

# PUBLIC MATTER

**FILED**

**DEC 21 2016**

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**



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

In the Matter of	)	Case No. 15-C-12539
	)	
C. DANA PEREAU,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 243705.	)	ENROLLMENT
_____	)	

Respondent C. Dana Pereau (Respondent) was convicted of violating Penal Code section 415, subdivision (1) (fighting in public), a misdemeanor violation which may or may not involve moral turpitude or constitute other misconduct warranting discipline. After finality of the conviction, the Review Department of the State Bar Court issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violation involved moral turpitude or other misconduct warranting discipline. Respondent failed to participate, either in person or through counsel, and his default was entered. 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 hearing on conviction,



<sup>1</sup> Unless otherwise indicated, all references to rule(s) are to this source.

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.<sup>2</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 July 5, 2006, and has been a member since then.

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

On March 3, 2016, the State Bar Court filed and properly served on Respondent the notice of hearing on conviction (NOH) in case No. 15-C-12539 by certified mail, return receipt requested, to Respondent's membership records address. The NOH notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.) On March 14, 2016, the State Bar Court received the return card that was signed by "Dana Pereau."

Respondent had actual notice of this proceeding. On April 1, 2016, OCTC called Respondent at his membership records telephone number and spoke to him. OCTC advised Respondent to immediately respond to the NOH to avoid entry of default, which could lead to his disbarment. During the conversation, Respondent confirmed that he received the NOH.

Respondent failed to file a response to the NOH. On April 15, 2016, OCTC properly filed and served a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the

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<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).)

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 9, 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 official 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 no other investigative matters against Respondent; (3) Respondent has no records of prior 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 October 5, 2016.

#### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of Respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.346(D).) As set forth below in greater detail, Respondent's fighting in public conviction supports the conclusion that

Respondent violated a statute, rule or court order that would warrant the imposition of discipline.  
(Rule 5.85(F)(1)(d).)

**Case Number 15-C-12539 - (Conviction Matter – Pen. Code, § 415, subd. (1).)**

Respondent was convicted of violating Penal Code section 415, subdivision (1) (fighting in public).

On January 1, 2015, Respondent was in Fry's Electronics in Fountain Valley. While in the components department, Jose Perez, Fry's loss prevention officer and safety manager, observed Respondent remove a WD My Passport 2TB Hard Drive from its packaging and place it into Respondent's briefcase. The briefcase was in Respondent's shopping cart. The hard drive was priced at \$119.00. Respondent proceeded to another aisle of the store where he removed the hard drive from his briefcase and put it into his front right pocket. He placed the packaging for the hard drive onto a shelf behind other merchandise. Respondent then took a pack of Fry's RJ45 Modular Plugs, sold for \$6.99, and also put them into his front right pocket. Respondent made a payment for a different hard drive, as well as a fan, box of cable, and a tool. Respondent did not pay for the WD hard drive or modular plugs. Respondent then left the store.

When Respondent was about ten feet outside of the store, Loss Prevention Officer Thomas King approached Respondent and identified himself. However, Respondent refused to stop to speak with King. Respondent hid the WD hard drive under a car parked next to his own automobile, a white Toyota Rav 4 SUV. Respondent drove away from Fry's Electronics still in possession of the modular plugs. Perez reported the incident to the Fountain Valley Police Department.

On January 1, 2015, Fountain Valley Police Officers Adam Laguisan and Redoutey were dispatched following a report of theft at Fry's Electronics in Fountain Valley by a suspect who had fled the store in a white Toyota Rav 4. The officers located the vehicle described and

conducted a traffic stop on Respondent. Respondent exited the vehicle and began walking to the rear of his automobile when officers detained him. Officer Redoutey then identified Respondent with his driver's license and conducted a records check which revealed that respondent was on informal probation.

Officer Laguisan asked Respondent about the incident at Fry's. Respondent stated that he paid for all of the items he left with. He stated that when he was confronted by Fry's loss prevention personnel, they removed a Samsung hard drive from Respondent's pocket. Respondent represented that the hard drive belonged to him, but Fry's thought that he had stolen it. Officer Laguisan searched respondent and removed a WD hard drive instruction manual from Respondent's pocket, which did not pertain to the Samsung hard drive in Respondent's possession at that time.

The officers located the hard drive. When Officer Laguisan confronted Respondent about the items he removed from Fry's, Respondent declined to speak. Officer Redoutey then searched Respondent's vehicle and located the modular plugs on the front passenger seat.

The officers handcuffed Respondent and transported him back to Fry's. Officer Laguisan returned the modular plugs and hard drive to Fry's loss prevention, who identified the items as those that were stolen. Officer Laguisan then reviewed the surveillance video footage himself and identified Respondent as the suspect in the video. Perez provided Officer Laguisan with Fry's theft report. Perez informed Officer Laguisan that he observed Respondent, through the surveillance cameras, remove a hard drive from its packaging and conceal it in his pocket. Officer Laguisan cited Respondent for a violation of Penal Code section 488 (petty theft) and released him.

On February 24, 2015, the Orange County District Attorney's Office filed a misdemeanor complaint in case number 15WM01956, charging Respondent with one count of violating Penal Code section 484(a)-488 (petty theft). On July 17, 2015, a pre-trial hearing was held where the misdemeanor complaint was amended by interlineation to add Count Two, a violation of Penal Code section 415, subdivision (1) (fighting in public), a misdemeanor.

On July 17, 2015, Respondent pled guilty to the second count in the misdemeanor complaint, and the first count was dismissed. The court suspended imposition of sentence, placed respondent on informal probation for three years and ordered respondent to serve thirty days in county jail. Respondent was also ordered to stay away from all Fry's Electronics in Orange County, he was fined, and ordered to pay restitution to the State.

Fighting in public is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding Respondent's conviction involve moral turpitude because they involve intentional dishonesty and petty theft. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220-221 [moral turpitude involves acts of dishonesty, including intentional misrepresentation]; *In re Honoroff* (1975) 15 Cal.3d 755, 758 [petty theft is a crime involving moral turpitude].)

### **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 NOH was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of these 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 statement of facts and circumstances surrounding respondent's conviction 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 and actual notice and opportunity, Respondent failed to fully participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends Respondent's disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent C. Dana Pereau, State Bar number 243705, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **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.

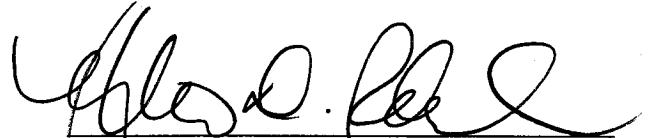
#### **Costs**

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 C. Dana Pereau, State Bar number 243705, 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 20, 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 21, 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:

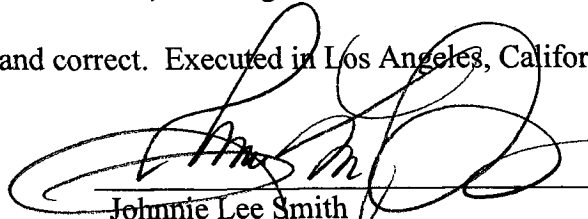
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**C. D. PEREAU  
2101 S 324TH ST UNIT 264  
FEDERAL WAY, WA 98003**

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

**JAMIE J. KIM**, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 21, 2016.

  
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Johnnie Lee Smith  
Case Administrator  
State Bar Court