



LAW.COM

Select '**Print**' in your browser menu to print this document.

Copyright 2010. ALM Media Properties, LLC. All rights reserved.

Page printed from: <http://www.law.com>

[Back to Article](#)

## Attorney Sues Calif. Bar Over Discipline Case

Mike McKee

03-30-2010

San Francisco lawyer Philip Kay isn't going down without a fight.

Facing a possible three-year suspension from practicing law, Kay responded recently by filing a 91-page suit in San Francisco Superior Court against the State Bar of California, its board of governors, State Bar Court Judge Lucy Armendariz and others. He contends, in part, that he was denied due process during his trial in State Bar Court.

"The State Bar has charged and found Kay guilty of criminal contempt and imposed a criminal and non-dischargeable fine by default," he wrote in *Kay v. State Bar of California*, 496869. "The State Bar proceeding is so deeply flawed and corrupt -- it shocks the conscience and represents an extreme miscarriage of justice and renders the decision absurd, *ultra vires* and thus, void."

Kay was referring to Armendariz's decision to issue a default order against him last year after he refused on the witness stand to answer questions that he said involved privileged and confidential client and work-product information. The default prevented Kay from defending against the charges.

"After the entry of default," Kay wrote in his suit, "the OCTC (Office of Chief Trial Counsel) sought additional punishment based on matters not charged in the NDC (notice of disciplinary charges), and the court granted the requests, made findings and recommended discipline for these uncharged matters.

"This result[ed]," he added, "in an amendment of the NDC, which vitiates the default, requires service of the NDC with the new charges and affords Kay the right to answer and contest the NDC."

Armendariz recommended suspension for Kay in December, saying he had engaged in a pattern of verbal abuse toward several people during trials in three San Diego judges' courtrooms. That recommendation can be appealed up to the California Supreme Court.

The advertisement features the 'AMERICAN LAWYER.COM' logo at the top. Below it is a red banner with the text 'Exclusive Webinar' and 'Which firms made the Am Law 100 in 2010?'. A large '100' logo is on the left. Below the main text, it says 'Get the results before they come out'.

The advertisement has an orange background. At the top, it says 'Newly Updated Book!'. The main title is 'Due Diligence in Business Transactions' in large white letters. Below the title is 'by Gary M. Lawrence'. A starburst graphic says 'Save 25%'. At the bottom, it says 'A complete overview of the due diligence process' and features the 'LJP' logo. An image of a hand writing on a clipboard is also present.

Michael von Loewenfeldt, a partner with San Francisco's Kerr & Wagstaffe who represents the State Bar in the matter, called Kay's allegations "nonsense" and said his remedy for any "alleged irregularities" lies with the Supreme Court.

"The superior court is not going to interfere with the ongoing disciplinary procedures against him," Von Loewenfeldt said.

Kay made his name in the early '90s with a \$3.5 million judgment against megafirm Baker & McKenzie in a high-profile sexual harassment suit.