STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **CYNTHIA DAWN RALLS,** **Member No. 186894,** A Member of the State Bar.	Case No.: **13-C-13544-YDR** **ORDER DENYING RESPONDENT'S MOTION TO VACATE DEFAULT; ORDER SETTING ASIDE DEFAULT; ORDER FILING [PROPOSED] RESPONSE TO THE HEARING ON CONVICTION; ORDER DENYING PETITION FOR DISBARMENT; ORDER TERMINATING INVOLUNTARY INACTIVE ENROLLMENT; AND ORDER SCHEDULING IN-PERSON STATUS CONFERENCE**

On May 19, 2014, the Review Department of the State Bar Court ("Review Department"), having determined that the judgment of conviction of Cynthia Dawn Ralls ("Respondent"), for violation of Penal Code section 484/488 (petty theft), a misdemeanor involving moral turpitude was final, referred the above-captioned matter to the Hearing Department of the State Bar Court ("Hearing Department") for a hearing and decision recommending discipline to be imposed.

On May 23, 2014, an initial status conference was set to take place on June 23, 2014, at a specified time and place. All parties were ordered to appear in-person. On May 23, 2014, the case administrator of the Hearing Department filed and properly served on Respondent at her membership records address, via certified mail, return receipt requested, the May 23, 2014 Notice of Assignment and Notice of Initial Status Conference and the Notice of Hearing on

Conviction. Attached to the Notice of Hearing was the May 19, 2014 Review Department order referring the matter to the Hearing Department.

On June 24, 2014, the court filed its Trial Date and Order Pursuant to Status Conference, in which it noted, among other things, that Respondent and the Deputy Trial Counsel (DTC) for the Office of the Chief Trial Counsel ("State Bar"), who had been assigned to this matter, were both present at the June 23, 2014 status conference. Thus, in addition to having been properly served with the Notice of Hearing on Conviction by the State Bar Court, Respondent also had actual notice of this disciplinary matter.[1]

On August 20, 2014, the State Bar filed and properly served a motion for entry of Respondent's default.[2] The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (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 timely file a response to the motion for entry of default. Her default, was, therefore, entered on September 8, 2014. The order entering the default was served on Respondent at her membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar

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[1] As noted in the court's status conference order, both Respondent and the assigned DTC appeared at the initial status conference in this proceeding. The assigned DTC stated in her August 20, 2014 declaration in support of the motion for entry of default, made under penalty of perjury, that she had advised Respondent at the June 23, 2014 initial status conference that Respondent must serve her response to the Notice of Hearing on the State Bar directed to the DTC's attention within 10 days or the State Bar would file a motion for entry of default in this matter. Thus, Respondent had actual knowledge of the default proceeding.

[2] On September 5, 2014, the State Bar received the return receipt for the August 20, 2014 mailing (containing the motion for entry of Respondent's default) bearing the signature, "Cynthia D. Ralls." (Exh. 2, attached to the State Bar's Petition for Disbarment.)

under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time.

Thereafter, on January 21, 2015, the State Bar served Respondent with and filed a Petition for Disbarment after Default. On February 12, 2015, Respondent, by and through her attorney Stephen J. Strauss, filed a response to the Petition for Disbarment entitled, "Notice of Motion and Motion to Vacate Default." (Rules of Procedure of the State Bar, rule 5.83(B).) Concurrent with the filing of Respondent's response to the Petition for Disbarment, Respondent submitted to the court her Verified Response to the Notice of Hearing, as required by rule 5.83(E) of the Rules of Procedure. In her response to the Petition for Disbarment, Respondent claims that the default entered against her was improperly entered. However after carefully considering all of the pleadings, the State Bar Court record in this proceeding, and the contentions of the parties, this court finds Respondent's arguments and contentions *lack* merit and that she has failed to provide evidence establishing that that the default entered against her had been improperly entered and, therefore, should be vacated.

Nonetheless, this court notes that the Review Department has declined to interpret the present default rules as mandating disbarment. Specifically, *In the Matter of* Carver (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 351 at footnote 2, the Review Department has declined to interpret the present default rules as *mandating* disbarment when an attorney has filed a response to a petition for disbarment. The Review Department remanded the case to the Hearing Department with instructions that the court exercise its discretion in considering appropriate relief for the Respondent. The Hearing Department then effectively set aside default for the purpose of holding a limited hearing as to the attorney's culpability, mitigation, and aggravation. Ultimately, the Hearing Department recommended a level of discipline short of

disbarment. On appeal, the Review Department recommended a further reduction in the level of discipline.

