



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

FILED

JUN 10 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case No.: 14-O-05339-WKM
)	
KRISTIN MARIE SCHUH,)	
)	DECISION AND ORDER OF INVOLUNTARY
Member No. 241554,)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

Respondent Kristin Marie Schuh (respondent) is charged with five counts of misconduct in 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 of the State Bar of California (OCTC) 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 if the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting that the State Bar Court recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the State Bar Court determines that any due process requirement is 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 that the petition for disbarment should be granted. Accordingly, the court will recommend that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to the practice of law in this state on January 28, 2006. She has continuously been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On August 27, 2015, OCTC filed and properly served the NDC on respondent by certified mail, return receipt requested, addressed to respondent at her membership records address on Hollywood Boulevard. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On September 2, 2015, the United States Postal Service returned the NDC to OCTC undelivered and marked: "Return to Sender, Attempted – Not Known, Unable to forward." Nonetheless, it is clear that respondent had actual notice of this proceeding no later than October 17, 2015, when a State Bar investigator personally served respondent with copies of the NDC and OCTC's motion for entry of default at 1003 ½ Hancock Avenue, West Hollywood, California 90069.³ When the State Bar investigator served respondent with these copies, the investigator recommended that respondent contact the senior trial counsel assigned to this matter and update her membership records address. Respondent told the investigator that she was not interested in participating in this State Bar Court disciplinary proceeding.

³ OCTC's conducted an internet search for respondent's current address. Even though that search suggests that respondent's current address is 1003 Hancock Avenue, West Hollywood, California 90069, the State Bar investigator actually located and served respondent at 1003 ½ Hancock Avenue, West Hollywood, California 90069. Hereafter, the court will refer to 1003 Hancock Avenue and 1003 ½ Hancock Avenue collectively as respondent's alternative addresses on Hancock Avenue.

Respondent failed to file a response to the NDC. Thus, on October 19, 2015, OCTC filed and properly served a motion for entry of default on respondent at her membership records address by certified mail, return receipt requested. In addition, OCTC mailed courtesy copies of the motion to respondent at her alternative addresses on Hancock Avenue. The motion complied with the requirements for a default, including a supporting declaration from Deputy Trial Counsel Bairamian. (Rule 5.80.) The motion 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 NDC or to the motion for entry of default, and the court properly entered her default on November 4, 2015. The court properly served the default order on respondent at her membership records address by certified mail, return receipt requested. The court also mailed courtesy copies of its default order to respondent at her alternative addresses on Hancock Avenue.

In the default order, the court advised respondent that, if she did not timely move to set aside her default, the court would recommend that she be disbarred. In the default order, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California in accordance with Business and Professions Code section 6007, subdivision (e).⁴ Thereafter, on November 7, 2015, respondent was involuntarily enrolled inactive, and she has been involuntarily enrolled inactive 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].) Thus, on February 18, 2016, OCTC filed and properly served the petition for disbarment on respondent at her membership records address by certified mail, return receipt requested. In addition, OCTC mailed courtesy copies of the petition to respondent at respondent's alternative addresses on Hancock Avenue.

⁴ Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

As required by rule 5.85(A), OCTC reported in the petition that (1) respondent has not contacted OCTC since her default was entered; (2) in addition to the present case, four additional disciplinary investigation matters are pending against respondent; (3) respondent does not have a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The court took the petition for disbarment under submission for decision on March 15, 2016.

The Factual Allegations Deemed Admitted by Default Warrant the Imposition of Discipline

Under section 6088 and rule 5.82, the factual allegations (but not the charges or the conclusions of law) set forth in the NDC are deemed admitted by the entry of respondent's default. When ruling on OCTC's petition for disbarment, the court must determine whether the admitted factual allegations support a finding, by clear and convincing evidence, that respondent is culpable of the charged misconduct. (Rule 5.85(F)(1)(d); cf. *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409, 410.) When making that determination, the court must resolve all reasonable doubts in respondent's favor, just as the court would do if this were a contested disciplinary proceeding. (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54-55, citing *Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.) As set forth in greater detail *post*, the admitted factual allegations support a finding that that respondent is culpable of the misconduct charged in two of the five counts. Therefore, the factual allegations in the NDC admitted by default "support a finding that [respondent] violated a statute, rule or court order that would warrant the imposition of discipline." (Rule 5.85(F)(1)(d).)

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Case Number 14-O-05339 (Thomas 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 Damon Thomas (Thomas) that she had received, on his behalf, a bond refund in the amount of \$19,327.70.

Count Two – This charge is that respondent willfully violated rule 4-100(A)(1) of the Rules of Professional Conduct, which requires that an attorney deposit and maintain all client funds in a trust account, by failing to maintain \$19,327.70 in her CTA for Thomas. Count two does not contain sufficient factual allegations to give respondent or the court adequate notice of the charges against respondent.

