

# PUBLIC MATTER

## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

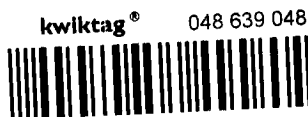
**FILED**  
**JUN 17 2014**  
STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

P.B.

In the Matter of	)	Case No.: <b>12-O-10288-RAH</b>
	)	
<b>JOEL ALLAN SUMNER,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 243307,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Joel Allan Sumner (respondent) was charged with one count of moral turpitude. He failed to appear at the trial of this case, 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 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 the attorney fails to have the default set aside or vacated within 90 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 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 6, 2006, and has been a member of the State Bar since then.

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

On December 27, 2012, the State Bar filed and properly served the notice of disciplinary charges (NDC) in this matter on respondent by recorded delivery and by United Postal Service with a tracking number, to his membership records address in Canada. On January 17, 2013, respondent filed his response to the NDC.

On February 1, 2013, respondent participated in an in-person status conference at which time the court set trial for April 30, May 1 and 2, 2013. The court thereafter filed an order on February 14, 2013, setting forth that trial would commence at 9:30 a.m. on April 30, May 1 and 2, 2013. The order setting the trial date was served on respondent at his membership records address by first-class mail, postage paid, on February 14, 2013.

The State Bar appeared for trial on April 30, 2013, but respondent did not.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed on April 30, 2013. 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 Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time. The order was served on respondent on April 30, 2013.

On July 26, 2013, respondent filed a motion to set aside his default. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].)

On August 22, 2013, the State Bar filed an opposition to respondent's motion to set aside the default. On September 30, 2013, the court filed an order denying respondent's motion to set aside the default.

Respondent filed a petition for review of the order denying his motion to set aside his default on October 18, 2013. The review department denied the petition in an order filed on December 13, 2013.

On February 26, 2014, the State Bar filed and properly served the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has had contact with respondent since respondent's default was entered;<sup>3</sup> (2) there are no other disciplinary matters pending against respondent; (3) respondent does not have 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 timely respond to the petition for disbarment.<sup>4</sup> The case was submitted for decision on April 16, 2014.

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<sup>3</sup> In addition to the pleadings discussed above which were filed after entry of respondent's default, respondent sent two emails to the deputy trial counsel assigned to this matter (DTC) on May 3, 2013. On December 18, 2013, respondent sent the DTC an email asking for a copy of the review department's order regarding his petition for interlocutory review. The DTC sent an email attaching a copy of the order to respondent on December 20, 2013, and, on that same date, respondent sent an email to the DTC thanking him for emailing a copy of the order to him. On December 26, 2013, respondent sent the DTC an email indicating that he had sent a petition for relief to the Supreme Court. Attached to the email was a copy of the purported petition. On February 19, 2014, the DTC sent an email to respondent indicating that the Supreme Court's website did not indicate that he filed the petition for relief, and that the State Bar would be filing a petition for disbarment. Respondent replied to the State Bar's email on February 19, 2014.

<sup>4</sup> On April 9, 2014, respondent filed an opposition to the State Bar's disbarment petition. However, as the opposition was untimely filed, the court filed an order on April 16, 2014, rescinding the filing of respondent's opposition to the State Bar's disbarment petition.

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

#### **Case Number 12-O-10288 (Kochis Matter)**

Respondent willfully violated section 6106 of the Business and Professions Code (moral turpitude) by sending intimidating and threatening emails to San Bernardino County Chief Deputy District Attorney John P. Kochis and others.

#### **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 proceeding and adequate notice of the trial date prior to entry of the default;<sup>5</sup>
- (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.

Despite adequate notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding and failed to have the default entered against him on April 30, 2013, set

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<sup>5</sup> In fact, respondent had actual notice of the trial dates as he was present at the status conference in which the trial dates were set.

aside or vacated. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Joel Allan Sumner 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 Joel Allan Sumner, State Bar Number 243307, 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: June 17, 2014

  
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RICHARD A. HONN  
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 June 17, 2014, 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:

**JOEL A. SUMNER  
SUMNER LAW  
330 BAY ST # 820  
TORONTO ON M5H 3S8, CANADA**

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

**Agustin Hernandez, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 17, 2014.



\_\_\_\_\_  
Paul Barona  
Case Administrator  
State Bar Court