PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	Case Nos.: **15-O-10284-WKM (15-O-10290; 15-O-10473; 15-O-10531; 15-O-10801)**
PETER ROBIN ESTES, Member No. 168867,	**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**
A Member of the State Bar.	

Respondent Peter Robin Estes (respondent) is charged with a total of twenty counts of misconduct in five separate client matters. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (OCTC) 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 90 days, OCTC will file a petition requesting the court to recommend the attorney's disbarment.[2]

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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 requirement is 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).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and that the petition for disbarment should be granted. Accordingly, the court will recommend that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Jurisdiction

Respondent was admitted to the practice of law in this state on December 13, 1993. Since that date, he has continuously been a member of the State Bar of California.

Procedural Requirements Have Been Satisfied

On August 25, 2015, OCTC filed and properly served the NDC on respondent by certified mail, return receipt requested, at respondent's membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On October 2, 2015, the United States Postal Service returned the NDC to OCTC undelivered and marked: "Return to Sender-Unclaimed-Unable to forward ...." Nonetheless, the record is clear that respondent had actual notice of this proceeding no later than September 15, 2015, when he spoke on the telephone with the trial counsel assigned to this matter, Deputy Trial Counsel Lara Bairamian (DTC Bairamian).

On September 22, 2015, respondent met with DTC Bairamian in the State Bar's Los Angeles office. At that meeting, DTC Bairamian not only provided respondent with a courtesy copy of the NDC in this matter, but also notified respondent that the matter had been set for an initial status conference on October 9, 2015. DTC Bairamian also advised respondent that she would seek his default if he did not promptly file a response to the NDC.

On October 6 and 9, 2015, respondent and DTC Bairamian again spoke on the telephone. During their October 6 conversation, respondent provided DTC Bairamian with an alternative mailing address in Accokeek, Maryland where courtesy copies of pleadings could be sent to him.

During their October 9 conversation, DTC Bairamian told respondent that, because he had not filed a response to the NDC, she intended to seek the entry of his default the following week. She also notified respondent that this proceeding had been set for another status conference on October 20, 2015.

On October 12, 2015, DTC Bairamian received an email from respondent. Attached to that email was a letter from respondent stating that he elects "to resolve this matter by default." Thereafter, respondent failed to file a response to the NDC. On October 16, 2015, OCTC filed and properly served a motion for entry of default on respondent at his membership-records address by certified mail, return receipt requested. In addition, OCTC mailed a courtesy copy of the motion to respondent at his alternative address in Accokeek, Maryland. The motion complied with the requirements for a default, including a supporting declaration from DTC Bairamian. (Rule 5.80.) The motion 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 NDC or to the motion for entry of default, and the court properly entered his default on November 3, 2015. The court properly served the default order on respondent at his membership records address by certified mail, return receipt requested. The court also sent a courtesy copy of its default order to respondent at his alternative address in Accokeek, Maryland by first class mail, regular delivery.

In the default order, the court advised respondent that, if he did not timely move to set aside his default, the court would recommend that he be disbarred. In the default order, the court also ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California in accordance with Business and Professions Code section 6007, subdivision (e).[3]

[3] Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

Thereafter, on November 6, 2015, respondent was involuntarily enrolled inactive, and he has been involuntarily enrolled inactive since that time.

The default order that was served on respondent at his membership records address was returned to the court undelivered. However, the courtesy copy of the default order sent to respondent's alternative address in Accokeek, Maryland was not returned to the court.

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].) Thus, on February 26, 2016, OCTC filed and properly served the petition for disbarment on respondent at his membership records address by certified mail, return receipt requested. In addition, OCTC mailed a courtesy copy of the petition to respondent at respondent's alternative address in Accokeek, Maryland.

As required by rule 5.85(A), OCTC reported in the petition that (1) respondent had not contacted OCTC since his default was entered on November 3, 2015; (2) in addition to the present case, 20 other disciplinary matters are pending against respondent; (3) respondent has one prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's prior discipline. 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 March 23, 2016.

