



PUBLIC MATTER

FILED

FEB 14 2019

P.B.

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 16-C-10200-CV
)	
STEVEN ROBERT RAFALOVICH,)	
)	DECISION AND ORDER OF
A Licensed Attorney of the State Bar,)	INVOLUNTARY INACTIVE
No. 217976.)	ENROLLMENT

Respondent Steven Robert Rafalovich (Respondent) was convicted in the Fresno County Superior Court for violating Penal Code sections 422(a) (Criminal Threats), a felony, and 273.6(a) (Disobeying Domestic Relations Court Order), a misdemeanor. Respondent did not appeal his convictions. Upon finality of the conviction, the Review Department issued an order referring this matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding the violations of which Respondent was convicted involved moral turpitude or other misconduct warranting discipline, and if so found, the discipline to be imposed. Respondent failed to file a response to the Notice of Hearing on Conviction (NHC) in this matter and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

¹ Unless otherwise indicated, all references to rules are to this source. Rule 5.345(C) makes the default procedures in rules 5.80-5.86, with certain exceptions, applicable in conviction proceedings.

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 hearing on conviction, and the attorney fails to have the default set aside or vacated within 90 days, the OCTC 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

Jurisdiction

Respondent was admitted to practice law in this state on December 11, 2001, and has been a licensed attorney of the State Bar since then.

Procedural Requirements Have Been Satisfied

On or about September 7, 2016, Respondent pled guilty to a felony violation of Penal Code section 422(a) (Criminal Threats) and a misdemeanor violation of Penal Code section 273.6(a) (Disobeying Domestic Relations Court Order).

On July 24, 2017, the OCTC transmitted records and evidence of Respondent's conviction to the Review Department. It classified Respondent's felony as one involving moral turpitude and indicated that it would obtain the consolidated complaint of Respondent's convictions. On September 12, 2017, the OCTC transmitted additional records and evidence of Respondent's conviction, containing a certified copy of Respondent's consolidated criminal complaint. By order filed on October 6, 2017, Respondent was suspended from the practice of law effective on

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(F)(2).)

October 30, 2017, pursuant to Business and Professions Code section 6102 (interim suspension). Respondent was further ordered to comply with the acts specified in California Rules of Court, rule 9.20, subdivisions (a) and (c).

On November 2, 2017, the Review Department referred the matter to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding the violations involved moral turpitude or other misconduct warranting discipline, and, if so found, the discipline to be imposed. On November 2, 2017, the State Bar Court filed a NHC. That same day, the NHC was properly served on Respondent by certified mail, return receipt requested, at his official State Bar attorney records address.³ The NHC notified Respondent that his failure to timely file a written answer to the notice would result in a disbarment recommendation. (Rule 5.345.)

At the December 8, 2017 status conference, noting Respondent's incarceration at the Wasco State Prison and his scheduled release date, the court ordered this matter abated.⁴

Respondent had actual notice of this proceeding. He appeared by telephone at the April 2, 2018 status conference where the matter was unabated and he was ordered to file a response to the NHC on or before April 30, 2018. The OCTC was directed to file a motion to enter Respondent's default in the event that Respondent failed to file his response by the given deadline. Trial was scheduled to commence on May 29, 2018.

Respondent failed to file a response to the NHC. On May 1, 2018, the OCTC timely filed and properly served a motion for entry of Respondent's default. The motion complied with all

³ On November 3, 2017, a courtesy copy of the NHC was served on Respondent by certified mail, return receipt requested, at Fresno County Jail.

⁴ On September 20, 2017, the OCTC transmitted records of another felony conviction for Respondent, case number 17-C-04973. This unconsolidated matter was also abated.

the requirements for a default,⁵ including a supporting declaration of reasonable diligence by the assigned DTC declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) It notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. This motion was sent by certified mail, return receipt requested, addressed to Respondent at his official State Bar attorney records address. A courtesy copy was sent by regular first-class mail to an address that Respondent provided at the April 2, 2018 status conference.

Respondent did not file a response to the motion and his default was entered on May 18, 2018. The court also ordered Respondent's involuntary inactive enrollment as a licensed attorney of the State Bar pursuant to 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. The order entering the default and enrolling Respondent inactive was served by certified mail, return receipt requested, addressed to Respondent at his official State Bar attorney records address, as well as to the address Respondent had provided on April 2, 2018. The signed return receipt was received by the State Bar Court on May 30, 2018.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On December 14, 2018, the OCTC properly filed and served a first amended petition for disbarment.⁶ As required by rule 5.85(A), the OCTC reported in the petition that: (1) There has been no contact with Respondent since the entry of his default; (2) there are no other investigations or disciplinary matters pending against Respondent; (3) Respondent does not have a prior disciplinary record; and (4) the Client Security

⁵ Pursuant to rule 5.346(C)(1), when a default is entered in a criminal conviction matter for failure to file a timely response, the OCTC must recite, in its default motion, the facts and circumstances surrounding the conviction that it contends warrant the imposition of discipline and that it has clear and convincing evidence to prove. This statement was included.

