



**PUBLIC MATTER**

**FILED**

**JUN 01 2018**

**STATE BAR COURT CLERK'S OFFICE  
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**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	Case No. 16-C-15049-PEM
	)	
CELESTE MARIE VOGLER,	)	DECISION AND ORDER OF INVOLUNTARY
	)	INACTIVE ENROLLMENT
<u>A Member of the State Bar, No. 281332.</u>	)	

The subjects of this conviction referral proceeding are the felony violations of Vehicle Code section 10851, subdivision (a) (taking an automobile without the owner's consent) and of Vehicle Code section 2800.2, subdivision (a) (driving an automobile fleeing or attempting to elude a peace officer in disregard for safety of persons or property) to which respondent Celeste Marie Vogler (Respondent) pleaded guilty and on which she was convicted in December 2001. Even though Respondent's convictions occurred more than 16 years ago and more than 10 years before Respondent was even admitted to the practice of law in this state, the State Bar Court Review Department suspended Respondent from the practice of law effective October 30, 2017, pending the final disposition of this proceeding. (Bus. & Prof. Code, § 6102, subd. (a); Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.161(A); *In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402 [attorneys may be disciplined for pre-admission convictions].)

Because Respondent's convictions have long been final, the Review Department also referred the convictions to the Hearing Department for a trial on the issues of whether the facts

and circumstances surrounding Respondent's commissions of the crimes involved moral turpitude (Bus. & Prof. Code, §§ 6101, 6102) or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494); and if so, for a recommendation as to the discipline to be imposed. (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 5.161(A).) As noted in more detail *post*, Respondent has actual knowledge of this conviction referral proceeding, but has elected to let it proceed by default. Respondent's default was entered, and the State Bar's Office of Chief Trial Counsel (OCTC) filed a petition for disbarment under Rules of Procedure of the State Bar, rules 5.85 and 5.346.<sup>1</sup>

Rules 5.85 and 5.346 provide the procedures to follow when an attorney fails to participate in a conviction referral proceeding after receiving adequate notice and opportunity. Those rules provide that, if an attorney's default is entered for failing to respond to the notice of hearing on convictions (NOH) and if the attorney thereafter fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting that the State Bar Court recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rules 5.85 and 5.346 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

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<sup>1</sup> Unless otherwise indicated, all further references to rules are to this source. With limited modifications, the default procedures in original disciplinary proceedings, which are set forth in rules 5.80 through 5.86, are applicable in conviction referral proceedings, such as the present proceeding. (Rule 5.346(A).)

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

## **FINDINGS AND CONCLUSIONS**

### **Jurisdiction**

Respondent was admitted to the practice law in this state on December 19, 2011, and has been a member of the State Bar of California since that time.

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

On October 11, 2017, the State Bar Court filed and properly served the NOH in this conviction referral proceeding on Respondent at her membership-records address by certified mail, return receipt requested. The NOH notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.)

On October 23, 2017, Respondent telephoned the assigned Deputy Trial Counsel (DTC) and told him that she wanted to resign her membership in the State Bar of California. The DTC sent Respondent instruction on how to resign from the State Bar with disciplinary charges pending against her. Respondent appeared telephonically at the November 20, 2017 initial status conference in this matter and requested that the matter proceed by default.

Respondent failed to file a response to the NOH. On December 5, 2017, OCTC filed and served a motion for entry of default on Respondent at her membership-records address by certified mail, return receipt requested. The motion complied with all the requirements for a default, including both (1) a supporting declaration from the DTC of the reasonable diligence OCTC used to notify Respondent of this proceeding and (2) a statement of the facts and circumstances surrounding Respondent's convictions that OCTC has clear and convincing evidence to prove and that OCTC contends warrants the imposition of discipline on Respondent in this proceeding. (Rules 5.80, 5.346(B)&(C)(1).) The motion also notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment.

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Respondent did not file a response to the motion for entry of default or to the NOH, and her default was properly entered on December 21, 2017. The default order was properly served on Respondent at her membership records address by certified mail, return receipt requested. In the default order, the court also ordered Respondent's involuntary enrollment as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e). Accordingly, on December 24, 2017, Respondent was involuntarily enrolled inactive, and she has continuously been involuntarily enrolled inactive under this court's December 21, 2017, order since that time.

