

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>11-O-17865-DFM</b> (11-O-18406;
	)	11-O-19465; 12-O-10012;
	)	12-O-10109; 12-O-10845;
	)	12-O-11118; 12-O-11142;
<b>ROGER DALE STACY,</b>	)	12-O-12150; 12-O-12509;
	)	12-O-12730; 12-O-13370;
	)	12-O-14309; 12-O-14932)
	)	
<b>Member No. 208500,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
	)	
A Member of the State Bar.	)	

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Respondent Roger Dale Stacy (Respondent) was charged with thirty-one counts of misconduct stemming from twenty-one client matters. He failed to appear at the trial of this case and his default was entered. After the requisite waiting period had expired, 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.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney’s default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in California on October 28, 2000, and has been a member of the State Bar since then.

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

On August 22, 2012, the State Bar properly served a First Amended Notice of Disciplinary Charges (First Amended NDC) on Respondent by certified mail, return receipt requested, and by first class mail, to his membership records address.<sup>3</sup> Respondent was also served with a copy of the First Amended NDC by email.<sup>4</sup> A search for alternate addresses did not reveal any. A letter was also sent via email to Respondent notifying him of the State Bar's intention to file a motion for the entry of his default and attaching a copy of the First Amended NDC. A State Bar investigator also contacted Respondent's business telephone number and left a voicemail message. Respondent did not file a response to the First Amended NDC.

By order filed August 6, 2012, trial was set to commence on October 16, 2012, at 9:30 a.m., for an estimate of five days and would continue from day to day or as otherwise ordered by

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<sup>2</sup> 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).)

<sup>3</sup> The First Amended NDC was filed on August 28, 2012.

<sup>4</sup> 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).)

the court. The order setting the trial date was served on Respondent at his membership records address by first-class mail, postage paid, on August 6, 2012. (Rule 5.81(A).)

The State Bar appeared for trial on October 16, 2012. Respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered Respondent's default by order filed on October 16, 2012. The order notified Respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.<sup>5</sup>

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On July 31, 2013, the State Bar filed and properly served a petition for disbarment on Respondent by email and by certified mail, return receipt requested, at his membership records address.<sup>6</sup> As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent has not contacted the State Bar since October 16, 2012, the date his default was entered; (2) there are multiple other matters pending against Respondent which have not yet been filed; (3) Respondent has one record of prior discipline; and (4) the Client Security Fund (CSF) has not yet considered multiple claims against Respondent.<sup>7</sup> Respondent has not responded to the petition

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<sup>5</sup> The return receipt for the order entering default served on Respondent at his membership records address was returned to the State Bar Court, indicating that it was delivered on October 18, 2012, and received by "E. TAUB."

<sup>6</sup> An earlier petition for disbarment was denied by the court, without prejudice, for numerous errors.

<sup>7</sup> However, the court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of the pertinent State Bar records, which show that the CSF has paid claims against Respondent.

for disbarment or moved to set aside or vacate the default. The case was submitted for decision on August 30, 2013.

Respondent has been disciplined on one prior occasion.<sup>8</sup> Pursuant to a Supreme Court order filed on October 19, 2011, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years, on the condition that he be suspended from the practice of law for the first year of probation. That suspension began on November 18, 2011. Respondent stipulated to his failure to perform legal services with competence in eight client matters; failure to keep a client reasonably informed of significant developments in three client matters; settlement of a claim/potential claim for Respondent's liability to the client without informing the client in writing that the client may seek advice of an independent attorney and giving the client a reasonable opportunity to do so in two client matters; failure to respond promptly to reasonable client status inquiries in two client matters; willfully disobeying and violating an order of the court in one client matter; failure to report judicial sanctions to the State Bar in one client matter; failure to refund promptly unearned fees in three client matters; failure to deposit funds received for a client's benefit in a trust account in one client matter; and failure to maintain and preserve for five years, from final appropriate disposition, complete records of all client funds in one matter.

