



PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

FILED

AUG 04, 2016

P.B.

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

In the Matter of)	Case Nos.: 15-O-12311-WKM (15-O-12423)
)	
AMY LYNN SPENCER,)	
)	DECISION AND ORDER OF INVOLUNTARY
Member No. 248069,)	INACTIVE ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

Respondent Amy Lynn Spencer (respondent) is charged with seven counts of misconduct in two separate client matters. 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 December 15, 2006. She has continuously been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On September 16, 2015, OCTC properly served the NDC on respondent at her membership records address by certified mail, return receipt requested. On the same day, OCTC also sent a courtesy copy of the NDC to respondent at her membership-records address by first-class mail (regular delivery). OCTC filed the NDC on September 17, 2015. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Neither of the two NDCs that were sent to respondent on September 16, 2015, were returned to OCTC as undeliverable or otherwise. However, OCTC also never received a return receipt for the NDC that was served on respondent on September 16, 2015. Thereafter, on October 23, 2015, the assigned Deputy Trial Counsel (DTC) telephoned respondent at her membership records telephone number and left a voicemail message for her. That same day, the DTC also sent a courtesy copy of the NDC to respondent at her membership records email address.³

³ Effective February 1, 2010, every attorney is required to maintain, on the official membership records of the State Bar, a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

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Respondent never responded to the DTC's voicemail message, but on October 27, 2015, respondent responded to the DTC's October 23, 2015, email. Specifically, on October 27, 2015, respondent sent the DTC a reply email in which she acknowledged receiving the DTC's email and courtesy copy of the NDC attached to it. Respondent did not send that reply email from her membership records email address, but from her email address of "amy@knockoutmydebt.com."

On October 27, 2015, the DTC replied to respondent's email. Specifically, the DTC sent a reply email to respondent at "amy@knockoutmydebt.com" in which he aptly advised respondent to promptly file with the State Bar Court and to serve on OCTC a response to the NDC. In that reply email, the DTC also made clear to respondent that the State Bar Court had ordered OCTC to file a motion for the entry of her default by November 13, 2015.

Notwithstanding respondent's actual knowledge of the NDC and of the requirement that she respond to it, respondent failed to file a response to the NDC. Thus, on November 23, 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 sent respondent a courtesy copy of the motion at her membership records email address.

The motion complied with the requirements for a default, including a supporting declaration from the DTC. (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 December 10, 2015. The court properly served the default order on respondent at her membership-records address by certified mail, return receipt requested. The court also sent a courtesy copy of the default order to respondent at her membership records address by first-class mail (regular delivery).

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 under Business and Professions Code section 6007, subdivision (e).⁴ Thereafter, on December 13, 2015, respondent was involuntarily enrolled inactive in accordance with the court's order, and respondent has remained on involuntary inactive enrollment since that time.

On January 6, 2016, both in a voicemail message the DTC left for respondent and in an email the DTC sent to respondent at "amy@knockoutmydebt.com," the DTC stated that respondent's default had been entered and that her disbarment would be sought if she did not move to set aside the default. Nonetheless, 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 March 11, 2016, OCTC filed and served a petition for disbarment on respondent at her membership records address by certified mail, return receipt requested. On the same day, OCTC also sent a courtesy copy of the petition for disbarment to respondent's membership-records address by first-class mail (regular delivery). In early April 2016, the DTC resent his January 6, 2016, email to respondent at "amy@knockoutmydebt.com" and forwarded a copy of his January 6, 2016, email to respondent's membership records email address. In early April 2016, the DTC also sent courtesy copies of the petition for disbarment to respondent's "amy@knockoutmydebt.com" email address and to respondent's membership records email address. Notwithstanding these and other attempts by the DTC to communicate with respondent, respondent did not communicate with the DTC other than in her October 27, 2015, email.

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

As required by rule 5.85(A), OCTC reported in the petition for disbarment that (1) respondent has not contacted OCTC since her default was entered; (2) in addition to the present case, there are two disciplinary investigations 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 May 10, 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 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 [even when a respondent stipulates to his or her culpability, the State Bar Court has an affirmative duty to examine the factual and legal sufficiency of OCTC's case and to find the respondent culpable only of the misconduct that is supported by the factual record].) Of course, when determining whether the admitted factual allegations support a finding of culpability, 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 respondent is culpable of the misconduct charged in five of the seven counts. Therefore,

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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).)

