

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>11-O-17684 (12-O-12880)-DFM</b>
	)	
<b>RAYMOND GERARD HELLWIG,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 100897,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Raymond Gerard Hellwig (Respondent) was charged with (1) failing to perform with competence; (2) failing to deposit client funds in a trust account; (3) moral turpitude – misappropriation due to gross negligence; (4) moral turpitude – issuance of insufficient funds checks; (5) failing to maintain records of client funds; (6) failing to comply with probation conditions; and (7) moral turpitude – misrepresentations. 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 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 disciplinary charges (NDC),

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

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>

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 December 1, 1981, and has been a member since then.

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

Respondent and the deputy trial counsel (DTC) assigned to this matter met at an early neutral evaluation conference (ENEC) held in this case. The assigned DTC had spoken with Respondent previously on the telephone on a few occasions prior to and after the ENEC.

On July 13, 2012, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, at his membership records address. The State Bar received the return receipt on July 19, 2012, "signed by Ray Hellwig."<sup>3</sup> The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual notice of this disciplinary proceeding. Sometime between July 13, 2012, and August 20, 2012, the date of the initial status conference in this matter, the assigned DTC received a telephone call from Respondent. Respondent stated that he had received 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(E)(2).)

<sup>3</sup> Declaration of Deputy Trial Counsel Kimberly G. Anderson attached to the State Bar's motion for entry of Respondent's default.

NDC and asked for an extension of time to respond to the NDC. The DTC told him that she would give him an extension of time to respond to the NDC up until the initial status conference.

On August 23, 2012, the DTC telephoned Respondent at his cellular telephone number. Respondent answered the telephone, and the DTC told him that since she had not received his response to the NDC, she would be filing a motion for entry of default immediately. Respondent told the DTC “that he would not be participating in the State Bar’s disciplinary proceeding, that he was going to let the State Bar take a default against him, and that the State Bar ‘could take his license back.’”<sup>4</sup> The DTC informed Respondent that if he did not file a response to the NDC and later tried to set aside any default, the DTC would aggressively oppose any attempt to set the default aside since Respondent was consciously deciding not to participate in the proceedings. Respondent indicated that he understood.

Respondent failed to file a response to the NDC. On August 24, 2012, 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 DTC declaring the additional steps taken to provide notice to Respondent (rule 5.80) and setting forth facts that show that Respondent had actual notice of this proceeding. 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 September 11, 2012. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. The return receipt was returned to the State Bar Court by the United States Postal Service, reflecting that the order was received by “Ray Hellwig” on September 27, 2012.<sup>5</sup> The court also ordered

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<sup>4</sup> Declaration of Deputy Trial Counsel Kimberly G. Anderson attached to the State Bar’s motion for entry of Respondent’s default.

<sup>5</sup> See return receipt for order entering default in the official court file in this matter.

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 March 21, 2013, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact with Respondent since his default was entered and the order entering his default was served; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of Respondent's conduct. 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 May 22, 2013.

Respondent has a prior record of discipline.<sup>6</sup> Pursuant to a Supreme Court order filed on August 10, 2011, Respondent was suspended for two 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 the first nine months of probation. Respondent was disciplined for (1) failing to deposit funds received for a client's benefit in a bank account properly labeled as a client trust account (three matters); (2) failing to maintain the balance of funds received for a client's benefit and deposited in a client trust account; (3) committing an act involving moral turpitude, corruption, or dishonesty by failing to supervise his office so as to allow the misappropriation of client funds (two matters); (4) failing to promptly refund unearned

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<sup>6</sup> The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

fees (two matters); and (5) intentionally, repeatedly, or recklessly failing to perform legal services with competence.

### **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(E)(1)(d).)

#### **1. Case Number 11-O-17684 (Kim Matter)**

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to supervise his non-attorney staff to ensure that settlement funds received on his client's behalf were properly deposited into Respondent's client trust account and properly disbursed.

Count Two – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to deposit settlement drafts on behalf of his client into his client trust account.

Count Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude) by permitting his non-attorney staff to misappropriate \$8,500 in settlement funds belonging to his client due to Respondent's gross negligence and recklessness in failing to supervise his non-attorney staff.

#### **2. Case Number 12-O-12880 (Client Trust Account and Probation Matters)**

Count Four – Respondent willfully violated Business and Professions Code section 6106 by issuing checks drawn on his client trust account when he knew, or should have known absent

gross negligence, that there were insufficient funds in the account to cover the amounts of the checks.

Count Five – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (maintain records of client property) by failing, between June 29, 2011, and January 3, 2012, to (1) maintain client trust account (CTA) ledgers for each of his clients; (2) maintain a written account journal for his CTA; and (3) maintain monthly reconciliations of his CTA.

Count Six - Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions) by (1) failing to maintain proper trust account records in violation of rule 4-100(B)(3) of the Rules of Professional Conduct and (2) issuing two checks drawn upon his CTA against insufficient funds in violation of Business and Professions Code section 6106, during his disciplinary probation period, thereby failing to comply with all conditions attached to his disciplinary probation.

Count Seven – Respondent willfully violated Business and Professions Code section 6106 by making misrepresentations in a quarterly report required by the conditions of his disciplinary probation.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) 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 disciplinary proceeding, as (1) the certified mail return receipt for the NDC was “signed by Ray Hellwig”;<sup>7</sup> (2) Respondent and the assigned DTC spoke by telephone on two occasions. In the first telephone conversation, Respondent acknowledged receipt of the NDC. In the second telephone conversation, Respondent, among

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<sup>7</sup> Declaration of Deputy Trial Counsel Kimberly G. Anderson attached to the State Bar’s motion for entry of Respondent’s default.

other things, told the DTC “that he would not be participating in the State Bar’s disciplinary proceeding, that he was going to let the State Bar take a default against him, and that the State Bar ‘could take his license back’”;<sup>8</sup>

(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 actual 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 Raymond Gerard Hellwig 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 Yeun Hwa Kim in the amount of \$8,500 plus 10 percent interest per year from June 14, 2011. 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

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<sup>8</sup> Declaration of Deputy Trial Counsel Kimberly G. Anderson attached to the State Bar’s motion for entry of Respondent’s default.

(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 Raymond Gerard Hellwig, State Bar number 100897, 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: August \_\_\_\_\_, 2013

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DONALD F. MILES  
Judge of the State Bar Court