

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT 845 S. Figueroa Street, 3 rd Floor Los Angeles, CA 90017-2515	FOR CLERK'S USE ONLY: <div style="text-align: right;"> FILED MAY -5 2016 <i>Y/C</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In the Matter of: JANICE L. KUHR, Member No. 141470, A Member of the State Bar	Case No: 15-O-10315-DFM ORDER DENYING STATE BAR'S PETITION FOR DISBARMENT AFTER DEFAULT; VACATING ENTRY OF DEFAULT AND TERMINATING RESPONDENT'S INACTIVE ENROLLMENT; AND GRANTING LEAVE TO AMEND NDC

On August 10, 2015, the State Bar filed and properly served a notice of disciplinary charges (NDC) on Respondent. The NDC contains a single count, alleging that Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct.

On October 2, 2015, after Respondent had failed to file any response to the NDC, the State Bar filed and served a motion for entry of Respondent's default. When Respondent did not file a response to the motion, her default was entered on October 20, 2015. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (e), effective three days after service of the order; and she has remained inactive enrolled since that time.

On April 21, 2016, the court issued an order, noting that no petition for disbarment had yet been filed by the State Bar pursuant to rule 5.85 of the Rules of Procedure of the State Bar and scheduling a status conference to discuss the matter. In response, on April 25, 2015, the State Bar filed a "Notice To Court," stating that it had served a petition for entry of default on April 8, 2016, but that the original copy sent to the State Bar Court for filing had apparently not reached the court. On the same day, the State Bar filed its Petition for Disbarment after Default pursuant to rule 5.85. Respondent's response to the petition is due on May 20, 2016.

Although Respondent's response to the petition is not yet due, the court, having reviewed the petition, recognizes that the petition cannot be granted.

In order for a petition for disbarment under Rule 5.85 to be granted, the rule requires, inter alia, that this court must find that: "The factual allegations deemed admitted in the notice of disciplinary charges or pursuant to the notice of hearing on conviction support a finding that the member violated a statute, rule or court order that would warrant the imposition of discipline." (Emphasis added.) Having reviewed the sparse language of the only count in the NDC, Count One, the court has determined that the factual allegations of the NDC fall short of satisfying this requirement.

Count One reads in its entirety:

Respondent failed to release promptly, after termination on or about April 29, 2013, to Respondent's client, Kaylin Wilson, all of the client's papers and property following the client's request for the client's file on January 12, 2014, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

To find culpability under Rule 3-700(D)(1), it must be established that: (1) the attorney's employment has terminated; (2) the client made a request for the return of the client's papers or property; and (3) the member failed to release "promptly" to the client the requested papers or property. Here, only the first two elements are established by the facts alleged in Count One. With regard to the third element, there are no facts alleged in the NDC that, when deemed to be true, would enable this court to find that Respondent's return of the file was, in fact, not done "promptly." Since this third element is essential to finding a violation of the rule, this court cannot find that the "factual allegations" of the current NDC, even when deemed admitted, support a finding that Respondent violated rule 3-700(D)(1) or any other statute, rule or court order.

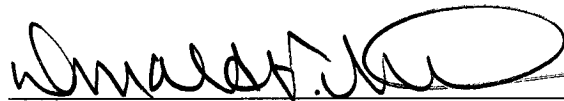
The deficiencies of the NDC can be easily remedied by the filing of an amended NDC, assuming that the actual facts support such an amendment. In the interim, the pending petition cannot be granted.

Rule 5.85 provides that, where the court has determined that any of the requirements of rule 5.85 have not been established with regard to a petition for disbarment, the court must deny the petition, vacate the default, and take other appropriate action to ensure that the matter is promptly resolved. In accordance with that mandate, the court orders as follows:

1. The Petition for Disbarment After Default is DENIED.
2. Leave to amend the existing NDC is hereby GRANTED. Any such amendment must be properly served and filed within twenty (20) days after service of this order. Failure to timely file an amended NDC will result in the proceeding being promptly dismissed by this court. (Rules Proc. of State Bar, rules 5.44 and 5.124.)
3. The October 20, 2015 order, entering Respondent's default and enrolling her inactive under Business and Professions Code section 6007, subdivision (e), is hereby VACATED;
4. If and when an amended NDC is filed and served, Respondent must file a timely response to it pursuant to rule 5.43; and
5. Should Respondent fail to file a timely response to an amended NDC in this proceeding, the State Bar is ordered to file a motion for entry of her default within five (5) days after the deadline has elapsed for that response to have been filed.

IT IS SO ORDERED.

Dated: May 5, 2016.



DONALD F. MILES
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 May 5, 2016, I deposited a true copy of the following document(s):

**ORDER DENYING STATE BAR'S PETITION FOR DISBARMENT AFTER
DEFAULT; VACATING ENTRY OF DEFAULT AND TERMINATING
RESPONDENT'S INACTIVE ENROLLMENT; AND GRANTING LEAVE TO
AMEND 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 Los Angeles, California, addressed as follows:

**JANICE L. KUHR
LAW OFFICE OF JANICE L. KUHR
21922 OTTAWA RD # 36
APPLE VALLEY, CA 92308**

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

WILLIAM TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 5, 2016.



Tammy Cleaver
Case Administrator
State Bar Court