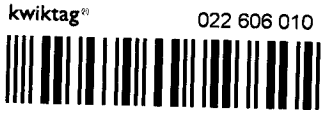
PUBLIC MATTER



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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **CASH JOSEPH BONAS, No. 179837,** A Member of the State Bar.	**Case No. 03-C-03750 JMR** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

INTRODUCTION

This default conviction referral proceeding arises out of the criminal conviction of Respondent Cash J. Bonas on December 30, 2003, in the San Diego County Superior Court, of three felony violations of Penal Code section 646.9, subdivision (a) [stalking] and one felony violation of Penal Code section 422 [making a criminal threat].

For the reasons stated below, this Court finds that the facts and circumstances surrounding Respondent's conviction of the above-referenced offenses involved moral turpitude. In light of those convictions and the egregious nature of Respondent's misconduct, the Court recommends that Respondent be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

PROCEDURAL HISTORY

Pursuant to Business and Professions Code section 6101, subdivision (c), on February 4, 2004, the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") transmitted the record of Respondent's convictions to the State Bar Court. Thereafter, by order filed February

19, 2004, the State Bar Court Review Department placed Respondent on interim suspension from the practice of law pending the final disposition of this proceeding, in accordance with Business and Professions Code section 6102, subdivision (a) and rule 951(a) of the California Rules of Court, since the crimes of which Respondent was convicted are felonies and the Review Department concluded that Penal Code section 422 is a felony which probably involves moral turpitude.

On June 11, 2004, following its receipt of evidence that Respondent's criminal convictions had become final, the Review Department ordered the above-entitled matter to be referred to this Court for a hearing and decision as to whether the facts and circumstances surrounding Respondent's convictions involved moral turpitude or other misconduct warranting discipline and, if so, the discipline to be imposed or recommended to the Supreme Court.

On June 28, 2004, this Court filed a Notice of Hearing on Conviction and caused it to be properly served upon Respondent by certified mail, return receipt requested, at his official State Bar membership records address.[1] A Notice of Assignment and Notice of Initial Status Conference was also properly served upon Respondent at the same time. These documents notified Respondent that the Court had scheduled that initial status conference for August 16, 2004, at 9:30 a.m. and directed Respondent to participate in the status conference by telephone.

Respondent did not filed a response to the Notice of Hearing, either within the time provided in rule 601 of the Rules of Procedure or at any time thereafter. Respondent appeared by telephone at the initial status conference on August 16, 2004, but the Court was compelled to terminate the status conference because of Respondent's inappropriate and disruptive behavior, including repeatedly interrupting and talking over the Court.

In light of Respondent's failure to file a response to the Notice of Hearing on Conviction, the State Bar filed a Notice of Motion and Motion for Entry of Default on August 18, 2004, and properly served them on Respondent by certified mail, return receipt requested, addressed to him at his

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[1] At all times since February 19, 2004, Respondent's official address has been 639 Roskilde Drive, Solvang, California 93463.

official membership address.

The Court entered Respondent's default on September 1, 2004, due to his continued failure to file a response to the Notice of Hearing on Conviction. The Court further ordered Respondent to be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (e) and rule 602 of the Rules of Procedure. The Order of Entry of Default was properly served upon Respondent on September 1, 2004, and was actually received at Respondent's official membership address on September 3, 2004.

Respondent has neither sought relief from default nor attempted to participate further in this proceeding. On September 30, 2004, Deputy Trial Counsel Charles A. Murray submitted the State Bar's Brief Re Level of Discipline, along with numerous exhibits, on September 30, 2004.

This matter was taken under submission, without a hearing, on October 1, 2004.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Respondent's culpability in this proceeding is conclusively established by the record of his conviction. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) He is presumed to have committed all of the elements of the crimes of which he was convicted. (*In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 6, 1995, and has been a member of the State Bar of California at all times since that date.

B. Respondent's Convictions

Pursuant to an Information filed on October 15, 2003, in *People* v. *Cash Joseph Bonas*, San Diego County Superior Court Case No. SCD 159416, Respondent was charged with three felony violations of Penal Code section 646.9, subdivision (a) [stalking] and one felony violation of Penal Code section 422 [making a criminal threat].

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On December 30, 2003, Respondent entered guilty pleas to all four felony charges and specifically stipulated that there was a factual basis for his guilty pleas. The court accepted Respondent's pleas and he was convicted on the basis of those pleas.

On March 22, 2004, the court suspended imposition of sentence and placed Respondent on formal probation for a period of five years on conditions which included his incarceration for 218 days[2]; participation in treatment, therapy and/or counseling as recommended and abstinence from alcohol and all controlled substances, completion of an anger management course and a prohibition upon contacted, annoying or molesting any person or firm involved in either his state criminal proceeding or a dismissed federal case.

Respondent did not appeal his criminal conviction.

C. <u>Facts and Circumstances Surrounding Respondent's Convictions</u>

Following Respondent's graduation from law school, he became a partner in the law firm of Kendrick, Bonas and Nutley. Commencing in approximately 1998, Respondent represented his sister and another plaintiff in a civil action against three major California grocery stores. The plaintiffs alleged that the grocery stores had engaged in price fixing with respect to the price of eggs. The plaintiffs ultimately lost their case and were ordered by the court to pay $120,000 to $150,000 to cover the legal costs of the three defendant grocery stores.

