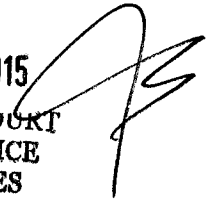


FILED

DEC 18 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES



**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of)	Case Nos.: 14-C-02370-YDR
)	
JOSEPH DECARLO,)	
)	DECISION AND ORDER OF
Member No. 230256,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Joseph DeCarlo (“Respondent”) was convicted of violating Vehicle Code section 23103 (reckless driving), a misdemeanor violation which may or may not involve moral turpitude or constitute other misconduct warranting discipline. After finality of the conviction, the Review Department of the State Bar Court issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violation involved moral turpitude or other misconduct warranting discipline. Respondent failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (“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 hearing on conviction,



¹ Unless otherwise indicated, all references to rule(s) are to this source.

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.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 California on March 26, 2004, and has been a member since that date.

Procedural Requirements Have Been Satisfied

On March 27, 2015, the State Bar Court filed and properly served on Respondent the notice of hearing on conviction ("NOH") in case No. 14-C-02370 by certified mail, return receipt requested, to Respondent's membership records address. The NOH notified respondent that his failure to appear at trial would result in a disbarment recommendation. (Rule 5.345.) The State Bar Court received the return card that was signed by "Joe."³

Respondent had actual notice of this proceeding. On May 1, 2015, the deputy trial counsel ("DTC") left a voicemail message at Respondent's official membership records telephone number, left a voicemail message at an alternate phone number, and sent an email notifying Respondent that his response to the NOH was past due and that the State Bar intended to file a motion for default.⁴ On May 4, 2015, the DTC sent Respondent another email indicating that Respondent's response was past due and that she intended to file a motion for

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(F)(2).)

³ The last name on the return card is undecipherable.

⁴ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

default. On the same date, Respondent emailed the DTC and stated he was not going to file a response.

Respondent failed to file a response to the NOH. On May 8, 2015, the State Bar properly filed and 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 DTC 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 response to the motion, and his default was entered on June 2, 2015. 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. He has remained inactively enrolled since that time.

Respondent 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 September 9, 2015, the State Bar properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are no other investigative matters against Respondent; (3) Respondent has no records of prior discipline; and (4) the Client Security Fund has not paid any claims as a result of Respondent's misconduct. 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 October 6, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of Respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.346(D).) As set forth below in greater detail, Respondent's reckless driving conviction supports the conclusion that Respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 14-C-02370 - (Conviction Matter – Vehicle Code § 23103)

Respondent was convicted of violating Vehicle Code section 23103 (reckless driving).

On April 18, 2014, Respondent was driving in the Hollywood area with three adult passengers. Los Angeles Police Officers Laule and Barnes saw Respondent driving with his bright headlights on. The officers pulled Respondent over. Officer Laule smelled a strong odor of alcohol and asked Respondent if he had been drinking. Respondent stated he had a glass of wine with dinner. Officer Laule then asked Respondent to step out of the vehicle.

After Respondent exited the car, Officer Laule again asked Respondent how much he had to drink. Respondent stated that he split two bottles of wine with his passengers. When Officer Laule asked what time he had his last drink, Respondent replied, "About thirty minutes ago."

Respondent consented to the administration of several tests. First, he agreed to submit to three Field Preliminary Alcohol Screenings ("PAS"). The 9:57 p.m. test resulted in a blood alcohol level of .104. The second test at 10:15 p.m. resulted in blood alcohol level of .102, and the third test at 10:17 p.m. returned a blood alcohol level of .106. Respondent also took a Standard Field Sobriety Test, which he failed to perform properly. Respondent was arrested for driving under the influence and taken to a DUI Sobriety Check Point. Respondent provided two

breath screening samples – one at 10:54 p.m. and another at 10:56 p.m. His blood alcohol level was .09.

On May 14, 2014, Respondent was charged with violating Vehicle Code section 23152(a) (driving under the influence) and 23152(b) (driving with a blood alcohol level of .08 % or more). On August 21, 2014, Respondent was also charged with violating Vehicle Code section 23103 (reckless driving).

On August 21, 2014, Respondent pled nolo contendere to a misdemeanor violation of Vehicle Code section 23103, and the remaining charges were dismissed. The imposition of sentence was suspended for three years pending Respondent's successful completion of summary probation. His probation conditions included serving two days in the Los Angeles County jail, a \$510 fine plus penalty assessments, performing five days of community labor, and enrolling in and successfully completing an approved 18-month alcohol education program.

Reckless driving under the influence of alcohol is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude, but do constitute other misconduct warranting discipline.

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) The NOH was properly served on Respondent under rule 5.25;
- (2) Reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default;

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

(4) The factual allegations in the statement of facts and circumstances surrounding respondent's convictions 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 and actual notice and opportunity, Respondent failed to fully participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends Respondent's disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent **Joseph DeCarlo**, State Bar number 230256, 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 **Joseph DeCarlo**, State Bar number 230256, 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: December 18, 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 December 18, 2015, 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:

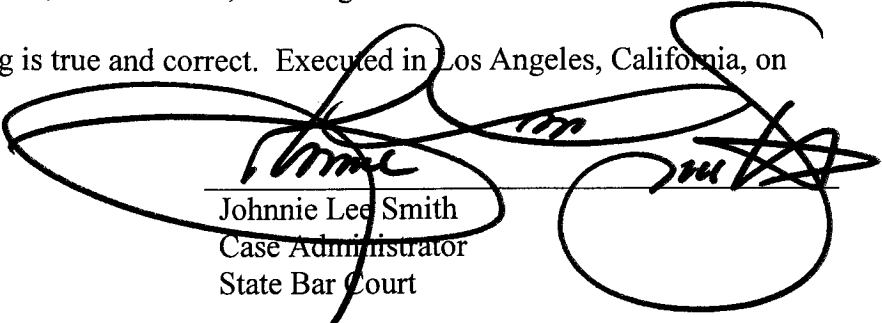
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOSEPH DECARLO
6861 IRIS CIR
LOS ANGELES, CA 90068**

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

ANN J. KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 18, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court