

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>10-O-00853-RAH</b> (10-O-02463;
	)	10-O-03008; 10-O-03011; 10-O-03012;
	)	10-O-03013; 10-O-04111; 10-O-04112;
<b>CRAIG MICHAEL LAVERTY,</b>	)	10-O-04728; 10-O-04730; 10-O-05077;
	)	10-O-05564; 10-O-10605; 11-O-11488)
<b>Member No. 176586,</b>	)	
	)	<b>DECISION AND ORDER OF INVOLUNTARY</b>
	)	<b>INACTIVE ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

Respondent Craig Michael Laverty (respondent) was charged with multiple violations of the Business and Professions Code and the Rules of Professional Conduct in connection with 14 separate client matters. 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>1</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 (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney’s disbarment.<sup>2</sup>

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<sup>1</sup> Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar.

<sup>2</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(E)(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**

Respondent was admitted to practice law in this state on June 7, 1995, and has been a member since then.

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

In August 2011, Deputy Trial Counsel Eli D. Morgenstern (DTC Morgenstern) sent two letters to respondent at his membership-records address notifying respondent of the State Bar's intent to file an NDC. One of those two letters was also mailed to respondent at an alternative address.

Then, in early September 2011, respondent sent his resignation with disciplinary charges pending to DTC Morgenstern. DTC Morgenstern thereafter sent, to respondent's membership-records address, three letters raising issues regarding respondent's resignation and inviting respondent to contact him to discuss those issues. Two of those letters were also mailed to respondent at an alternative address.<sup>3</sup>

On October 25, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at respondent's membership-records address and by regular mail to an alternative address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar subsequently received a signed certified mail return receipt, bearing the signature of Lloyd Talan.

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<sup>3</sup> Later, in April 2012, the Supreme Court declined to accept respondent's resignation.

The State Bar also attempted to reach respondent by sending, to respondent at the email address that respondent provided to the State Bar for its use, an email reminding respondent when his response to the NDC was due.<sup>4</sup> In addition, the State Bar verified that respondent's membership-records address was current and attempted to obtain a current phone number for respondent.

Respondent thereafter failed to file a response to the NDC. On November 22, 2011, the State Bar filed a motion for entry of respondent's default and properly served that motion on respondent at his membership-records address by certified mail, return receipt requested, and by regular mail at an alternative address for respondent. 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 December 8, 2011. The order entering his default was properly 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),<sup>5</sup> effective three days after service of the order, and 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 180 days to file motion to set aside default].) On June 11, 2012, the State Bar filed

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<sup>4</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

<sup>5</sup> All further statutory references are to the Business and Professions Code.

the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact with respondent since the default was entered; (2) there are non-public disciplinary matters pending against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from 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 July 24, 2012.

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

#### **Case Number 10-O-00853 (Vlasenko Matter)**

Count One - respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct (unauthorized practice of law in another jurisdiction) when he engaged in the unauthorized practice of law (UPL) in Massachusetts by accepting employment to perform legal services in connection with the mortgages on his clients' Massachusetts home when he was not licensed to practice law in Massachusetts.

Count Two – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by collecting a \$2,495 advanced attorney fee from his clients when respondent was not licensed to practice law in Massachusetts.

Count Three -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund \$2,495 in unearned fees to his clients.

**Case Number 10-O-02463 (White Matter)**

Count Four -- respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he engaged in UPL in Illinois by accepting employment to perform legal services in connection with the mortgage on his client's Illinois home when he was not licensed to practice law in Illinois.

Count Five -- respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by collecting a \$3,900 advanced attorney fee from his client when respondent was not licensed to practice law in Illinois.

Count Six -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$3,900 in unearned fees to his client.

**Case Number 10-O-03008 (Smillie Matter)**

Count Seven -- respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he engaged in UPL in Michigan and Florida by accepting employment to perform legal services in connection with the mortgage on his Michigan client's condo in Florida when he was not licensed to practice law in either Michigan or Florida.

Count Eight -- respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by collecting a \$2,950 advanced attorney fee from his client when respondent was not licensed to practice law in either Michigan or Florida.

Count Nine -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$2,950 in unearned fees to his client.

**Case Number 10-O-03011 (Tordone Matter)**

Count Ten -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by not performing any legal services of value for his client.

Count Eleven -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$3,500 in unearned fees to his client.

**Case Number 10-O-03012 (Miller Matter)**

Count Twelve -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by not performing any legal services of value for his client.

Count Thirteen -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$2,995 in unearned fees to his client.

**Case Number 10-O-03013 (Manson Matter)**

Count Fourteen -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by not performing any legal services of value for his clients.

Count Fifteen -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$11,980 in unearned fees to his clients.

**Case Number 10-O-04111 (Williams Matter)**

Count Sixteen -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by not performing any legal services of value for his client.

Count Seventeen -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$6,800 in unearned fees to his client.

**Case Number 10-O-04112 (Ranno Matter)**

Count Eighteen -- respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he engaged in UPL in Massachusetts and Florida by accepting employment to perform legal services in connection with the mortgage on his Massachusetts clients' rental property in Florida when he was not licensed to practice law in either Massachusetts or Florida.

