

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 11-O-16407-PEM
)	
JESSICA ELAINE RAUFF,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 262264,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Jessica Elaine Rauff (respondent) was charged with (1) failing to perform legal services with competence; (2) engaging in conduct in violation of Civil Code section 2944.7; (3) charging and collecting an illegal fee; (4) failing to respond to client inquiries; (5) failing to inform client of significant development; and (6) failing to promptly refund unearned fees. She failed to participate either in person or through counsel, 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 notice of disciplinary charges (NDC),

¹ Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have 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 February 3, 2009, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 3, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular first-class mail, at her membership records address. The NDC served by certified mail was returned unclaimed; the NDC served by regular first-class mail was not returned. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Thereafter, Deputy Trial Counsel Linda I. Yen emailed respondent³ and also left a voicemail message for her.

Respondent failed to file a response to the NDC. On May 30, 2012, the State Bar filed and properly served a motion for entry of respondent's default on respondent at her membership records address.⁴ The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the

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).)

³ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

⁴ The motion was served on respondent by certified mail, return receipt requested, and by regular mail to respondent's membership records address.

additional steps taken to provide notice to respondent. (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 June 15, 2012. 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, and she has remained inactively enrolled since that time.

Respondent also 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 December 21, 2012, the State Bar filed and properly served the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since the default was entered on June 15, 2012; (2) there is one investigation matter pending against respondent; (3) respondent has no prior record of discipline; and (4) as of December 21, 2012,⁵ the Client Security Fund (CSF) has not made payments resulting from respondent's conduct; however, respondent has one pending CSF matter. 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 January 16, 2013.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of 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

⁵ This is the date of the declaration of Deputy Trial Counsel Heather E. Abelson attached to the disbarment petition.

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

Case Number 11-O-16407 (Raffals Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to perform any services of value on behalf of her client and failing to inform her client or obtain her client’s consent prior to dismissing the lawsuit in which her client was a class member.

Count Two – respondent willfully violated section 6106.3, subdivision (a) of the Business and Professions Code (conduct in violation of Civil Code sections 2944.6 or 2944.7) by negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving fees from the client prior to fully performing each and every service she had contracted to perform or represented that she would perform in violation of Civil Code section 2944.7, subdivision (a)(1).

Count Three – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by charging and collecting \$1,000 in violation of Civil Code section 2944.7, subdivision (a).

Count Four – respondent willfully violated section 6068, subdivision (m) of the Business and Professions Code (duty to communicate) by failing to respond to her client’s emails and telephone messages.

Count Five – respondent willfully violated section 6068, subdivision (m) of the Business and Professions Code by failing to inform her client of the dismissal of the lawsuit in which the client was a class member until two and one-half months after the dismissal had been filed.

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

advanced fees paid by her client which were unearned due to respondent's failure to perform services of any value on behalf of her client.

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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, as the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular first-class mail, at her membership records address and emailed respondent and also left a voicemail message for her;

(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 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.

RECOMMENDATION

Disbarment

The court recommends that respondent Jessica Elaine Rauff 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 Richard Raffals in the amount of \$1,000 plus 10 percent interest per year from April 27, 2010. 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 Jessica Elaine Rauff, State Bar number 262264, 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: April _____, 2013

PAT McELROY
Judge of the State Bar Court