⁶ The court denied OCTC's October 16, 2018 petition for disbarment, without prejudice.

Fund has not made payments resulting from Respondent's conduct. 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 February 1, 2019.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a Respondent's default, the factual allegations set forth in Respondent's conviction matter are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82(2).) As set forth below in greater detail, the factual allegations in Respondent's conviction matter 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 No. 16-C-10200

On or about September 7, 2016, Respondent was convicted in Fresno County Superior Court of a felony violation of Penal Code section 422(a) (Criminal Threats) and a misdemeanor violation of Penal Code section 273.6(a) (Disobeying Domestic Relations Court Order). Specifically, on May 5, 2015, Respondent's ex-wife was awarded custody of the couple's child and Respondent was granted supervised visits twice per month. From June 18, 2015 until his arrest on January 9, 2016, Respondent sent his ex-wife over 632 text messages. On December 27, 2015, Respondent sent the following texts, threatening his ex-wife with great bodily injury or death, and giving rise to Respondent's felony conviction for Criminal Threats:

I AM goin to ri RAPE y to DEATH for thevREST of your fuckjhg ife
Ur cunt will be fuckjng SHREDDed and Bleeding as I fuck you with a DAGGER
5 TIMEZ DAILY

...

AM going to STAB so many fucking times they will have to amputate my hand
I AM GOING to BRITALIZE YOYR MOTGER DUCKING FaCe [CV2]
SHaTTER EVEY FUCK BONE TGEN BASH IN UR MZoRGR FUCKING
EVIL, CRIMINAL, CHILD TORTYRING BRaINz

...

I will resortvto self gelp and rake a SLEdGEchAMNwD to [cv2] thecfaggit
dustricy attorney's FYCKING HEAD!

...

So now I AM – bc why knot – FUCKING TERRORIZE ununtil I die or your
CRIME ENDZ

...
I AM going to rape ur bitch wife then cut iff her head

The following threatening text message gave rise to Respondent's misdemeanor conviction for violating a Family Court restraining order. It was sent to his ex-wife on December 19, 2015:

Im going to fucking rip if cur skull whore
Fag DA pink cum johnny I can't wait till I see blood spray as my first blow
SPRAYS a number of ur TEETH a ross the Courtroom floor rattling till they
reach a standstill
Silver fillings shimmering from the DETRITUS u fed on ur entire life.
[CV2] I AM going to fucking VICTIMIZE YOU.
TRUST ME to cave in ur akull – legally.
With SLEDGE HAMMER

The OCTC alleges that Respondent sent his ex-wife hundreds of additional text messages with similar content, each of which could have supported an additional violation of Penal Code sections 422 and 273.6(a).

On July 24, 2017, Respondent's felony probation was revoked and on September 6, 2017, Respondent was found in violation of his felony probation and sentenced to a term of two years in state prison. He was released from custody on February 20, 2018.

The facts and circumstances surrounding Respondent's felony and misdemeanor convictions warrant a finding that Respondent's convictions are of crimes involving moral turpitude.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and Respondent's disbarment is recommended. In particular:

- (1) the NHC was properly served on Respondent;
- (2) Respondent had actual notice of the proceedings prior to the entry of his default;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in Respondent's conviction matter 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.

RECOMMENDATIONS

Disbarment

It is recommended that Steven Robert Rafalovich, State Bar Number 217976, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended 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 imposing discipline in this proceeding.⁷ Failure to do so may result in disbarment or suspension.

⁷ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a licensed attorney of the State Bar who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Steven Robert Rafalovich, State Bar number 217976, be involuntarily enrolled as an inactive licensed attorney of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: February 14, 2019



CYNTHIA VALENZUELA
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 Los Angeles, on February 14, 2019, 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 Los Angeles, California, addressed as follows:

STEVEN R. RAFALOVICH
3334 E. COAST HWY STE 514
CORONA DEL MAR, CA 92625

STEVEN ROBERT RAFALOVICH
WILLOW TREE LODGE
1015 SOUTH HARBOR BLVD., #105
FULLERTON, CA 92832

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

AKILI P. NICKSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 14, 2019.



Paul Barona
Court Specialist
State Bar Court