

**PUBLIC MATTER**

**FILED**

NOV 17 2015

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	Case Nos.: 13-O-14287-PEM (13-O-14752;
	)	13-O-16876); 14-O-03000
<b>JUDSON THOMAS FARLEY,</b>	)	(14-O-03448; 14-O-05670)
	)	(Cons.)
<b>Member No. 83378,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
A Member of the State Bar.	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
_____	)	

Respondent Judson Thomas Farley (respondent) was charged with 25 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> He failed to appear at the trial of this case 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 appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

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<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.

within 45 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 November 29, 1978, and has been a member since then.

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

On July 22, 2014, the State Bar properly filed and served a first notice of disciplinary charges on respondent (First NDC) in case Nos. 13-O-14287 et al. The First NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed a response to the First NDC on November 20, 2014.<sup>4</sup>

On December 5, 2014, the State Bar properly filed and served on respondent a second notice of disciplinary charges (Second NDC) in case Nos. 14-O-03000 et al. The Second NDC also notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed a response to the Second NDC on February 11, 2015.

The two matters were consolidated on January 27, 2015.

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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).)

<sup>4</sup> Respondent's default was previously entered for failure to file a response. But on November 10, 2014, the court granted his motion to set aside default.

At the March 9, 2015 status conference, attended by the State Bar and respondent, the court set the trial to start on June 16, 2015. The March 2015 order setting the trial date was served on respondent by first-class mail. (Rule 5.81(A).)

On June 16, 2015, the State Bar appeared for trial but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed June 16, 2015. The order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status 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 did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On August 6, 2015, 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 three other disciplinary matters pending against respondent; (3) respondent has one record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct, but there are three claims currently pending.

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 September 8, 2015.

### **Prior Record of Discipline**

Respondent has been disciplined on one prior occasion.<sup>5</sup> Pursuant to a Supreme Court order filed on July 9, 2014, respondent was suspended for two years, the execution of which was stayed, and placed on probation for three years. Respondent committed misconduct in three client matters, including failure to obey court orders and failure to report judicial sanctions.

### **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).)

#### ***First NDC***

##### **1. Case No. 13-O-14287 (Carver Matter)**

Count 1 – Respondent willfully violated section 6103 (failure to comply with court order) by failing to comply with a sanctions order in *In re Martin L. Carver*, U.S. Bankruptcy Court, Northern District of California, case No. 12-51803 (bankruptcy matter).

Count 2 – Respondent willfully violated section 6068, subdivision (c), which provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense, by failing to withdraw an objection to confirmation filed July 18, 2012, in the bankruptcy matter, even after being notified that the objection lacked basis by his client Deborah Malkin and Carver's counsel.

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<sup>5</sup> The court admits into evidence the certified copy of respondent's prior record of discipline filed August 14, 2015.

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 letters of September 10 and September 30, 2013, as requested by the State Bar.

**2. Case No. 13-O-14752 (Grant Matter)**

Count 4 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to perform any legal services of value on behalf of his clients, Wade and Bernarda Grant, in a bankruptcy 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 \$1,500 unearned attorney fees and \$306 in advanced costs to his clients, upon the termination of his employment on March 23, 2013.

Count 6 – 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 for the legal fees and costs paid to respondent.

Count 7 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to deposit the \$306 received for the benefit of his clients in a client trust account.

Count 8 – Respondent willfully violated section 6106 (moral turpitude) by misappropriating \$306 of client funds.

Count 9 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters of September 11 and September 30, 2013, as requested by the State Bar.

**3. Case No. 13-O-16876 (Hollinga Matter)**

Count 10 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services of value on behalf of the client, Bouke Hollinga, regarding the liens on his property.

Count 11 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing to return any portion of the \$1,000 unearned attorney fees to his client, upon the termination of his employment on October 22, 2013.

Count 12 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to deposit the \$306 received for the benefit of his client in a client trust account.

Count 13 – Respondent willfully violated section 6106 (moral turpitude) by misappropriating \$306 of client funds.

Count 14 – 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 letters of December 4, 2013, and January 3, 2014, as requested by the State Bar.

Count 15 – 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.

***Second NDC***

**1. Case No. 14-O-03000 (Barboza-Santana Matter)**

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to file a bankruptcy petition or perform any other legal services for his client, Veronica Barboza-Santana.

Count 2 – Respondent willfully violated section 6068, subdivision (m), by failing to respond promptly to client's reasonable status inquiries.

Count 3 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to inform his client that he was withdrawing from employment and by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client when he constructively terminated his employment on February 24, 2014.

Count 4 – 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 \$1,556 unearned attorney fees to his client, upon the termination of his employment.

Count 5 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to deposit the \$200 received for the benefit of his client in a client trust account.

Count 6 – Respondent willfully violated section 6106 (dishonesty) by misrepresenting to his client that he was going to refund her \$200 but never did.

Count 7 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's letters of July 31 and August 19, 2014, as requested by the State Bar.

**2. Case No. 14-O-03448 (Farley Matter)**

Count 8 – Respondent willfully violated section 6106 (moral turpitude) by misappropriating \$5,154.59 of spousal support funds which Deborah Farley aka Deborah Bryan, his ex-wife, was entitled to receive as of November 14, 2013.

Count 9 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar’s letters of June 23 and July 9, 2014, as requested by the State Bar.

**3. Case No. 14-O-05670 (Probation Violation Matter)**

Count 10 – Respondent willfully violated section 6068, subdivision (k), by violating the conditions attached to his disciplinary probation in Supreme Court case No. S218333, including failing to contact the Office of Probation, schedule a required meeting, submit a quarterly report in October 2014, and submit proof of restitution payments.

**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 two NDCs were properly served on respondent under rule 5.25.
- (2) Respondent had actual notice of this proceeding and had adequate notice of the trial date prior to the entry of his default.
- (3) The default was properly entered under rule 5.81.
- (4) The factual allegations in the NDCs, 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.
- (5) Despite adequate notice and opportunity, respondent failed to appear for the trial of 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 **Judson Thomas Farley**, State Bar number 83378, 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) Wade and Bernarda Grant in the amount of \$1,806 plus 10 percent interest per year from March 23, 2013;
- (2) Bouke Hollinga in the amount of \$1,306 plus 10 percent interest per year from October 23, 2013; and
- (3) Veronica Barboza-Santana in the amount of \$1,756 plus 10 percent interest per year from February 24, 2014.

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.

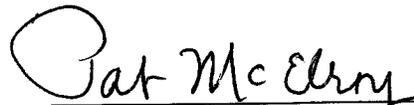
### **Costs**

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 Judson Thomas Farley, State Bar number 83378, 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: November 17, 2015

  
PAT McELROY  
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 San Francisco, on November 17, 2015, 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:

JUDSON THOMAS FARLEY  
PO BOX 2539  
SANTA CRUZ, CA 95063

- 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:

Catherine E. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 17, 2015.

  
George Hu  
Case Administrator  
State Bar Court