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**STATE BAR COURT
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**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES**

In the Matter of)	Case Nos.: 13-O-17137 (13-O-17225;
)	14-O-03839)-YDR
Robert Roman,)	
)	DECISION AND ORDER OF
Member No. 93369,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

Respondent Robert Roman (“Respondent”) was charged with 13 violations of the Business and Professions Code and the Rules of Professional Conduct. He failed to participate either in person or through counsel, and his default was entered. Thereafter, 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.¹

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



¹ Unless otherwise indicated, all references to rules are to this source.

("NDC") 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.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 this state on October 31, 1980, and has been a member since that date.

Procedural Requirements Have Been Satisfied

On July 29, 2014, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On August 11, 2014, the State Bar received the return receipt card signed by Nicole Meza.

Thereafter, the State Bar took additional steps to notify Respondent about these proceedings. Respondent does not have a current telephone or fax number listed on his membership records information, but the Deputy Trial Counsel ("DTC") assigned to this matter sent an email to Respondent at his membership records email address on October 7, 2014.³ The DTC informed Respondent that his response to the NDC was past due, and he intended to file a

² 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).)

³ 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).)

motion for entry of default unless Respondent advised the DTC when Respondent planned to file a response.⁴

On March 17, 18, 19 and 20, 2015 the DTC sent additional emails to Respondent at his membership records email address. The DTC informed Respondent that his NDC response was past due and that he intended to file a motion for entry of default on March 23, 2015, unless Respondent responded to the DTC's email and indicated when Respondent would file his response. Respondent never replied to the DTC's emails.

Despite the State Bar's efforts, Respondent failed to file a response to the NDC. On April 3, 2015, 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 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 April 27, 2015. 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.

⁴ At this point, the State Bar filed and the court granted the State Bar's motion for entry of default. Respondent's default was entered on October 29, 2014. After the matter was reassigned, the court vacated the default on March 13, 2015, because the motion for entry of default failed to satisfy the requirements of rule 5.80(B). The DTC declaration in support of the motion: (1) failed to establish that the DTC acted with reasonable diligence to notify Respondent of the proceedings; and (2) failed to state whether a signed return receipt for the NDC was received from the member.

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 3, 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 is one other disciplinary matter pending against Respondent; (3) Respondent has one 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 September 3, 2015.

Prior Record of Discipline

Respondent has one prior record of discipline. On July 9, 2013, 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 two client matters, which included failing to perform legal services with competence; failing to keep his client reasonably informed about significant developments; improperly withdrawing from representation; two counts of failing to cooperate with the State Bar; and failing to promptly release his client's file upon termination of employment.

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. 13-O-17137 (The Unauthorized Practice of Law Matter)

Count One – Respondent willfully violated Business and Professions Code section 6068, subdivision (a),⁵ (attorney’s duty to support Constitution and laws of United States and California) by holding himself out as entitled to practice law and by actually practicing law when he was not an active member of the State Bar in violation of sections 6125 and 6126.

Count Two – Respondent willfully violated section 6106 (moral turpitude, dishonesty or corruption) by holding himself out as entitled to practice law and by actually practicing law when he knew, or was grossly negligent in not knowing, that he was not an active member of the State Bar.

Count Three – Respondent willfully violated section 6068, subdivision (i), (failure to cooperate) by failing to provide a substantive response to two letters from the State Bar which he received that requested his response to allegations of misconduct being investigated case No. 13-O-17137.

Case No. 13-O-17225 (The Balderas Matter)

Count Four – The court does not find Respondent culpable of willfully violating rule 3-110(A) of the Rules of Professional Conduct (failure to perform) as there is no clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.⁶

⁵ Unless otherwise indicated, all further references to sections are to the Business and Professions Code.

⁶ The State Bar merely alleged that Respondent violated the rule by “performing no legal services of value on behalf of the client.” This allegation is vague and arbitrary and does not establish clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count Five – Respondent willfully violated rule 3-310(F) of the Rules of Professional Conduct (accepting fees from a non-client) by accepting \$2,500 from a third party as compensation for representing a client without obtaining the client’s informed written consent.

Count Six – 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 Seven – 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 \$2,500 advanced fee because Respondent performed no services of value on behalf of his client.

Count Eight – The court does not find Respondent culpable of willfully violating rule 4-100(B)(4) of the Rules of Professional Conduct (failure to promptly pay client funds) as the facts deemed admitted as a result of Respondent's default do not support a finding by clear and convincing evidence that Respondent failed to pay out funds in Respondent’s possession, as requested by a client, which the client was entitled to receive.

Count Nine – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to deposit client funds in trust) by receiving \$500 for the benefit of a client and failing to deposit the funds in a bank account labeled “Trust Account,” “Client’s Funds Account,” or words of similar import.

Count Ten – Respondent willfully violated section 6106 (moral turpitude – misappropriation) by dishonestly or gross negligently misappropriating entrusted client funds in the amount of \$500.00 for Respondent’s own purposes.

Count Eleven - Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to two letters from the State Bar which he received that requested his response to allegations of misconduct being investigated case No. 13-O-17225.

Case No. 14-O-03839 (The Probation Matter)

Count Twelve – Respondent willfully violated section 6068, subdivision (k), (duty to comply with probation conditions) by failing to comply with certain specified conditions attached to the disciplinary probation in State Bar Court case numbers 12-O-10256 and 12-O-12009.

Count Thirteen – Respondent willfully violated section 6106 (moral turpitude – misrepresentations) by knowingly or gross negligently making misrepresentations to the State Bar Office of Probation about his compliance with the conditions of his disciplinary probation.

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 Robert Roman, State Bar number 93369, 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 Arturo Balderas, Jr. in the amount of \$3,000 plus 10 percent interest per year from May 8, 2013. 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

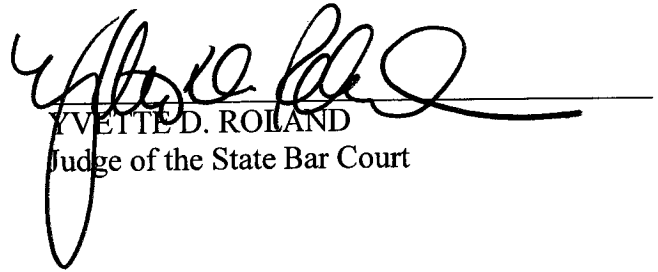
The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Robert Roman, State Bar number 93369, 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 23, 2015



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 November 25, 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:

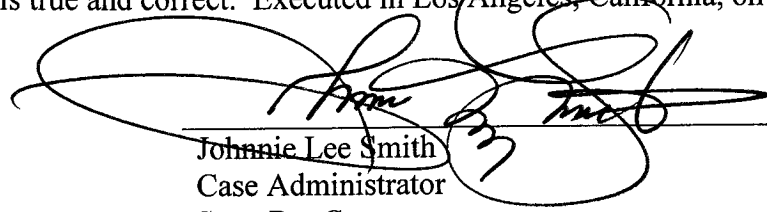
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ROBERT ROMAN
ROMAN LAW FIRM
13089 PEYTON DR # C160
CHINO HILLS, CA 91709**

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 25, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court