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JUL 19 2019



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 No. 17-O-04174-YDR
	)	
TONY M. DIAB,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
State Bar No. 277343.	)	ENROLLMENT
_____	)	

Respondent Tony M. Diab (Respondent) was charged with 13 counts of misconduct. Even though Respondent had notice of the trial date, he failed to appear at the trial, and his default was entered. Thereafter, the State Bar of California, 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 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 if the attorney fails to have the default set aside or vacated within 45 days, the OCTC will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California. All further references to section(s) refer to provisions of 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 all of 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 the practice of law in California on June 29, 2011, and has been a member of the State Bar since then.

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

On September 12, 2018, the OCTC filed and properly served a Notice of Disciplinary Charges (NDC) on Respondent by certified mail, return receipt requested, at his membership records address. Respondent filed an answer to the NDC on October 9, 2018.

Respondent participated by telephone at a status conference on October 23, 2018, at which time trial dates were set. On November 1, 2018, the court filed an amended order setting forth that the trial would commence at 10:00 a.m. on February 5-8, 2019.<sup>3</sup> The order setting the trial was properly served by first-class mail, postage prepaid, to Respondent at the address in his response to the NDC.<sup>4</sup> (Rule 5.81(A).)

The OCTC appeared for trial on February 5, 2019, but Respondent did not. The court entered Respondent's default in an order filed on February 7, 2019. The order was properly served on Respondent by certified mail, return receipt requested, and by regular U. S. mail, at Respondent's membership records address. (Rule 5.81(B).) 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

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<sup>3</sup> At a telephonic status conference on January 10, 2019, the trial dates of February 6-8, 2019, were continued to February 27-March 1, 2019. Respondent participated telephonically at this status conference.

<sup>4</sup> This address was Respondent's membership records address at that time.

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 April 2, 2019, the OCTC properly filed and served a petition for disbarment on Respondent.<sup>5</sup> As required by rule 5.85(A), the OCTC reported in the petition that: (1) the OCTC has not received any contact from Respondent since his default was entered; (2) there are no other investigations or disciplinary charges pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) as of April 2, 2019, the Client Security Fund has not paid out any claims as a result of Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate his default. The case was submitted for decision on May 7, 2019.

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

Upon entry of a 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).)

#### **Case Number 17-O-04174 (Chamaria Matters)**

Count One – By failing to (1) notify his client that Respondent was served with a set of requests for admission of behalf of the client; (2) respond to request for admissions propounded by the opposing party; (3) oppose the opposing party's motion to deem requests admitted; and (4) inform his client that the opposing party's motion to deem requests admitted was granted on

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<sup>5</sup> The petition for disbarment was served by certified mail, return receipt requested, to Respondent at his membership records address.

January 25, 2017, Respondent repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) (failure to perform legal services with competence) of the former Rules of Professional Conduct.

Count Two – Respondent willfully violated section 6068, subdivision (m) (failure to inform client of significant development), by failing to inform his client that (1) requests for admissions were propounded by the opposing party; (2) he had failed to timely respond to the requests for admissions; (3) he had failed to oppose the opposing party’s motion to deem requests admitted; (4) the opposing party’s motion to deem requests admitted was granted on January 25, 2017; and (5) on March 22, 2017, Respondent settled the matter at mediation without his client’s knowledge or consent.

Count Three – Respondent willfully violated rule 3-510 of the former Rules of Professional Conduct (failure to communicate a settlement offer) by failing to communicate any of the terms or conditions of a settlement offer to his client.

Count Four - Respondent willfully violated rule 3-110(A) of the former Rules of Professional Conduct by failing, between February 20, 2017, and May 9, 2017, to take any action to quash the warrant for his client, thereby recklessly failing to perform legal services with competence.

Count Five – Respondent willfully violated section 6068, subdivision (m), by failing to inform his client that the arrest warrant in his criminal case had not been quashed.

Count Six – Respondent willfully violated section 6106 (moral turpitude – misrepresentation to client) by advising his client that (1) he had filed a motion to quash a warrant that had issued against his client; (2) he had attended a hearing on the motion to quash; and (3) that the court had, in fact, quashed the warrant, when Respondent knew that he had (1) not filed a motion to quash the warrant; (2) not attended a hearing on a motion to quash; and (3)

the court had not issued any order quashing the warrant, Respondent knew that his statements were false and misleading and thereby committed acts of moral turpitude in willful violation of section 6106.

Count Seven – Respondent committed acts involving moral turpitude in willful violation of section 6106 (moral turpitude – false pretense) by sending his clients an email on April 11, 2017, stating that the court had granted a motion to quash the client’s arrest warrant on April 3, 2017, when Respondent knew the court had not granted such a motion and by attaching a falsified court order to the April 11, 2017 email with a falsified signature of a judge when Respondent knew that no such order had issued and that the judge had not signed such an order.

