

PUBLIC MATTER

FILED

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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

In the Matter of) Case No.: 14-O-04265-LMA
)
KENNETH CLIFFORD OLSON,)
) DECISION
Member No. 279643,)
)
A Member of the State Bar.)

Introduction¹

In this contested disciplinary matter, respondent Kenneth Clifford Olson is charged with six counts of misconduct stemming from a single client matter. The alleged misconduct included failing to perform legal services with competence, failing to obey court orders, failing to communicate significant developments, failing to refund unearned fees, failing to promptly release a client file, and failing to deposit client funds into a trust account.

Having considered the facts and the law, the court finds Respondent culpable on all six counts, and recommends, among other things, that he be suspended for a minimum of 90 days and until full payment of restitution.

Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) against Respondent on August 25, 2015. Respondent filed his response to the NDC on September 11, 2015.



¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct and all statutory references are to the Business and Professions Code.

The State Bar was represented by Senior Trial Counsel Susan I. Kagan. Respondent represented himself. On December 9, 2015, the parties filed two factual stipulations.² A five-day trial was held on December 9 and 10, 2015, and January 4, 6, and 7, 2016. On January 7, 2016, the State Bar made an oral motion to amend the NDC to conform to proof. Hearing no objection, the court granted the motion. Following the filing of closing briefs,³ this matter was submitted for decision on January 15, 2016.

Findings of Fact and Conclusions of Law

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 at all times since that date.

Facts

On February 28, 2013, a lawsuit was filed against Nikki and Ernest Cheng (the Chengs), by their homeowners association, *Positano Owners Association v. Ernest and Nikki Cheng*, Alameda County Superior Court case no. HG13669469 (civil action). The Positano Owners Association (POA) was suing the Chengs for preliminary and permanent injunctions and declaratory relief based on the Chengs' act of painting their driveway without POA approval.

On March 5, 2013, the court in the civil action ordered the parties to appear at a case management conference (CMC) on July 18, 2013. On March 25, 2013, POA served a discovery request on the Chengs. On April 13, 2013, the Chengs restored their driveway back to the original color.

On May 31, 2013, the Chengs hired Respondent to defend them in the civil action. In total, the Chengs paid Respondent \$2,800 in advanced fees to defend them in the civil action. At

² The parties' second stipulation expanded on the facts contained in the first stipulation.

³ Respondent's closing brief abruptly ended in the middle of page seven. On that page was a hand-written request for additional time to complete his closing argument. That request is denied, no good cause having been shown.

the time of hire, Nikki Cheng provided Respondent with the court order issued on March 5, 2013, requiring the parties to appear at a CMC on July 18, 2013. The Chengs also provided Respondent with the March 25, 2013 discovery request.

Respondent subsequently requested two extensions of time to respond to the discovery request, both of which were granted by POA. Thereafter, Respondent failed to respond to the discovery request.⁴ Respondent never informed the Chengs that he failed to provide responses to the discovery request.

On June 13, 2013, Respondent filed a demurrer in the civil action. A hearing on the demurrer was scheduled to take place on August 2, 2013.

On July 18, 2013, the court issued an order continuing the CMC to August 2, 2013, and requiring Respondent to file a CMC statement. Despite receiving the July 18, 2013 order, Respondent failed to file a CMC statement.⁵

On July 18, 2013, counsel for POA sent Respondent notices for depositions of the Chengs and production of documents on August 6, 2013. Respondent received the notices of deposition and production of documents for the Chengs. Thereafter, he informed the Chengs that their deposition date was August 6, 2013. Nikki Cheng advised Respondent that she and her

⁴ Respondent's testimony that he responded to the discovery request was not credible. His testimony on this subject conflicted with the credible evidence presented by the State Bar, and was not corroborated by documentary evidence or additional witness testimony.

