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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 No. 16-J-14383-YDR
)	
JAMES RUDOLPH ANDREWS,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND ORDER OF
A Member of the State Bar, No. 277734.)	INVOLUNTARY INACTIVE
_____)	ENROLLMENT

On December 23, 2015, Respondent James Rudolph Andrews was ordered by the Supreme Court of Arizona to be disciplined upon findings that he had committed professional misconduct in that jurisdiction. As a result, the Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding on February 22, 2017. (Bus. & Prof. Code, § 6049.1; Rules Proc. of State Bar, rules 5.350-5.354.)¹

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 Arizona 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 Arizona; and (3) whether the Arizona proceeding lacked fundamental constitutional protection. (§ 6049.1, subd. (b).)

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.



Respondent bears the burden of establishing that the conduct for which he was disciplined by Arizona would not warrant the imposition of discipline in California and/or that the Arizona proceedings lacked fundamental constitutional protection. Unless Respondent establishes one or both of these, the record of discipline in the Arizona proceeding is conclusive evidence of Respondent's culpability of misconduct in California. (§ 6049.1, subds. (a) and (b).)

Respondent failed to participate 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.² 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.³

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 this state on October 11, 2011, and has been a member since then.

Procedural Requirements Have Been Satisfied

On February 22, 2017, the State Bar properly filed and served an NDC on Respondent by certified mail, return receipt requested, at his membership records address (official address). The

³ 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).)

NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The mailing by certified mail was returned as undeliverable.

On February 22, 2017, courtesy copies of the NDC were also sent to Respondent to his public and private email addresses. The public email was returned as undeliverable; but the private email was not returned as undeliverable.

On March 29, 2017, the State Bar sent another email to Respondent at his public and private email addresses, notifying him of the upcoming initial status conference and that the State Bar had not received a response to the NDC from him. Again, the public email was returned as undeliverable; but the private email was not returned as undeliverable. Respondent did not respond to the email.

Furthermore, on April 5, 2017, the State Bar attempted to contact Respondent by telephone at his official membership records telephone number. The number would not accept calls at the time. On the same day, the State Bar attempted to contact Respondent by another telephone number provided by a LexisNexis search. The State Bar left a voicemail. To date, the State Bar had not received a return phone call from Respondent.

On April 5, 2017, the State Bar sent a notice of intent to file motion for default to Respondent at his official address and by emails. The public email was returned as undeliverable; but the letter and the private email were not returned as undeliverable. To date, Respondent did not respond.

Respondent failed to file a response to the NDC. On April 13, 2017, the State Bar 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 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 May 8, 2017. The order entering the default was served on Respondent at his official 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 August 21, 2017, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it had no contact with Respondent since the default was entered; (2) Respondent has one non-public disciplinary matter pending; (3) Respondent has no 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 October 24, 2017.

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.) 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 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, pursuant to Rule 42, Rule 54(d)(2), and numerous subsections of Rule 43 (trust account rules) of the Arizona Rules of the Supreme Court and Arizona Rules of Professional Conduct, ER 1.15(a), ER 8.4(d), and ER 5.5, in the Arizona 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 Arizona proceeding, as follows:

1. Elsberry and Pichette Matters (Arizona File No. 14-3042)

Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to perform services competently on behalf of his clients, Shane and Mandy Elsberry and David and Donna Pichette.

Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by issuing an insufficiently funded check.

Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay funds to client) by failing to promptly pay any portion of the medical liens to the medical providers on behalf of his clients, in the amount of \$26,433 on behalf of Shane and Mandy Elsberry and in the amount of \$9,185.90 on behalf of David and Donna Pichette.

Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to timely respond to the lawful requests of the disciplinary authority.

2. Maricopa County Matter (Arizona File No. 15-2207)

Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by issuing three insufficiently funded checks, totaling \$628, to the Clerk of the Maricopa County Superior Court, Arizona.

Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct by failing to promptly pay the outstanding checks to Clerk of the Maricopa County.

Respondent willfully violated section 6106 (moral turpitude, dishonesty, or corruption) by committing acts prejudicial to the administration of justice, thereby committing an act involving moral turpitude.

3. Unauthorized Practice of Law (Arizona File No. 15-2802)

By filing pleadings in a superior court when he was suspended from the practice law for failure to pay his membership dues, Respondent actually practiced law when he was not an active member of the State Bar of Arizona and not entitled to practice law, in willful violation of section 6126 (unauthorized practice of law), and thereby he failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Respondent willfully violated section 6106 by holding himself out as entitled to practice law and actually practicing law when he was not entitled to practice law, thereby committing an act involving moral turpitude.

However, Respondent did not violate section 6125, which provides that "No person shall practice law in California unless the person is an active member of the State Bar." Respondent did not practice law in California; he practiced law in Arizona when he was not entitled to do so.

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.

RECOMMENDATIONS

Disbarment

The court recommends that Respondent James Rudolph Andrews 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 the following payees:

- (1) Shane and Mandy Elsberry in the amount of \$26,433;
- (2) David and Donna Pichette in the amount of \$9,185.90; and
- (3) Clerk of the Maricopa County Superior Court, Arizona, in the amount of \$628.

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.

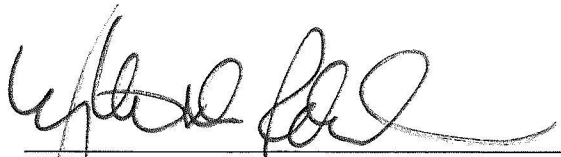
Costs

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 Rudolph Andrews, State Bar number 277734, 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 7, 2017



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 7, 2017, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

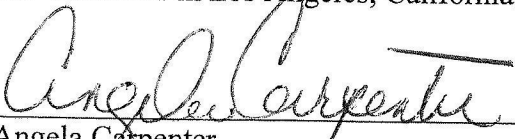
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES R. ANDREWS
ANDREWS LAW
3190 S GILBERT RD STE 5
CHANDLER, AZ 85286

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

Michaela F. Carpio, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 7, 2017.



Angela Carpenter
Case Administrator
State Bar Court