Count Eight – Respondent committed an act of moral turpitude in willful violation of section 6106 (moral turpitude – conversion and misappropriation) by knowingly and dishonestly diverting \$375,000 in funds belonging to his clients, intentionally not paying the \$375,000 owed to his clients, and improperly converting and misappropriating the funds for his own personal benefit.

Count Nine – Respondent willfully violated rule 4-100(B)(1) of the former Rules of Professional Conduct (failure to notify of receipt of client funds) by failing to notify his clients of Respondent’s receipt of funds on behalf of the clients pursuant to a Termination Agreement between P&V L.L.C., Chop Shop L.L.C., and Ameritel Management Incorporated.

Count Ten – Respondent willfully violated rule 4-100(A) of the former Rules of Professional Conduct (failure to deposit client funds in trust account) by failing to deposit \$375,000 in funds received for the benefit of his clients in a client trust account.

Count Eleven – Respondent willfully violated rule 4-100(B)(4) of the former Rules of Professional Conduct (failure to pay client funds promptly) by failing to promptly pay, as

requested by his client on two occasions, \$375,000 in Respondent's possession to which the clients were entitled.

Count Twelve - Respondent willfully violated section 6106 (moral turpitude – misrepresentation to clients) by making the following representations when he knew or was grossly negligent in not knowing that the representations were false: (1) stating on May 2, 2017, to his client that the other party was refusing to make the final installment payment of \$375,000 as a result of an alleged chargeback dispute pursuant to a certain paragraph of the Termination Agreement between his clients, as owners of two businesses, and another corporation, when Respondent knew there was no such chargeback; (2) beginning May 1, 2017, through May 4, 2017, Respondent, via multiple telephone and text messages, represented to his clients that he was in on-going negotiations with the other parties' counsel regarding the other party's delay in payment of certain funds when, in fact, Respondent had already received the \$375,000; (3) on May 5, 2017, in furtherance of Respondent's representations, he forwarded his clients two separate emails he claimed to have sent to the other parties' counsel disputing the alleged chargebacks, when Respondent knew that the emails had been falsified, as Respondent himself converted payment of those funds into his personal bank account on May 1, 2017, and misappropriated them; and (4) on May 10, 2017, Respondent forwarded a purported email chain between himself and the other parties' counsel to his clients by which Respondent represented to his clients that they were negotiating a \$90,000 lease dispute and the reason why the \$375,000 installment had not been made when, in fact, Respondent knew the email chain was falsified and had already received the \$375,000. In making such misrepresentations, Respondent committed acts of moral turpitude in willful violation of section 6106.

Count Thirteen - Respondent willfully violated section 6106 (moral turpitude – misrepresentation) by making the following representations to a State Bar investigator when he

knew or was grossly negligent in not knowing that the representations were false: (1) stating that he entered into a fee agreement with his clients related to the Termination Agreement between P&V L.L.C., Chop Shop L.L.C., and Ameritel Management Corporation (ATI) and attached a copy of the purported fee agreement to his letter responding to the State Bar investigative letter; (2) stating that he and his client executed a settlement agreement related to the ATI representation, whereby the client agreed to take \$3,000 of the \$375,000 installment payment from ATI, and the remaining \$372,000 would remain with Respondent as attorney fees; and (3) stating that he never agreed to represent a client in his criminal matter and never received a \$7,500 flat fee for the representation, but that the \$7,500 deposit was from the P&V L.L.C. account and was in connection with a different matter Respondent was handling for P&V L.L.C. In making such misrepresentations, Respondent committed acts of moral turpitude in willful violation of section 6106.

**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) Respondent had actual notice of this proceeding and adequate notice of the trial date prior to entry of his default;
- (3) the default was properly entered under rule 5.81; 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.

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Despite adequate notice and opportunity, Respondent failed to appear for trial 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 Tony M. Diab 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 and that the costs be 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 Tony M. Diab, State Bar Number 277343, 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: July 18, 2019

  
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 Court Specialist 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 July 19, 2019, 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:

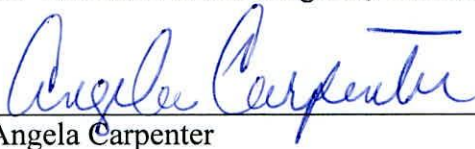
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

TONY M. DIAB  
DIAB LAW  
620 NEWPORT CENTER DR  
STE 670  
NEWPORT BEACH, CA 92660-8055

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

KIMBERLY G. ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 19, 2019.

  
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Angela Carpenter  
Court Specialist  
State Bar Court