⁵ Respondent's testimony that he was not served with and/or did not receive all of the Superior Court orders and that he was not served with and/or did not receive all of the pleadings filed on behalf of POA lacked credibility and was not supported by the evidence. In addition to the proofs of service contained in the Superior Court records, secretary Laurie Briggs and attorney Michael Vinding (both from the firm that represented POA) credibly testified that they served Respondent with all of the pleadings and relevant orders. Even assuming, arguendo, that Respondent had not received the orders and notices, he was under a standing order from the Superior Court to obtain copies of the court orders from the court's website and was on notice of the fact that he was required to follow the Local Rules and check the court's website for tentative rulings.

husband were unavailable for depositions on that day. Respondent never informed counsel for POA that his clients were unavailable for depositions on August 6, 2013.

On August 1, 2013, counsel for POA sent Respondent a confirmation letter regarding the August 6, 2013 depositions. Respondent received the August 1, 2013 letter, but failed to notify counsel for POA that his clients were unavailable for depositions on August 6, 2013.

On August 2, 2013, a CMC was held in the civil action. At the CMC, the parties initially waived a jury trial and the court scheduled a one-day trial on November 14, 2013. In addition, the court issued an order imposing sanctions on Respondent and the Chengs in the amount of \$100 to be paid by August 12, 2013, for failing to file a CMC statement.

Also on August 2, 2013, the court issued an order overruling Respondent's demurrer and ordering Respondent to file an answer to the complaint by August 17, 2013. Respondent received the August 2, 2013 order.

On August 6, 2013, Respondent and the Chengs failed to appear for the scheduled depositions. Upon their nonappearance, counsel for POA called Respondent and left a voicemail message about the depositions. Respondent failed to respond to the voicemail message. Counsel for POA then faxed a notification of the depositions to Respondent. Respondent received the August 6, 2013 fax, but failed to respond to it.⁶ The Chengs were not aware that their depositions were still scheduled to go forward on August 6, 2013.

On August 12, 2013, Respondent filed a verified answer to the complaint. On August 13, 2013, the court rescheduled the trial to November 25, 2013.

⁶ Respondent's testimony that various fax acknowledgment confirmation sheets from opposing counsel were forged documents was not credible. Further, Respondent's assertions that the Superior Court judge was biased against him lacked credibility and were not supported by credible documentary evidence.

On August 30, 2013, POA filed a motion to compel the depositions of the Chengs and a motion to compel discovery responses, to be heard on September 27, 2013. Respondent received POA's motions to compel, but failed to file an opposition to them. Respondent was aware of the September 27, 2013 hearing date.

On September 27, 2013, a hearing was held on the motions to compel. Respondent, however, failed to appear. At the hearing, the court issued an order requiring Respondent to serve responses to discovery by October 11, 2013, and for Respondent and the Chengs to pay sanctions of \$1,265 to POA by November 25, 2013. The court further ordered the Chengs to appear for depositions by October 18, 2013, and for Respondent and the Chengs to pay additional sanctions of \$5,348 to POA by November 25, 2013. The court also ordered that the matters set forth in the Request for Admissions would be deemed admitted on condition that POA file a supplemental declaration and show valid proof of service with the Request for Admissions attached.

Respondent received a copy of the court's September 27, 2013 order, but never informed the Chengs about the order or the sanctions. Respondent never paid the sanctions ordered on September 27, 2013.

POA filed the supplemental declaration regarding the Request for Admissions, pursuant to the court's September 27, 2013 order. On October 7, 2013, counsel for POA mailed Respondent notices for the Chengs' depositions and production of documents on October 23, 2013.⁷ Respondent received the deposition notices with demands for documents, but failed to inform the Chengs of the October depositions.

⁷ Although the court ordered the depositions to take place by October 18, 2013, the notices sent by POA were for depositions on October 23, 2013.

Respondent failed to provide responses to discovery, failed to attend and failed to have his clients attend depositions by October 18, 2013 (or October 23, 2013), and failed to pay sanctions, in violation of the court's September 27, 2013 order.

On October 18, 2013, the court issued an order to show cause (OSC), requiring Respondent to appear on November 8, 2013, and to file an affidavit and show cause why the court should not impose sanctions for failing to comply with the court's September 27, 2013 order regarding discovery. Respondent received the October 18, 2013 order, but never informed the Chengs.

On October 28, 2013, the court issued an OSC requiring Respondent to appear on November 8, 2013; file an affidavit by November 1, 2013; and show cause why the court should not impose sanctions for failing to comply with the court's September 27, 2013 order regarding the depositions of the Chengs. Respondent received the October 28, 2013 order, but never informed the Chengs.