After the egg case was lost, Respondent engaged in a pattern of harassment against numerous attorneys and law firms, many of whom had some involvement in the egg case. During February and March 2001, Respondent made between 300 and 1,000 harassing and/or threatening telephone calls to at least eleven law firms. The anger and threats expressed by Respondent in these telephone calls increased over time. In addition, Respondent sent more than 1,000 e-mails to several of the same attorneys that he had been calling on the telephone. He also personally appeared at three of the law firms that were the targets of his threats and harassment, but was either denied access to the buildings

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[2] Respondent received credit for 146 actual days of incarceration and for 72 days of custody credits as authorized by Penal Code section 4019 (totaling the 218 days of incarceration ordered by the court).

or was escorted off the premises.

Between February 16, 2001, and March 29, 2001, Respondent telephoned David Noonan, one of the defense attorneys in the egg case, at least 143 times and sent him scores of e-mails. These telephone calls and e-mails were harassing and threatening in nature. On April 4, 2001, Respondent left a screaming, obscenity-laced voice mail message for Noonan in which he made specific threats to kill him.

A second victim of Respondent's harassment and threats was Dan Mogin, a partner of Jay Kendrick, for whom Respondent had worked as a law clerk in law school and with whom he subsequently practiced in the law firm of Kendrick, Bonas & Nutley. In the summer of 2000, Respondent approached Mogin to seek help in a dispute he was having with Kendrick and for advice on the appeal of his egg case. Mogin referred Respondent to another attorney. Respondent and the other attorney subsequently had a dispute over Respondent's increasingly bizarre behavior and over legal fees owed by Respondent for the attorney's legal services. About six months later, in early 2001, Respondent sent Mogin at least 218 e-mails and made numerous harassing and threatening telephone calls to Mogin's office. In several of the telephone messages, Respondent made threatening references to Mogin's family. On February 27, 2001, Respondent appeared – dirty, unkempt and wearing a trench coat, outside of Mogin's law firm. He paced back and forth in front of the building for several minutes before leaving.

The third victim of the threats and harassment that resulted in Respondent's criminal convictions was attorney Bill Lerach. Respondent had previously worked with several attorneys in Lerach's law firm. Respondent sent at least 95 harassing and/or threatening e-mails to Lerach and left eight threatening voice mails in which, among other things, Respondent screamed, shouted obscenities and threatened to kill Lerach. Respondent then arrived unannounced at Lerach's law firm on February 27, 2001, and had to be escorted out of the building by one of the firm's attorneys.

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Although it did not form any part of the basis for Respondent's criminal convictions, there is also evidence that, between March 18, 2001 and March 27, 2001, Respondent made voice mail and/or e-mail threats to kill three other attorneys who had been involved in the egg case, i.e., Gregory Stone, Don Howarth and Andrew Hale.

Respondent's threats and harassment caused significant fear and concern to Respondent's victims and to other employees of the law firms at which his threats were directed. Noonan's law firm hired a security guard for a period of three weeks as a direct result of Respondent's threats. Mogin issued several memoranda to his staff about Respondent and about security practices. Several members of Mogin's staff expressed fear for their safety to the police. Lerach hired security officers to protect both his law firm and his family as a result of Respondent's threats.

Respondent was arrested by the FBI on April 5, 2001, and remained in federal custody until August 2003, when he was released to the custody of the San Diego County Sheriff's Department to face trial for the criminal charges against him in San Diego County Superior Court Case No. SCD 159416.[3] Respondent remained in custody at the San Diego County Jail until December 31, 2003, the day following the acceptance of his guilty pleas in the state criminal proceeding.

The Court concludes that the facts and circumstances surrounding Respondent's commission of the offenses for which he was convicted involved moral turpitude. "Moral turpitude" has been defined by the California Supreme Court as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12 Cal.2d 93, 97.) Holding that an attorney's act constitutes moral turpitude characterizes the attorney as unsuitable to practice law. (*In re Strick* (1983) 34 Cal.3d 891, 902; *In re Higbie* (1972) 6 Cal.3d 562, 570.)

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[3] In an indictment filed in the U.S. District Court (Case No. CR 01-334(a) GAF), Respondent was charged with eight violations of 18 United States Code section 875(c) [making criminal threats]. The indictment was subsequently dismissed on September 17, 2003, on grounds of double jeopardy.

In *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543, 550-551, the State Bar Court Review Department concluded that the attorney's conviction of a violation of Penal Code section 417.2, subdivision (a) [exhibiting a replica of a firearm in a threatening manner to cause fear of bodily harm] involved moral turpitude where the attorney pointed what appeared to be a gun at a building receptionist and pulled the trigger after she had delivered to him a three-day notice to quit the premises for failure to pay his office rent. After leaving the reception area, the attorney went to another reception area on the third floor of the building and said, "[e]verybody freeze" while holding what appeared to be a gun pointed first at the receptionist and then at others in the room. In finding that the attorney's conduct involved moral turpitude, the Review Department stated that the attorney's acts were intended to be perceived as life-threatening and that he could have provoked heart attacks or an armed response to the perceived threat, thereby demonstrating a flagrant disregard toward human life. The Review Department also noted that the attorney's acts were not the result of an act of uncontrollable anger but, rather, the attorney had time and opportunity to ponder his acts and to reconsider them before acting further.

