

PUBLIC MATTER

FILED

AUG 24 2015

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 13-J-15308-YDR
	)	
PAUL ALAN MANOFF,	)	DECISION INCLUDING DISBARMENT
	)	RECOMMENDATION AND ORDER OF
Member No. 57697,	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
<u>A Member of the State Bar.</u>	)	

On March 7, 2014, respondent Paul Alan Manoff was ordered by the Supreme Judicial Court of Suffolk County for the Commonwealth of Massachusetts (Massachusetts) 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 7, 2014. (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 Massachusetts 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 Massachusetts; and (3) whether the Massachusetts 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 Massachusetts would not warrant the imposition of discipline in California and/or that the Massachusetts proceedings lacked fundamental constitutional protection. Unless respondent establishes one or both of these, the record of discipline in the Massachusetts 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.<sup>1</sup> 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 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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 18, 1973, and has been a member since then.

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> 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).)

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

On August 27, 2014, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at his membership records address (official address). The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41)

Respondent had actual notice of this proceeding. Respondent appeared telephonically at the status conference conducted on October 2, 2014, during which dates were scheduled for a pretrial conference and trial. At that time, the court also directed respondent to file a response to the NDC by November 4, 2014. Moreover, the deputy trial counsel spoke with respondent on November 4, 2014 and reminded him that a response was due that day and that the State Bar would file a motion for entry of his default if there was no response.

Respondent failed to file a response to the NDC. On December 1, 2014, the State Bar filed and served a motion for entry of respondent's default. The motion complied with all the requirements for a default,<sup>3</sup> 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) and reflecting that he had actual notice of the proceeding. 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 response to the motion, and his default was entered on December 30, 2014. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The return receipt, signed by "L.

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<sup>3</sup> Since the court allowed respondent to file a response by November 4, 2014, the earliest date upon which the State Bar could file a motion for entry of default was December 4, 2014. The court finds this error to be de minimis given respondent's actual notice of the proceedings since before October 2, 2014 and his contact with the State Bar on November 4, 2014. Moreover, the return receipt for the motion for entry of default showed delivery to "C. Johnson" on December 8, 2014.

O'Reilly", shows delivery on January 2, 2015. 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 90 days to file motion to set aside default].) On April 13, 2015, 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 had no contact with respondent since the default was entered; (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 June 3, 2015.

#### **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 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 pursuant to rules 1.15(b), (e) and (f); 3.4(c); and 8.4(d) and (h) of the Massachusetts Rules of Professional Conduct in the Massachusetts 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 Massachusetts proceeding, as follows.

***(Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])***

By commingling personal and entrusted funds and not reconciling his client trust account or maintaining its records after the termination of representation, respondent willfully violated rule 4-100(A), which provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

***(§ 6103 [Failure to Obey a Court Order])***

By intentionally violating court orders to appear at payment review hearings, respondent willfully violated section 6103, which provides, in relevant part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

**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 proceeding;
- (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 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 recommends disbarment.

## RECOMMENDATIONS

### Disbarment

The court recommends that respondent Paul Alan Manoff 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.

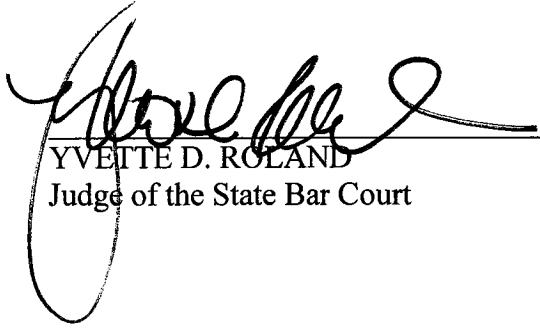
### Costs

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 Paul Alan Manoff, State Bar number 57697, 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: August 21, 2015



YVETTE D. ROLAND  
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 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 August 24, 2015, I deposited a true copy of the following document(s):

### **DECISION INCLUDING DISBARMENT RECOMMENDATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

in a sealed envelope for collection and mailing on that date as follows:

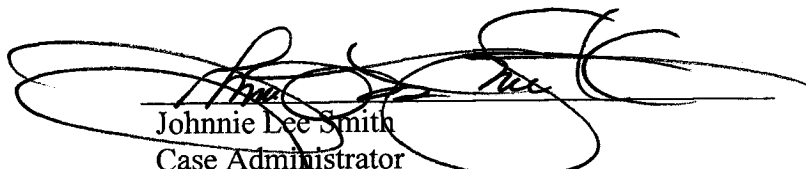
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**PAUL ALAN MANOFF  
47 WINTER ST 4TH FL  
BOSTON, MA 02108**

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

**SHERELL MCFARLANE**, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 24, 2015.

  
Johnnie Lee Smith  
Case Administrator  
State Bar Court