

PUBLIC MATTER

FILED

JUL 28 2017

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 15-O-14453; 16-O-11934
)	Cons.-YDR
MARY FRANCES PREVOST,)	
)	DECISION AND ORDER OF
A Member of the State Bar, No. 157782.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

Respondent Mary Frances Prevost (Respondent) is charged with six ethical violations in two client matters. Respondent failed to appear at trial, and her default was entered. Thereafter, the Office of Chief Trial Counsel (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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and if the attorney fails to have the default set aside or vacated within 45 days, then OCTC will file a petition requesting that the State Bar Court recommend the attorney's disbarment.²

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¹ Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

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 all of 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 the practice of law in California on March 23, 1992, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On May 11, 2016, OCTC filed and properly served a notice of disciplinary charges (NDC) on Respondent in case number 15-O-14453. OCTC served the NDC on Respondent at her membership records address by certified mail, return receipt requested. Respondent filed an answer to the NDC on June 6, 2016. On October 18, 2016, OCTC filed and properly served a second NDC on Respondent in case number 16-O-11934. OCTC served the NDC on Respondent at her membership records address by certified mail, return receipt requested. Respondent filed an answer to the second NDC on November 14, 2016.

On December 19, 2016, the court held a status conference that Respondent attended. The court set the trial for three days, commencing on February 15, 2017, at 10:00 a.m. On December 21, 2016, the court filed an order setting forth the forgoing trial date in this matter. The order was properly served on Respondent at Respondent's membership records address by first-class mail, postage prepaid.

Prior to trial, on February 9, 2017, Respondent filed a motion to disqualify the undersigned judge.³ On February 10, 2017, Judge Miles denied the motion. On February 14, 2017, Respondent filed a "Motion to Stay Trial and Mandate the Hearing Department Produce

³ On December 5, 2016, Respondent filed her first motion to disqualify Judge Yvette Roland. On December 8, 2016, Judge Donald Miles, Supervising Hearing Department Judge denied the motion.

Respondent's Copy of Her Motion to Recuse Judge Yvette Roland and Accompanying Request for Judicial Notice and Exhibits." On the same date, the Review Department filed an order providing, in part, that Respondent had not filed a request for order shortening time, that "Any request to stay proceedings must be presented to the Hearing Department in the first instance," and ordering OCTC to file a response to the motion within five days. Thereafter, on March 3, 2017, the Review Department denied the February 14, 2017 motion to stay trial.

Respondent failed to appear for trial on February 15, 2017; however, OCTC was in attendance. The court entered Respondent's default in an order filed on February 15, 2017. The order was properly served on Respondent at Respondent's membership records address by certified mail, return receipt requested. (Rule 5.81(B).) The order notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e),⁴ effective three days after service of the order, and Respondent has remained inactively enrolled since that time.

On April 5, 2017, Respondent filed a motion for relief from default pursuant to rule 5.83(B) or in the alternative, rule 5.83(C). OCTC filed an opposition to the motion on April 13, 2017.

While the motion for relief from default was pending, on April 20, 2017, OCTC filed and properly served the petition for disbarment on Respondent at her membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) OCTC has had contact with Respondent since the default was entered – Respondent sent OCTC pleadings, notified OCTC about her new mailing address, and requested that OCTC stipulate to a relief from default;⁵

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

⁵ On February 23, 2017, Respondent provided OCTC with her new email address and requested that OCTC stipulate to a relief from default. OCTC indicated that it would not

(2) there are two disciplinary matters or disciplinary investigations pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has not paid out any claims resulting from Respondent's conduct.

Respondent did not file a timely response to the petition for disbarment. On May 3, 2017, the court denied Respondent's motion for relief from default for lack of good cause shown. On May 22, 2017, Respondent requested by email "an ex parte to obtain a Court order for approval of a late filing before default is entered in Petition for Disbarment." Thereafter, the court set a status conference for June 9, 2017. The case was submitted for decision on May 24, 2017.

During the June 9, 2017 status conference, Respondent clarified that her ex parte request sought permission to submit a late response to the petition for disbarment. The court granted Respondent's request to submit a late response to the petition. Respondent's response was due by June 13, 2017.

Respondent did not file her response to the petition for disbarment by June 13, 2017. Instead, on June 14, 2017, Respondent filed a "motion for reconsideration from denial of request from default; request that Judge Roland comply with the rules of ethics and recuse herself; stay of petition for disbarment and extend briefing on petition for disbarment pending resolution of the instant motion." OCTC filed its opposition to the motion on June 20, 2017. On June 21, 2017, the court vacated its May 24, 2017 order submitting the case for decision, denied Respondent's motion for reconsideration, and resubmitted the matter for decision.

