

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: <b>13-O-11052-LMA</b>
	)	<b>(13-O-11053; 13-O-11346)</b>
<b>SIGMUND CHARLES KOHNEN,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 61759,</b>	)	<b>ENROLLMENT</b>
	)	
A Member of the State Bar.	)	

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Respondent Sigmund Charles Kohnen (respondent) was charged with 12 counts of misconduct. 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 December 18, 1974, and has been a member of the State Bar since then.

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

On June 10, 2013, the State Bar filed and properly served the notice of disciplinary charges (NDC) in this matter on respondent by certified mail, return receipt requested, to his then-membership records address. On July 22, 2013, respondent filed his response to the NDC.

By order filed and served on July 15, 2013, trial was set to be held from October 8 to 11, 2013. The order setting the trial date was served on respondent at his then-membership records address and what is now his membership records address by first-class mail, postage paid. (Rule 5.81(A).)

The State Bar appeared for trial on October 8, 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 October 8, 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, and he has remained inactively enrolled since that time.<sup>3</sup>

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<sup>3</sup> The return receipt for the order entering default served on respondent at his membership records address was returned to the State Bar on October 15, 2013, bearing an illegible signature but with the name "C. Ferrante" printed above it and showing a delivery date of October 11, 2013.

Respondent did not file 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 January 29, 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) respondent has not contacted the State Bar since October 8, 2013, the date his default was entered and the order entering his default was served, other than by a telephone call on December 16, 2013;<sup>4</sup> (2) there is one pending default matter against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments as a result of respondent's conduct. Respondent has not responded to the petition for disbarment. The case was submitted for decision on April 16, 2014.<sup>5</sup>

### **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).)

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Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to provide any legal services of value to the clients, including not taking any steps to pursue the transfer of their time-share property.

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<sup>4</sup> The Declaration of Suzan J. Anderson, filed with the State Bar's petition for disbarment, stated that she found another telephone number for respondent and, that day, they had a conversation about another pending matter, State Bar Court case no. 13-C-14321.

<sup>5</sup> The February 25, 2014 submission date was vacated and the matter submitted on April 16, 2014.

Count Two – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by not refunding any portion of the \$1,295 in advanced attorney fees paid by the clients.

Count Three – Respondent willfully violated section 6068, subdivision (m) (failure to respond to client inquiries) by failing to respond to the clients’ telephone messages and emails of July 2012 regarding the status of their matter.

Count Four – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation) by failing to provide a written response to the allegations raised in a client’s complaint as requested by the State Bar in two letters.

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Count Five – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to provide any legal services of value to the clients, including not taking any steps to pursue the transfer of their time-share property.

Count Six – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by not refunding any portion of the \$1,295 in advanced attorney fees paid by the clients.

Count Seven – Respondent willfully violated section 6068, subdivision (m) (failure to respond to client inquiries), by failing to respond to the clients’ emails regarding the status of their matter

Count Eight – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation), by failing to provide a substantive response to the allegations raised in a client’s complaint as requested by the State Bar in two letters.

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Count Nine – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence), by failing to provide any legal services of value to the clients, including not taking any steps to pursue the transfer of their time-share property.

Count 10 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to refund unearned fees) by not refunding any portion of the \$395 in advanced attorney fees paid by the clients.

Count 11 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to client inquiries) by failing to respond to the clients' emails regarding the status of their matter.

Count 12 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate in a State Bar investigation), by failing to provide a substantive response to the allegations raised in a client's complaint as requested by the State Bar in two letters.

**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;
- (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 October 8, 2013, be 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 Sigmund Charles Kohnen 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 recommends that respondent be ordered to make restitution to:

- (1) Levis and Marie Caycedo in the amount of \$1,295.00 , plus 10 percent interest per year from March 28, 2012;
- (2) Kenneth and Elaine Thomas in the amount of \$1,295.00, plus 10 percent interest per year from September 15, 2011; and
- (3) Andrew and Pajaree Korinek in the amount of \$395.00, plus 10 percent interest per year from July 21, 2012.

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 Sigmund Charles Kohnen, State Bar Number 61759, 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 \_\_\_\_\_, 2014

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LUCY ARMENDARIZ  
Judge of the State Bar Court