Respondent did not seek to have her default vacated or set aside. (Rules 5.83(B)&(C)(1), 5.346 [attorney has 90 days to file motion to set aside default].) On April 13, 2018, OCTC filed a petition for disbarment after default and served it on Respondent at her membership-records address by certified mail, return receipt requested. As required by rules 5.85(A) and 5.346, OCTC reported in the petition (1) that Respondent has failed to contact OCTC since November 2017; (2) that there are four other conviction referral proceedings pending against Respondent; (3) that Respondent has no prior record of discipline; and (4) that 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 the default. The court took the petition for disbarment under submission for decision on May 9, 2018.

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

Upon entry of Respondent's default, the factual allegations that are set forth in OCTC's statement of the facts and circumstances surrounding Respondent's convictions<sup>3</sup> are deemed admitted, and no further proof is required to establish the truth of such facts. (Rules 5.82,

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<sup>3</sup> OCTC's statement of the facts and circumstances surrounding Respondent's convictions is set forth in the December 5, 2017 motion for entry of default at pages 3 and 4.

5.346(C)(1)&(D).) As set forth in greater detail *post*, Respondent's convictions and the facts and circumstances surrounding them support the conclusion 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-C-15049 (Conviction Matter)**

As note *ante*, in December 2001, Respondent pleaded guilty to and was convicted on one felony count charging her with violating Vehicle Code section 10851, subdivision (a) (taking an automobile without the owner's consent) and on a second felony count charging her with violating Vehicle Code section 2800.2, subdivision (a) (driving an automobile fleeing or attempting to elude a pursuing peace officer in disregard for the safety of persons or property). These two crimes are crimes that may or may not involve moral turpitude or other misconduct warranting discipline depending upon the facts and circumstances surrounding their commission. In that regard, OCTC's statement of the facts and circumstances surrounding Respondent's December 2001 convictions provides as follows:<sup>4</sup>

On May 26, 2001, in Sonoma County, respondent drove a 2001 Honda Civic, license plate 4RPA007, belonging to Roxana Perez and Nestor Moya, without the consent of Perez or Moya and with the intent to deprive Perez and Moya of possession of the Vehicle. On the same day, respondent drove the same Honda Civic with the intent to evade and elude a pursuing police car. On December 11, 2001, respondent was convicted of violating Vehicle Code sections 10851(a), taking a vehicle without the owner's consent, and 2800.2(a), operating a motor vehicle with an intent to evade peace officers, both as felonies.

Resolving all reasonable doubts in Respondent's favor (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 694), the court finds that the facts and circumstances surrounding Respondent's December 2001 convictions for violating the Vehicle Code do not involve moral turpitude, but do involve other misconduct warranting discipline.

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<sup>4</sup> These are all of the facts and circumstances on which OCTC relies to establish that the imposition of discipline is warranted in this proceeding. (See rule 5.346(C)(1).)

## **Disbarment is Recommended**

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and recommends disbarment. Specifically, the court finds:

- (1) that the NOH was properly served on Respondent under rule 5.25;
- (2) that reasonable diligence was used to give Respondent actual notice of this proceeding before her default was entered;
- (3) that the default was properly entered under rules 5.80 and 5.346; and
- (4) that the factual allegations in OCTC's statement of the facts and circumstances surrounding Respondent's convictions that were deemed admitted by the entry of Respondent's 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.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Celeste Marie Vogler, State Bar number 281332, be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

### **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 Celeste Marie Vogler, State Bar number 281332, 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 (Rules Proc. of State Bar, rule 5.111(D)).

Dated: June 1, 2018.

  
PAT E. McELROY  
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 Court Specialist 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 1, 2018, 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:

CELESTE M. VOGLER  
1268 PONDEROSA DR  
PETALUMA, CA 94954 - 4350

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:


by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Duncan C. Carling, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 1, 2018.

  
George Hue  
Court Specialist  
State Bar Court