

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case No.: **12-J-14178-RAP**
)
MICHAEL ANTONIO JOSEPH,) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
Member No. 76924,) **ENROLLMENT**
)
A Member of the State Bar.)

On March 26, 2012, respondent Michael Antonio Joseph was ordered by the Supreme Court of the Virgin Islands (USVI) to be disciplined upon findings that he had committed professional misconduct in that jurisdiction. As a result, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding on July 13, 2012. (Bus. & Prof. Code, § 6049.1; Rules Proc. of State Bar, rules 5.350-5.354.)

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon respondent in California; (2) whether, as a matter of law, respondent’s culpability in the USVI proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of respondent’s misconduct in the USVI; and (3) whether the USVI proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

Respondent bears the burden of establishing that the conduct for which he was disciplined by the USVI would not warrant the imposition of discipline in California and/or that

the USVI proceedings lacked fundamental constitutional protection. Unless respondent establishes one or both of these, the record of discipline in the USVI proceeding is conclusive evidence of respondent's culpability of misconduct in California. (Section 6049.1, subdivisions (a) & (b).)

Respondent failed to participate either in person or through counsel, and his default was entered. The State Bar filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹ 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 disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar 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

Respondent was admitted to practice law in this state on December 21, 1977, and has been a member since then.

Procedural Requirements Have Been Satisfied

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¹ Unless otherwise indicated, all references to rules are to this source.

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(E)(2).)

On July 13, 2012, the State Bar filed the NDC. It was properly served on respondent on August 21, 2013³ by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The United States Postal Service returned the NDC as undeliverable.

In addition, reasonable diligence was also used to notify respondent of this proceeding. Prior to the filing of the NDC, an Early Neutral Evaluation Conference letter was mailed to respondent at his official membership records address. This letter was returned as undeliverable. Also, on July 10, 2012 and August 19, 2013, the State Bar called respondent at his official membership records telephone number, but the call did not go through as the number had been disconnected. On August 19, 2013, the State Bar found two additional addresses that may have belonged to respondent and sent copies of the NDC by first-class mail to those addresses as well as to his official membership records address. The latter and one of the others were returned as undeliverable. The other was not. On that same date, the State Bar attempted to fax a copy of the NDC to respondent's official membership records facsimile number but the fax did not go through, bearing the result "no answer."

Respondent failed to file a response to the NDC. On September 23, 2013, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a

³ The NDC was not properly served on July 13, 2012 as it was not served by certified mail, return receipt requested. Accordingly, by order filed on August 8, 2013, the order of default and inactive enrollment entered on September 13, 2012 was vacated.

response to the motion, and his default was entered on October 17, 2013. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under 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.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On June 2, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered except for a telephone call from respondent's attorney Ronald E. Russell who indicated he was going to file a request for special admission to represent respondent in these proceedings;⁴ (2) respondent has no other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security 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 July 7, 2014.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) Section 6049.1(a) provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed

⁴ On January 21, 2014, the court filed an order denying without prejudice the request for special admission to represent respondent; notice of appearance; and motion to set aside default and to provide responses as the request did not comply with rule 9.40 of the California Rules of Court.

professional misconduct in that jurisdiction shall be conclusive evidence that, subject to limited exceptions, the member is culpable of professional conduct in this state.

The court finds, as a matter of law, that respondent's culpability in the USVI proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in the USVI proceeding, as follows.

Rules of Professional Conduct, Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By not preparing for trial as ordered in one client matter which was then dismissed for lack of prosecution, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Bus. & Prof. Code, § 6068, subd. (m) [Failure to Communicate]

By not responding to his clients' status inquiries and by not advising them that he had moved his office and that their case had been called for trial and subsequently dismissed for lack of prosecution, respondent did not promptly respond to reasonable status inquiries of clients or keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services in willful violation of section 6068, subdivision (m).

The charge that respondent wilfully violated rule 3-500 of the Rules of Professional Conduct is dismissed with prejudice as duplicative.

Bus. & Prof. Code, § 6068, subd. (i) [Failure to Cooperate]

By not responding to the USVI disciplinary investigator's 2005 letter seeking a written response to a disciplinary grievance, respondent did not cooperate and participate in a disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney in willful violation of section 6068, subdivision (i).

Disbarment is Recommended under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

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

(2) respondent had actual notice of the proceedings prior to the entry of his default, as he was properly served with a copy of the NDC; received a voicemail reminder at his official membership records telephone number; received an email notification from the State Bar; and advised the State Bar, via email, that he did not intend to participate in the disciplinary proceedings;

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

(4) the factual allegations in the NDC 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 must recommend his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Michael Antonio Joseph be disbarred from the practice of law in the State of California and that his 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, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Michael Antonio Joseph, State Bar number 76924, 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. (Rule 5.111(D).)

Dated: September 8, 2014

RICHARD A. PLATEL
Judge of the State Bar Court