

# **PUBLIC MATTER**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. 17-J-01370-YDR
	)	
SEAN GARDNER SAXON,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
A Member of the State Bar, No. 230054.	)	ENROLLMENT
_____	)	

Respondent Sean Gardner Saxon (Respondent) was suspended for three years by the Supreme Court of the State of Colorado upon facts that established his culpability for acts of professional misconduct in that jurisdiction. As a result, the Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding against Respondent by filing a notice of disciplinary charges on February 14, 2018. (Bus. & Prof. Code, § 6049.1;<sup>1</sup> Rules Proc. of State Bar, rules 5.350-5.354.)

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the Colorado proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in California at the time of Respondent's misconduct in Colorado; and (3) whether the Colorado proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Business and Professions Code.

Respondent bears the burden of establishing that the conduct for which he was disciplined in Colorado would not warrant the imposition of discipline in California and/or that the Colorado proceedings lacked fundamental constitutional protection. Unless Respondent establishes one or both of these, the record of discipline in the Colorado proceeding is conclusive evidence of Respondent's culpability of misconduct in California. (Section 6049.1, subdivisions (a) and (b).)

Respondent failed to participate in the California State Bar Court proceeding, either in person or through counsel, and his default was entered. The 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 State Bar Court 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 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**

### **Jurisdiction**

Respondent was admitted to practice law in this state on February 5, 2004, and has been a member since then.

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<sup>2</sup> Unless otherwise indicated, all references to rules in this Decision and Order are to the Rules of Procedure of the State Bar of California.

<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).)

## **Procedural Requirements Have Been Satisfied**

On February 14, 2018, OCTC properly filed and served a Notice of Disciplinary Charges in case No. 17-J-01370 (NDC) on Respondent by certified mail, return receipt requested, at his then membership records address. The NDC notified Respondent that his failure to participate in the proceedings would result in a disbarment recommendation. (Rule 5.41.) OCTC did not receive a return receipt from the U.S. Postal Service.

In addition, Respondent had actual notice of this proceeding. On March 19, 2018, an OCTC Deputy Trial Counsel spoke with Respondent by telephone and notified him of the present proceedings. Respondent acknowledged receiving a previous email from the Deputy Trial Counsel, which included a copy of the NDC. Respondent provided the Deputy Trial Counsel with an updated mailing address. The Deputy Trial Counsel advised Respondent that she would be filing a default motion.

On March 22, 2018, OCTC filed and properly served a motion for entry of Respondent's default.<sup>4</sup> The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by Deputy Trial Counsel Jennifer Kishimizu Pinney 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 failed to appear at the March 26, 2018 in-person status conference and did not file a response to the default motion. His default was entered on April 20, 2018. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under section 6007, subdivision (e), effective three days after service of the order. Respondent has remained inactively enrolled since that time. The order entering default and enrolling

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<sup>4</sup> OCTC also mailed a courtesy copy of this motion to Respondent at the updated mailing address he provided the Deputy Trial Counsel.

Respondent inactive was properly served on Respondent at his then membership records address by certified mail, return receipt requested.

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 August 1, 2018, OCTC filed the petition for disbarment. As required by rule 5.85(A), OCTC reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (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 September 6, 2018.

#### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

The court finds that Respondent's culpability in the Colorado proceedings would warrant the imposition of discipline in California under the laws or rules applicable in this state at the time of Respondent's misconduct in the Colorado proceedings, as follows:

##### **Case No. 17-J-01370 – The December 21, 2016 Colorado Disciplinary Order**

On December 21, 2016, the Supreme Court of the State of Colorado ordered that Respondent be suspended from the practice of law in that state for three years upon finding that he had committed professional misconduct in that jurisdiction as set forth in the Colorado Hearing Board's November 7, 2016 opinion and decision imposing sanctions. In this opinion and decision imposing sanctions, Respondent was found culpable of violating numerous Colorado Rules of Professional Conduct (CRPC). Said misconduct included knowingly disobeying an obligation under the rules of a tribunal, in violation of CRPC rule 3.4(c); committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, in violation of CRPC rule 8.4(b); and engaging in conduct that directly,

intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law, in violation of CRPC rule 8.4(h).

The NDC alleges that Respondent's misconduct in Colorado reflects violations of sections 6068, subdivision (a); 6068, subdivision (b); 6103, and 6106. This court agrees. The allegations from the NDC are deemed admitted upon the entry of Respondent's default in this proceeding and are supported by the facts giving rise to Respondent's discipline in Colorado. Those facts show that Respondent willfully failed to support the laws of the United States, failed to maintain the respect due to the courts of justice and judicial officers, disobeyed a court order, and committed misconduct constituting moral turpitude.

### **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) Respondent had actual notice 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 actual 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.

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## RECOMMENDATIONS

### Disbarment

The court recommends that respondent Sean Gardner Saxon, State Bar number 230054 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 Sean Gardner Saxon, State Bar number 230054, 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: October 5, 2018

  
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YVETTE D. ROLAND  
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 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 Los Angeles, on October 9, 2018, 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:

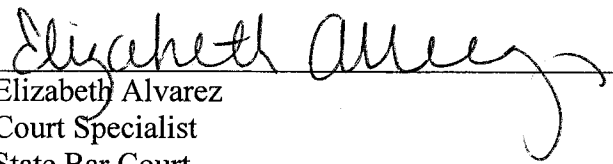
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SEAN G. SAXON  
SAXON LAW FIRM LLC  
15400 W. 64TH AVENUE  
UNIT 9E-178  
ARVADA, CO 80007

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

Kimberly G. Anderson, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 9, 2018.

  
Elizabeth Alvarez  
Court Specialist  
State Bar Court