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PUBLIC MATTER

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **DAPHNE LORI MACKLIN,** **Member No. 117189,** A Member of the State Bar.	Case Nos.: **15-O-13786-LMA** (15-O-14055; 15-O-14613; 16-O-10164) **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In this matter, respondent Daphne Lori Macklin (Respondent) was charged with twenty counts of misconduct deriving from four correlated matters. Respondent failed to participate either in person or through counsel, and her default was entered. The Office of Chief Trial Counsel of the State Bar of California (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]

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

[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 10, 1984, and has been a member since then.

Procedural Requirements Have Been Satisfied

On March 21, 2016, the State Bar properly filed and served an NDC, in case Nos. 15-O-13786 (15-O-14055; 15-O-14613; 16-O-10164), on Respondent by certified mail, return receipt requested, at her 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 NDC was not returned to the State Bar by the U.S. Postal Service as undeliverable.

In addition, reasonable diligence was used to notify Respondent of this proceeding. The State Bar made several attempts to contact Respondent without success. These efforts included calling Respondent at her membership records telephone number and possible alternative telephone numbers, conducting a LexisNexis search for additional contact information, and sending an email to Respondent at her membership records email address.

Respondent failed to file a response to the NDC. On April 19, 2016, the State Bar filed and properly served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy 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 May 5, 2016. The order entering the default was served on Respondent at her membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled 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 August 9, 2016, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it had contact with Respondent after her default was entered, but has not communicated with her since May 26, 2016;[3] (2) Respondent has no other disciplinary matters pending; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments 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 September 7, 2016.

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 as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

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[3] On May 25, 2016, the State Bar received a telephone call from Respondent. Respondent stated she was looking for an attorney to represent her. On May 26, 2016, Respondent and the State Bar spoke again. Respondent was advised that her default had been entered and that she would need to file a motion to set aside the default. Respondent was also told that she was on inactive status and could not practice law.

Case Number 15-O-13786 – The Solla Matter

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to initiate discovery and failing to respond to the opposing party's discovery requests, motions to compel discovery, and motion for sanctions and to strike.

Count Two – Respondent willfully violated rule 3-700(A)(1) of the Rules of Professional Conduct (withdrawal from employment without court permission) by effectively withdrawing from representation without the court's permission.

Count Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating her employment without notice to her client.

Count Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries) by failing to promptly respond to numerous reasonable client status inquiries.

Count Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments), by failing to inform her client that: (1) the opposing party served discovery; (2) Respondent was placed on inactive enrollment; (3) a trial date had been scheduled; (4) the opposing party filed a motion to compel discovery that Respondent did not oppose; (5) the motion to compel discovery was granted; (6) the opposing party scheduled depositions for Respondent's client and his wife; (7) the opposing party filed a motion to strike the complaint; (8) the court made a further order compelling discovery; and (9) Respondent stopped pursuing the case after on or about October 29, 2014.

Count Six – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – unauthorized practice) by holding herself out as entitled to practice law and actually practicing law when she was not an active member of the State Bar, in willful violation of Business and Professions Code sections 6125 and 6126.

Count Seven – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by holding herself out as entitled to practice law and actually practicing law when she was not an active member of the State Bar.

Count Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to respond to the allegations in a disciplinary investigation after being contacted by the State Bar.

Case Number 15-O-14055 – The McFarland Matter

Count Nine – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to file a case management statement as ordered by the court and failing to appear at a court conference.

Count Ten – Respondent willfully violated rule 3-700(A)(1) of the Rules of Professional Conduct (withdrawal from employment without court permission) by effectively withdrawing from representation without the court's permission.

Count Eleven – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by terminating her employment without notice to her client.

Count Twelve – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to respond to client inquiries) by failing to promptly respond to numerous reasonable client status inquiries.

Count Thirteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate significant developments), by failing to inform her client that Respondent stopped working on the client's case in or about October 2014.

Count Fourteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to respond to the allegations in a disciplinary investigation after being contacted by the State Bar.

Case Number 16-O-10164 – The State Bar Investigation Matter

Count Fifteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to respond to the allegations in a disciplinary investigation after being contacted by the State Bar.

Case Number 15-O-14613 – The Coker Matter

Count Sixteen – Respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – unauthorized practice) by holding herself out as entitled to practice law when she was not an active member of the State Bar, in willful violation of Business and Professions Code sections 6125 and 6126.

Count Seventeen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by holding herself out as entitled to practice law and actually practicing law when she was not an active member of the State Bar.

Count Eighteen – Respondent willfully violated rule 3-700(A)(1) of the Rules of Professional Conduct (withdrawal from employment without court permission) by effectively withdrawing from representation without the court's permission.

Count Nineteen – Respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with an August 18, 2015 order in *People v. Coker*, Stanislaus County Superior Court case No. 1468109.

Count Twenty – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failure to cooperate with a disciplinary investigation) by failing to respond to the allegations in a disciplinary investigation after being contacted by the State Bar.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) 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 adequate notice of the proceedings prior to 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.

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 Daphne Lori Macklin 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 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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Daphne Lori Macklin, State Bar number 117189, 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. (Rule 5.111(D).)

Dated: September 28, 2016

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 September 28, 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 San Francisco, California, addressed as follows:

DAPHNE LORI MACKLIN
PO BOX 661702
SACRAMENTO, CA 95866

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

DONALD R. STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 28, 2016.

Mazie Yip
Case Administrator
State Bar Court