptly return her client’s file, upon the client’s request after the termination of respondent’s employment.

Count Five – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to the State Bar’s letter and emails or to otherwise cooperate in the State Bar’s investigation of the Thompson 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) respondent had actual notice of this proceeding before the entry of her default;
- (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.

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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.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Sara Lynn Shafer 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 further recommends that Sara Lynn Shafer be ordered to make restitution to Bart Thompson in the amount of \$42,045.42 plus 10 percent interest per year from June 22, 2011.

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.

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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 Sara Lynn Shafer, State Bar Number 251533, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: June 17, 2015.



LUCY ARMENDARIZ
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 June 17, 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:

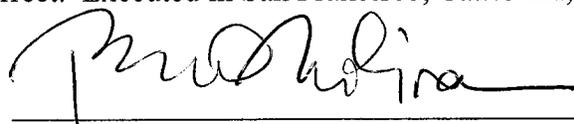
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

SARA L. SHAFER
PO BOX 210
FRESNO, CA 93708

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

SHERRIE B. McLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 17, 2015.



Bernadette C.O. Molina
Case Administrator
State Bar Court