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DEC 09 2010
STATE BAR COURT
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**REVIEW DEPARTMENT OF THE STATE BAR COURT
IN BANK**

In the Matter of)	09-C-15839
)	
)	
Robert Alan Pfaff)	RECOMMENDATION OF
Member No. 93439)	SUMMARY DISBARMENT
)	
<u>A Member of the State Bar.</u>)	

On October 14, 2010, the State Bar filed a motion for summary disbarment based on Robert Alan Pfaff's felony conviction. Pfaff did not file a response. We grant the request and recommend that Pfaff be summarily disbarred.

On September 23, 2009, Pfaff pled guilty to a felony violation of 18 United States Code section 371, conspiracy to commit the following offenses against the United States: a violation of title 26 United States Code section 7206(1) (filing a false tax return) and title 18 United States Code sections 1341 (mail fraud) and 1343 (wire fraud).¹ As a result of the conviction, we issued an order placing Pfaff on interim suspension, effective March 29, 2010. On October 14, 2010, the State Bar transmitted evidence that Pfaff's conviction is final.

After the judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific

¹ Pfaff was also convicted of violating title 18 United States Code section 371, conspiracy to (1) defraud the United States (a felony which may or may not involve moral turpitude); and (2) title 26 United States Code section 7206(1) (tax evasion, a felony for which there is probable cause to believe that it involves moral turpitude).

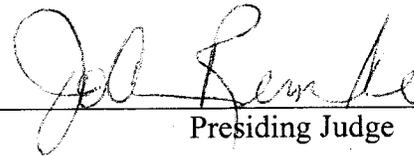


intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude.” (Bus. & Prof. Code, § 6102, subd. (c).) The record of conviction establishes that Pfaff’s criminal offenses meet the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c). First, the offenses are felonies. (18 U.S.C. § 3559(a).) Second, the elements of the offenses involve moral turpitude or the intent to defraud.

The moral turpitude classification of the crime of conspiracy depends upon the object of the conspiracy. (*In re McAllister* (1939) 14 Cal.2d 602, 603 [if the commission of an offense involves moral turpitude, then a conspiracy to commit the offense would also involve moral turpitude].) Filing a false tax return was an object of Pfaff’s conspiracy conviction. A conviction under this statute requires the government prove that a defendant specifically intended the return to be false. (*U.S. v. Friedland* (D.N.J. 1980) 502 F.Supp 611, 619.) Intentionally making such false statements necessarily involves moral turpitude. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 124.) Conspiracy to commit mail fraud and wire fraud require that a jury find the intent to defraud in order to convict. (*In re Utz* (1989) 48 Cal.3d 468, 482; [essential element of mail fraud is the specific intent to defraud]; *United States v. McNeil* (9th Cir. 2003) 320 F.3d 1034, 1040 [wire fraud has three elements: a scheme to defraud, use of the wires in furtherance of the scheme, and the specific intent to defraud].)

When an attorney’s conviction meets the above requirements, “the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for.” (*In re Paguirigan* (2001) 25 Cal.4th 1, 4-7.) Disbarment is mandatory. (*Id.* at p. 9; see also *In re Lesansky* (2001) 25 Cal.4th 11.)

We therefore recommend that Robert Alan Pfaff be disbarred from the practice of law in this state. We also recommend that Pfaff be ordered to comply with rule 9.20 of the California Rules of Court 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's order. Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.


Presiding Judge

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 December 9, 2010, I deposited a true copy of the following document(s):

ORDER FILED DECEMBER 9, 2010

in a sealed envelope for collection and mailing on that date as follows:

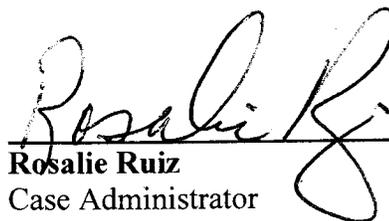
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ROBERT ALAN PFAFF
C/O THERMO COMPANIES
1735 19TH ST FL 2ND
DENVER, CO 80202 - 6001

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

MURRAY B. GREENBERG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 9, 2010.



Rosalie Ruiz
Case Administrator
State Bar Court