The *Carver* decision makes clear that a hearing judge retains discretion to fashion appropriate relief under the new default rules, as amended in 2011.[3] In *Carver* the court pointed out that "[w]hat should not be overlooked . . . is that the new rules . . . provide a defaulted member with various opportunities to seek relief both before and after OCTC has filed a petition for disbarment." (*Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. 348, 354.) The opportunity for a Respondent to participate in a disciplinary proceeding after entry of default when a Respondent files a response to a petition for disbarment is consistent with the longstanding public policy of resolving matters on the merits. (*In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct Rptr, 207, 215 [law strongly favors resolution on merits; therefore, doubts are resolved in defaulted party's favor and orders denying relief scrutinized more closely].) With this strong public policy in mind," '[r]eversal of an order denying relief is appropriate where the effect of the order is to "defeat, rather than to advance the ends of justice." [Citation.]' " (*Ibid.*, citing *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 236.)

The Review Department in *Carver* further noted that "[b]ecause the effects of a default may deny a disposition of the case on the merits irrespective of the charges or potential mitigation, we closely scrutinize orders denying relief from default and "any doubts . . . must be resolved in favor of [the member seeking relief]." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233; *In the Matter of Morone* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207, 215.) The hearing judge may require "very slight" evidence to justify it, as long as the granting of such relief will not cause prejudice. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 ["when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's

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[3] The default rules were subsequently amended and renumbered, effective July 1, 2014.

order setting aside a default"].) (*Carver, supra*, 5 Cal. State Bar Ct. Rptr. 348, 354-355.) In *Carver*, the Review Department further noted that the revised disbarment provisions for defaulting members are aimed at members who have essentially abandoned their law licenses.

In the instant matter, Respondent's filing of a response to the State Bar's petition for disbarment after default clearly demonstrates that she had not abandoned her law license. Further, this court notes that the alleged misconduct in this case would not alone warrant disbarment. At the time of her criminal misconduct, Respondent had been in practice for over 17 years and had no prior record of discipline. Thus, disbarring Respondent under the circumstances presented here would not only be at odds with the well-established public policy of resolving matters on their merits; but it would not advance the ends of justice.

Moreover, the State Bar has not identified or produced evidence of any prejudice which would result if the matter were to proceed on the merits.

Therefore, the court orders as follows:

(1) Finding no good cause, the court **DENIES** Respondent's February 12, 2015 Motion to Vacate Default;

(2) The court on its own motion and in the interest of justice **SETS ASIDE** the September 8, 2014 entry of Respondent's default;

(3) Respondent's [proposed] Verified Response to Notice of Hearing, which the court received with Respondent's motion to vacate default on February 12, 2015, is ordered **FILED** as of the date of this order;

(4) The State Bar's January 21, 2015 Petition for Disbarment is **DENIED;**

(5) Respondent Cynthia Dawn Ralls's involuntary inactive enrollment under Business and Professions Code section 6007(e)(1) pursuant to the court's September 8, 2014 order, is hereby **TERMINATED**; and

(6) All parties in this matter must appear at an in-person status conference on Monday, April 20, 2015, at 2:00 p.m., in the State Bar Court, 845 South Figueroa Street, 3rd Floor, Los Angeles, CA 90017.

IT IS SO ORDERED.

Dated: April 3, 2015

YVETTE D. ROLAND
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 3, 2015, I deposited a true copy of the following document(s):

ORDER DENYING RESPONDENT'S MOTION TO VACATE DEFAULT; ORDER SETTING ASIDE DEFAULT; ORDER FILING [PROPOSED] RESPONSE TO THE HEARING ON CONVICTION; ORDER DENYING PETITION FOR DISBARMENT; ORDER TERMINATING INVOLUNTARY INACTIVE ENROLLMENT; AND ORDER SCHEDULING IN-PERSON STATUS CONFERENCE

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:

CYNTHIA D. RALLS
12854 NEWHOPE ST
GARDEN GROVE, CA 92840

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

SHERELL MCFARLANE, Enforcement/Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 3, 2015.

Johnnie Lee Smith
Case Administrator
State Bar Court