On November 8, 2013, two OSC hearings were held in the civil action. Respondent appeared at the November 8, 2013 OSC hearings by telephone. At these hearings, Respondent claimed he was never served with POA's motion to compel discovery and never received the OSC that was issued on October 18, 2013, or the OSC that was issued on October 28, 2013. On November 8, 2013, the court continued the OSC hearing to January 10, 2014, and later to January 31, 2014, and ordered Respondent to personally appear. The court issued a tentative ruling requiring Respondent to file a declaration under penalty of perjury by December 6, 2013, addressing whether he received the aforementioned documents, why he did not comply with the court's September 27, 2013 order, why he did not serve timely responses to discovery, and how he learned about the hearings on each of the items.

The tentative ruling also required Respondent to file a declaration under penalty of perjury by December 26, 2013, attaching all of the verified responses to discovery and stating whether the Chengs have appeared for their depositions, as required by the court's order of September 27, 2013. Respondent was aware of the tentative ruling. The written order after the November 8, 2013 OSC hearing was issued on December 2, 2013. The written order set forth the same orders contained in the tentative ruling. Respondent received the December 2, 2013 written order.

On November 20, 2013, Respondent filed a motion for judgment on the pleadings. That motion was later denied by the court.

On November 22, 2013, a CMC was held. Respondent appeared at the CMC and requested a jury trial. At the CMC, the court rescheduled the trial date and ordered Respondent to deposit jury fees. Respondent received the November 22, 2013 order, but failed to deposit jury fees.

On November 25, 2013, the Chengs paid Respondent \$150 as advanced costs to cover the deposit for jury fees. As of November 25, 2013, Respondent did not have a client trust account. Respondent failed to deposit the \$150 in advanced costs into a client trust account and failed to deposit jury fees. Respondent misappropriated the \$150 soon after receiving it. To date, Respondent has not refunded the \$150 to the Chengs.

On December 6, 2013, Respondent filed a declaration under penalty of perjury claiming that he was never personally served with POA's motion to compel. In this declaration, Respondent claimed that counsel for POA made misrepresentations to the court about serving the motion. Respondent failed to address the other issues raised by the court, in violation of the court's December 2, 2013 order.

On December 13, 2013, POA filed a response to Respondent's declaration, in which it provided evidence that Respondent was served with POA's motion. In violation of the court's December 2, 2013 order, Respondent failed to file a declaration by December 26, 2013, which attached all of the verified responses to discovery and stated whether the Chengs appeared for their depositions.

POA requested terminating sanctions. On January 6, 2014, the court issued an order permitting Respondent to file a declaration which attached all of the verified responses to discovery and indicating whether the Chengs appeared for their depositions by January 17, 2014.⁸ Respondent received the order, but did not file a declaration by January 17, 2014, or anytime thereafter.

The court rescheduled the trial to January 31, 2014, and scheduled a hearing on the discovery matters for that same day. Respondent was aware of the hearing date. On January 31, 2014, the court held a hearing on the discovery issues. Respondent and the Chengs appeared at that hearing.

At the January 31, 2014 hearing, the court granted POA's motion for terminating sanctions and ordered that the case proceed by way of a default "prove up" hearing. The court stated it would issue a written order elaborating on its determination. At the January 31, 2014 hearing, Respondent failed to provide evidence that he responded to discovery and that the Chengs appeared for their required depositions, as ordered by the court. At the hearing, Respondent informed the court that he failed to read the December 2, 2013 order and stated that he felt like he was being taken advantage of because he is a new attorney. At the hearing, the

⁸ In this order, the court acknowledged Respondent's failure to file a declaration, as ordered, by December 26, 2013. The court further stated that the present order did not extend the time for Respondent to file the ordered declaration, and that the court would be considering sanctions.

Chengs learned for the first time that Respondent failed to respond to discovery; failed to inform opposing counsel that the Chengs could not appear for depositions on August 6, 2013; failed to inform the Chengs of the October 23, 2013 deposition date; and otherwise failed to comply with the court's orders.

