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STATE BAR COURT  
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of	)	Case No. 18-Q-13627
	)	
DAVID NEIL CLYDE,	)	RECOMMENDATION ON
	)	RESIGNATION
A Member of the State Bar, No. 89068.	)	
_____	)	

On May 25, 2018, David Neil Clyde, 84, filed a resignation with charges pending. On July 26, 2018, the Office of Chief Trial Counsel of the State Bar (OCTC) filed a report and recommendation, which recommends that Clyde's resignation be rejected. Clyde did not respond. Based on OCTC's report and recommendation, and in light of the grounds set forth in California Rules of Court, rule 9.21(d)<sup>1</sup>, as detailed below, we recommend that the Supreme Court decline to accept the resignation.

I. BACKGROUND

Clyde was admitted to practice law in California on November 29, 1979, and has one prior record of discipline. On October 12, 2017 (effective November 11, 2017), the Supreme Court ordered Clyde suspended for one year, execution stayed, and placed on probation for two years subject to the conditions of probation, including a minimum 30-day period of actual suspension. (*In re David Neil Clyde* (S243914), State Bar Court Case No. 16-O-15107.) Clyde was ordered to make restitution to a former client in the amount of \$6,035, plus 10 percent

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<sup>1</sup> All further references to rule(s) are to this source unless otherwise noted.

interest per year from May 1, 2014. Clyde stipulated that he: (1) engaged in the unauthorized practice of law (Bus. & Prof. Code, §§ 6125-26); (2) engaged in conduct involving moral turpitude, dishonesty or corruption (Bus. & Prof. Code, § 6106); (3) charged an illegal fee (Rules Prof. Conduct, rule 4-200(A)); (4) failed to act competently once authorized to practice law (Rules Prof. Conduct, rule 3-110(A)); and (5) failed to timely return unearned fees (Rules Prof. Conduct, rule 3-700(D)(2)). In aggravation, Clyde committed multiple acts of wrongdoing and failed to make restitution. In mitigation, he entered into the stipulation and had no prior record of discipline in 25 years of practice. On November 11, 2017, Clyde was suspended.

On May 25, 2018, Clyde filed his resignation. In support of his resignation, Clyde submitted a personal statement and a doctor's letter. Clyde stated that he is suffering from two strokes, progressive dementia and disability from combat wounds. He further stated that he is no longer able to perform lawyerly duties, or financially satisfy the terms of his probation. Clyde's doctor stated Clyde suffers from a cerebrovascular accident, recent memory loss, a progressive cognitive condition and balance problems that contribute to Clyde's non-performance of activities and daily living.

When Clyde filed his resignation, there was one disciplinary proceeding against him (State Bar Court No. 18-O-10985). On April 19, 2018, OCTC filed a notice of disciplinary charges (NDC), charging Clyde with failure to comply with the conditions of his probation in case number 16-O-15107. On May 23, 2018, OCTC filed a notice of motion and motion for entry of default. Clyde did not respond by the June 7, 2018 deadline. However, OCTC's notice of motion and motion for entry of default became moot because the hearing judge issued an order to show cause and conditional order re abatement on June 4, 2018. The case was abated on July 2, 2018. Clyde has remained ineligible to practice since November 11, 2017.

## **II. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)**

We have considered Clyde's resignation under the grounds set forth in rule 9.21(d), and summarize the relevant information for each ground:

### **1. Whether the preservation of testimony is complete.**

OCTC reports that preservation of the evidence is not necessary in the pending matters.

### **2. Whether after transfer to inactive status, Clyde has practiced law or has advertised or held himself out as entitled to practice law.**

OCTC reports that it has no evidence that Clyde has practiced law in California or held himself out as entitled to practice law in California since he became ineligible to practice on November 11, 2017.

### **3. Whether Clyde performed the acts specified in rule 9.20(a)-(b).**

OCTC reports that Clyde has not submitted a 9.20 declaration, and that as of now, the Supreme Court has not issued an order.

### **4. Whether Clyde provided proof of compliance with rule 9.20(c).**

OCTC reports that Clyde has not submitted a 9.20 declaration, and that as of now, the Supreme Court has not issued an order.

### **5. Whether the Supreme Court has filed a disbarment order.**

The Supreme Court has not filed a disbarment order.

### **6. Whether the State Bar Court has filed a decision recommending disbarment.**

The State Bar Court has not filed a decision or opinion recommending Clyde's disbarment.

**7. Whether Clyde previously resigned or has been disbarred and reinstated to the practice of law.**

Clyde has not previously resigned or been disbarred in California.

**8. Whether Clyde entered a stipulation with OCTC as to facts and conclusions of law regarding pending disciplinary matters.**

Clyde and OCTC have not entered into a written stipulation as to facts and conclusions of law regarding the pending charge. OCTC reports that a stipulation as to facts and conclusion of law was mailed to Clyde, but has not been received by the State Bar.

**9. Whether accepting Clyde's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.**

We recommend rejecting Clyde's resignation for the reasons OCTC presented in its filings in this matter. Clyde: (1) has one prior record of discipline; (2) failed to abide by the terms and conditions of his disciplinary probation; (3) failed to make restitution to a former client; and (4) has not entered into a stipulation with OCTC regarding the pending charge. Under these circumstances, we find that that Clyde should not be allowed the benefit of resigning.

Given Clyde's medical condition and his stated financial situation, we further recommend that Clyde's request for resignation be denied without prejudice. If Clyde chooses to resubmit his request for resignation, Clyde may wish to submit further evidence in support of his claim that he lacks financial means to satisfy the conditions of his probation.

### **III. RECOMMENDATION**

We recommend that the Supreme Court decline to accept the resignation of David Neil Clyde, State Bar number 89068.

**HONN**

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Acting Presiding Judge

## 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 3, 2018, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED OCTOBER 3, 2018

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:

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

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

Maria Oropeza, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 3, 2018.



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Mel Zavala  
Court Specialist  
State Bar Court