

PUBLIC MATTER

FILED

MAR 08 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 18-J-12285-YDR
LAWRENCE JOSEPH McSWIGGAN,)	DECISION AND ORDER OF
State Bar No. 214415.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

Respondent Lawrence Joseph McSwiggan (Respondent) was ordered disciplined by the Supreme Judicial Court of the Commonwealth of Massachusetts 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 (OCTC) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against Respondent on July 13, 2018. (Bus. & Prof. Code, § 6049.1;¹ 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 Massachusetts 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 Massachusetts; and (3) whether the Massachusetts proceeding lacked fundamental constitutional protection. (§ 6049.1, subd. (b).)

¹ 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 in Massachusetts would not warrant the imposition of discipline in California or that the Massachusetts proceedings lacked fundamental constitutional protection. Unless Respondent establishes one or both of these, the record of discipline in the Massachusetts proceeding is conclusive evidence of Respondent's culpability of misconduct in California. (§ 6049.1, subds. (a) & (b).)

Respondent failed to participate in the California State Bar Court proceeding, either in person or through counsel, and his default was entered. OCTC 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 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, OCTC 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

Jurisdiction

Respondent was admitted to practice law in this state on June 1, 2001, and has been a licensed attorney since then.

² Unless otherwise indicated, all references to rules are to this source.

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).)

Procedural Requirements Have Been Satisfied

On July 13, 2018, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's official State Bar attorney records address. The NDC notified Respondent that his failure to participate in this proceeding would result in a disbarment recommendation. (Rule 5.41.) On July 26, 2018, the NDC was returned to OCTC as undeliverable, "unclaimed, unable to forward."

Thereafter, OCTC took additional steps to notify Respondent about these proceedings by: (1) sending, by first class mail, a courtesy copy of the NDC to Respondent at his official State Bar attorney records address; (2) leaving a voicemail message regarding this proceeding at Respondent's official State Bar attorney records telephone number; (3) sending an email and a copy of the NDC to Respondent at his official State Bar attorney records email address and an alternate email address; (4) sending a copy of the NDC to Respondent at an alternate address that was found following a LexisNexis search; and (5) leaving voicemail messages for Respondent about this proceeding at two alternate telephone numbers.

Respondent failed to file a response to the NDC. On August 24, 2018, OCTC properly filed and served a motion for entry of Respondent's default. The motion complied with all of the requirements for a default, including a supporting declaration of reasonable diligence by OCTC 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 September 17, 2018. The order entering the default was served on Respondent at his official State Bar attorney records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a licensed attorney 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 December 28, 2018, OCTC properly filed and served the petition for disbarment on Respondent at his official State Bar attorney 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 no other disciplinary matters pending against Respondent; (3) Respondent has a prior record 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 or move to set aside or vacate the default. The case was submitted for decision on February 13, 2019.

Prior Record of Discipline

Pursuant to an order of the Supreme Court filed on December 9, 2014, Respondent was suspended from the practice of law for one year, stayed, and placed on probation for one year subject to conditions. Respondent's misconduct arose from a reciprocal discipline matter in Massachusetts. Respondent stipulated that from June 30, 2011, through July 20, 2012, he was administratively suspended from the practice of law in Massachusetts after he failed to pay his 2011 annual registration dues. During his suspension, Respondent practiced law in seven client matters. Respondent entered into a stipulation for discipline, and he received a public reprimand for his misconduct. In the California State Bar proceeding, Respondent stipulated that his misconduct was equivalent to violations of sections 6068, subdivision (a), 6125, and 6126 (unauthorized practice of law).

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 licensed attorney of the State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that, subject to limited exceptions, the attorney is culpable of professional misconduct in this state.

The court finds, as a matter of law, that Respondent's culpability in the Massachusetts 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 Massachusetts proceeding.

On December 8, 2017, the Supreme Judicial Court of the Commonwealth of Massachusetts ordered that Respondent be suspended from the practice of law for six months upon the finding that he had committed professional misconduct in that jurisdiction. Respondent's misconduct involved two matters. The Supreme Judicial Court determined that Respondent committed the following ethical violations: (1) he failed to act with reasonable diligence and promptness in representing a client, and he failed to keep individual client records by issuing a check from his IOLTA account that caused a negative balance; (2) he knowingly failed to respond to a lawful demand for information from a disciplinary authority by failing to provide answers to the Massachusetts Bar Counsel's requests for information during a disciplinary investigation; and (3) he engaged in misconduct that was prejudicial to the administration of justice, and he failed to cooperate with the Board of Bar Overseers by failing to comply with the Supreme Judicial Court's administrative suspension order.

The NDC filed by OCTC in the instant proceeding alleges that Respondent's misconduct in the Massachusetts matter reflects violations of former rules 3-110(A) (failure to perform with competence) and 4-100(B)(3) (failure to render an accounting) of the Rules of Professional Conduct, and sections 6068, subdivision (i), (failure to cooperate in a disciplinary investigation) and 6103 (failure to obey a court order). This court agrees. This allegation is deemed admitted upon the entry of Respondent's default in this proceeding and is supported by the agreed-upon facts giving rise to Respondent's discipline in Massachusetts.

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

Discipline - Disbarment

It is recommended that Lawrence Joseph McSwiggan, State Bar Number 214415, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended 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 imposing discipline in this matter.⁴ Failure to do so may result in disbarment or suspension.

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

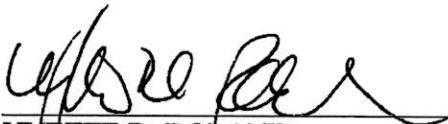
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Lawrence Joseph McSwiggan, State Bar number 214415, be involuntarily

⁴ For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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: March 8, 2019



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 Court Specialist 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 March 8, 2019, 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:

LAWRENCE J. MCSWIGGAN
CHARLES RIVER LAW GROUP
PO BOX ONE
NEWTON, MA 02464

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

TERESE E. LAUBSCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 8, 2019.



Mazie Yip
Court Specialist
State Bar Court