Prior Record of Discipline

Respondent has one prior record of discipline for misconduct committed between about March 2013 and September 2014.[4] On May 7, 2015, the Supreme Court filed an order in case number S224906 (State Bar Court case number 14-O-00858, etc.), entitled *In re Peter Robin Estes on Discipline*, placing respondent on one year's stayed suspension and two years'

[4]The court admits into evidence the certified copy of respondent's prior record of discipline, which is attached as Exhibit 1 to DTC Bairamian's declaration that is included in OCTC's February 26, 2016, petition for disbarment.

probation on conditions, including a 90-day suspension. The Supreme Court imposed that discipline on respondent because respondent stipulated to culpability on the following fourteen counts of misconduct in six separate client matters: one count of failure to perform legal services competently; six counts of charging and collecting illegal fees; one count of misleading advertising; five counts of engaging in the unauthorized practice of law in various sister states; and one count of offering to settle a client's legal malpractice claim against him without advising the client of the right to seek independent legal advice.

The Factual Allegations Deemed Admitted by Default Warrant the Imposition of Discipline

Under section 6088 and rule 5.82, the factual allegations (but not the charges or the conclusions of law) set forth in the NDC are deemed admitted by the entry of respondent's default. When ruling on OCTC's petition for disbarment, the court must determine whether the admitted factual allegations support a finding, by clear and convincing evidence, that respondent is culpable of the charged misconduct. (Rule 5.85(F)(1)(d); cf. *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409, 410.) When making that determination, the court must resolve all reasonable doubts in respondent's favor, just as the court would do if this were a contested disciplinary proceeding. (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54-55, citing *Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.) As set forth in greater detail *post*, the admitted factual allegations support a finding that that respondent is culpable of the misconduct charged in 10 of the 20 counts. Therefore, the factual allegations in the NDC admitted by default "support a finding that [respondent] violated a statute, rule or court order that would warrant the imposition of discipline." (Rule 5.85(F)(1)(d).)

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Case Number 15-O-10284 (Furtado Matter)

Count One – Respondent willfully violated Rules of Professional Conduct, rule 1-300(B) (prohibition on practicing law in another jurisdiction in violation of that jurisdiction's professional regulations) by engaging in the practice of law in Massachusetts in violation of the Massachusetts Rules of Professional Conduct.

Count Two – This charge is that, "On or about February 24, 2014, Respondent made a solicitation, *or allowed one to be made on Respondent's behalf by agents of his law firm*, 'Estes Law,' to Orminda Furtado, a prospective client, by communication delivered by telephone to a person whom Respondent or Estes Law had no family or prior professional relationship concerning Respondent's availability for professional employment with a significant motive of pecuniary gain, in willful violation of the Rules of Professional Conduct, rule 1-400(C)." (Italics added.)

First, count two does not contain sufficient factual allegations to give respondent or the court adequate notice of the charges against respondent. Due process mandates that OCTC allege, in the NDC, sufficient specific factual detail to provide respondent with " 'a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial' [Citation.] " (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 168.) Without question, attorneys in State Bar Court disciplinary proceedings are to "be given fair, adequate, and reasonable notice and have a fair, adequate, and reasonable opportunity and right ... [¶] ... [t]o defend against the charges ...." (§ 6085.)[5] Second, the factual allegations in count two that are deemed admitted by respondent's default do not support a finding that respondent is culpable of violating rule 1-400(C) in the Furtado matter.

[5] In 1999, the Legislature twice inserted the phrase "fair, adequate, and" into section 6085. Once before the term "reasonable notice," and once before the term "reasonable opportunity."

Because all reasonable doubts in an attorney disciplinary proceeding must be resolved in favor of the attorney, a disjunctive allegation of misconduct deemed admitted by the entry of the attorney's default establishes only the lesser of the allegations. (*In the Matter of* Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 [disjunctive allegations of misconduct deemed admitted by default did not and could not establish culpability for misappropriating client funds, but could and did establish the lesser offense of commingling/use of trust account for personal purposes]; cf. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 359 [in an expedited proceeding based on discipline imposed by federal government or sister state under section 6049.1, the court accepts as established only the lesser of the charges in each count].)

The admitted disjunctive allegations in count two establish only that respondent somehow, and possibly unknowingly, allowed agents of his law firm to make a solicitation to Furtado. However, an attorney may ordinarily be disciplined for his employee's or agent's improper solicitation of a prospective client only if the attorney had actual knowledge of the improper solicitations. Thus, a finding that an attorney should have known of his employee's or agent's improper solicitations "is insufficient to warrant discipline for a wilful breach of the rules of professional conduct. (See Bus. & Prof. Code, § 6077.)" (*Geffen v. State Bar* (1975) 14 Cal.3d 843, 856, fn. 4.)

The admitted allegation that respondent somehow "allowed [a solicitation] to be made on Respondent's behalf by agents of his law firm," does not clearly establish that respondent had actual knowledge of the agents' alleged improper solicitation to Furtado. Thus, count two is DISMISSED with prejudice for want of proof.

