



PUBLIC MATTER

FILED

JUN 07 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 15-O-11503-WKM (15-O-12483;
)	15-O-12561; 15-O-12679;
)	15-O-12729; 15-O-13201)
ROBYN LYNNETTE POOL,)	
Member No. 218837,)	ORDER SETTING ASIDE DEFAULT;
)	FILING PROPOSED RESPONSE TO NDC;
)	AND TERMINATING INVOLUNTARY
A Member of the State Bar.)	INACTIVE ENROLLMENT

This matter is before the court on respondent **ROBYN LYNNETTE POOL'S** May 31, 2016, motion to set aside her default,¹ which the court entered on May 2, 2016. The Office of the Chief Trial Counsel of the State Bar of California (OCTC) opposes respondent's motion.

Even though a respondent attorney's default has been properly entered in a State Bar Court disciplinary proceeding, the respondent may have the default set aside because of "mistake, inadvertence, surprise or excusable neglect." (Rules Proc. of State Bar, rule 5.83(C).) Contrary to the State Bar's contention, respondent is required to establish her mistake, inadvertence, surprise, or excusable neglect only by a preponderance of the evidence. (*In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207, 214.) Moreover, when determining whether respondent has met her burden of proof, the court must resolve all doubts in respondent's favor because the law and the public policy of this state *strongly* favor resolution of matters on the merits. (*Id.* at pp. 214-215, quoting *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 [*Elston* was superseded by statute on another point, see *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 978-980].)

¹ Respondent inaptly titled her motion to set aside default (Rules Proc. of State Bar, rule 5.83(C)) as a motion for relief from default.

The consequences of entering a respondent's default for failing to file a response to the notice of disciplinary charges changed dramatically with the amended Rules of Procedure of the State Bar, which became effective January 1, 2011. Under the new rules, when a respondent's default has been entered for failing to file a response the consequence is most often disbarment regardless of the charges and any compelling mitigation (e.g., 25 years of misconduct free practice). (Rules Proc. of State Bar, rule 5.85.) In that regard, the review department recently made clear that, in light of this dramatic change in the consequences of a default, it will "closely scrutinize orders denying relief from default." (*In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 354.) The review department also recently made clear that, under the new rules, a "hearing judge may require 'very slight' evidence to justify [setting aside a respondent's default], as long as the granting of such relief will not cause prejudice [to the State Bar]. [Citation.]" (*Ibid.*)

OCTC has not identified any resulting prejudice to the State Bar if respondent's default is set aside and this matter proceeds on the merits. Moreover, incurring the ordinary expenses attendant to prosecuting all State Bar Court disciplinary proceedings that are resolved on the merits is not prejudicial. Thus, the court concludes that the State Bar will not be prejudiced if respondent's default is set aside and the matter proceeds on the merits.

Respondent did not deliberately nor intentionally fail to timely file her response to the NDC in response to OCTC's motion for entry of default. Furthermore, respondent's present motion and her participation in other disciplinary proceedings pending against her (e.g., case number 15-O-14484-WKM) establish that respondent has not abandoned her law license. Standing alone, the misconduct alleged in this case would not warrant respondent's disbarment. In light of all the relevant facts and circumstances, including respondent's ongoing mental health issues, respondent's participation in and termination from the State Bar Court's Alternative

Discipline Program, respondent's hospitalization for her mental health issues on about April 5 or 8, 2016, and respondent's in propria persona appearance at and participation in the April 20, 2016, status conference in this matter, respondent's mistaken response in only case number 15-O-14484-WKM without responding in case number 15-O-11503-WKM, and respondent's diligence in promptly filing the present motion seeking to set aside her default, the court finds that granting respondent's motion will advance the ends of justice and that denying her motion will defeat those ends. The court further finds that the entry of respondent's default was the results of respondent's mistake, excusable neglect, or both. In sum, the court finds good cause to grant respondent's motion to set aside the default. (Rules Proc. of State Bar, rule 5.83(H)(1) [court may grant motion to set aside default upon a showing of good cause].)

ORDER

The court orders that (1) respondent Robyn Lynnette Pool's May 31, 2016, motion to set aside the entry of her default is GRANTED for good cause shown, (2) the court's May 2, 2016, entry of respondent's default is SET ASIDE, (3) respondent's proposed response to the notice of disciplinary charges, which is attached to respondent's motion, is FILED as of the date of this order, and (4) respondent's involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (e) under this court's May 2, 2016, order in this proceeding is TERMINATED FORTHWITH.²

Dated: June 6, 2016.


W. KEARSE MCGILL
Judge of the State Bar Court

² 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 Los Angeles, on June 7, 2016, I deposited a true copy of the following document(s):

**ORDER SETTING ASIDE DEFAULT; FILING PROPOSED RESPONSE TO
NDC; AND TERMINATING 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:

**KEVIN P. GERRY
711 N SOLEDAD ST
SANTA BARBARA, CA 93103**

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

WILLIAM S. TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 7, 2016.



Paul Barona
Case Administrator
State Bar Court