

AUG 26 2003

**PUBLIC MATTER**

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**THE STATE BAR COURT  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of

Case No. 02-N-15871-JMR

**ERNEST D. GARCIA,**

**Member No. 88416,**

A Member of the State Bar.

**DECISION INCLUDING DISBARMENT  
RECOMMENDATION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT**

**I. INTRODUCTION**

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") alleging that respondent Ernest D. Garcia failed to comply with rule 955, California Rules of Court as ordered by the Supreme Court. The State Bar was represented by Erica L. M. Dennings. Respondent did not participate in the proceedings.

For the reasons stated below, it is recommended that respondent be disbarred.

**II. SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges ("NDC") was filed and properly served on respondent on February 25, 2003, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar ("official address"). (Bus. & Prof. Code §6002.1(c)<sup>1</sup>; Rules Proc. of State Bar, rules 60(b) and 583 (hereinafter "rule(s)").) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The return receipt for this correspondence indicates it was received.

<sup>1</sup>Unless otherwise stated, all future references to "section(s)" are to the Business and Professions Code.



1 On February 27, 2003, the State Bar Court properly served respondent by first-class mail,  
2 postage prepaid at his official address with notice scheduling a status conference on April 7,  
3 2003.

4 Respondent did not appear at the April 7 status conference. On that same date,  
5 respondent was properly served at his official address with a post-status conference order.

6 Respondent did not file a response to the NDC. On June 4, 2003, the State Bar filed and  
7 properly served on respondent a motion for entry of default by certified mail, return receipt  
8 requested, at his official address. (Rule 200(a), (b).) Courtesy copies of the motion were also  
9 served on respondent at two alternate addresses. The motion advised respondent that the State  
10 Bar would seek his disbarment if he was found culpable. (Rule 200(a)(3).)

11 Respondent did not respond to the default motion. Orders entering respondent's default  
12 and involuntarily enrolling him inactive were filed and properly served on him on June 24, 2003,  
13 by certified mail, return receipt requested, at his official address. This document advised  
14 respondent, among other things, that he was enrolled inactive pursuant to section 6007(e)  
15 effective three days after service of the order. The return receipt for the correspondence indicates  
16 it was received.

17 The court judicially notices its records which indicate that the United States Postal  
18 Service did not return mail sent by the court to respondent as undeliverable. (Evid. Code  
19 §452(d).)

20 The State Bar's efforts to contact respondent were fruitless.

21 The matter was submitted for decision on July 13, 2003.<sup>2</sup>

### 22 **III. JURISDICTION**

23 Respondent was admitted to the practice of law in California on November 29, 1979, and  
24 has been a member of the State Bar at all times since.

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27 <sup>2</sup>The order entering respondent's default allowed the State Bar until July 13, 2003, to  
28 submit a discipline brief and any additional evidence, including copies of respondent's discipline  
record, otherwise the matter would be submitted as of that date. A discipline brief was filed on  
July 14, 2003, after the matter was submitted. Accordingly, it will not be considered.

1 **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 On September 27, 2002, the California Supreme Court filed an order ("September 27,  
3 2002 order") in Supreme Court case number S103853 (State Bar Court case nos.00-O-11587; 00-  
4 O-14062; 00-O-14261; 01-O-04590 (Cons.)) imposing discipline on respondent as follows:  
5 stayed suspension of four years and until he complied with standard 1.4(c)(ii), Standards for  
6 Attorney Sanctions for Professional Misconduct and four years probation on conditions including  
7 actual suspension of two years and until he complied with standard 1.4(c)(ii). The Supreme  
8 Court further ordered respondent to comply with rule 955 of the California Rules of Court,  
9 subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the  
10 September 27, 2002 order. The September 27, 2002 order was effective on October 27, 2002.  
11 (Cal. Rules of Court, rule 953(a).) Accordingly, he was to comply with California Rules of  
12 Court, rule 955(a) and (c) by November 26 and December 6, 2002, respectively.

13 Upon filing of the September 27, 2002 order, the Office of the Clerk of the Supreme  
14 Court of California sent respondent a copy of the said order imposing discipline and directing his  
15 compliance with rule 955 of the California Rules of Court.<sup>3</sup> Respondent received a copy of the  
16 Supreme Court's order.

17 On October 21, 2002, the Probation Unit in the State Bar sent respondent a copy of the  
18 Supreme Court's order, enclosing a form for the affidavit regarding compliance with rule 955.  
19 The correspondence was sent to respondent's State Bar membership records address via regular  
20 mail, postage prepaid. It was not returned as undeliverable.

21 A copy of the September 27, 2002 order was attached to the Notice of Disciplinary  
22 Charges which was properly served on respondent as previously set forth.

23 As of February 24, 2003, respondent had not filed with the State Bar Court the affidavit  
24 required by rule 955(c) of the California Rules of Court. The court judicially notices its records  
25 indicating that he still has not filed the affidavit as of August 22, 2003.

26 Based on the foregoing, it has been proved by clear and convincing evidence that  
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<sup>3</sup>See, rule 24(a), California Rules of Court, and Evidence Code section 664.

1 respondent wilfully violated the September 27, 2002 order directing his compliance with rule 955  
2 of the California Rules of Court.<sup>4</sup> This constitutes a violation of section 6103, which requires  
3 attorneys to obey court orders.

4 **V. FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES**

5 There are no mitigating circumstances. (Rules Proc. of the State Bar, tit. IV, Stds. for  
6 Atty. Sanctions for Prof. Misconduct, std. 1.2(e) ("standards").)