Count Three – This charge is that respondent willfully violated Rules of Professional Conduct, rule 4-200(A) (illegal fee) by charging and collecting from Furtado a fee of $3,000 that was illegal because respondent was not entitle to practice law in Massachusetts. The factual

allegations in count three that are deemed admitted by respondent's default do not support the conclusion that respondent is culpable of violating rule 4-200(A) in the Furtado matter. Even though rule 4-200(A) pertains only to "Fees for Legal Services," count three does not even allege that the $3,000 fee that respondent charged and collected from Furtado was a fee for legal services. Nor does count three even allege that the $3,000 fee was for respondent's negotiating and obtaining a mortgage-loan modification on Furtado's Massachusetts properly. Thus, count three is DISMISSED with prejudice for want of proof.

Count Four – Respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to respond to the State Bar's two April 2015 letters regarding its investigation of the Furtado matter.

Case Number 15-O-10290 (Webb/Murillo Matter)

Count Five – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by engaging in the practice of law in Missouri in violation of the Missouri Rules of Professional Conduct.

Count Six – This charge is that, "In or about December 2013, Respondent made a solicitation, *or allowed one to be made on Respondent's behalf by agents of his law firm*, 'Estes Law,' to Jerry Webb and Kathleen Murillo, prospective clients, by communication delivered by telephone to a person whom Respondent or Estes Law had no family or prior professional relationship concerning Respondent's availability for professional employment with a significant motive of pecuniary gain in willful violation of the Rules of Professional Conduct, rule 1-400(C)." (Italics added.) Like count two *ante*, count six does not contain sufficient factual allegations to give respondent or the court adequate notice of the charges against respondent. Moreover, for the same reasons set forth *ante* under count two, the factual allegations in count six that are deemed admitted by respondent's default do not support the conclusion that

respondent is culpable of violating rule 1-400(C) in the Webb/Murillo matter. Thus, count six is DISMISSED with prejudice for want of proof.

Count Seven – This charge is that respondent willfully violated Rules of Professional Conduct, rule 4-200(A) by charging and collecting from Webb and Murillo a fee of $3,000 that was illegal because respondent was not entitled to practice law in Missouri. For the same reasons set forth *ante* under count three, the factual allegations in count seven that are deemed admitted by respondent's default do not support the conclusion that respondent is culpable of violating rule 4-200(A) in the Webb/Murillo matter. Count seven is DISMISSED with prejudice for want of proof.

Count Eight – Respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's two April 2015 letters regarding its investigation of the Webb/Murillo matter.

Case Number 15-O-10473 (Metrakas Matter)

Count Nine – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by engaging in the practice of law in Massachusetts and New Hampshire in violation of the Massachusetts Rules of Professional Conduct and the New Hampshire Rules of Professional Conduct, respectively.

Count Ten – This charge is that, "In or about February 2014, Respondent made a solicitation, *or allowed one to be made on Respondent's behalf by agents of his law firm*, 'Estes Law,' to Charles Metrakas, a prospective client, by communication delivered by telephone to a person whom Respondent or Estes Law had no family or prior professional relationship concerning Respondent's availability for professional employment with a significant motive of pecuniary gain in willful violation of the Rules of Professional Conduct, rule 1-400(C)." (Italics added.) Like counts two and six *ante*, count ten does not contain sufficient factual allegations to

give respondent or the court adequate notice of the charges against respondent. Moreover, for the same reasons set forth *ante* under count two, the factual allegations in count ten that are deemed admitted by respondent's default do not support the conclusion that respondent is culpable of violating Rules of Professional Conduct, rule 1-400(C) in the Metrakas matter. Count ten is DISMISSED with prejudice for want of proof.

Count Eleven – This charge is that respondent willfully violated Rules of Professional Conduct, rule 4-200(A) by charging and collecting from Metrakas a fee of $12,500 that was illegal because respondent was not entitled to practice law in Massachusetts and New Hampshire. For the same reasons set forth *ante* under count three, the factual allegations in count eleven that are deemed admitted by respondent's default do not support the conclusion that respondent is culpable of violating rule 4-200(A) in the Metrakas matter. Count eleven is DISMISSED with prejudice for want of proof.

Count Twelve – Respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's two April 2015 letters regarding its investigation of the Metrakas matter.

Case Number 15-O-10531 (Williams Matter)

Count Thirteen – Respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by engaging in the practice of law in Massachusetts in violation of the Massachusetts Rules of Professional Conduct.

