

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 13-N-15219-PEM (13-O-10357;
)	13-O-13459)
LISA R. ALEXHOLLAND,)	
)	DECISION AND ORDER OF
Member No. 224000,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent Lisa R. Alexholland was charged with (1) not complying with California Rules of Court, rule 9.20(c); (2) failing to perform legal services with competence; (3) failing to refund unearned fees; (4) failing to respond promptly to client inquiries; (5) failing to cooperate in a State Bar investigation; and (6) failing to comply with probation conditions. She failed to file a response to the notice of disciplinary charges (NDC), and her default was entered. The Office of the 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 NDC and the attorney fails to have

¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent’s default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to 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 practice law in this state on January 1, 2003, and has been a member of the State Bar of California since.

Procedural Requirements Have Been Satisfied

On November 4, 2013, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested to her membership records address. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt was returned to the State Bar on November 7, 2013, with an illegible signature.

Respondent did not file a response to the NDC by November 2, 2013. However, she had actual notice of this proceeding, as she spoke with the deputy trial counsel (DTC) in this proceeding by telephone on December 6, 2013, and was informed regarding the December 16, 2013 status conference and was advised of the consequences of not filing a response to the NDC, among other things. She indicated that she was not going to participate in the status conference as she was not in the San Francisco Bay area. Moreover, the DTC had made efforts to contact respondent by voicemail left at her official telephone number on December 4 and 5, 2013, and by

² 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).)

sending correspondence by email to her official and private email addresses on December 4, 2013. The emails were not returned or responded to.

On December 12, 2013, the State Bar filed and properly served on respondent a motion for entry of her default by certified mail, return receipt requested to respondent's membership records address. The motion complied with the requirements for a default, including a supporting declaration reflecting that respondent had actual notice of the disciplinary proceeding. (Rule 5.80.) The motion also 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 motion, and her default was entered on December 30, 2013. 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 under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. The order was returned by the U.S. Postal Service as undeliverable.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On July 10, 2014, the State Bar filed and properly served a petition for disbarment on respondent by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with respondent since the default was entered; (2) there is one other disciplinary matters pending against respondent; (3) respondent has two prior records of discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's conduct as set forth in the NDC. 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 August 14, 2014.

Respondent has two prior records of discipline.³

Pursuant to a Supreme Court order filed on May 5, 2011, respondent was suspended for two years, the execution of which was stayed, and she was placed on probation for three years, on condition that she be suspended for 60 days. Respondent stipulated that she willfully violated rules 3-110(A) (three counts), 3-700(D)(2) (three counts) and 3-700(D)(1) (one count) of the State Bar Rules of Professional Conduct and Business and Professions Code sections 6103 and 6068, subdivision (m) (three counts each).⁴

Pursuant to a Supreme Court order filed on May 22, 2013, respondent was suspended for four years, the execution of which was stayed, and she was placed on probation for five years, subject to certain conditions, including that she be suspended from the practice of law for two years and until she makes specified restitution and provides proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law. Respondent stipulated that she willfully violated rules 3-110(A) (two counts), 3-700(D)(2) (one count) and 4-100(B)(3) (two counts) of the State Bar Rules of Professional Conduct and Business and Professions Code sections 6106 (two counts) and 6068, subdivisions (k) and (m) (one count each).

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

³ The court takes judicial notice of the relevant State Bar court records regarding the two prior discipline records, admits them into evidence and directs the clerk to include copies in the record of this case.

⁴ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

respondent is culpable of the rule and statutory violations as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

1. Case Number 11-N-11529 (Rule 9.20 Matter)

Count One – respondent violated California Rule of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance with the rule as ordered by the Supreme Court in S20962.

2. Case Number 13-O-10357 (Navarette Matter)

Count Two alleges respondent’s willful violation of rule 3-110(A) of the State Bar Rules of Professional Conduct (failing to perform legal services with competence) “by performing no legal services of value on behalf of the client.” Rule 3-110(A) does not require that an attorney provide legal services of value and such value is immaterial in determining whether an attorney has intentionally, recklessly or repeatedly failed to perform legal services competently in willful violation of this rule. Count three is DISMISSED with prejudice as no violation of rule 3-110(A) is shown.

Count Three alleges respondent’s willful violation of rule 3-700(D)(2) of the State Bar Rules of Professional Conduct by failing to refund \$1,700 in unearned fees to a client, averring that respondent “performed no services of value on the client’s behalf and therefore earned none of the advanced fees paid.” The NDC’s statements that that respondent’s services were of no value and, therefore, the fees were unearned, are assertions of opinion, not factual allegations that can be deemed admitted. Moreover, similarly, as set forth regarding Count Two, lack of value is irrelevant in determining whether an advanced fee was unearned for purposes of this rule. Accordingly, since no violation was shown, this count is DISMISSED with prejudice.

Count Four – respondent willfully violated section 6068, subdivision (m) (failing to respond to client inquiries) by not responding promptly to two telephonic inquiries made by his

client between November 5, 2012 and January 11, 2013, which respondent received regarding a matter in which he had agreed to provide legal services.

Count Five – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to a State Bar investigator’s two letters and three emails that respondent received and that requested his response to allegations of misconduct being investigated in the Navarette mater.

3. Case Number 13-O-13459 (Probation Violation Matter)

Count Six – respondent willfully violated section 6068, subdivision (k) (failure to comply with probation conditions), by (1) failing to timely submit three quarterly reports; and (2) failing to timely submit satisfactory proof of restitution owed to two parties to the Office of Probation as ordered in Supreme Court order no. S190906.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) 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 the proceedings prior to the entry of her default, as she had a telephone conversation with the DTC and indicated that she was not going to participate in the status conference, among other things;

(3) the 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 actual 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.

RECOMMENDATION

Disbarment

The court recommends that respondent Lisa R. Alexholland 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, 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 Lisa R. Alexholland, State Bar number 224000, 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: November _____, 2014

PAT McELROY
Judge of the State Bar Court