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STATE BAR COURT
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PUBLIC MATTER

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

In the Matter of)	Case Nos.: 15-O-10754 (15-O-11980;
)	15-O-12218; 15-O-12363;
JAMES PATRICK STONEMAN II,)	15-O-12799; 15-O-13004)-YDR
)	
Member No. 94523,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar.</u>)	ENROLLMENT

Respondent James Patrick Stoneman II (Respondent) was charged with 25 counts of misconduct. He failed to participate in these proceedings either in person or through counsel, and his default was entered. Thereafter, the Office of Chief Trial Counsel (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 that the court recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

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).)

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 California on December 16, 1980, and has been a member since that date.

Procedural Requirements Have Been Satisfied

On November 20, 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.) The United States Postal Service (USPS) returned the NDC to OCTC, bearing the stamp "UNCLAIMED."

Reasonable diligence was used to notify Respondent of this proceeding. From December 16, 2015, through January 5, 2016, OCTC: (1) left a message with Respondent's answering service at Respondent's membership records telephone number; (2) sent an email to Respondent at Respondent's membership records email address, attaching a copy of the NDC; (3) performed a public records search and obtained two additional addresses potentially belonging to Respondent; (4) sent letters and copies of the NDC by first-class mail to two addresses potentially belonging to Respondent; and (5) sent a letter and copy of the NDC by first-class mail to Respondent at his membership records address advising him that his response to the NDC was past due.

Respondent failed to file a timely response to the NDC. On January 27, 2016, OCTC filed and properly served a motion for entry of Respondent's default on Respondent at his

membership records address. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by OCTC 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 February 22, 2016. 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 June 10, 2016, OCTC properly filed and served the petition for disbarment on Respondent at his official membership records address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) there are other matters pending against Respondent; (3) Respondent has two prior records of 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. The case was submitted for decision on July 13, 2016.

Prior Record of Discipline

On September 6, 2013, Respondent received a public reproof with conditions for ethical violations in two client matters. In the first client matter, Respondent stipulated that he failed to promptly respond to reasonable status inquiries, failed to perform with competence, improperly withdrew from representation, failed to promptly refund unearned fees, and failed to cooperate in

a disciplinary investigation. In the second client matter, Respondent again failed to cooperate in a disciplinary investigation.

In Respondent's second disciplinary proceeding, on December 16, 2015, the Supreme Court filed an order suspending Respondent for one year, stayed and placed him on probation for two years with conditions, including a 60-day period of actual suspension. Respondent committed misconduct in two matters. In the first matter, Respondent failed to comply with the conditions of his public reproof; and in the second matter, Respondent failed to render an appropriate accounting to his client.

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.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case No. 15-O-10754 (The Shin-Kashryama Matter)

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to perform any legal services for his client for which he was retained.

Count Two – Respondent willfully violated section 6068, subdivision (m) (failure to communicate), by failing to respond to his client's reasonable status inquiries.

Count Three – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

Case No. 15-O-11980 (The MCLE Matter)

Count Four – Respondent willfully violated section 6106 (moral turpitude – misrepresentation) by falsely reporting under the penalty of perjury to the State Bar that he had complied with the minimum continuing legal education requirements, when he knew or was grossly negligent in not knowing that his declaration was false.

Count Five – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

Case No. 15-O-12218 (The Drendel Matter)

Count Six – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services for his client for which he was retained.

Count Seven – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release client's file) by failing to promptly return his client's file as requested, upon the client's termination of Respondent's employment.

Count Eight – Respondent willfully violated rule 3-700(D)(2) (failure to refund unearned fees) by failing to promptly refund, upon termination of his employment, any part of the unearned \$2,500 advanced fee paid by his client, as Respondent performed no services on behalf of his client for which he was retained.

Count Nine – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render an accounting) by failing to provide his client with an accounting of the \$2,500 advanced fee that Respondent received from his client.

Count Ten – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client's reasonable status inquiries.

Count Eleven – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

Case No. 15-O-12363 (The Badillo Matter)

Count Twelve – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services for his client for which he was retained.

Count Thirteen – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund, upon termination of his employment, any part of the unearned \$5,000 advanced fee paid by his client, as Respondent performed no services on behalf of his client for which he was retained.

Count Fourteen – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client’s reasonable status inquiries.

Count Fifteen – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

Case No. 15-O-12799 (The Ntshingila Matter)

Count Sixteen – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services for his client for which he was retained.

Count Seventeen – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund, upon termination of his employment, any part of the unearned \$3,000 advanced fee paid by his client, as Respondent performed no services on behalf of his client for which he was retained.

Count Eighteen – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client’s reasonable status inquiries.

Count Nineteen – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

Case No. 15-O-13004 (The Staley Matter)

Count Twenty – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services for his client for which he was retained.

Count Twenty-One – Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct by failing to promptly return his client’s file as requested, upon the client’s termination of Respondent’s employment.

Count Twenty-Two – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to promptly refund, upon termination of his employment, any part of the unearned \$3,500 advanced fee paid by his client, as Respondent performed no services on behalf of his client for which he was retained.

Count Twenty-Three – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide his client with an accounting of the \$3,500 advanced fee that Respondent received from his client.

Count Twenty-Four – Respondent willfully violated section 6068, subdivision (m), by failing to respond to his client’s reasonable status inquiries.

Count Twenty-Five – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two OCTC letters that Respondent received, which requested a response to the allegations of misconduct being investigated.

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 NDC 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 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.

RECOMMENDATION

Disbarment

The court recommends that respondent James Patrick Stoneman II, State Bar number 94523, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

The court also recommends that Respondent be ordered to make restitution to the following payees:

- (1) Darla Drendel in the amount of \$2,500 plus 10 percent interest per year from November 16, 2014;
- (2) Erasto Badillo in the amount of \$5,000 plus 10 percent interest per year from March 1, 2015;
- (3) Musa Ntshingila in the amount of \$3,000 plus 10 percent interest per year from February 1, 2015; and
- (4) Lisa Staley in the amount of \$3,500 plus 10 percent interest per year from October 20, 2015.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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 James Patrick Stoneman II, State Bar number 94523, 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 5, 2016


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 October 5, 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:

JAMES PATRICK STONEMAN, II
100 W FOOTHILL BLVD
CLAREMONT, CA 91711

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

SHANE MORRISON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 5, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court