

**REVIEW DEPARTMENT OF THE STATE BAR COURT
IN BANK**

In the Matter of

MARK JAMES AVERY

A Member of the State Bar.

07-C-11673

**RECOMMENDATION OF
SUMMARY DISBARMENT**

The State Bar's request for recommendation of summary disbarment, filed July 29, 2008, is granted. On November 7, 2008, we filed an order to show cause (OSC) directing respondent Mark James Avery, State Bar No. 148373, to show cause why we should not recommend his summary disbarment to the Supreme Court. Respondent failed to file a response.

On March 6, 2007, respondent entered a guilty plea to five counts of wire fraud in violation of title 18 of the United State Code sections 1343 and 1346, ten counts of money laundering in violation of title 18 of the United States Code section 1957(a), and agreed to forfeiture pursuant to section 982(a)(1) of the same title. As a result of respondent's conviction we placed him on interim suspension effective July 2, 2007. Respondent's conviction is now final. (Cal. Rules of Court, rule 9.10(a).)

Respondent's conviction is conclusive proof that he committed the crime. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097.) The record of conviction establishes that respondent's conviction meets the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c), as amended effective January 1,

1997. First, respondent's offenses of wire fraud constitute felonies. (18 U.S.C. § 3559 (a)(3).) Second, an element of wire fraud is the specific intent to defraud. (*U.S. vs. McNeil* (9th Cir. 2003) 320 F.3d 1034, 1040.) When an attorney's conviction meets the requirements of Business and Professions Code, section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 4-7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that respondent, Mark James Avery, State Bar No. 148373, be summarily disbarred from the practice of law in this state. We also recommend that respondent be ordered to comply with rule 9.20 of the California Rules of Court and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order. Finally, we recommend 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.



Presiding Judge

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator 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 January 2, 2009, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED DECEMBER 2, 2009

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:

MARK J. AVERY
145 PLAZA DR #207-501
VALLEJO, CA 94591

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

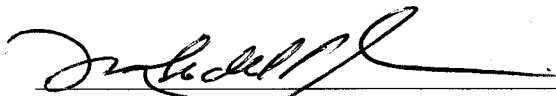
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Dane Christopher Dauphine, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 2, 2009.



Milagro del R. Salmeron
Case Administrator
State Bar Court