

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case Nos.: **12-O-12835-RAH**  
 ) (12-O-12929; 12-O-13066)  
**ROY NEWMAN,** )  
 )  
**Member No. 260156,** ) **DECISION AND ORDER OF**  
 ) **INVOLUNTARY INACTIVE**  
 ) **ENROLLMENT**  
A Member of the State Bar. )

In this matter, respondent Roy Newman (respondent) was charged with eleven counts of misconduct stemming from three separate client matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (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), 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 December 4, 2008, and has been a member since then.

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

On September 17, 2012, the State Bar properly filed and served an 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 NDC was returned to the State Bar by the United States Postal Service.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. These efforts included calling him at his membership records telephone number, calling him at a possible alternative telephone number identified in a State Bar investigator's computer search, sending an email to him at the email address listed in his membership records, and checking Parker's Directory for any additional contact information.

Respondent failed to file a response to the NDC. On November 29, 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 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 December 17, 2012. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. 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 July 5, 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) after default was entered, the State Bar was contacted by an attorney on respondent's behalf seeking a stipulation to set aside the default, however, shortly thereafter the attorney advised the State Bar that respondent would be getting new counsel;<sup>3</sup> (2) respondent has no other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from 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 August 1, 2013.

### **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).)

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<sup>3</sup> The State Bar did not receive any subsequent communications from respondent or an attorney on his behalf.

**Case Number 12-O-12835 – The Rae Matter**

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to complete the legal services for which he was retained.

Count Two – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to his client, upon termination of employment.

Count Three – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failing to respond to client inquiries), by failing to respond to his client’s requests for a status report.

Count Four – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to any of the State Bar investigator’s letters.

**Case Number 12-O-12929 – The Burns Matter**

Count Five – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to complete the legal services for which he was retained.

Count Six – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to release file) by failing to turn over his client’s file upon termination of employment.

Count Seven – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to his client, upon termination of employment.

Count Eight – respondent willfully violated Business and Professions Code section 6068, subdivision (j) (failing to update membership address), by failing to maintain a current address on his official State Bar membership records.

**Case Number 12-O-13066 – The Seitz and Wurtz Matter**

Count Nine – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to competently perform legal services) by failing to complete the legal services for which he was retained.

Count Ten – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by failing to refund unearned fees to his clients, upon termination of employment.

Count Eleven – respondent willfully violated Business and Professions Code section 6068, subdivision (j) (failing to update membership address), by failing to maintain a current address on his official State Bar membership records.

**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) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar properly served him with the NDC and made various efforts to locate respondent, including: calling him at his membership records telephone number, calling him at a possible alternative telephone number identified in a State Bar investigator’s computer search, sending an email to him at the email address listed in his membership records, and checking Parker’s Directory for any additional contact information;
- (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 recommends disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Roy Newman 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 the following payees:

- (1) Karen Rae in the amount of \$2,000 plus 10 percent interest per year from March 19, 2012;
- (2) Linda Burns in the amount of \$3,000 plus 10 percent interest per year from January 12, 2012; and
- (3) Sally Seitz and Greg Wurtz in the amount of \$3,000 plus 10 percent interest per year from November 1, 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 (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 Roy Newman, State Bar number 260156, 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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RICHARD A. HONN  
Judge of the State Bar Court