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SEP 21 2017

STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT - LOS ANGELES

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|---------------------------------------|---|-------------------------|
| In the Matter of |) | Case No. 16-J-10939-YDR |
| |) | |
| ROBERT LINDSAY EARLE, JR., |) | DECISION AND ORDER OF |
| |) | INVOLUNTARY INACTIVE |
| A Member of the State Bar, No. 64048. |) | ENROLLMENT |
| _____ |) | |

Robert Earle Lindsay, Jr. (Respondent) was ordered disciplined by the Supreme Court of Arizona upon facts that established his culpability for acts of 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 by filing an Amended Notice of Disciplinary Charges (NDC) against Respondent on January 27, 2017.¹ (Bus. & Prof. Code, § 6049.1;² 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 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 The State Bar filed a Notice of Disciplinary Charges in this proceeding on October 24, 2016. The initial notice was dismissed without prejudice on December 16, 2016.

² Unless otherwise indicated, all statutory references are to the Business and Professions Code.



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 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, subs. (a) & (b).)

Respondent failed to participate in the California State Bar Court proceeding, 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.³ Rule 5.85 provides the procedure to follow when an attorney fails to participate in a State Bar Court 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 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.⁴

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 27, 1975, and has been a member since then.

³ Unless otherwise indicated, all references to rules are to this source.

⁴ 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).)

Procedural Requirements Have Been Satisfied

On January 27, 2017, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's membership records address.⁵ The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The U.S. Postal Service returned the NDC to the State Bar bearing the stamp, "Return to Sender Unclaimed Unable to Forward." On February 28, 2017, the State Bar sent a courtesy copy of the NDC to Respondent by regular first-class mail at an alternate address. The United States Postal Service did not return the NDC.

Respondent received actual notice of these proceedings. On March 6, 2017, this court held an initial status conference. Respondent appeared telephonically, and the court ordered him to file his response to the NDC by March 10, 2017. After the State Bar indicated that it intended to file a motion for entry of default, Respondent agreed to a telephone conference on March 7, 2017, to discuss a potential settlement.

On March 7, 2017, Respondent spoke with the State Bar and indicated that he would call the State Bar again on March 9, 2017, to further discuss a potential settlement. Respondent did not call the State Bar on March 9, 2017, as agreed.

Respondent did not file a timely response to the NDC and did not file a response by March 10, 2017, as ordered by this court. On March 16, 2017, the State Bar 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 the State Bar declaring the additional steps taken to

⁵ The NDC does not specifically identify that these proceedings are governed by section 6049.1. However, the NDC does provide a certified copy of the Supreme Court of Arizona's final order determining Respondent committed professional misconduct in Arizona, outlines the limited issues addressed in this proceeding, and Respondent's burden in the proceeding, as set forth in section 6049.1. Moreover, the initial Notice of Disciplinary Charges cited section 6049.1. Thus, there are no issues concerning due process in this proceeding.

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 April 7, 2017. 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 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 July 18, 2017, 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 does not have a prior disciplinary record; 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 or move to set aside or vacate the default. The case was submitted for decision on August 30, 2017.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a 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).) Section 6049.1, subdivision (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 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.

Case No. 16-J-10939 – The March 17, 2015 Arizona Disciplinary Order

On March 17, 2015, the Supreme Court of Arizona filed a judgment and order admonishing Respondent for professional misconduct. The court imposed that discipline on Respondent in accordance with an Amended Agreement for Discipline by Consent that Respondent and the State Bar of Arizona filed in the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona on March 9, 2015. In that agreement, Respondent stipulated that his conduct violated rule 42 of the Rules of the Supreme Court of Arizona (Arizona Supreme Court Rules) and Ethical Rule 1.15(d).

Rule 3-700(D)(2) of the Rules of Professional Conduct (Failure to Refund Unearned Fees)

On October 4, 2013, Respondent's client terminated his representation. Respondent made a motion to withdraw as counsel on October 15, 2013, which the Pima County Superior Court granted on October 22, 2013. After Respondent was terminated by the client and the court, Respondent billed and collected \$2,923 in fees for unauthorized legal services. Respondent never returned the fees. By failing to promptly return \$2,923 to his client for unauthorized legal services that were performed after Respondent was terminated, Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct.

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 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 recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that Robert Lindsay Earle, Jr., State Bar number 64048, 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 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.

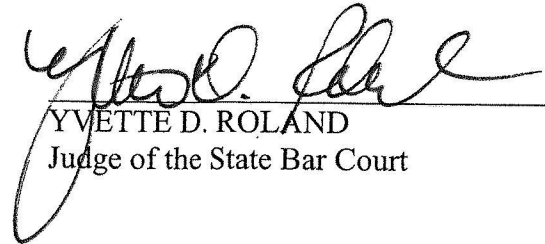
Costs

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 Robert Lindsay Earle, Jr., State Bar number 64048, 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: September 21, 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 September 21, 2017, 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:

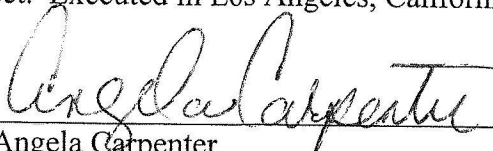
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ROBERT LINDSAY EARLE, JR.
EARLE & ASSOCIATES
385 ROCKRIDGE DR
SEDONA, AZ 86336

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

Asami J. Kishimizu Pinney, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 21, 2017.



Angela Carpenter
Case Administrator
State Bar Court