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

In the Matter of	)	Case No.: 10-C-00010
	)	
JOE MELVILLE CAPPS	)	
	)	<b>RECOMMENDATION OF SUMMARY</b>
Member No. 210998	)	<b>DISBARMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

On November 19, 2010, the State Bar filed a request for recommendation of summary disbarment based on Joe Melville Capps's felony conviction. Capps did not file a response. We grant the request and recommend that Capps be summarily disbarred.

On December 15, 2009, Capps pled guilty to violating Massachusetts General Code 266 section 5A (attempted arson of a dwelling).<sup>1</sup> Effective April 19, 2010, we placed Capps on interim suspension. On November 19, 2010, the State Bar filed evidence that Capps's conviction is now final.

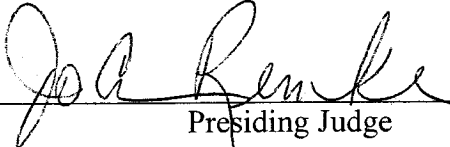
After the judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude." (Bus. & Prof. Code, § 6102, subd. (c).)

<sup>1</sup> This statute states that "Whoever willfully and maliciously attempts to set fire to, or attempts to burn . . . any of the buildings, structures or property mentioned in the foregoing sections . . . shall be punished by imprisonment in the state prison for not more than ten years . . ." Capps also pled guilty to felony violations of Massachusetts General Code 266 section 127 (malicious destruction of property), 265 section 15B (assault with a deadly weapon) and misdemeanor violations of Massachusetts General Code 275 section 2 and 4 (threat to commit crime) and 272 section 53 (disorderly conduct).

The record of conviction establishes that Capps's offense meets the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c). First, it is a felony. Second, we find the crime involves moral turpitude as it is analogous to California Penal Code section 455 (attempted arson), which has been determined to involve moral turpitude.<sup>2</sup> (See *People v. Miles* (1985) 172 Cal.App.3d 474, 481-482 [the least adjudicated elements of an arson conviction necessarily involve moral turpitude for purposes of impeachment]; CALJIC No. 6.00 [attempt to commit a crime consists of a specific intent to commit the crime and an act towards its commission].)

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, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Joe Melville Capps, State Bar number 210998, be disbarred from the practice of law in this state. We also recommend that he be ordered to comply with rule 9.20 of the California Rules of Court 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's order. Finally, we recommend that the costs be awarded to the State Bar in accordance with section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

  
\_\_\_\_\_  
Presiding Judge

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<sup>2</sup> This statute states that "Any person who willfully and maliciously attempts to set fire to, or attempts to burn . . . any structure . . . is punishable by imprisonment in the state prison for 16 months . . . ."

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 December 28, 2010, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED DECEMBER 28, 2010

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:

JOE M. CAPPS  
30 CRESCENT ST  
WEST NEWTON, MA 02465

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:

Murray B. Greenberg, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 28, 2010.

  
\_\_\_\_\_  
Milagto del R. Salmeron  
Case Administrator  
State Bar Court