

# 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. 16-O-14395-CV
	)	
YEN HOANG THI NGUYEN,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 214529.	)	ENROLLMENT
	)	

Respondent Yen Hoang Thi Nguyen (Respondent) was charged with five counts of misconduct involving one client matter. Even though Respondent had notice of the trial date, she failed to appear at the trial, and her default was entered. Thereafter, the State Bar of California, 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>1</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 if the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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

<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 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 August 31, 2001, and has been a member of the State Bar since then.

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

On December 21, 2016, the State Bar filed and properly served a NDC on Respondent by certified mail, return receipt requested, at her then membership records address. The NDC was also sent to Respondent by U.S. mail on that same date. Respondent filed a response to the NDC on January 25, 2017.

Respondent participated in-person at a status conference on January 25, 2017. On January 26, 2017, the court filed an order setting the trial for 10:00 a.m. on April 18, 2017. The order setting the trial was properly served by first-class mail, postage prepaid, to Respondent at the address in her response to the NDC.<sup>3</sup> (Rule 5.81(A).)

The State Bar appeared for trial on April 18, 2017, but Respondent did not. The court entered Respondent's default in an order filed on April 18, 2017. The order was properly served on Respondent by certified mail, return receipt requested, at Respondent's then membership records address. (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), effective three days after service of the order, and she has remained inactively

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<sup>3</sup> This address was Respondent's membership records address at that time.

enrolled since that time. The order was returned to the State Bar Court by the U.S. Postal Service as unclaimed and unable to be forwarded.

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 9, 2017, the State Bar properly filed and served a petition for disbarment on Respondent.<sup>4</sup> As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact with Respondent since her default was entered; (2) there are other investigations and disciplinary charges pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) as of June 7, 2017, 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 her default. The case was submitted for decision on July 7, 2017.

### **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-O-14395 (La 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 prepare and file an order after hearing on August 28 and October 22, 2014, and by failing to prosecute a dissolution of marriage on her client's behalf.

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<sup>4</sup> The petition for disbarment was served by certified mail, return receipt requested, to respondent at her then membership records address.

Count Two – Respondent willfully violated rule 3-700(D)(1) (failure to promptly release client papers/property) by failing to promptly release to her client all the client's papers and property following the client's September 1, 2015, request for the client's file.

Count Three – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (maintain records of client property/render appropriate accounts) by failing, upon her client's request on February 10, 2016, to render an appropriate accounting to her client of the \$4,200 advanced fees Respondent received.

Count Four – Respondent willfully violated section 6068, subdivision (m) (failure to communicate), by failing to respond promptly to eight status inquiries made by her client between June 29, 2015, and January 26, 2016, which Respondent received in a matter in which she had agreed to provide legal services.

Count Five – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate/participate in disciplinary investigation or regulatory/disciplinary proceeding), by failing to provide a substantive response to two letters from the State Bar which she received that requested her response to allegations of misconduct being investigated in this matter.

**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 adequate notice of the trial date prior to entry of her 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 adequate 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 Yen Hoang Thi Nguyen 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**

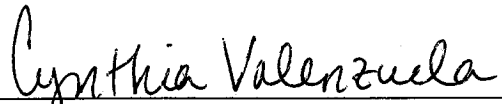
In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Yen Hoang Thi Nguyen, State Bar Number 214529, be involuntarily enrolled as

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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: July 28, 2017

  
CYNTHIA VALENZUELA  
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:

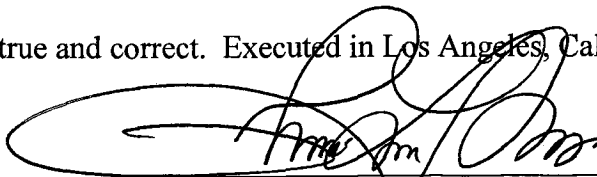
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**YEN H. NGUYEN  
ATTORNEY AT LAW  
951 BALBOA DR  
ARCADIA, CA 91007 - 6404**

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

**SHATAKA SHORES-BROOKS**, 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