Due process mandates that OCTC allege, in the NDC, sufficient specific factual detail to provide respondent with “ ‘a reasonable opportunity to prepare and present her defense and not be taken by surprise by evidence offered at her trial’ [Citation.] ” (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 168.) Without question, attorneys in State Bar Court disciplinary proceedings are to “be given fair, adequate, and reasonable notice and have a fair, adequate, and reasonable opportunity and right ... [¶] ... [t]o defend against the charge” (§ 6085, subd. (a).)⁵ In addition, the factual allegations in count two that are deemed admitted by respondent’s default do not support a finding that respondent is culpable of the charged rule 4-100(A)(1) violation.⁶ Therefore, count two is DISMISSED with prejudice for want of proof.

⁵ In 1999, the Legislature twice inserted the phrase “fair, adequate, and” into section 6085: once before the quoted term “reasonable notice,” and once before the quoted term “reasonable opportunity.”

⁶ For example, the statement that “Respondent failed to maintain a balance of \$19,327.70 on behalf of the client in respondent’s client trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A)” is not a factual allegation deemed admitted by the default,

Count Three – This charge is that respondent willfully violated section 6106, which proscribes acts involving moral turpitude, dishonesty, or corruption, when she “dishonestly or grossly negligently [sic] misappropriated for respondent’s own purposes \$19,326.96” Count three does not contain sufficient factual allegations to give respondent or the court adequate notice of the charges against respondent. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 168; § 6085, subd. (a).) In addition, the factual allegations in count three that are deemed admitted by respondent’s default do not support a finding that respondent is culpable of the charged section 6106 violation.⁷ Therefore, count three is DISMISSED with prejudice for want of proof.

Count Four – This charge is that respondent willfully violated section 6106 by making statements to a client that respondent “knew or was grossly negligent in not knowing the statements were false.” Count three does not contain sufficient factual allegations to give respondent or the court adequate notice of the charges against respondent. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 168; § 6085, subd. (a).) In addition, the factual allegations in count four that are deemed admitted by respondent’s default do not support a finding that respondent is culpable of the charged section 6106 violation.

Because all reasonable doubts in an attorney disciplinary proceeding must be resolved in favor of the attorney, a disjunctive allegation of misconduct deemed admitted by the entry of the attorney’s default establishes only the lesser of the allegations. (*In the Matter of Heiser, supra*, 1 Cal. State Bar Ct. Rptr. at p. 54 [disjunctive allegations of misconduct deemed admitted by

but is the charged violation of rule 4-100(A) that OCTC must prove by clear and convincing evidence.

⁷ For example, the statement that “respondent dishonestly or grossly negligently [sic] misappropriated for respondent’s own purposes \$19,326.96 ... and thereby committed an act involving moral turpitude” is not a factual allegation that is deemed admit by respondent’s default, but is the charged violation of section 6106 that OCTC must prove by clear and convincing evidence.

default did not and could not establish culpability for misappropriating client funds, but could and did establish the lesser offense of commingling/use of trust account for personal purposes]; cf. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 359 [in an expedited proceeding based on discipline imposed by federal government or sister state under section 6049.1, the court accepts as established only the lesser of the charges in each count].)

The disjunctive allegations in count four establish only that respondent “was grossly negligent in not knowing the statements were false.” The allegation that respondent “was grossly negligent in not knowing the statements were false” alleges nothing more than that respondent should have known that the statements were false. Even though one might be subject to tort liability for unknowingly making a false statement that one should have known was false, unknowingly making a false statement that one should have known was false does not involve either moral turpitude, dishonesty, or corruption. (Cf. *Geffen v. State Bar* (1975) 14 Cal.3d 843, 856, fn. 4 [a finding that an attorney should have known of her employee’s improper solicitations of clients is insufficient to warrant discipline for a wilful breach of the rules of professional conduct].) Thus, count four is DISMISSED with prejudice for want of proof.

Count Five – Respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a substantive response to the State Bar’s letters and emails of December 16, 2014; January 2, 2015; and February 25, 2015, regarding its investigation of the Thomas matter.

Disbarment is Recommended

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and a recommendation to disbar respondent is appropriate based on the record. 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) respondent's default was properly entered under rule 5.80; and
(4) the factual allegations in the NDC deemed admitted by the entry of respondent's default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite actual 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 will recommend disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Kristin Marie Schuh be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court further 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 and that the costs be 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 Kristin Marie Schuh, State Bar number 241554, 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 by mail. (Rule 5.111(D).)

Dated: June 10, 2016

A handwritten signature in black ink, appearing to read "W. Kearse McGill", written over a horizontal line.

W. KEARSE MCGILL
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 June 10, 2016, 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:

KRISTIN M. SCHUH
7080 HOLLYWOOD BLVD STE 1100
LOS ANGELES, CA 90028

Courtesy copies:

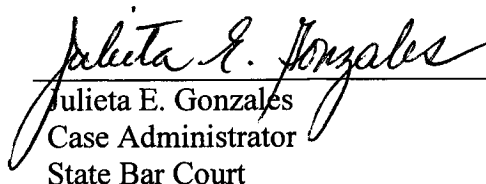
KRISTIN MARIE SCHUH
1003 HANCOCK AVENUE
WEST HOLLYWOOD, CA 90069

KRISTIN MARIE SCHUH
1003 1/2 HANCOCK AVENUE
WEST HOLLYWOOD, CA 90069

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

Murray B. Greenberg, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 10, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court