

**PUBLIC MATTER FILED**

AUG 04 2016

**STATE BAR COURT OF CALIFORNIA** STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO  
**HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	Case Nos.: 15-O-11154-PEM (15-O-11491;
	)	15-O-12164)
<b>RICHTER WONG KONG,</b>	)	
	)	
Member No. 96937,	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
A Member of the State Bar.	)	<b>ENROLLMENT</b>
_____	)	

Respondent **Richter Wong Kong** (respondent) was charged with 11 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> He 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.<sup>2</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

<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.

(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>3</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 California on December 16, 1980, and has been a member since then.

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

On October 21, 2015, the State Bar properly filed and served the NDC on respondent by certified mail, return receipt requested, to his 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 mailing was returned to the State Bar as unclaimed. On October 21, 2015, the State Bar also sent respondent a courtesy copy of the NDC by regular first-class mail to respondent's official membership records address. It was not returned as undeliverable.

On November 30, 2015, the State Bar attempted to telephone respondent at his official membership records telephone number but the number had been disconnected. On December 1, 2015, the State Bar attempted to contact respondent by calling him at two alternate telephone numbers contained in the file but was unsuccessful. The State Bar also sent courtesy copy of the NDC to two alternate addresses in Oakland and in Castro Valley. Finally, the State Bar sent an

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<sup>3</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).)

email to respondent, informing him that his response to the NDC was past due and that a motion for entry of default would be filed. To date, respondent has not contacted the State Bar.

Respondent failed to file a response to the NDC. On December 4, 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 supervising senior 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 December 22, 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 April 18, 2016, 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 disciplinary matters pending against respondent; (3) respondent has one prior discipline; and (4) the Client Security Fund has not paid any claims as a result of respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on May 17, 2016.

### **Prior Record of Discipline**

Respondent has one prior record of discipline. Pursuant to a Supreme Court order filed on August 8, 2008, respondent was suspended for two years, the execution of which was stayed, placed on probation for two years, and actually suspended for 60 days. Respondent committed misconduct in three client matters and trust account violations, including failure to communicate, improper withdrawal from employment, failure to pay client funds, and failure to perform services competently. In aggravation, his misconduct of failing to file a complaint within the period of limitations resulted in his client's case being dismissed. In mitigation, respondent was suffering from depression and severe financial difficulties.

### **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 and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

#### **Case Number 15-O-11154 (Owens Matter)**

Count 1 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to respond promptly to client's status inquiries.

Count 2 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to arrange for the delivery and disbursement of the settlement funds for his client, Bennie Owens.

Count 3 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar’s April 1, 2015 and April 16, 2015 letters.

**Case Number 15-O-11491 (Espinoza Matter)**

Count 4 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services on behalf of his clients, Jose Espinoza and his wife, in an immigration matter.

Count 5 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$2,440 unearned attorney fees, upon the constructive termination of his employment on March 1, 2015.

Count 6 – Respondent willfully violated section 6068, subdivision (m), by failing to respond promptly to client's status inquiries between May 2014 and March 2015.

Count 7 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s April 9, 2015 and April 24, 2015 letters.

**Case Number 15-O-12164 (Murray Matter)**

Count 8 – Respondent willfully violated section 6068, subdivision (m), by failing to respond promptly to client's status inquiries.

Count 9 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide an accounting, as requested, regarding the \$11,000 advanced fees received from his client, Shannon Murray.

Count 10 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$11,000 advanced fees, upon the termination of his employment on May 19, 2014. Respondent acknowledged that he earned some, but not all, of the advanced fees he collected.

Count 11 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s May 29, 2015 and June 15, 2015 letters.

**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 his disbarment.

**RECOMMENDATIONS**

**Disbarment**

The court recommends that respondent **Richter Wong Kong**, State Bar number 96937, 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 Jose Espinoza in the amount of \$2,440 plus 10 percent interest per year from March 1, 2015.<sup>4</sup>

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.

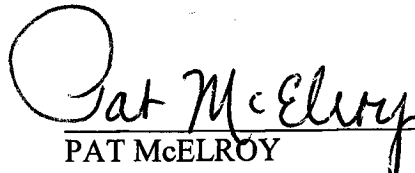
## **Costs**

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 **Richter Wong Kong**, State Bar number 96937, 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 4, 2016

  
PAT McELROY  
Judge of the State Bar Court

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<sup>4</sup> In the Murray matter, the facts alleged in the NDC stated that respondent earned some, but not all, of the \$11,000 advanced fees he collected. Absent further facts, the court cannot determine the portion of advanced fees, if any, that should be refunded to the client.

## 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 August 4, 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 San Francisco, California, addressed as follows:  
  
RICHTER WONG KONG  
388 9TH ST #250  
OAKLAND, CA 94607
- ☐ 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:

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 4, 2016.

  
George Hue  
Case Administrator  
State Bar Court