

# PUBLIC MATTER

FILED

APR 19 2017

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 16-N-12105-DFM
	)	
LYNDSEY MICHELLE HELLER,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 188234.	)	ENROLLMENT
	)	

Respondent Lyndsey Michelle Heller (Respondent) was charged with wilfully violating California Rules of Court, rule 9.20. She failed to participate in this proceeding, 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.<sup>1</sup>

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.<sup>2</sup>

<sup>1</sup> Unless otherwise indicated, all references to rule(s) are to this source.

<sup>2</sup> 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**

### **Jurisdiction**

Respondent was admitted to practice law in California on June 5, 1997, and has been a member since then.

### **Procedural Requirements Have Been Satisfied**

On July 27, 2016, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at an address in Carlsbad, California (the Carlsbad address), which on that date was the address shown as her membership records address on the official membership records of the State Bar. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On August 19, 2016, the NDC was returned to the State Bar.

On July 28, 2016, Respondent changed her official membership records address to an address in Encinitas, California (the Encinitas address). The Encinitas address remained Respondent's official membership records address from July 28, 2016, through September 14, 2016.

On August 24, 2016, the State Bar again served the NDC on Respondent, this time by by certified mail, return receipt requested, and first-class mail at the Encinitas address. On September 2, 2016, both copies of these mailings were returned to the State Bar.

On September 6, 2016, the State Bar Court held an Initial Status Conference in this matter. Respondent appeared telephonically at that status conference. During the status conference, the court ordered the State Bar to serve Respondent with a copy of the NDC at the

Carlsbad address, the address at which Respondent indicated she should be served. The court further ordered to Respondent file her response to the NDC on or before September 20, 2016. Finally, the court ordered the State Bar to file a motion for entry of Respondent's default on or before September 26, 2016, if Respondent failed to timely file a response to the NDC.

On September 6, 2016, the State Bar served Respondent with the NDC via first class and certified mail at the Carlsbad address. The State Bar also served Respondent with the NDC at her official membership records email address. These service efforts were not returned to the State Bar.

Despite having actual knowledge of this matter, Respondent failed to file a response to the NDC by September 20, 2016, as ordered by this court. Consequently, on September 21, 2016, the State Bar properly served and filed 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 assigned deputy trial counsel (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 still did not file a response to the motion, and her default was entered on October 17, 2016. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time. The order entering the default and enrolling Respondent inactive was served on Respondent at her membership records address by certified mail, return receipt requested and by first-class mail, postage prepaid.

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 February 24, 2017, the State Bar

filed and properly served on Respondent its petition for disbarment after default<sup>3</sup>. As required by rule 5.85(A), the State Bar reported in the petition that: (1) “[s]ince the entry of default, the State Bar has received the following contacts from Respondent: October 13, 2016, the State Bar received an email from Respondent. . . ;”<sup>4</sup> (2) there is one confidential matter pending against Respondent; (3) Respondent has a record of prior discipline; and (4) the Client Security Fund has paid out claims as a result of Respondent’s misconduct. 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 April 4, 2017

### **Prior Record of Discipline**

Respondent has two prior records of discipline.<sup>5</sup> Pursuant to an order of the Supreme Court filed on April 11, 2014, Respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for two years subject to certain probation conditions, including that she be suspended for the first 60 days of probation. Respondent had stipulated in the matter that she improperly collected advanced fees for loan modification

---

<sup>3</sup> Although on February 24, 2017, the State Bar filed and properly served a disbarment petition in this matter, the petition did not contain an authenticated/certified copy of Respondent’s prior record of discipline, as required by rule 5.85(B). Therefore, on March 2, 2017, the court filed and properly served on the parties an “Order Directing the State Bar to Provide Authenticated Copy of Prior Record of Discipline,” within five days of service of its order.

<sup>4</sup> The DTC’s statement that the State Bar received a communication from Respondent “[s]ince the entry of default” is incorrect. As the DTC stated in her declaration, it was on October 13, 2016, i.e., four days *prior to* the entry of default, that the State Bar received Respondent’s email stating that she was under a doctor’s care and unable to deal with any legal matters. According to the DTC’s declaration, Respondent attached a doctor’s note to the email. However, the note did not mention that Respondent was unable to deal with legal matters. The DTC also stated in her declaration that Respondent indicated that she would not answer any further telephone calls or open any further mail or email from the State Bar.

<sup>5</sup> The court admits into evidence the “Authenticated Copy of Respondent’s Prior Record of Discipline,” which was properly served on Respondent by certified mail, return receipt requested, on March 6, 2017, and filed with this court on March 7, 2017.

services (four counts), failed to perform legal services with competence (two counts), and engaged in the unauthorized practice of law in another jurisdiction (one count).

Pursuant to an order of the Supreme Court filed on December 16, 2015, the Supreme Court, among other things, revoked Respondent's probation and suspended her from the practice of law for a minimum of one year and until she pays specified restitution and submits proof thereof to the State Bar's Office of Probation in Los Angeles; and, if she remains suspended for two years or more as a result of failing to pay restitution, Respondent must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before the suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).

#### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a 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-12105 (Rule 9.20 Compliance Matter)**

Respondent wilfully violated rule 9.20 of the California Rules of Court by failing to file a declaration of compliance with rule 9.20, in conformity with the requirements of rule 9.20(c), with the clerk of the State Bar Court by February 24, 2016, as required by Supreme Court order number S216208.

#### **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) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of her default, and Respondent had actual notice of the proceeding;
- (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 actual and 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 **Lyndsey Michelle Heller**, State Bar number 188234, 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 **Lyndsey Michelle Heller**, State Bar number 188234, 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: April 19, 2017

  
DONALD F. MILES  
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 April 19, 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:

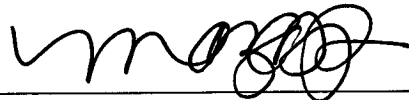
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LYNDSEY MICHELLE HELLER  
6831 XANA WAY  
CARLSBAD, CA 92009 - 6031

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

ELIZABETH G. STINE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 19, 2017.



---

Mazie Yip  
Case Administrator  
State Bar Court