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

Upon entry of Respondent's default, the factual allegations in the First Amended 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 First Amended NDC

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<sup>8</sup> Attachment 1 to the State Bar's July 31, 2013, petition for disbarment after default for failure to appear at trial is not a full and correct copy of Respondent's prior record of discipline. The court therefore takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the records of this case.

support the conclusion, except as otherwise noted, that Respondent is culpable as charged of violating a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

**Case Number 11-O-17865 (Bankruptcy Matters)**

Count One - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to file timely lien strip motions and failing to handle properly the Chapter 13 bankruptcies of eight clients.

**Case Number 11-O-18406 (Cortez Matter)**

Count Two – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return the \$3,874 in unearned advanced fees paid by his client.

**Case No. 11-O-19465 (Rodriguez Matter)**

Count Three - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to appear at the Chapter 13 confirmation hearing in his clients' matter and by failing to take steps to reinstate the clients' bankruptcy petition after it was dismissed without prejudice.

**Case No. 12-O-10012 (Salgado Matter)**

Count Four - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to send counsel familiar with the clients' case to two creditor meetings, failing to correct miscalculations in the payment plan, and failing to take steps to reinstate his clients' bankruptcy petition after it was dismissed without prejudice.

Count Five - Respondent willfully violated section 6068, subdivision (m), of the Business and Professions Code<sup>9</sup> (failure to communicate) by failing to respond promptly to his clients' reasonable status inquiries in the matter in which Respondent had agreed to provide legal services.

**Case No. 12-O-10109 (Fernandez Matter)**

Count Six – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return the \$1,000 in unearned advanced fees paid by his client and which Respondent agreed to repay on June 8, 2011.

**Case No. 12-O-10845 (Madrigal Matter)**

Count Seven - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to file timely a lien strip motion and failing to handle properly his clients' bankruptcy.

**Case No. 12-O-11118 (Llamas Matter)**

Count Eight - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return after being terminated on November 18, 2011, the \$15,000 in unearned advanced fees paid by his client.<sup>10</sup>

Count Ten - Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (promptly pay/deliver client funds) by failing to pay promptly to his client, as requested by his client, the \$15,000 advanced fees she paid and was entitled to receive.

Count Eleven - Respondent willfully violated section 6106 (moral turpitude), by misappropriating the \$15,000 in unearned advanced attorney fees paid by his client.

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<sup>9</sup> Unless otherwise indicated, all further references to section(s) refer to the provisions of the Business and Professions Code.

<sup>10</sup> The court declines to find culpability for the allegations of Count Nine, which more appropriately should have been charged as a violation of section 6103, rather than rule 4-100(A).

**Case No. 12-O-11142 (McFarlin Matter)**

Count Twelve – Respondent willfully violated section 6103 (failure to obey a court order) by failing to pay the \$5,995 in sanctions ordered by the bankruptcy court.

**Case No. 12-O-12150 (Haynes Matter)**

Count Thirteen - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return, after being terminated after his suspension began on November 18, 2011, the \$20,000 in unearned advanced fees paid by his client.<sup>11</sup>

Count Fifteen - Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct by failing to promptly pay his client, as requested by the client, the \$20,000 in unearned advanced fees he paid, and which he was entitled to receive.

Count Sixteen - Respondent willfully violated section 6106 by misappropriating the \$20,000 in unearned advanced fees paid by his client.

**Case No. 12-O-12509 (Ruiz Matter)**

Count Seventeen - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return the \$2,500 in unearned advanced fees paid by his client. The court does not find Respondent culpable of willfully violating rule 3-700(D)(2) for failing to return the \$299 in costs, as this money was for costs and not advanced fees. The court notes that Respondent was not charged with a willful violation of rule 4-100(B)(4) in this matter.

**Case No. 12-O-12730 (Sandoval Matter)**

Count Eighteen - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return the \$2,000 in unearned advanced fees paid by his client.

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<sup>11</sup> The court declines to find culpability for the allegations of Count Fourteen, which more appropriately should have been charged as a violation of section 6103 or rule 3-110(A), rather than rule 4-100(A).

Count Nineteen - Respondent willfully violated section 6106.3 (violation of Civil Code section 2944.7) by collecting an advanced fee from a client to perform mortgage loan modification services after the effective date of Civil Code section 2944.7.

