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STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No. 16-O-17855-MC
	)	
DAVID NEIL CLYDE,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
State Bar No. 89068.	)	ENROLLMENT
	)	

Respondent David Neil Clyde (Respondent) was charged with four counts of violations of the Rules of Professional Conduct and the Business and Professions Code.<sup>1</sup> He failed to participate, either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>2</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

<sup>1</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

<sup>2</sup> Unless otherwise indicated, all references to rules are to this source.



(NDC) and the attorney fails to have the default set aside or vacated within 90 days, OCTC will file a petition requesting the court to recommend the attorney's disbarment.<sup>3</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 California on November 29, 1979, and has been a licensed attorney since then.

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

On October 24, 2018, OCTC properly filed and served the NDC on Respondent by certified mail, return receipt requested, to his official State Bar record address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) Courtesy copy of the NDC was also sent to Respondent by regular first class mail to his official State Bar record address. On October 29, OCTC received the return receipt signed by Respondent.

On November 29, 2018, OCTC sent Respondent an email at his official State Bar record email address, informing him that a response to the NDC was overdue and that a motion for entry of default would be filed. OCTC did not receive any response from Respondent

Respondent failed to file a response to the NDC. On November 30, 2018, OCTC properly filed and served a motion for entry of Respondent's default by certified mail, return receipt requested. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by OCTC senior trial counsel declaring the

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<sup>3</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(F)(2).)

additional steps taken to provide notice to Respondent. (Rule 5.80.)<sup>4</sup> The motion also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The mailing was not returned as undeliverable.

Respondent did not file a response to the motion, and his default was entered on December 18, 2018. The order entering the default was served on Respondent at his official State Bar record address by certified mail, return receipt requested. The court also ordered Respondent's involuntary inactive enrollment as a licensed attorney of the State Bar 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.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].)

On March 29, 2019, OCTC properly filed and served the petition for disbarment on Respondent at his official State Bar record address. As required by rule 5.85(A), OCTC reported in the petition that: (1) there has been no contact with Respondent since his default was entered; (2) Respondent has two pending disciplinary matters; (3) Respondent has one prior record of discipline; and (4) the Client Security Fund (CSF) has not paid out any claims as a result of Respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on April 24, 2019.

### **Prior Record of Discipline**

Respondent has one prior record of discipline. On November 11, 2017, Respondent was suspended for one year, the execution of which was stayed, and placed on probation for two

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<sup>4</sup> Former rule 5.80 of the Rules of Procedure of the State Bar is applicable since the motion for entry of default was filed in November 2018, before rule 5.80 was amended, effective January 1 and January 29, 2019.

years, with conditions of probation, including 30 days' actual suspension. Respondent's stipulated misconduct in one client matter involved failure to return unearned fees, unauthorized practice of law, collection of illegal fees, and failure to perform services competently.

**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(F)(1)(d).)

**Case No. 16-O-17855 (Ocariza Matter)**

Count 1 – Respondent willfully violated section 6106 (moral turpitude, dishonesty, or corruption) by stating to Jose and Rosalina Ocariza that he could speed up the consular processing for their children when Respondent knew that the statement was false and misleading.

Count 2 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund any part of the \$1,500 in unearned fees upon his termination of employment on December 12, 2013.

Count 3 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide an accounting regarding the \$1,500 funds received from the clients as advanced fees upon the termination of his employment in 2013.

Count 4 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to inform clients of significant development in their immigration matter.

### **Disbarment Is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(F) 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;
- (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 his disbarment.

### **RECOMMENDATIONS**

#### **Disbarment**

It is recommended that **David Neil Clyde**, State Bar number 89068, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

#### **California Rules of Court, Rule 9.20**

It is further recommended 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.<sup>5</sup>

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<sup>5</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32

## Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to section 6086.10, subdivision (c), costs assessed against a licensed attorney of the State Bar who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

## ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders **David Neil Clyde**, State Bar number 89068, be involuntarily enrolled as an inactive licensed attorney of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: May 16, 2019

  
\_\_\_\_\_  
Manjari Chawla  
Judge of the State Bar Court

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Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 San Francisco, on May 16, 2019, 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 San Francisco, California, addressed as follows:

DAVID NEIL CLYDE  
DAVID N CLYDE, ESQ  
3310 N JASON AVE  
FRESNO, CA 93737 - 9216

- by certified mail, No. \_\_\_\_\_, with return receipt requested, through the United States Postal Service at \_\_\_\_\_, California, addressed as follows:

- by overnight mail at \_\_\_\_\_, California, addressed as follows:

- by fax transmission, at fax number \_\_\_\_\_. No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Maria J. Oropeza, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 16, 2019.

  
George Hue  
Court Specialist  
State Bar Court