

PUBLIC MATTER

FILED

V.A.

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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

|   |   |                         |
|---|---|-------------------------|
| In the Matter of                              | ) | Case No. 14-C-04177-LMA |
|   | ) |                         |
|   | ) | DECISION AND ORDER OF   |
| KENNETH CLIFFORD OLSON,                       | ) | INVOLUNTARY INACTIVE    |
|   | ) | ENROLLMENT              |
|   | ) |                         |
| <u>A Member of the State Bar, No. 279643.</u> | ) |                         |

In January 2015, respondent Kenneth Clifford Olson (Respondent) was convicted of a misdemeanor violation of Penal Code section 1320, subdivision (b) (failing to appear after release from custody upon one's own recognizance). Upon finality of the conviction, the review department initiated this conviction referral proceeding by filing an order referring Respondent's conviction to the hearing department for a hearing and decision recommending the discipline to be imposed in the event that the hearing department finds that the facts and circumstances surrounding Respondent's violation of section 1320, subdivision (b) involved moral turpitude (Bus. & Prof. Code, §§ 6101, 6102)<sup>1</sup> or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494). (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rules 5.161(A) & 5.340 et seq.<sup>2</sup>)

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

<sup>2</sup> Except where otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar.



Respondent failed to participate in this proceeding either in person or through counsel, and his default was entered. The State Bar filed a petition for disbarment in accordance with rule 5.85.<sup>3</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 hearing on conviction, 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>4</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.

Respondent has one prior record of discipline. On July 29, 2016, the Supreme Court filed an order in case number S234647 (State Bar Court case number 14-O-04265), styled *In re Kenneth Clifford Olson on Discipline*, placing Respondent on one year's stayed suspension and two years' probation on conditions, including minimum actual suspension of ninety days that will continue until Respondent makes restitution totaling almost \$3,000 with interest and until Respondent establishes his rehabilitation, fitness to practice, and learning and ability in the law in accordance with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).

The Supreme Court imposed that discipline on Respondent based upon the recommendations that this court made in its March 17, 2016, decision in State Bar Court case

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<sup>3</sup> The default procedures set forth in rules 5.80 through 5.86 as modified by rule 5.346 are applicable in conviction referral proceedings. (Rule 5.346(A).)

<sup>4</sup> If the court determines that any due process requirement is 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).)

number 14-O-04265. In its March 17, 2016, decision, this court found Respondent culpable of the following six counts of misconduct in a single client matter: failing to perform legal services competently (Rules Prof. Conduct, rule 3-110(A)); failing to obey a court order (§ 6103); failing to communicate (§ 6068, subd. (m)); failing to refund an unearned fee (Rules Prof. Conduct, rule 3-700(D)(2)); failing to return the client's file (Rules Prof. Conduct, rule 3-700(D)(1)); and failing to deposit client funds into a trust account (Rules Prof. Conduct, rule 4-100(A)). In aggravation, the court found that Respondent committed multiple acts of misconduct; that Respondent demonstrated little insight into his misconduct; that Respondent was culpable of an uncharged misappropriation of \$150 in client funds; that Respondent's misconduct caused significant client harm; that Respondent failed to make restitution for about \$2,900 in unearned fees. In mitigation, the court found that Respondent was entitled to nominal mitigation for his good character evidence and that Respondent was entitled to some mitigation for entering into a partial stipulation of facts.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in California on December 5, 2011, and has been a member of the State Bar of California since that time.

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

On August 12, 2016, the State Bar Court filed and properly served a notice of hearing on conviction on Respondent at his membership-records address by certified mail, return receipt requested. The notice of hearing on conviction notified Respondent that his failure to participate in this proceeding would result in a disbarment recommendation. (Rule 5.345.)

Thereafter, the assigned Senior Trial Counsel (STC) used reasonable diligence to notify Respondent of this proceeding by (1) attempting to call Respondent at his membership-records telephone number; (2) attempting to send an email message to Respondent at his membership-

records email address; (3) leaving a voicemail message for Respondent on his private telephone number; and (4) sending a fax to Respondent at his membership-records fax number.

