



**PUBLIC MATTER**

**FILED**

**JUN 29 2018**

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	Case No. 16-O-16589-LMA
	)	
JENNA M. MAACK,	)	DECISION AND ORDER OF INVOLUNTARY
	)	INACTIVE ENROLLMENT
	)	
<u>A Member of the State Bar, No. 268747.</u>	)	

In this original disciplinary proceeding, respondent Jenna M. Maack (Respondent) is charged with nine counts of misconduct. Even though Respondent had adequate notice of the March 12, 2018, trial setting in this proceeding, Respondent failed to appear at the trial, and her default was entered under rule 5.81 of the Rules of Procedure of the State Bar.<sup>1</sup> Thereafter, the State Bar's Office of Chief Trial Counsel (OCTC) filed a petition for disbarment under rule 5.85.

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 if the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the State Bar Court to recommend the attorney's disbarment to the Supreme Court.<sup>2</sup>

<sup>1</sup> All further references to rules are to the Rules of Procedure of the State Bar of California.

<sup>2</sup> If the court determines that any due process requirement is 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).)

In the instant case, the court concludes that all of 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 the practice of law in California on January 13, 2010, and has been a member of the State Bar of California since that time.

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

On November 17, 2017, the State Bar filed and properly served the NDC in this case on Respondent at her membership-records address by certified mail, return receipt requested. The NDC notified Respondent that her failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) Respondent filed a response to that NDC on December 18, 2017.

On January 8, 2018, the court filed and served on Respondent at the address she provided in her response to the NDC (which address is also Respondent's membership-records address) by first class mail, postage paid, an order in which the court, among other things, set the case for trial beginning on March 12, 2018. (Rule 5.81(A)(2)(b).) On March 5, 2018, following the pretrial conference that was held earlier that same day, the court filed and served on Respondent at the address she provided in her response to the NDC (which address is the same as Respondent's membership-records address) by first class mail, postage paid, a minute order confirming that the trial in this case was set to begin on March 12, 2018.

On March 12, 2018, the OCTC appeared for trial, but Respondent did not. Finding that all of the requirements of rule 5.81(A) were satisfied, the court filed and properly served on

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Respondent at her membership-records address<sup>3</sup> by certified mail, return receipt requested on March 12, 2018, an order entering Respondent's default. (Rules 5.25(B), 5.81(B).) The order notified Respondent that, if she did not timely move to set aside or vacate her default, the court would recommend her disbarment. The order also involuntarily enrolled Respondent as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e)<sup>4</sup> effective March 15, 2018. And Respondent has remained involuntarily enrolled inactive under that order since that time.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].) On May 3, 2018, the OCTC filed a petition for disbarment. On May 8, 2018, OCTC also properly served the petition for disbarment on Respondent at her membership-records address<sup>5</sup> by certified mail, return receipt requested. (Rule 5.85(D).) As required by rule 5.85(A), the OCTC reported in the petition that: (1) it has received no contact from Respondent since her default was entered; (2) there are no other investigations or disciplinary charges pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) the Client Security Fund has not paid out any claims as a result of Respondent's misconduct.

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 30, 2018.

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<sup>3</sup> Respondent's membership-records address is the same address that Respondent provided in her response to the NDC.

<sup>4</sup> All further statutory references are to the Business and Professions Code.

<sup>5</sup> Again, Respondent's membership-records address is the same address that Respondent provided in her response to the NDC.

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

Upon entry of a Respondent's default, the factual allegations, but not the conclusions or the charges, 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 findings that Respondent is culpable on three of the nine counts of charged misconduct and that Respondent, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

### **Case Number 16-O-16589**

Counts one and three each charge Respondent with willfully violating section 6068, subdivision (d) (attorney's duty to never seek to mislead a judge or judicial officer by artifice or false statement of law or fact) by directing her client to sign Respondent's name to a pleading and to then file the pleading with the superior court in which the client's case was pending. The skeletal factual allegations in counts one and three, which were deemed admitted by the entry of Respondent's default, are insufficient to support a finding that Respondent willfully violated section 6068, subdivision (d). Accordingly, counts one and three are dismissed with prejudice.

Counts two and four each charge respondent with willfully violating section 6106 (moral turpitude) by directing her client to sign Respondent's name to a pleading and to then file the pleading with the superior court in which the client's case was pending. The skeletal factual allegations in counts two and four, which were deemed admitted by the entry of Respondent's default, are insufficient to support a finding that Respondent willfully violated section 6106. Accordingly, counts two and four are dismissed with prejudice.

Count Five — Respondent willfully violated section 6103 (violating a court order) by failing to comply with an order to provide discovery to opposing counsel and to pay \$3,000 in sanctions within 10 days.

Count Six — Respondent willfully violated section 6106 by filing, in a superior court case, a notice of settlement stating that the entire case had been unconditionally settled when Respondent knew that the statement was false and misleading.

Count Seven — Respondent willfully violated section 6068, subdivision (d) by filing, in a superior court case, a notice of settlement stating that the entire matter had been unconditionally settled on April 21, 2016, when Respondent knew that the matter had not settled.

Count eight charges that Respondent willfully violated section 6106 by writing a letter addressed to a court for filing that contained a statement that Respondent knew was false and misleading. The factual allegations in count eight are insufficient to support a finding that Respondent willfully violated section 6106. The factual allegations do not allege that Respondent did anything more than *write* a letter containing a false and misleading statement. There is no allegation that Respondent mailed the letter to anyone or that she filed it with the court. Count eight is dismissed with prejudice.

Count nine charges that Respondent violated section 6068, subdivision (d) by writing a letter addressed to a court for filing that contained a statement that Respondent knew was false and misleading. The factual allegations in count eight are insufficient to support a finding that Respondent willfully violated section 6068, subdivision (d). The factual allegations fail to allege which of the two statements in the letter was false. The factual allegations do not allege that Respondent did anything than write a letter containing a false and misleading statement. Count eight is dismissed with prejudice.

### **Disbarment is Recommended**

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and that it is appropriate to recommend Respondent's disbarment. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;

(2) Respondent had actual knowledge of this proceeding and of the trial date before the entry of her default;

(3) Respondent's default was properly entered under rule 5.81; and

(4) the factual allegations in the NDC 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 will recommend disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Jenna M. Maack be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

### **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 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Jenna M. Maack, State Bar Number 268747, 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 (rule 5.111(D)).

Dated: June 29, 2018.

  
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**LUCY ARMENDARIZ**  
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 29, 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:

JENNA M. MAACK  
PO BOX 302  
BAYSIDE, CA 95524 - 0302

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

Carla L. Cheung, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 29, 2018.

  
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Vincent Au  
Court Specialist  
State Bar Court