In the present case, Respondent made specific threats to kill numerous people. They were sufficiently fearful of the legitimacy of Respondent's threats that they felt compelled to take additional measures to protect their families and their law firms. Respondent intended his threats to be taken seriously. When he was escorted from the premises of Lerach's law firm and was asked about the threats, Respondent admitted to them and stated, "Good. They were supposed to upset people."

Thus, the Court concludes that the egregious conduct that led to Respondent's criminal convictions clearly involved moral turpitude.

LEVEL OF DISCIPLINE

A. Factors in Mitigation

Respondent has no record of prior discipline. However, he was only admitted to practice for slightly more than five years at the time of his misconduct. Respondent's lack of prior discipline

over such a short period of time is not entitled to any weight as a mitigating factor. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 66 [five years of practice without prior discipline does not entitle attorney to mitigation]; *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473 [four years of practice is insufficient for mitigation].)

There are no other mitigating circumstances.

B. <u>Factors in Aggravation</u>

Respondent was convicted of criminal offenses involving threats and harassment that victimized at least three different individuals. (Standard 1.2(b)(ii).)

Respondent's threats and harassment caused significant fear and concern to his victims, compelling them to take measures to protect themselves and their families. (Standard 1.2(b)(iv).)

Respondent failed to cooperate in this proceeding prior to the entry of his default. He failed to file a response to the Notice of Hearing on Conviction and the Court was compelled to terminate the telephonic status conference on August 16, 2004, as a result of Respondent's disruptive behavior. (Standard 1.2(b)(vi).)

C. <u>Discussion</u>

Standard 3.2 of the Standards for Attorney Sanctions for Professional Misconduct provides that the final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding its commission, shall result in disbarment and that a discipline other than disbarment shall be imposed only when the most compelling mitigating circumstances are present. No such mitigating circumstances have been presented in this case.

The Supreme Court has specifically stated that "adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct." (*In re Naney* (1990) 51 Cal.3d 186, 190; *In re Brown* (1995) 12 Cal.4th 205, 220.)

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There is evidence in the record which indicates that, at or about the time of the incidents that resulted in his criminal convictions, Respondent may have had a substance abuse problem involving methamphetamine. There is also evidence in the record that suggests that Respondent suffers from mental health problems that also may have contributed to his misconduct in this proceeding.

Both substance abuse and mental health problems can be accorded significant weight as mitigating circumstances in determining the appropriate discipline to be recommended. However, it is Respondent who bears the burden of demonstrating that the substance abuse and/or mental health issues have a causal relationship to the underlying misconduct and that Respondent has undergone a meaningful and sustained period of rehabilitation from the substance abuse problem or no longer suffers from the mental health issues. (*Harford* v. *State Bar* (1990) 52 Cal.3d 93, 101; *Porter* v. *State Bar* (1990) 52 Cal.3d 518, 527.)

Respondent's failure to participate in this proceeding deprives this Court of an opportunity to make a realistic assessment regarding the progress of his recovery. However, in the very limited contact the Court had with Respondent in this proceeding, he was wholly unwilling or unable to conduct himself in a professional manner or to act appropriately in court.

The protection of the public, the public and the legal professions must be this Court's primary concern in determining the degree of discipline to be imposed. The Court concludes that such protection is best afforded by Respondent's disbarment. Following expiration of the minimum waiting period required by rule 662 of the Rules of Procedure, Respondent will have an opportunity to present evidence of his rehabilitation, his recovery from any substance abuse or mental health issues and his fitness to practice law in the context of a reinstatement proceeding.

RECOMMENDED DISCIPLINE

It is hereby recommended that Respondent **CASH JOSEPH BONAS** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

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It is also recommended that Respondent be ordered to comply with rule 955 of the Rules of Court and that he be ordered to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, of the effective date of the Supreme Court's final disciplinary order in this proceeding.

COSTS

It is recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and that such costs be made payable and enforceable in accordance with Business and Professions Code sections 6086.10, subdivision (a) and 6140.7.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In light of this Court disbarment recommendation, it is hereby ordered that Respondent be transferred to involuntary inactive enrollment status under Business and Professions Code section 6007, subdivision (c)(4) and rule 220(c) of the Rules of Procedure. The inactive enrollment shall become effective three calendar days after this Order is filed.

Dated: December 30, 2004

JOANN M. REMKE
Judge of the State Bar Court

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 San Francisco, on December 30, 2004, 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:

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

CASH J. BONAS
639 ROSKILDE DRIVE
SOLVANG CA 93463

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

CHARLES MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 30, 2004.**

George Hue
Case Administrator
State Bar Court