

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>11-N-11381-RAP</b>
	)	
<b>JON RANDOLPH KNISS,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 141454,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Jon Randolph Kniss (respondent) was charged with willfully violating rule 9.20, California Rules of Court (CRC) by willfully disobeying or violating a court order. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under the Rules of Procedure of the State Bar, rule 5.85.<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 180 days, the State Bar 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 references to rules are to this source.

<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(E)(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**

Respondent was admitted to practice law in this state on July 17, 1989, and has been a member since then.

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

On February 3, 2011, respondent was advised by his probation deputy that his matter would be referred to Enforcement due to his failure to file a rule 9.20 declaration.

On April 12, 2011, 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.) The return receipt was received by the State Bar signed with a name other than that of respondent.

Thereafter, the State Bar attempted to reach respondent by sending a copy of the NDC, along with a letter requesting that respondent contact the assigned deputy trial counsel, by certified mail, return receipt requested, to respondent's official membership records address. The return receipt was received by the State Bar signed with a name other than that of respondent. The State Bar also attempted to reach respondent by calling respondent's cellular telephone number and leaving a voicemail message which included the State Bar's intent to file a motion for the entry of respondent's default.<sup>3</sup>

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<sup>3</sup> 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).) However, the membership records pertaining to respondent do not include an email address for respondent.

Respondent failed to file a response to the NDC. On May 31, 2011, the State Bar filed and properly 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 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 June 21, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested.<sup>4</sup> 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, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 21, 2011, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) there are no other disciplinary matters that were prompted by a complaint from a client or other complaint pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund (CSF) has not made payments resulting from respondent's conduct; and there is no applicant for CSF payment due to misconduct addressed by the NDC herein. 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 January 23, 2012.

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<sup>4</sup> The return receipt was returned to the court bearing the name and signature of someone with a name other than that of respondent.

Respondent has been disciplined on three prior occasions. In October 2000, the court filed an order approving the parties' stipulation as to facts, conclusions of law and disposition, and respondent was privately reproved with conditions for one year. The misconduct involved one client matter in which respondent failed to perform legal services with competence, failed to promptly respond to reasonable client status inquiries and to keep the client reasonably informed of significant developments, and settled a potential malpractice claim without complying with the requirements of rule 3-400(B).

Pursuant to a Supreme Court order filed on November 9, 2010, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions including that he be suspended from the practice of law for the first year of probation. The misconduct involved four client matters in which respondent failed to perform legal services with competence, failed to respond to reasonable client status inquiries, and failed to keep a client reasonably informed of significant developments in a matter. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter. Respondent was also ordered to comply with rule 9.20, CRC.

Pursuant to a Supreme Court order filed on June 6, 2011, respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for three years subject to conditions including that he be suspended from the practice of law for a minimum of the first two years of probation and until he provided proof of his rehabilitation, fitness to practice and learning and ability in the general law. The misconduct involved seven client matters and two non-client matters in which respondent failed to perform legal services with competence, failed to keep his client reasonably informed of significant developments in a matter, disobeyed court orders, failed to promptly pay client funds as requested by his client, failed to respond to reasonable client status inquiries, failed to cooperate in a disciplinary

investigation, improperly withdrew from employment, and failed to promptly release all client papers upon his client's request. Respondent and the State Bar entered into a stipulation as to facts and conclusions of law in this matter.

### **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 and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

#### **Case Number 11-N-11381 (Rule 9.20 Matter)**

Respondent willfully violated rule 9.20, CRC (duties of disbarred, resigned or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of a Supreme Court order filed November 9, 2010, requiring compliance with rule 9.20, CRC.

### **Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be 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, as the NDC was served on respondent at his membership records address by certified mail, return receipt requested; a copy of the NDC, along with a letter, was sent by certified mail, return receipt requested, to respondent's official membership records address; and the State Bar attempted to reach respondent by leaving a voicemail message at respondent's cellular telephone number.

(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 must recommend his disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Jon Randolph Kniss be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 Jon Randolph Kniss, State Bar number 141454, 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. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: April 19, 2012.

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RICHARD A. PLATEL  
Judge of the State Bar Court