

PUBLIC MATTER

FILED

AUG 10 2017

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos. 16-O-14108-PEM (16-O-11805)
	)	
MARY LYNN WYATT,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 165804.	)	ENROLLMENT
_____	)	

Respondent **Mary Lynn Wyatt** (respondent) was charged with 16 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> She failed to appear at the trial of this case and her default was entered. The Office of Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>2</sup>

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 the attorney fails to have the default set aside or vacated

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<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.



within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>3</sup>

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 California on September 29, 1993, and has been a member since then.

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

On December 14, 2016, the State Bar properly filed and served a notice of disciplinary charges (NDC) on respondent. The NDC notified respondent that her failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed a response to the NDC on January 23, 2017.

At a status conference on January 23, 2017, the trial was set to start on April 11, 2017. The January 23, 2017 order setting the trial date was served on respondent at her membership records address by first-class mail, postage paid. (Rule 5.81(A).)

On April 11, 2017, the State Bar appeared for trial but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed April 11, 2017. 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 section 6007, subdivision (e),

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<sup>3</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).)

effective three days after service of the order, and she has remained inactive enrolled since that time.

Respondent did not 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 June 2, 2017, the State Bar properly filed and served the petition for disbarment on respondent at her official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since her default was entered; (2) there is one investigation matter pending against respondent; (3) respondent has one record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct, but there is one claim pending.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on July 5, 2017.

#### **Prior Record of Discipline**

Respondent has one prior record of discipline. Pursuant to a Supreme Court order filed on April 4, 2008, respondent was suspended for one year and until she makes restitution, the execution of which was stayed, and placed on probation for two years. Respondent committed misconduct in one matter, including failure to communicate, improper withdrawal from employment, and failure to cooperate with a State Bar investigation.

#### **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. 16-O-14108 (Jenkins Matter)**

Count 1 – 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 bankruptcy petition on her client's behalf.

Count 2 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to respond to her client's multiple status inquiries.

Count 3 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to inform her client that she had relocated and changed her telephone number.

Count 4 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to deposit the \$306 for the bankruptcy court filing fee received for the benefit of the client, Gary Jenkins, in a client trust account.

Count 5 – Respondent willfully violated section 6106 (moral turpitude, dishonesty, or corruption) by misappropriating \$306 on October 8, 2014, which the client was entitled to receive.

Count 6 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund any part of the \$800 in unearned fees upon her termination of employment on May 1, 2016.

Count 7 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide an accounting regarding the \$1,106 funds (\$800 + \$306) received from the client.

Count 8 – Respondent willfully violated section 6106 (moral turpitude, dishonesty, or corruption) by stating to the client that she had filed a bankruptcy petition on her client's behalf when she knew that the statement was false.

Count 9 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar's July 27, August 23, and September 7, 2016 letters.

**Case No. 16-O-11805 (Parker Matter)**

Count 10 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to complete her client's family court litigation matter.

Count 11 – Respondent willfully violated section 6068, subdivision (m), by failing to respond to her client's multiple status inquiries.

Count 12 – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing to promptly release to her client, Jeremisha Parker, upon the client's request the client's property and papers.

Count 13 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund any part of the \$3,500 in unearned fees upon her termination of employment on November 25, 2015.

Count 14 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide an accounting regarding the \$3,500 advanced fees.

Count 15 – Respondent willfully violated section 6106 by stating to the client that she had submitted a request for a court date when she knew that the statement was false.

Count 16 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's May 9, July 27, and September 21, 2015 letters.

### **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 had adequate notice of the trial date prior to the entry of her default.
- (3) The default was properly entered under rule 5.81.
- (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.
- (5) Despite adequate notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding.

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

### **RECOMMENDATIONS**

#### **Disbarment**

The court recommends that respondent **Mary Lynn Wyatt**, State Bar number 165804, 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 the following payees:

- (1) Gary Jenkins in the amount of \$1,106 plus 10 percent interest per year from May 1, 2016; and

- (2) Jeremisha Parker in the amount of \$3,500 plus 10 percent interest per year from November 25, 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 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 **Mary Lynn Wyatt**, State Bar number 165804, 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: August 10, 2017

  
PAT McELROY  
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 August 10, 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 San Francisco, California, addressed as follows:
- MARY L. WYATT  
MARY L. WYATT, ATTORNEY  
907 S CARSON ST UNIT 17  
CARSON CITY, NV 89701 - 5203
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Carla L. Cheung, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 10, 2017.

  
George Hue  
Case Administrator  
State Bar Court