On February 3, 2014, the court held a "prove up" hearing. Neither Respondent nor the Chengs appeared for the hearing. That same day, POA filed a trial brief requesting attorney's fees in the amount of \$60,825.53 and for judgment to be entered against the Chengs. Respondent received the February 3, 2014 trial brief, but failed to file an opposition and failed to inform his clients about POA's request for attorney's fees and for judgment to be entered against the Chengs.

On February 18, 2014, the court issued a written order granting POA's motion for terminating sanctions and deemed the matters set forth in the Request for Admissions admitted as of September 10, 2013. On the same date, the court issued an order striking the Chengs' verified answer and entering default. The court found that POA was entitled to apply for entry of judgment. Respondent received the February 18, 2014 order, but did not inform the Chengs about the order.

On March 18, 2014, the Chengs sent an email to Respondent, terminating Respondent's services and requesting their client file. Respondent received the March 18, 2014 email.

On March 24, 2014, the court entered judgment against the Chengs in the amount of \$60,249.28, plus interest. Respondent received the March 24, 2014 judgment, but did not inform the Chengs about the judgment.

On April 10, 2014, the Chengs hired attorney James Schwartz (Schwartz) to represent them in the civil action. By emails dated April 11 and April 17, 2014, and by telephone voicemail messages on April 14 and 17, 2014, Schwartz's firm requested that Respondent

provide a declaration in support of the Chengs' motion to vacate default, set aside the discovery orders, and reinstate the answer under Civil Code of Procedure section 473(b). Respondent received the emails and voicemails, but failed to respond to them and failed to provide a declaration.

On April 21, 2014, Schwartz filed a motion to vacate the default judgment, set aside the discovery orders, and reinstate the answer. The motion did not contain the required supporting declaration from Respondent. Ultimately, the court granted the motion to vacate the default judgment, but did not set aside the discovery orders. Based on the fact that the Chengs were bound by the discovery orders and sanctions, they decided to enter into a settlement of the civil action for \$70,000. The Chengs also paid POA \$6,613.40 in court-ordered sanctions. In addition, the Chengs paid Schwartz \$26,766 as attorney's fees for his work in the civil action.

On April 30, 2014, Schwartz sent Respondent a letter requesting that he return the Chengs' client file and refund all unearned fees to the Chengs. Respondent received the April 30, 2014 letter, but failed to refund unearned fees and failed to return the client file. To date, Respondent has failed to refund \$2,800 in unearned fees to the Chengs.

By email dated September 5, 2014, Schwartz again requested the Chengs' client file from Respondent. Respondent received the email. Respondent finally made the client file available to the Chengs for pick-up from Respondent's office on September 5, 2014, more than five months after the Chengs first requested the file.

Conclusions

Count One – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent willfully violated rule 3-110(A) by failing to: (1) serve discovery responses on POA; (2) timely file a CMC statement; (3) advise

POA that the Chengs were unavailable to be deposed on August 6, 2013; (4) advise the Chengs that the August 6, 2013 deposition remained on calendar and they were required to appear; (5) appear at the August 6, 2013 deposition; (6) file responses to POA's motion to compel discovery and motion to compel the Chengs' depositions; (7) appear at the September 27, 2013 hearing on POA's motions to compel; (8) notify the Chengs that their deposition had been rescheduled to October 23, 2013; (9) appear at the October 23, 2013 deposition; (10) file a response to POA's motion requesting attorney fees; and (11) inform the Chengs of the court order entering judgment against them in the amount of \$60,249.28.⁹

Count Two – Section 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Respondent willfully violated section 6103 by not complying with: (1) the July 18, 2013 order requiring Respondent to file a CMC statement; (2) the September 27, 2013 order requiring Respondent to serve discovery, have his clients appear for depositions, and pay \$6,613 in sanctions; (3) the November 22, 2013 order requiring Respondent to deposit jury fees; (4) the December 2, 2013 order requiring Respondent to file a declaration under penalty of perjury fully addressing specific issues identified by the court; and (5) the December 2, 2013 order requiring Respondent to file a declaration attaching all of the verified responses to discovery and stating whether his clients have appeared for their depositions.

