

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **08-O-11447-PEM**  
 ) 10-O-10682 (10-O-11130;  
**JAMIE LEIGH HARLEY,** ) 11-O-16289; 12-O-13373;  
 ) 12-O-17480); 10-N-09881 (Cons.)  
**Member No. 112320,** )  
 ) **DECISION AND ORDER OF**  
A Member of the State Bar. ) **INVOLUNTARY INACTIVE**  
 ) **ENROLLMENT**

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In this matter, respondent Jamie Leigh Harley was charged with fifteen counts of misconduct stemming from seven separate matters. She failed to appear at the trial of this case and her default was entered. The Office of the 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 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 within 90 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 references to rules 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(E)(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 practice law in this state on December 12, 1983, and has been a member since then.

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

On December 21, 2012, the State Bar filed and properly served a notice of disciplinary charges (NDC) on respondent's attorney at his membership records address by certified mail, return receipt requested. The NDC notified respondent that her failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On January 28, 2013, both respondent and her attorney were present in court for an initial status conference. On February 11, 2013, respondent filed her response to the NDC.

On February 12, 2013, the State Bar filed and properly served a second NDC on respondent's attorney at his membership records address by certified mail, return receipt requested. The NDC notified respondent that her failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On March 18, 2013, respondent filed her response to the second NDC.

By order filed February 27, 2013, the two NDCs were consolidated and trial was set to begin on May 28, 2013. The order setting the trial date was properly served on respondent's counsel. (Rule 5.81(A).)

On April 18, 2013, the court granted the State Bar's unopposed motion to disqualify respondent's attorney. On May 7, 2013, the court issued an order continuing the trial date to

August 28, 2013, giving respondent additional time to retain new counsel. A copy of this order was properly served on respondent at her official membership records address. (Rule 5.81(A).)

On August 28, 2013, 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 issued and properly served an order entering respondent's default that same day. The order notified respondent that if she did not timely move to set aside or vacate 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), and she has remained inactive since that time.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].)

On December 6, 2013, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has three other disciplinary matters pending in investigation; and (3) respondent has one record of prior discipline.<sup>3</sup> 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 February 19, 2014.

Respondent has been disciplined on one prior occasion.<sup>4</sup> Pursuant to a Supreme Court order filed on August 11, 2010, respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for two years, including a minimum period of suspension of six months and until payment of restitution. In this contested matter, respondent was found culpable on nine counts of misconduct stemming from six client matters, including

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<sup>3</sup> The State Bar failed to indicate whether the Client Security Fund has paid out any claims as a result of respondent's misconduct. (Rule 5.85(A)(4).)

<sup>4</sup> The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

failing to competently perform legal services, failing to return unearned fees, failing to return a client file, failing to respond to reasonable client inquiries, failing to account, accepting fees from a third-party without the client's consent, and failing to keep a client reasonably informed of significant developments.

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

Upon entry of respondent's default, the factual allegations in the NDCs 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 NDCs support the conclusion that respondent is culpable as charged, except as otherwise noted, and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **Case Number 10-O-10682 (The Orozco Matter)**

Count One – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.<sup>5</sup>

Count Two – respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide her client with an accounting.

#### **Case Number 10-O-11130 (The Leyva Matter)**

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (d) (seeking to mislead a judge) by knowingly making false statements to the court in order to secure legal fees.

Count Four – respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by knowingly submitting a false accounting to the court.

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<sup>5</sup> The record reflects that “[r]espondent did not earn the entire advance fees paid to her.” It remains unclear, however, what portion of the advanced fees was earned. The court therefore lacks sufficient information to recommend restitution.

**Case Number 11-O-16289 (The Picart Matter)**

Count Five – respondent willfully violated Business and Professions Code section 6068, subdivision (a) (failure to comply with all laws – unauthorized practice) by holding herself out as entitled to practice law and actually practicing law when she was not an active member of the State Bar, in willful violation of Business and Professions Code sections 6125 and 6126.

Count Six – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by charging and receiving \$2,500 for legal work performed while she was not entitled to practice law.<sup>6</sup>

**Case Number 12-O-13373 (The Mateo Matter)**

Count Seven – respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by intentionally (or through gross negligence) signing or causing to be signed false signatures of her client, without her client’s knowledge, consent, or authority.

**Case Number 12-O-17480 (The Probation Matter)**

Count Eight – respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failing to comply with conditions of probation) by failing to comply with all the conditions of her prior disciplinary probation.

**Case Number 10-N-09881 (The 9.20 Matter)**

Count One – respondent willfully violated Business and Professions Code section 6103 (failing to obey a court order) by failing to timely file a declaration in compliance with rule 9.20 of the California Rules of Court as ordered by the California Supreme Court.

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<sup>6</sup> There is no indication in the record that this fee was not reimbursed through the credit card company or otherwise refunded. Accordingly, the court does not recommend restitution.

**Case Number 08-O-11447 (The Valdez Matter)**

Count Two – respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (accepting fees from a non-client) by accepting legal fees from a non-client without her client’s informed written consent.

Count Three – the court does not find respondent culpable of willfully violating rule 3-310(B)(2) of the Rules of Professional Conduct (conflict – relationship with a party or witness), as there is no clear and convincing evidence that respondent’s previous relationship with the district attorney’s office would substantially affect her representation.<sup>7</sup>

Count Four - the court does not find respondent culpable of willfully violating rule 3-310(B)(2) of the Rules of Professional Conduct (conflict – relationship with a party or witness), as there is no clear and convincing evidence that respondent’s “brief personal relationship” with the district attorney who handled her client’s prosecution nearly ten years earlier would substantially affect respondent’s representation.<sup>8</sup>

Count Five – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to perform any of the substantive legal services for which she was retained.

Count Six – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund unearned advanced fees.

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<sup>7</sup> The court does not accept the State Bar’s legal conclusion that respondent’s employment with the district attorney’s office would substantially affect respondent’s representation. The record is devoid of information regarding how long respondent worked for the district attorney’s office, what position she held, how long ago she left that office, and other relevant factors.

<sup>8</sup> The court does not accept the State Bar’s legal conclusion that respondent’s “brief personal relationship” with the district attorney who prosecuted her client nearly ten years earlier would substantially affect respondent’s representation. The phrase “brief personal relationship” has not been defined and could have a wide range of meanings.

Count Seven – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to promptly turn over her client’s file upon termination of employment.

**Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment must be recommended. In particular:

(1) the NDCs were properly served on respondent’s attorney under rule 5.25;

(2) respondent had actual notice of the proceedings prior to the entry of her default, as she filed responses to the NDCs, appeared in court for an initial status conference, and was properly served with notice of the trial dates;

(3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the NDCs deemed admitted by the entry of 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 the trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends her disbarment.

**RECOMMENDATION**

**Disbarment**

The court recommends that respondent Jamie Leigh Harley 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 Peggy Valdez in the amount of \$8,000 plus 10 percent interest per year from February 15, 2008. 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 Jamie Leigh Harley, State Bar number 112320, 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: March \_\_\_\_\_, 2014

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Pat McElroy  
Judge of the State Bar Court