On July 12, 2017, the court vacated the June 21, 2017, submission date of this matter and reopened the record because OCTC failed to file certified copies of Respondent's entire prior

stipulate to set aside her default. On April 3, 2017, OCTC received a copy of Respondent's motion for relief from default.

records of discipline. On July 17, 2017, OCTC filed certified copies of Respondent's entire prior records of discipline. The case was resubmitted for decision on July 17, 2017.

Prior Record of Discipline

Respondent has two prior discipline records.⁶ In the first discipline, on September 23, 2015, the Supreme Court filed an order suspending Respondent for one year, stayed, and placed her on probation for two years with conditions. Respondent was culpable of three ethical violations in a single client matter. She failed to return unearned fees, failed to respond to her client's reasonable status inquiries, and failed to cooperate in a disciplinary investigation.

In the second discipline, on February 10, 2017, the Supreme Court filed an order suspending Respondent for two years, stayed, and placed her on probation for three years with conditions, including a six-month period of actual suspension. Respondent's misconduct involved two matters. In the first matter, Respondent engaged in the unauthorized practice of law (UPL), the UPL involved moral turpitude, and Respondent failed to cooperate in a disciplinary investigation. In the second matter, Respondent failed to perform with competence and failed to inform her client of significant developments.

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).)

Case No. 15-O-14453 (The Li Matter)

Count One – The court does not find Respondent culpable of willfully violating rule

⁶ The court admits into evidence the certified copy of Respondent's prior records of discipline filed by OCTC on July 17, 2017.

3-110(A) of the Rules of Professional Conduct (failing to perform with competence) as the facts deemed admitted as a result of the entry of Respondent's default do not support a finding by clear and convincing evidence that Respondent intentionally, repeatedly, or recklessly failed to perform legal services with competence.

Count Two - Respondent willfully violated section 6068, subdivision (m) (failure to inform client of significant developments), by failing to inform her client that: (1) a Department of Motor Vehicles (DMV) administrative hearing had been scheduled on her client's behalf; (2) her client had a right to attend the DMV administrative proceedings; (3) Respondent sent a fax to the DMV requesting a continuance of the DMV hearing; and (4) Respondent failed to attend the DMV hearing on behalf of her client.

Case No. 16-O-11934 (The Haddox Matter)

Count One - Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to deposit client funds in trust) by receiving \$2,500 for the benefit of a client and failing to deposit the funds in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import.

Count Two - Respondent willfully violated section 6106 (moral turpitude - misappropriation) by dishonestly or grossly negligently misappropriating for Respondent's own purposes, \$2,500 provided to Respondent for her client's advance costs.

Count Three - Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay client funds) by failing to promptly pay her client, as her client requested, any portion of the \$2,500 in advance costs held on her client's behalf.

Count Four - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render an accounting) by failing to provide her client with an accounting of the \$2,500 advance costs that Respondent received from her client.

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 actual notice of this proceeding and was properly given notice of the trial date before the entry of the default;
- (3) the default was properly entered under rule 5.81; 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 actual notice and opportunity, Respondent failed to appear for trial in this disciplinary proceeding. Before granting this petition for disbarment, the court considered what, if any, relief was appropriate under the default rules and has determined that no relief was appropriate; that the petition for disbarment should be granted; and that Respondent's disbarment should be recommended as the appropriate discipline in this matter. As set forth in the rules, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Mary Frances Prevost, State Bar number 157782, be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to make restitution to Judith Haddox in the amount of \$2,500 plus 10 percent interest per year from December 3, 2012. 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 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.

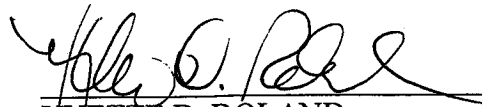
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 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 Mary Frances Prevost, State Bar number 157782, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: July 27, 2017


YVETTE D. ROLAND
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 July 28, 2017, 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:

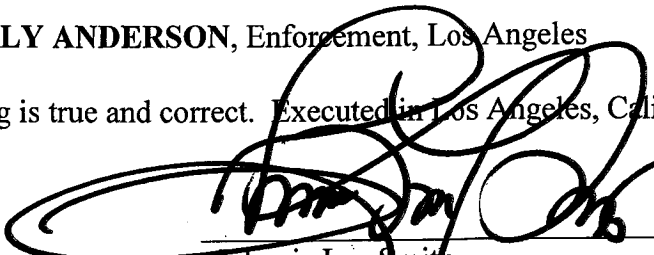
**MARY F. PREVOST
LAW OFC MARY FRANCES PREVOST
700 W "E" ST
SAN DIEGO, CA 92101**

**MARY FRANCES PREVOST
187 CALLE MAGDALENA STE 104
ENCINITAS, CA 92024**

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

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 28, 2017.



Johnnie Lee Smith
Case Administrator
State Bar Court