7 **VI. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

8 Respondent's prior instances of discipline are an aggravating circumstance. (Standard  
9 1.2(b)(i).)<sup>5</sup> As previously discussed, in Supreme Court case no. S108322, the California  
10 Supreme Court actually suspended respondent for two years and until he complied with standard  
11 1.4(c)(ii), among other things, for violations of Rules of Professional Conduct, rule 4-100(A),  
12 and sections 6106 and 6068(i) regarding his trust account and, in one client matter, for violations  
13 of rules 3-110(A), 4-100(A) and (B)(4) of the Rules of Professional Conduct, and sections 6106  
14 and 6068(i).

15 In Supreme Court case no. S027262 (State Bar Court case no. 90-O-18156), effective  
16 October 2, 1992, the Supreme Court imposed discipline including one year stayed suspension  
17 and two years probation with conditions for violations of section 6068(m) and Rules of  
18 Professional Conduct, rule 3-500, former rules 6-101(A)(2), rules 3-100(A) and former rules 2-  
19 111(A)(2)/3-700(A)(2) in one client matter.

20 Respondent demonstrated indifference toward rectification of or atonement for the  
21 consequences of his misconduct by failing to comply with rule 955(c) of the California Rules of  
22 Court even after the NDC in the instant proceeding was filed. (Standard 1.2(b)(v).)

23 Respondent's failure to participate in proceedings prior to the entry of default

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25 <sup>4</sup>"Wilfulness" in the context of rule 955 of the California Rules of Court does not require  
26 actual knowledge of the provision which is violated. The Supreme Court has disbarred an  
27 attorney whose failure to keep his official address current prevented him from learning that he  
had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

28 <sup>5</sup>The court judicially notices its records as to respondent's prior instances of discipline.  
The State Bar failed to submit certified copies of these records as it should to meet its burden.

1 demonstrates his contemptuous attitude toward disciplinary proceedings and his failure to  
2 comprehend the duty of an officer of the court to participate therein, a serious aggravating factor.  
3 (Standard 1.2(b)(vi); Cf. *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct.  
4 Rptr. 104, 109.)

#### 5 **VII. LEVEL OF DISCIPLINE**

6 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to  
7 protect the public, to preserve public confidence in the profession, and to maintain the highest  
8 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;  
9 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

10 Respondent's wilful failure to comply with rule 955(c) of the California Rules of Court is  
11 extremely serious misconduct for which disbarment is generally considered the appropriate  
12 sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116,131; rule 955(d), Cal. Rules of Court.)  
13 Disbarment has been consistently imposed by the Supreme Court as the sanction for  
14 noncompliance with rule 955 of the California Rules of Court. (*Bercovich v. State Bar, supra*, 50  
15 Cal.3d at p. 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44  
16 Cal.3d at p. 342.) There are no mitigating circumstances warranting deviation from the norm.

17 Respondent has demonstrated an unwillingness to comply with the professional  
18 obligations and rules of court imposed on California attorneys although he has been given  
19 opportunities to do so. Most recently, he did not comply with rule 955(c) of the California Rules  
20 of Court. Respondent's failure to comply with rule 955 undermines its prophylactic function in  
21 ensuring that all concerned parties learn about an attorney's suspension from the practice of law.  
22 (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

23 Respondent's disbarment is necessary to protect the public, the courts and the legal  
24 community, to maintain high professional standards and to preserve public confidence in the  
25 legal profession. It would undermine the integrity of the disciplinary system and damage public  
26 confidence in the legal profession if respondent were not disbarred for his wilful disobedience of  
27 the Supreme Court's order.

28 The provisions of section 6007(c)(4) are applicable and mandatory. Accordingly, the

1 court will order respondent's inactive enrollment pursuant to that provision.

2 **VIII. DISCIPLINE RECOMMENDATION**

3 IT IS HEREBY RECOMMENDED that respondent ERNEST D. GARCIA be  
4 DISBARRED from the practice of law in the State of California and that his name be stricken  
5 from the rolls of attorneys in this state.

6 It is also recommended that the Supreme Court order respondent to comply with rule 955,  
7 paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of  
8 the Supreme Court order in the present proceeding, and to file the affidavit provided for in  
9 paragraph (c) within 40 days of the effective date of the order showing his compliance with said  
10 order.

11 **IX. COSTS**

12 The court recommends that costs be awarded to the State Bar pursuant to Business and  
13 Professions Code section 6086.10, and that those costs be payable in accordance with section  
14 6140.7.

15 **X. ORDER REGARDING INACTIVE ENROLLMENT**

16 It is ordered that respondent be transferred to involuntary inactive enrollment status  
17 pursuant to section 6007(c)(4). The inactive enrollment shall become effective three days from  
18 the date of service of this order and shall terminate upon the effective date of the Supreme  
19 Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant  
20 to its plenary jurisdiction.

21  
22  
23  
24  
25 Dated: August 26 2003

26   
27 JOANN M. REMKE  
28 Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 August 26, 2003, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND  
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

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

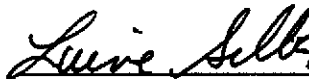
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ERNEST DAVID GARCIA  
1228 I ST  
MODESTO CA 95354**

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

**ERICA DENNINGS, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 26, 2003.



\_\_\_\_\_  
**Laine Silber**  
Case Administrator  
State Bar Court