Respondent failed to file a response to the notice of hearing on conviction. On September 23, 2016, the State Bar filed and served on Respondent a motion for entry of Respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the STC declaring the additional steps taken to attempt 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 did not file a response to the motion, and his default was entered on October 12, 2016. The order entering the default was served on Respondent at his membership records address by certified mail, return receipt requested. In the default order, the court also ordered that Respondent be involuntarily enrolled as an inactive member of the State Bar of California under section 6007, subdivision (e). Thereafter, on October 15, 2016, Respondent was involuntarily enrolled inactive, and he has been enrolled inactive under the court's order 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 January 17, 2017, the State Bar filed and served on Respondent a 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 the default was entered; (2) Respondent has no other disciplinary matters pending; (3) Respondent has one prior record of discipline; and (4) the Client Security Fund has not paid out claims resulting from Respondent's conduct in this matter. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default.

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

On page numbers 4 and 5 of the State Bar's September 23, 2016, motion for entry of default, the State Bar set forth a statement of facts and circumstances surrounding Respondent's conviction. (Rule 5.346(C)(1).) Upon the entry of Respondent's default, the factual allegations in that statement were deemed admitted by Respondent and no further proof was required to establish the truth of such facts. (Rule 5.346(D).) As set forth below, Respondent's conviction supports the conclusion that Respondent violated a statute, rule, or court order that warrants the imposition of discipline. (Rule 5.85(F)(1)(d).)

#### **State Bar Court Case Number 14-C-04177**

In early 2014, Respondent was arrested on a two-count criminal complaint charging Respondent with a felony violation of Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance) and a misdemeanor violation of Vehicle Code section 12500, subdivision (a) (unlicensed driver) with a special allegation based on two prior violations. The Napa County Superior Court released Respondent from custody upon his own recognizance.

On March 27, 2014, Respondent failed to appear in the Napa County Superior Court for arraignment and a settlement conference. Thereafter, on January 8, 2015, Respondent pleaded nolo contendere to and was convicted of a misdemeanor violation of Penal Code section 1320, subdivision (b) for failing to appear in the Napa County Superior Court on March 27, 2014.

Failing to appear after being released upon one's own recognizance is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding Respondent's conviction do not involve moral turpitude, but do constitute other misconduct warranting attorney discipline (*In re Kelley, supra*, 52 Cal.3d at p. 494).

### **Disbarment is Recommended**

The court finds that the following four requirements of rule 5.85(F) have been satisfied:

1. the notice of hearing on conviction was properly served on Respondent in accordance with rule 5.25;
2. reasonable diligence was used to notify Respondent of the proceedings prior to the entry of his default;
3. Respondent's default was properly entered under rule 5.80; and
4. the factual allegations deemed admitted pursuant to the notice of hearing on conviction support a finding that Respondent violated a statute, rule, or court order that warrants the imposition of discipline.

Despite adequate or actual notice and opportunity, Respondent failed to participate in this disciplinary proceeding. Accordingly, as set forth in the Rules of Procedure of the State Bar, the court will recommend Respondent's disbarment.

### **RECOMMENDATIONS**

#### **Disbarment**

The court recommends that Kenneth Clifford Olson, State Bar number 279643, 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 Kenneth Clifford Olson 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.

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## **Costs**

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be 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 Kenneth Clifford Olson, State Bar number 279643, 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 by mail (Rules Proc. of State Bar, rule 5.111(D)).

Dated: March 8, 2017.

  
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**LUCY ARMENDARIZ**  
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 Case Administrator 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 March 8, 2017, 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:

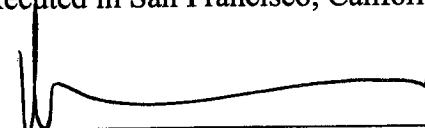
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KENNETH C. OLSON  
OLSON LAW GROUP  
100 COMPTON CIR APT A  
SAN RAMON, CA 94583 - 1690

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

Susan I. Kagan, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 8, 2017.

  
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Vincent Au  
Case Administrator  
State Bar Court