Count Fourteen – This charge is that, "In or about December 27, 2013, Respondent made a solicitation, *or allowed one to be made on Respondent's behalf by agents of his law firm*, 'Estes Law,' to Lawrence Williams and Sonia Williams, prospective clients, by communication delivered by telephone to persons whom Respondent or Estes Law had no family or prior professional relationship concerning Respondent's availability for professional employment with

a significant motive of pecuniary gain in willful violation of the Rules of Professional Conduct, rule 1-400(C)." (Italics added.) Like counts two, six, and ten *ante*, count fourteen does not contain sufficient factual allegations to give respondent or the court adequate notice of the charges against respondent. Moreover, for the same reasons set forth *ante* under count two, the factual allegations in count fourteen that are deemed admitted by respondent's default do not support the conclusion that respondent is culpable of violating Rules of Professional Conduct, rule 1-400(C) in the Williams matter. Count fourteen is DISMISSED with prejudice for want of proof.

Count Fifteen – This charge is that respondent willfully violated Rules of Professional Conduct, rule 4-200(A) by charging and collecting from Lawrence and Sonia Williams a fee of $3,000 that was illegal because respondent was not entitled to practice law in Massachusetts. For the same reasons set forth *ante* under count three, the factual allegations in count fifteen that are deemed admitted by respondent's default do not support the conclusion that respondent is culpable of violating rule 4-200(A) in the Williams matter. Count fifteen is DISMISSED with prejudice for want of proof.

Count Sixteen – Respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's two April 2015 letters regarding its investigation of the Williams matter.

Case Number 15-O-10801 (Roten Matter)

Count Seventeen – Respondent willfully violated rule 1-300(B) of the Rules of Professional by engaging in the practice of law in Georgia in violation of the Official Code of Georgia and the Georgia Rules of Professional Conduct.

Count Eighteen – This charge is that, "In or about January 2014, Respondent made a solicitation, *or allowed one to be made on Respondent's behalf by agents of his law firm*, 'Estes

Law,' to Johnny Roten, a prospective client, by communication delivered by telephone to persons whom Respondent or Estes Law had no family or prior professional relationship concerning Respondent's availability for professional employment with a significant motive of pecuniary gain in willful violation of the Rules of Professional Conduct, rule 1-400(C)." (Italics added.) Like counts two, six, ten, and fourteen *ante*, count eighteen does not contain sufficient factual allegations to give respondent or the court adequate notice of the charges against respondent. Moreover, for the same reasons set forth *ante* under count two, the factual allegations in count fourteen that are deemed admitted by respondent's default do not support the conclusion that respondent is culpable of violating Rules of Professional Conduct, rule 1-400(C) in the Williams matter. Count eighteen is DISMISSED with prejudice for want of proof.

Count Nineteen – This charge is that respondent willfully violated Rules of Professional Conduct, rule 4-200(A) by charging and collecting from Roten a fee of $3,000 that was illegal because respondent was not entitled to practice law in Georgia. For the same reasons set forth *ante* under count three, the factual allegations in count nineteen that are deemed admitted by respondent's default do not support the conclusion that respondent is culpable of violating rule 4-200(A) in the Roten matter. Count nineteen is DISMISSED with prejudice for want of proof.

Count Twenty – Respondent willfully violated section 6068, subdivision (i) by failing to respond to the State Bar's two April 2015 letters regarding its investigation of the Roten matter.

Disbarment is Recommended

In light of the foregoing, the court finds that the requirements of rule 5.85(F) have been satisfied and that it is appropriate to recommend respondent's disbarment. In particular:

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

(2) respondent had actual notice of this proceeding before the entry of his default;

(3) respondent's default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of respondent's 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 will recommend disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Peter Robin Estes 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 further 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 and that the costs be 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 Peter Robin Estes, State Bar number 168867, be involuntarily enrolled as an

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inactive member of the State Bar of California, effective three calendar days after the service of this decision and order by mail. (Rule 5.111(D).)

Dated: June 3, 2016.

W. KEARSE McGILL
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 June 3, 2016, 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:

PETER R. ESTES
3658 BARHAM BLVD P221
LOS ANGELES, CA 90068

Courtesy copy:

PETER ROBIN ESTES
15601 FARMINGTON COURT
ACCOKEEK, MD 20607

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

Alex J. Hackert, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 3, 2016.

Julieta E. Gonzales
Case Administrator
State Bar Court