Count Nineteen – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by charging and collecting a \$4,000 advanced attorney fee from his clients when respondent was not licensed to practice law in either Massachusetts or Florida.

Count Twenty -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$4,000 in unearned fees to his clients.

**Case Number 10-O-04728 (Shahat Matter)**

Count Twenty-One -- respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he engaged in UPL in New Jersey by accepting employment to perform legal services in connection with the mortgage on his client's New Jersey home when he was not licensed to practice law in New Jersey.

Count Twenty-Two – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by charging and collecting \$6,000 in advanced attorney fees from his client when respondent was not licensed to practice law in New Jersey.

Count Twenty-Three -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$6,000 in unearned fees to his client.

**Case Number 10-O-04730 (Escobar Matter)**

Count Twenty-Four -- respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he engaged in UPL in Missouri and Maryland by accepting employment to perform legal services in connection with the mortgage on his Missouri client's home in Maryland when he was not licensed to practice law in either Missouri or Maryland.

Count Twenty-Five – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by charging and collecting a \$4,000 advanced attorney fee from his client when respondent was not licensed to practice law in either Missouri or Maryland.

Count Twenty-Six -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$4,000 in unearned fees to his client.

**Case Number 10-O-05077 (Sears Matter)**

Count Twenty-Seven -- respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he engaged in UPL in Oregon by accepting employment to perform legal services in connection with the mortgage on his client's Oregon home when he was not licensed to practice law in Oregon.

Count Twenty-Eight – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by charging and collecting a \$4,500 advanced attorney fee from his client when respondent was not licensed to practice law in Oregon.

Count Twenty-Nine -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$4,500 in unearned fees to his client.

**Case Number 10-O-05564 (Hosseini Matter)**

Count Thirty -- respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he engaged in UPL in Virginia by accepting employment to perform legal services in connection with the mortgage on his client's Virginia home when he was not licensed to practice law in Virginia.

Count Thirty-One – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by charging and collecting a \$3,750 advanced attorney fee from his client when respondent was not licensed to practice law in Virginia.

Count Thirty-Two -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$3,750 in unearned fees to his client.

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**Case Number 10-O-10605 (Hairston Matter)**

Count Thirty-Three -- respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct when he engaged in UPL in Virginia by accepting employment to perform legal services in connection with the mortgage on his client's Virginia home when he was not licensed to practice law in Virginia.

Count Thirty-Four -- respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct by charging and collecting \$5,600 in advanced attorney fees from his client when respondent was not licensed to practice law in Virginia.

Count Thirty-Five -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$5,600 in unearned fees to his client.

**Case Number 11-O-11488 (Diaz-Carabez Matter)**

Count Thirty-Six -- respondent willfully violated section 6106.3, subdivision (a) (violation of statutes regulating persons offering to perform mortgage loan modifications for a fee) by willfully violating Civil Code section 2944.7, subdivision (a) by charging and collecting \$7,000 in advanced attorney fees from his client for home-mortgage-loan-modification services before performing all of the contracted or represented services for the client.

Count Thirty-Seven -- respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by not performing any legal services of value for his client.

Count Thirty-Eight -- respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to refund \$5,600 in unearned fees to his client.

**Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and that respondent's disbarment must be 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, such as sending respondent five letters before filing the NDC, verifying that respondent's membership-records address was current, attempting to obtain a current telephone number for respondent, sending respondent an email reminder, and serving the NDC and the motion for entry of default on respondent at his membership-records address and at an alternative address;

(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 must recommend his disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Craig Michael Laverty 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 further recommends that Craig Michael Laverty be ordered to make restitution to the following payees:

1. Mikhail and Vera Vlasenko in the amount of \$2,495 plus 10 percent interest per year from February 3, 2010;
2. Leland White III in the amount of \$3,900 plus 10 percent interest per year from November 19, 2009;
3. John Smillie in the amount of \$2,950 plus 10 percent interest per year from January 30, 2010;

4. Michael Tordone in the amount of \$3,500 plus 10 percent interest per year from January 8, 2010;
5. Gregory Miller in the amount of \$2,995 plus 10 percent interest per year from February 22, 2010;
6. Daniel and Susan Manson in the amount of \$11,980 plus 10 percent interest per year from December 19, 2009;
7. Danielle Williams in the amount of \$6,800 plus 10 percent interest per year from February 5, 2010;
8. Gary and Tina Ranno in the amount of \$4,000 plus 10 percent interest per year from February 6, 2010;
9. Ahmed Shahat in the amount of \$6,000 plus 10 percent interest per year from March 2, 2010;
10. Maj. Eduardo Escobar, M.D. in the amount of \$4,000 plus 10 percent interest per year from April 30, 2010;
11. Robert Sears in the amount of \$4,500 plus 10 percent interest per year from March 28, 2010;
12. Mort Hosseini in the amount of \$3,750 plus 10 percent interest per year from June 30, 2010;
13. Charlie Hairston in the amount of \$5,600 plus 10 percent interest per year from July 30, 2010; and
14. Manual Diaz-Carabez in the amount of \$5,600 plus 10 percent interest per year from December 31, 2009.

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.

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## **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 Craig Michael Laverty, State Bar Number 176586, 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 \_\_\_\_, 2012.

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**RICHARD A. HONN**  
Judge of the State Bar Court