Case Number 15-O-12311 (Meigs Matter)

Count One charges that respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct, which provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Specifically, count one charges that respondent violated rule 3-110(A) “by failing to perform any legal services on her client’s behalf.” Count one, which contains a single sentence comprised of less than 50 words, does not contain sufficient factual allegations to give respondent adequate notice of the charges against her. 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 Likewise, count one does not contain sufficient factual allegations to provide the court “with a proper framework within which to decide the issues raised.” (*In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517, 523.)

Finally, the factual allegations in count one that are admitted by respondent’s default do not support a finding that respondent is culpable of the charged rule 3-110(A) violation. When

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.”

an attorney is charged with violating rule 3-110(A) by performing only meager or no legal services for a client, OCTC must prove that the “respondent acted ‘ “in reckless disregard of a client’s cause” ’ and not merely that respondent acted negligently. [Citation.]” (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950.) In *Brockway*, the Review Department held that the respondent’s most meager and incomplete efforts on his client’s behalf after almost a year constituted such a reckless disregard for the client’s cause because the respondent knew that his client’s need was urgent (i.e., time was of the essence). (*Ibid.*)

In the present case, there are no allegations in count one as to the duration of respondent’s employment (i.e., the time in which she did not perform any legal services for her client). Further, no allegation exists that the client had provided respondent with all the information necessary for respondent to perform the legal services for which she was employed. Therefore, count one is DISMISSED with prejudice.

Count Two – Respondent willfully violated section 6068, subdivision (m) (failing to communicate) by failing to respond to her client’s nine emails and numerous telephone calls containing reasonable status inquires.

Count Three – Respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to four State Bar investigation letters regarding the Meigs matter.

Case Number 15-O-12423 (Larson Matter)

Count four charges that respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct “by failing to perform any legal services on her client’s behalf.” Like count one *ante*, count four does not contain sufficient factual allegations to give respondent adequate notice of the charges against her or to provide the court with a proper framework for deciding the issues. In addition, like in count one *ante*, 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 rule 3-110(A) violation. Therefore, count four is DISMISSED with prejudice.

Count Five – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund \$1,850 in unearned fees to her client Tracy Larson.

Count Six – Respondent willfully violated section 6068, subdivision (m) (failing to communicate) by failing to respond to her client's 28 telephone calls containing reasonable status inquires.

Count Seven – respondent willfully violated section 6068, subdivision (i) by failing to respond to three State Bar investigation letters regarding the Larson matter.

Disbarment will be Recommended

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and that it is appropriate to recommend respondent's disbarment. 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.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent Amy Lynn Spencer be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

The court further recommends that Amy Lynn Spencer be required to make restitution to Tracy Larson in the amount of \$1,850 plus 10 percent interest per year from April 1, 2015. 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 further recommends that respondent be ordered to comply with 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.

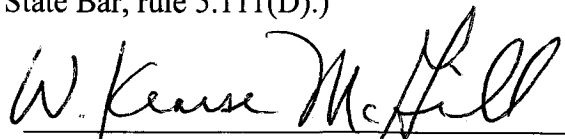
Costs

Finally, the court 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 Amy Lynn Spencer, State Bar number 248069, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: August 3, 2016



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 August 4, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLMENT

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:

AMY L. SPENCER
LAW OFFICES OF AMY L. SPENCER
PO BOX 26131
ANAHEIM, CA 92825

Courtesy copy to:
AMY LYNN SPENCER
2400 E. KATELLA BLVD., 8TH FLOOR
ANAHEIM, CA 92806

- ☒ by email, addressed as follows:

Amy@redding-lawyer.com
Amy@knockoutmydebt.com
Kevin.bucher@calbar.ca.gov

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

RONALD K. BUCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 4, 2016.



Paul Barona
Case Administrator
State Bar Court