**Case No. 12-O-13370 (Barrios Matter)**

Count Twenty - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return the \$45,500 in unearned advanced fees paid by his client.<sup>12</sup>

Count Twenty-Two - Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct by failing to promptly pay his client, as requested by the client, the \$45,500 in advanced fees she paid and was entitled to receive.

Count Twenty-Three - Respondent willfully violated section 6106 by misappropriating the \$45,500 in unearned advanced attorney fees paid by his client.

Count Twenty-Four - Respondent willfully violated section 6103 by willfully disobeying or violating the bankruptcy court's February 7, 2012, order requiring Respondent to disgorge the \$45,500 unearned advanced fees paid by his client.

**Case No. 12-O-14309 (Escojido Matter)**

Count Twenty-Five - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return the \$16,039 in unearned advanced fees paid by his client.<sup>13</sup>

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<sup>12</sup> The court declines to find culpability for the allegations of Count Twenty-One, which more appropriately should have been charged as a violation of section 6103 or rule 3-110(A), rather than rule 4-100(A).

<sup>13</sup> The court declines to find culpability for the allegations of Count Twenty-Six, which more appropriately should have been charged as a violation of section 6103 or rule 3-110(A), rather than rule 4-100(A).

Count Twenty-Seven - Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct by failing to promptly pay to his client, as requested by the client, the \$16,039 advanced fees she paid and was entitled to receive.

Count Twenty-Eight - Respondent willfully violated section 6106 by misappropriating the \$16,039 in unearned advanced attorney fees from his client.

Count Twenty-Nine - Respondent willfully violated section 6103 by willfully disobeying or violating the bankruptcy court's January 6, 2012, order requiring Respondent to disgorge the \$16,039 in unearned advanced fees paid by his client.

**Case No. 12-O-14932 (Gonzalez Matter)**

Count Thirty - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to prepare and file a Chapter 7 bankruptcy petition for his client.

Count Thirty-One - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return the \$1,398 in unearned advanced fees paid by his 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 First Amended NDC was properly served on Respondent under rule 5.25.
- (2) Reasonable diligence was used to notify Respondent of the proceeding as (1) the First Amended NDC was properly served on Respondent at his membership records address and by email; (2) a search was conducted for alternate addresses for Respondent; (3) a letter was sent to Respondent via email; and (4) a voicemail message was left at Respondent's business telephone number. In addition, Respondent had adequate notice of the trial date prior to entry of the default;

(3) The default was properly entered under rule 5.81.

(4) The factual allegations in the First Amended 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 appear for the trial of 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 **Roger Dale Stacy**, State Bar Number 208500, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **Restitution**

The court recommends that Respondent be ordered to make restitution to the following clients or courts as follows:

1. Jesus Cortez in the amount of \$3,874, plus 10 percent interest per year from November 12, 2010;
2. Manuel Fernandez in the amount of \$1,000, plus 10 percent interest per year from June 8, 2011;
3. Bertha Llamas in the amount of \$15,000, plus 10 percent interest per year from November 18, 2011;
4. Clerk of the United States Bankruptcy Court in the Southern District of California in the amount of \$5,995, as ordered in *In re Dakeyeh McFarlin*, case No. 08-09137-PB13;

5. Howard Haynes in the amount of \$20,000, plus 10 percent interest per year from November 18, 2011;
6. Noe Ruiz in the amount of \$2,500, plus 10 percent interest per year from April 30, 2011;
7. Ramiro Sandoval in the amount of \$2,000, plus 10 percent interest per year from March 28, 2010;
8. Raquel Barrios in the amount of \$45,500, plus 10 percent interest per year from February 7, 2012;
9. Cristobal Escojido in the amount of \$16,039, plus 10 percent interest per year from January 6, 2012; and
10. Ricardo Gonzalez in the amount of \$1,398, plus 10 percent interest per year from December 31, 2008.

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 **Roger Dale Stacy**, State Bar Number 208500, 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: December \_\_\_\_\_, 2013

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DONALD F. MILES  
Judge of the State Bar Court