

1 STATE BAR OF CALIFORNIA
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PUBLIC MATTER

FILED

NOV 30 2018

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

12 In the Matter of:) Case No. 16-O-13049
13 FERGUS MAHONY GINTHER, JR.,)
14 No. 170744,) NOTICE OF DISCIPLINARY CHARGES
15 A Member of the State Bar.)

NOTICE - FAILURE TO RESPOND!

17 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
18 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
19 **THE STATE BAR COURT TRIAL:**

- 20 (1) **YOUR DEFAULT WILL BE ENTERED;**
- 21 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
22 **WILL NOT BE PERMITTED TO PRACTICE LAW;**
- 23 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
24 **THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**
25 **AND THE DEFAULT IS SET ASIDE, AND;**
- 26 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
27 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
28 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Fergus M. Ginther, Jr. (“respondent”) was admitted to the practice of law in the State
4 of California on June 7, 1994, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT 1

7 Case No. 16-O-13049
8 Former Rules of Professional Conduct, Rule 3-110(A)
9 [Failure to Perform with Competence]

10 2. On or about January 20, 2016, John Hoffman employed respondent to perform legal
11 services, namely to represent him and defend his interests in a civil matter then pending in the
12 Butte County Superior Court, entitled *Hoffman v. Jimenez*, case no. 165047, which respondent
13 intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of
14 former Rules of Professional Conduct, rule 3-110(A) by, including without limitation, failing to
15 make an appearance in the matter, failing to respond to discovery requests, failing to file a case
16 management statement, failing to represent the client as agreed, abandoning the client, and
17 failing to provide any services of value.

18 COUNT 2

19 Case No. 16-O-13049
20 Former Rules of Professional Conduct, Rule 3-700(D)(2)
21 [Failure to Refund Unearned Fees]

22 3. Between on or about January 20, 2016 and February 4, 2016 respondent received
23 advanced fees of 18,000 from a client, John Hoffman, to represent and defend Mr. Hoffman’s
24 interests in a civil matter then pending in the Butte County Superior Court, entitled *Hoffman v.*
25 *Jimenez*, case no. 165047. Respondent failed to represent the client as agreed or perform any
26 legal services for the client, and therefore earned none of the advanced fees paid. Respondent
27 failed to return promptly, upon respondent’s termination of employment on or about March 28,
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1 2016 any part of the \$18,000 fee to the client, in willful violation of former Rules of Professional
2 Conduct, rule 3-700(D)(2).

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4 COUNT 3

5 Case No. 16-O-13049
6 Former Rules of Professional Conduct, Rule 4-100(B)(3)
7 [Failure to Render Accounts of Client Funds]

8 4. Between on or about January 20, 2016 and February 4, 2016, respondent received
9 from respondent's client, John Hoffman, the sum of \$18,000 as advanced fees for legal services
10 to be performed. Respondent thereafter failed to render an appropriate accounting to the client
11 regarding those funds following the client's request for such accounting on or about April 27,
12 2017, in willful violation of former Rules of Professional Conduct, rule 4-100(B)(3).

13 COUNT 4

14 Case No. 16-O-13049
15 Former Rules of Professional Conduct, Rule 3-700(A)(2)
16 [Improper Withdrawal from Employment]

17 5. Respondent failed, upon termination of employment, to take reasonable steps to avoid
18 reasonably foreseeable prejudice to respondent's client, John Hoffman, by constructively
19 terminating respondent's employment on or about March 3, 2016 by failing to take any action on
20 the client's behalf after communicating with opposing counsel by email regarding *Hoffman v.*
21 *Jimenez*, case no. 165047, which was then pending in Butte County Superior Court, and
22 thereafter failing to inform the client that respondent was withdrawing from employment, in
23 willful violation of former Rules of Professional Conduct, former rule 3-700(A)(2).

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COUNT 5

Case No. 16-O-13049
Former Rules of Professional Conduct, Rule 4-200(A)
[Unconscionable Fee]

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4 6. Between on or about January 20, 2016 and February 4, 2016, respondent entered into
5 an agreement with, charged and collected from John Hoffman a fee of \$18,000 to perform legal
6 services that were unconscionable for the following reasons, in willful violation of former Rules
7 of Professional Conduct, rule 4-200(A):

- 8 a. the amount of respondent's fee was disproportionate to the value of the services
9 performed;
- 10 b. the issues and questions involved in the matter under representation were not
11 novel or difficult;
- 12 c. respondent was not precluded from accepting other employment when he
13 undertook the client's matter; and
- 14 d. respondent achieved no results for the client.

COUNT 6

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17 Case No. 16-O-13049
18 Former Rules of Professional Conduct, Rule 1-300(A)
19 [Aiding the Unauthorized Practice of Law]

20 7. From on or about January 20, 2016 through on or about February 9, 2016, respondent
21 aided Hossein Joe Hariri, who is not licensed to practice law in California, in the unauthorized
22 practice of law, by delegating to Hossein Joe Hariri client intake responsibilities, including initial
23 case consultation, negotiation of legal fees and discussions of case strategy with the client, John
24 Hoffman, in willful violation of former Rules of Professional Conduct, rule 1-300(A).

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NOTICE - INACTIVE ENROLLMENT!

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YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: November 30, 2018

By: 

Paul Prissel
Senior Trial Counsel

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 16-O-13049

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES



By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))



By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').



By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)



(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 7196 9008 9111 1007 2279 at Los Angeles, addressed to: (see below)



(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: addressed to: (see below)

Table with 4 columns: Service Copy, Business-Residential Address, Fax Number, Courtesy Copy. Row 1: Fergus Mahony Ginther, Jr., PO Box 11313 Newport Beach, CA 92658-5025, Electronic Address, Fergus Mahony Ginther, Jr. PO Box 11313 Newport Beach, CA 92658-5025

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: November 30, 2018

SIGNED:

Handwritten signature of Charles C. Bagai, Charles C. Bagai Declarant