



PUBLIC MATTER

FILED

OCT 14 2015

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STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 14-J-06085-PEM
	)	
<b>JOSEPH PATRICK MASTERSON,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 165564,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

On June 6, 2014, respondent **Joseph Patrick Masterson** (respondent) was ordered disbarred by the Supreme Court of Missouri upon facts that established his culpability for acts of 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 January 22, 2015. (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 Missouri 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 Missouri; and (3) whether the Missouri proceeding lacked fundamental constitutional protection. (Bus. & Prof. Code, § 6049.1, subd. (b).)

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

the Missouri proceeding lacked fundamental constitutional protection. Unless respondent establishes one or both of these, the record of discipline in the Missouri proceeding is conclusive evidence of respondent's culpability of misconduct in California. (Bus. & Prof. Code, § 6049.1, subd. (a) & (b).)

Respondent failed to participate in this matter 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**

### **Jurisdiction**

Respondent was admitted to practice law in this state on June 1, 1993, and has been a member since then.

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

On January 22, 2015, the State Bar properly filed and served a NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified

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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(F)(2).)

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 to the State Bar bearing a stamp that it was unable to be forwarded.

Thereafter, the State Bar: (1) sent a copy of the NDC to respondent by regular, first-class mail to his membership records address; (2) attempted to reach respondent by telephone at his membership records telephone number; (3) conducted a search of various internet sites and a Lexis search to identify potential addresses and other contact information for respondent; (4) attempted to reach respondent at five alternate telephone numbers for respondent revealed by the search; (5) sent a copy of the NDC, with a cover letter, to respondent at four alternate address for respondent located by the search.

Respondent failed to file a response to the NDC. On February 24, 2015, the State Bar properly served on respondent a motion for entry of respondent's default. The motion was filed on February 25, 2015. 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 response to the motion, and his default was entered on March 18, 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, 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 June 23, 2015, the State Bar served

respondent with the petition for disbarment. The petition for disbarment was filed on June 24, 2015. 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 served;<sup>3</sup> (2) respondent has no other disciplinary matters pending; (3) respondent has a 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 28, 2015.

### **Prior Record of Discipline**

Respondent has one prior record of discipline.<sup>4</sup> On July 22, 1998, the Supreme Court filed an order suspending respondent from the practice of law for five years and until he demonstrated his rehabilitation, fitness to practice, and learning and ability in the general law, staying execution of that suspension, and placing respondent on probation for five years on conditions including that he be actually suspended for three years and until he demonstrated his rehabilitation, fitness to practice, and learning and ability in the general law. Respondent stipulated that the facts and circumstances surrounding his felony violations of Kansas statutes 21-3414 [aggravated battery] and 65-4127(b)(5) [possession of cocaine] of which he was convicted involved moral turpitude.

### **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(2).) Business and Professions Code 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

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<sup>3</sup> This is the same date that respondent's default was entered.

<sup>4</sup> The court admits into evidence the certified copy of respondent's prior record of discipline attached to the June 2015 petition for disbarment.

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 in the Missouri 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 Missouri proceeding, as follows.<sup>5</sup>

**Rules of Professional Conduct, Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]**

By using his " 'operating' " and " 'personal' " accounts to hold client and third party funds, rather than a client trust account, respondent willfully violated Rules of Professional Conduct, rule 4-100(A).

**Business and Professions Code, Section 6106 [Dishonesty, Moral Turpitude, or Corruption]**

By (1) using \$5,238.86 in client or third party funds for his personal use and by failing to give a client the \$200 owed to her and (2) making a misrepresentation of a material fact in a sworn statement in connection with the investigation of the Missouri disciplinary matter, respondent willfully violated Business and Professions Code section 6106.<sup>6</sup>

**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 must be recommended. In particular:

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

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<sup>5</sup> The court does not find that the findings in the Missouri proceeding support a willful violation of rule 4-100(B)(1) of the Rules of Professional Conduct.

<sup>6</sup> The misrepresentation respondent made in the Missouri disciplinary investigation would also constitute a violation of Business and Professions Code section 6068, subdivision (i) [failure to cooperate].

(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 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 **Joseph Patrick Masterson** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that respondent be ordered to make restitution to Marquita Richardson in the amount of \$200, plus 10 percent interest per year from October 23, 2013. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).<sup>7</sup>

### **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

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<sup>7</sup> The court will not recommend restitution to client John Duncan, as it is unclear whether the \$5,238.86 in settlement funds belonged to Mr. Duncan or one or more of his medical providers.

(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 Patrick Masterson**, State Bar number 165564, 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: October 14, 2015

  
PAT McELROY  
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 San Francisco, on October 14, 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 San Francisco, California, addressed as follows:

JOSEPH P. MASTERSON  
NIGRO LAW FIRM  
606 W 39TH ST  
KANSAS CITY, MO 64111

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:

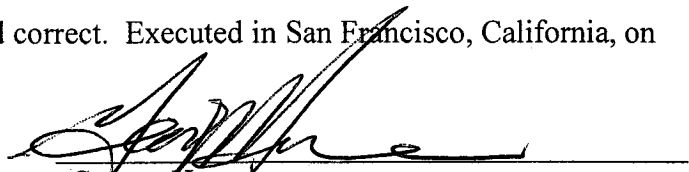
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Drew D. Massey, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 14, 2015.

  
George Hue  
Case Administrator  
State Bar Court