⁹ It was further alleged that Respondent's failure to comply with the December 2, 2013 court orders constituted a failure to perform legal services with competence. As addressed below, this same misconduct was relied upon to establish culpability in Count Two. The appropriate resolution of this matter does not depend on how many rules of professional misconduct or statutes proscribe the same misconduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Accordingly, this court declines to rely on the same misconduct to establish culpability in Count One.

Count Three – Section 6068, subd. (m) [Failure to Communicate]

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Respondent willfully violated section 6068, subdivision (m), by failing to inform the Chengs that: (1) Respondent did not answer the discovery request; (2) the court issued a discovery and sanctions order on September 27, 2013; (3) their depositions were rescheduled for October 23, 2013; (4) the court issued an order to show cause on October 18, 2013; and (5) POA filed a motion requesting attorney's fees and that judgment be entered against the Chengs.

Count Four – Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. By repeatedly failing to perform on behalf of the Chengs in the POA matter, Respondent failed to earn the \$2,800 paid as advanced fees. Respondent then failed to refund any part of the \$2,800 in advanced fees, despite performing no services of value on behalf of the Chengs, in willful violation of rule 3-700(D)(2).

Count Five – Rule 3-700(D)(1) [Failure to Return Client Papers/Property]

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. By failing to promptly release to the Chengs, after the termination of Respondent's employment, all of their papers and property upon their request, Respondent willfully violated rule 3-700(D)(1).

Count Six – Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be

deposited therein or otherwise commingled therewith, except for limited exceptions. By failing to deposit the Chengs' \$150 in advanced costs in a bank account labeled "Trust Account," "Client's Funds Account," or words of similar import, Respondent failed to deposit and maintain client funds in trust, in willful violation of rule 4-100(A).

Aggravation¹⁰

Multiple Acts (Std. 1.5(b))

Respondent's multiple acts of misconduct warrant some consideration in aggravation.

Lack of Insight

Respondent demonstrated little insight or understanding of his own misconduct. He refuses to accept any responsibility for the aforementioned misconduct, instead blaming the judge, opposing counsel, and the Chengs. Respondent's accusations include assertions that opposing counsel was forging documents and was in collusion with the judge. Respondent's accusations were not corroborated, and were diametrically opposed to the credible testimony and documentary evidence presented by the State Bar. Respondent's lack of insight and understanding regarding the present misconduct warrants significant consideration in aggravation.

Uncharged Misconduct (Std. 1.5(h))

Although evidence of uncharged misconduct may not be used as an independent ground of discipline, it may be considered in aggravation where the "evidence was elicited for the relevant purpose of inquiring into the cause of the charged misconduct [and where the finding of uncharged misconduct] was based on [the respondent's] own testimony. . . ." (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 36.) Here, Respondent testified that he used the \$150 given to him by

¹⁰ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

the Chengs and allocated for jury fees for his personal use. Said conduct constitutes, at a minimum, a grossly negligent misappropriation of client funds (§ 6106), and warrants some consideration in aggravation.

Significant Client Harm (Std. 1.5(j))

Respondent's misconduct caused significant harm to the Chengs. His misconduct resulted in a default judgment being entered against them. In addition, the Chengs were forced to pay sanctions and hire new counsel to try to unwind the situation resulting from Respondent's misconduct. Consequently, Respondent's significant harm to the Chengs warrants considerable weight in aggravation.

Failure to Make Restitution (Std. 1.5(m))

Respondent kept \$2,950 in unearned fees and costs and has failed to make restitution to the Chengs. Respondent's failure to pay restitution warrants some consideration in aggravation.

Mitigation

No Prior Record of Discipline (Std. 1.6(a))

Although Respondent has no prior record of discipline, he was admitted to practice law less than two years before the present misconduct began. Accordingly, Respondent's lack of a prior record of discipline does not warrant consideration in mitigation. (See *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837; and *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.)

Good Character (Std. 1.6(f))

Respondent presented good character testimony from two witnesses. Although his character witnesses did not demonstrate a thorough understanding of the present misconduct, they attested to Respondent's good character, highlighting his honesty, trustworthiness, and work ethic. However, due to the fact that Respondent's good character testimony did not come from a

wide range of references, the court assigns nominal weight in mitigation for Respondent's good character evidence. (See *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615, 624 [two character witnesses insufficient].)

