



PUBLIC MATTER

FILED

JUN 26 2017

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 16-O-16952-LMA
)	
)	DECISION AND ORDER OF
ALICE BROWN TRAEG,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	
<u>A Member of the State Bar, No. 79823.</u>)	

Respondent Alice Brown Traeg (Respondent) is charged with one count of violating her duty, under Business and Professions Code section 6068, subdivision (k), to comply with all the conditions of any disciplinary probation imposed on her. Specifically, Respondent is charged with five violations of the conditions of the two-year disciplinary probation that the Supreme Court imposed on her in May 2016. Respondent failed to participate in this proceeding either in person or through counsel, and her default was entered. Thereafter, the State Bar of California's 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.¹

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 if the attorney fails to have the default set aside or vacated within 90 days,

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

the State Bar will file a petition requesting that the State Bar Court recommend the attorney's disbarment.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

Respondent was admitted to the practice of law in this state on June 23, 1978, and has been a member of the State Bar of California since that time.

Procedural Requirements Have Been Satisfied

On November 28, 2016, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's membership-records address. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41(B)(3).) The State Bar did not receive a return receipt for the NDC from the United States Postal Service (Postal Service).

Courtesy copies of the NDC were emailed to Respondent both at an email address for Respondent that is in the State Bar's case file in this matter and at Respondent's membership-records email address.³ In addition, the assigned Deputy Trial Counsel (DTC) attempted to contact Respondent by telephone both at Respondent's membership-records telephone number and at an alternative telephone number that the State Bar has for Respondent. The records of the State Bar's Office of Probation contain the following notes summarizing a voicemail message

² If the court determines that any due process requirements is not satisfied, including adequate notice to the attorney, it will deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

³ Effective February 1, 2010, all attorneys are required to maintain a current email address on record with the State Bar to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

that Respondent left for the Office of Probation on June 29, 2016: "I am not going to schedule prb. hearing. I am finished w/Bar. Not going to pay dues. I'm finished."

Thereafter, Respondent failed to file a response to the NDC. On January 9, 2017, the State Bar filed and properly served a motion for entry of default on Respondent at her membership-records address by certified mail, return receipt requested. The motion complied with the requirements for a default, including a supporting declaration from the 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 did not file a response to the NDC or to the motion for entry of default, and the court entered her default on January 25, 2017. The court properly served the default order on Respondent at her membership-records address by certified mail, return receipt requested. In the default order, Respondent was again advised that, if she did not timely move to set aside her default, the court would recommend her disbarment.

In the default order, the court also ordered that Respondent be involuntarily enrolled as an inactive member of the State Bar of California in accordance with Business and Professions Code section 6007, subdivision (e). Thereafter, on January 28, 2017, Respondent was involuntarily enrolled inactive, and she has been involuntarily enrolled inactive under the court's January 25, 2017, order since that time.

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].) Thus, on May 8, 2017, the State Bar filed and properly served a petition for disbarment on Respondent at her membership-records address by certified mail, return receipt requested.

As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent has not contacted the State Bar since her default was entered on January 25, 2017; (2) there are no

other charges or investigations pending against Respondent; (3) Respondent has one prior record of discipline; and (4) no Client Security Fund payments have been made due to 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 June 5, 2017.

Prior Record of Discipline

Respondent has one prior record of discipline for misconduct she committed in about 2013. On May 19, 2016, the Supreme Court filed an order in case number S233377 (State Bar Court case number 13-O-12373, etc.), styled *In re Alice Brown Traeg on Discipline*, placing Respondent on one year's stayed suspension and two years' probation on conditions, including a 30-day suspension (*Traeg I*).⁴ The Supreme Court imposed that discipline on Respondent after Respondent stipulated to culpability on the following six counts of misconduct involving two separate client matters: one count of failure to perform legal services competently; one count of failing to adequately communicate; one count of failing to return the client's file; one count of violating court orders; and two counts of failing to cooperate in a disciplinary investigation. In addition, Respondent stipulated to both multiple-acts and harm-to-administration-of-justice aggravation. In mitigation, Respondent had practiced law for 35 years without a prior record of discipline and she cooperated with the State Bar.

The Factual Allegations Deemed Admitted by Default Warrant the Imposition of Discipline

Under Business and Professions Code section 6088 and rule 5.82, the factual allegations set forth in the NDC are deemed admitted by the entry of Respondent's default. As set forth in greater detail *post*, the admitted factual allegations support a finding that Respondent is culpable of the charged misconduct. Therefore, the factual allegations in the NDC admitted by default

⁴ The court admits into evidence the certified copy of Respondent's prior record of discipline, which is attached as exhibit 1 to the State Bar's May 8, 2017, petition for disbarment.

“support a finding that [Respondent] violated a statute, rule or court order that would warrant the imposition of discipline.” (Rule 5.85(F)(1)(d).)

Case Number 16-O-16952 (Probation Violation Matter)

Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by failing to comply with all conditions (specifically, meet with assigned probation deputy, submit medical waiver, obtain mental and physical evaluations, submit quarterly reports, and submit mental health reports) of the two-year disciplinary probation that the Supreme Court imposed on her in its May 19, 2016, order in *Traeg I*.

Disbarment is Recommended

In light of the foregoing, the court finds 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;
- (3) Respondent’s 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 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.

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RECOMMENDATIONS

Disbarment

The court recommends that respondent Alice Brown Traeg 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 further 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 Alice Brown Traeg, State Bar number 79823, 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 by mail. (Rule 5.111(D).)

Dated: June 26, 2017.



LUCY ARMENDARIZ
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 June 26, 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:

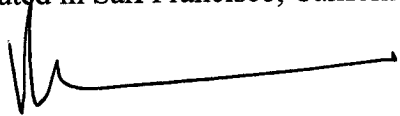
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ALICE B. TRAEG
LAW OFFICES OF ALICE BROWN
TRAEG
1849 CHESTNUT ST APT 1
SAN FRANCISCO, CA 94123

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

Lauren M. Williams, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 26, 2017.



Vincent Au
Case Administrator
State Bar Court