

FILED

JUL 12 2017

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 16-N-11812-YDR
)	
SUZANNE KAE BIELY,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 158643.)	ENROLLMENT
)	

Respondent Suzanne Kae Biely (Respondent) is charged with two ethical violations.

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

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 June 8, 1992, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On November 7, 2016, OCTC filed a notice of disciplinary charges (NDC) in case number 16-N-11812. On November 23, 2016, OCTC properly served the NDC on Respondent at her membership records address by certified mail, return receipt requested. Respondent filed an answer to the NDC on December 13, 2016.

On December 12, 2016, the court held a status conference that Respondent attended telephonically. The court set the trial for one day, commencing on March 7, 2017, at 10:00 a.m. On December 16, 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.

Respondent failed to appear for trial on March 7, 2017; however, OCTC was in attendance. The court entered Respondent's default in an order filed on March 7, 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),³ effective three days after service of the order, and Respondent has remained inactively enrolled since that time.

Respondent did not timely seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) On May 17, 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 no contact with Respondent since the default was entered; (2) there are no disciplinary matters or disciplinary investigations pending against Respondent; (3) Respondent has one prior record of discipline; and (4) the Client Security Fund has not paid out any claims 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 June 20, 2017.

Prior Record of Discipline

Respondent has one prior discipline record.⁴ On October 19, 2015, the Supreme Court filed an order suspending Respondent for two years, stayed, and placed her on probation for two years with conditions, including a minimum two-year actual suspension and until she provides proof of her rehabilitation, fitness to practice and learning and ability in the general law. Respondent stipulated to misconduct in two client matters. In the first matter, Respondent failed to perform legal services with competence, failed to respond to her clients' reasonable status inquiries, and failed to render an accounting for the funds she received from her clients. In the second matter, while acting as an executor, Respondent disbursed assets of an estate without prior court order as required by the Probate Code; disbursed funds from an estate to herself as

³ All further references to sections are to the Business and Professions Code.

⁴ The court admits into evidence the certified copy of Respondent's prior record of discipline attached to the May 17, 2017 petition for disbarment.

payment for legal services without a court order; and committed an act of moral turpitude by disbursing \$147,077.40 to herself from an estate as advances for attorney's fees and costs without receiving prior authorization, in violation of the Probate Code and Rules of Court.

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 Number 16-N-11812

Count One - Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing, with the clerk of the State Bar Court, by December 28, 2015, a declaration of compliance as required by California Rules of Court, rule 9.20 and in conformity with the requirements of rule 9.20(c), as required by Supreme Court order number S228512.

Count Two - By failing to contact the Office of Probation by December 18, 2015, to schedule a meeting with her assigned probation deputy, and failing to timely submit a quarterly report, Respondent failed to comply with certain conditions attached to the disciplinary probation in State Bar case numbers 12-O-14351 and 12-O-15870, in willful violation of section 6068, subdivision (k).

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. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Suzanne Kae Biely, State Bar number 158643, 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.

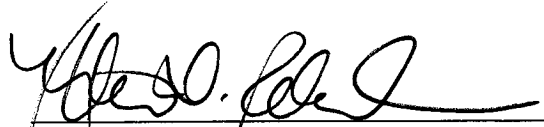
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 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 Suzanne Kae Biely, State Bar number 158643, 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 11, 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 12, 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:

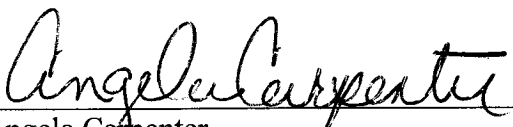
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SUZANNE K. BIELY
6600 N ST ANDREWS DR
TUCSON, AZ 85718

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

Jamie J. Kim, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 12, 2017.



Angela Carpenter
Case Administrator
State Bar Court