Cooperation with the State Bar (Std. 1.6(e))

Respondent entered into partial stipulations as to facts and admission of documents. Respondent's cooperation with the State Bar warrants some consideration in mitigation.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

In this case, the standards call for the imposition of a sanction ranging from reproof to disbarment. Standard 2.12(a) advocates the most severe sanction. It provides that disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the member's practice of law.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar requested, among other things, that Respondent be actually suspended for 90 days. Respondent, on the other hand, argued that the Alameda County Superior Court intentionally helped opposing counsel effectuate fraud, and that Respondent did not commit the alleged misconduct.

Turning to the applicable case law, the court finds some guidance in *Matthew v. State Bar* (1989) 49 Cal.3d 784. In *Matthew*, the attorney was found culpable of failing to timely perform legal services in three client matters. In two of these matters, the attorney also failed to return unearned fees. In aggravation, the attorney demonstrated indifference toward rectification of or an atonement for the consequences of his misconduct. Additionally, his misconduct caused harm to his clients. In mitigation, the attorney had no prior record of discipline, however, this was not considered to be a “weighty mitigating factor,” due to the attorney’s brief legal career. (*Id.* at p. 792.) The California Supreme Court ordered that the attorney be suspended for three years, stayed, with three years’ probation, including a 60-day actual suspension.

While the present matter only involves a single client matter, the misconduct is more extensive, including additional findings of, among other things, failing to obey court orders and failing to deposit client funds in trust. Similar to *Matthew*, Respondent caused significant harm

to his clients, but unlike *Matthew*, Respondent also committed uncharged misconduct involving the misappropriation of entrusted client funds.

Respondent's lack of insight regarding the present misconduct is of great concern to this court. The fact that he continues to shift the blame to the Superior Court, opposing counsel, and his clients, demonstrates no recognition of his own misconduct. Respondent's lack of insight gives this court little confidence that he will not commit similar misconduct in the future.

Respondent's lack of insight is particularly distressing considering that he demonstrated the same inability to perform in the present proceeding. Respondent's closing brief epitomizes his work in the Chengs' matter. As noted above, Respondent filed a half-written closing brief in this matter, abruptly concluding with a hand-written plea for more time. Just like his representation of the Chengs, Respondent started the work, but couldn't finish.

In view of Respondent's misconduct, the case law, the standards, and the mitigating and aggravating factors, this court finds that, among other things, a 90-day period of suspension and until full payment of restitution is appropriate, and provides adequate protection for the courts, the public, and the legal profession.

Recommendations

It is recommended that respondent **Kenneth Clifford Olson**, State Bar Number 279643, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation¹¹ for a period of two years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first 90 days of probation, and Respondent will remain suspended until the following requirements are satisfied:

¹¹ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- i. He makes restitution to Nikki and Ernest Cheng in the amount of \$2,800 plus 10 percent interest per year from April 30, 2014 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Nikki and Ernest Cheng, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;
 - ii. He makes restitution to Nikki and Ernest Cheng in the amount of \$150 plus 10 percent interest per year from November 25, 2013 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Nikki and Ernest Cheng, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles; and
 - iii. If Respondent remains suspended for two years or more as a result of not satisfying the preceding requirements, he must also provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
6. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education

requirement, and Respondent will not receive Minimum Continuing Legal Education credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

7. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

Multi-State Professional Responsibility Examination

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of Respondent's suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

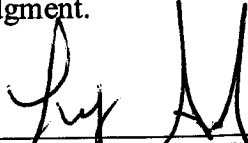
California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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. Failure to do so may result in disbarment or suspension.

Costs

It is 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.

Dated: March 17, 2016



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 17, 2016, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

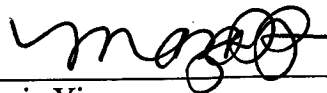
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KENNETH C. OLSON
OLSON LAW GROUP
2415 SAN RAMON VALLEY BLVD
STE # 4-229
SAN RAMON, CA 94583

- ☒ 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 17, 2016.



Mazie Yip
Case Administrator
State Bar Court