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DEC 16 2016

STATE BAR COURT  
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LOS ANGELES

# PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos. 15-O-13372 (15-O-13972)
	)	
AL FADEL AMER,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 197745.	)	ENROLLMENT
	)	

Respondent Al Fadel Amer (Respondent) was charged with eight counts of misconduct. He failed to participate in these proceedings either in person or through counsel, and his default was entered. Thereafter, the Office of Chief Trial Counsel (OCTC) 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 90 days, OCTC will file a petition requesting that the court recommend the attorney's disbarment.<sup>2</sup>



<sup>1</sup> 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.

<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(F)(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**

### **Jurisdiction**

Respondent was admitted to practice law in California on November 25, 1998, and has been a member since then.

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

On March 8, 2016, OCTC filed and properly served the NDC on Respondent by certified mail, return receipt requested, at Respondent's membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The United States Postal Service (USPS) returned the NDC to OCTC on April 12, 2016.

Reasonable diligence was used to notify Respondent of this proceeding. OCTC took the following steps to notify Respondent: (1) sent a courtesy copy of the NDC via U.S. first-class mail to Respondent's membership records address; (2) emailed a copy of the NDC to Respondent at Respondent's membership records email address; (3) attempted to obtain an alternative address and telephone number for Respondent by performing a LexisNexis person search and an Internet search; (4) and called Respondent at his membership records telephone number, but was only able to leave a message once because subsequently, Respondent's voicemail box was full.

Respondent failed to file a timely response to the NDC. On April 21, 2016, OCTC 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 OCTC 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 19, 2016. 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 Business and Professions Code 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 August 25, 2016, OCTC properly filed and served the petition for disbarment on Respondent at his membership 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 other matters pending against Respondent; (3) Respondent has two prior records 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. The case was submitted for decision on September 23, 2016.

#### **Prior Record of Discipline**

On September 11, 2015, the Supreme Court filed an order suspending Respondent for two years, stayed, and placed him on probation for three years with conditions, including a 60-day period of actual suspension. Respondent stipulated to misconduct in four matters. In the first matter, Respondent failed to perform with competence and failed to cooperate with the State Bar. The remaining three matters involved trust account violations. Respondent repeatedly

deposited personal funds into his client trust account (CTA), issued checks and made electronic payments drawn on his CTA to pay personal expenses when there were insufficient funds to pay the checks or electronic payments, and failed to cooperate with the State Bar.

In Respondent's second disciplinary proceeding, on May 18, 2016, the Supreme Court filed an order suspending Respondent for two years, stayed, and placed him on probation for three years with conditions, including a 90-day period of actual suspension. Respondent committed misconduct in a single client matter. Respondent stipulated that he accepted funds on a client's behalf from a third party without the client's informed written consent; upon Respondent's termination, Respondent failed to release his client's file as requested; and Respondent failed to return the unearned advance fees to his client.

#### **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, except as otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

#### **Case No. 15-O-13372 (The Lerma Matter)**

Count One – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (accepting fees from a non-client) by accepting \$10,700 from third parties as compensation for representing a client without obtaining the client's informed written consent.

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

Count Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) by constructively terminating his employment when he failed to take any action on his client’s behalf after he was hired.

Count Four – Respondent willfully violated rule 3-700(D)(2) (failure to refund unearned fees) by failing to promptly refund, upon termination of his employment, any part of the unearned \$10,700 advanced fee paid by three individuals on behalf of Respondent’s client, as Respondent performed no services on behalf of his client for which he was retained.

Count Five – Respondent willfully violated section 6106 (moral turpitude – misrepresentation). Respondent falsely stated in writing to the State Bar that he had been hired to “prepare his writ of habeas corpus” for a client and not to “do his direct appeal.” Additionally, Respondent attached a Flat Fee Retainer Agreement providing that Respondent had been retained to file a “Writ of Habeas Corpus After Direct Appeal” that bore the simulated signature of his client. Respondent knew or was grossly negligent in not knowing that the statements and documents were false and/or manufactured, thereby committing acts involving moral turpitude and dishonesty, in willful violation of section 6106.

**Case No. 15-O-13972 (The Nunez Matter)**

Count Six – Respondent willfully violated 3-310(F) of the Rules of Professional Conduct by accepting \$5,00 from a third party as compensation for representing a client without obtaining the client’s informed written consent.

Count Seven – The court does not find Respondent culpable of willfully violating rule 3-700(A)(2) of the Rules of Professional Conduct as the facts deemed admitted as a result of the entry of Respondent’s default do not support a finding by clear and convincing evidence that Respondent improperly withdrew from employment.

Count Eight – Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund, upon termination of his employment, any part of the unearned \$5,000 advanced fee paid by an individual on behalf of Respondent’s client, as Respondent performed no services on behalf of his client for which he was retained.

**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.

**RECOMMENDATION**

**Disbarment**

The court recommends that respondent Al Fadel Amer, State Bar number 197745, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

The court also recommends that Respondent be ordered to make restitution to the following payees:

- (1) Jose Lerma, Anna Membrere, and Jennifer Hernandez in the amount of \$10,700 plus 10 percent interest per year from May 26, 2015; and
- (2) Irma Nunez De Gomez in the amount of \$5,000 plus 10 percent interest per year from January 28, 2016.

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.

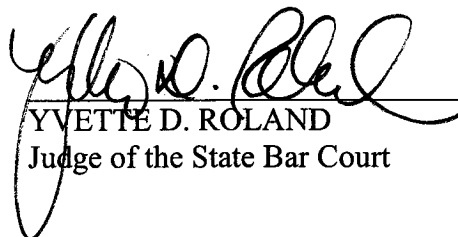
**Costs**

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 Al Fadel Amer, State Bar number 197745, 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 15, 2016

  
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 16, 2016, 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:

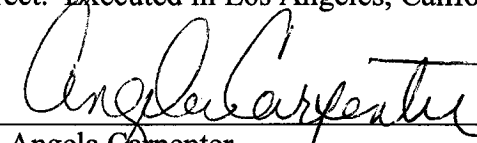
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

AL F. AMER  
THE AMER LAW FIRM  
PO BOX 90773  
LONG BEACH, CA 90809

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 16, 2016.



Angela Carpenter  
Case Administrator  
State Bar Court