

PUBLIC MATTER

FILED

AUG 25 2003

STATE BAR COURT CLERK'S OFFICE
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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

MICHAEL F. GALLIGAN,

Member No. 53572,

A Member of the State Bar.

Case No. 03-H-00491-PEM

DECISION

I. INTRODUCTION

In this default matter, Respondent **MICHAEL F. GALLIGAN** is found culpable, by clear and convincing evidence, of failing to submit quarterly reports as ordered in connection with his earlier public reproval.

Accordingly, the court recommends, among other things, that Respondent be suspended from the practice of law for two years, that execution of said suspension be stayed, and that Respondent be actually suspended from the practice of law for 90 days and until the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

II. PERTINENT PROCEDURAL HISTORY

On March 27, 2003, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served a Notice of Disciplinary Charges (NDC) on Respondent. (Rules Proc. of State Bar, rule 60.) The State Bar received the return receipt for the certified mailing of the NDC, but the signature on the card was illegible. However, Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On April 23, 2003, Erica L. M. Dennings, Deputy Trial Counsel, attempted to reach Respondent by telephone at his membership records telephone number. She left a message with the



1 receptionist at Respondent's office asking Respondent to return the call. On April 24, 2003,
2 Respondent returned the call, and left a voice message for the Deputy Trial Counsel, promising to
3 call her on Friday, April 26, 2003. But Respondent did not call the Deputy Trial Counsel as
4 promised, and she had no further contact with Respondent. (See the Declaration of Erica L. M.
5 Dennings, Deputy Trial Counsel, submitted in support of the motion for entry of default.)

6 On motion of the State Bar, Respondent's default was entered on May 16, 2003. The notice
7 of entry of default was properly sent to Respondent's official address by certified mail, return receipt
8 requested.

9 Effective May 19, 2003, Respondent was enrolled as an inactive member pursuant to
10 Business and Professions Code section 6007(e)¹. The court took this matter under submission on
11 June 5, 2003, following the filing of the State Bar's brief.

12 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default,
14 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
15 200(d)(1)(A).)

16 **A. Jurisdiction**

17 Respondent was admitted to the practice of law in California on December 13, 1972, and has
18 since been a member of the State Bar of California.

19 **B. Case No. 00-O-13635**

20 In May 2002, Respondent and the State Bar entered into a stipulation regarding facts and
21 disposition in State Bar Court case No. 00-O-13635. On May 31, 2002, the Hearing Department
22 of the State Bar Court approved the stipulation with modifications and imposed upon Respondent
23 discipline consisting of a public reproof with attached conditions (order) for a period of one year.

24 On May 31, 2002, the order was properly served on Respondent at his official
25 membership records address. It became effective on June 16, 2002.

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27 ¹All references to section are to the provisions of the Business and Professions Code,
28 unless otherwise indicated.

1 The order required Respondent to comply with conditions of the reproof for one year,
2 including, but not limited to, submitting quarterly reports to the Probation Unit of the State Bar, on
3 October 10, 2002 and January 10, April 10 and July 10, 2003, stating under penalty of perjury that
4 he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during
5 said period and to file a final report no earlier than 20 days prior to the expiration of the reproof
6 period and no later than the last day of the period.

7 As of March 27, 2003, Respondent has not submitted to the Probation Unit the October 10,
8 2002, and the January 10, 2003, quarterly reports. Therefore, Respondent has not complied with
9 the conditions of the public reproof imposed by this court's order.

10 **C. Business and Professions Code Section 6103 and Rule 1-110 of the Rules of Professional**
11 **Conduct**

12 The State Bar alleges that Respondent violated rule 1-110 of the Rules of Professional
13 Conduct² and section 6103.

14 Rule 1-110 requires members of the State Bar to comply with conditions attached to
15 reprovals.

16 Section 6103 provides that "[a] wilful disobedience or violation of an order of the court
17 requiring [Respondent] to do or forbear an act connected with or in the course of his profession ...
18 constitute causes for disbarment or suspension."

19 The State Bar proved by clear and convincing evidence that Respondent wilfully violated
20 section 6103 and rule 1-110 in that he failed to comply with the conditions of his reproof and failed
21 to comply with a court order.

22 However, as discussed in *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar
23 Ct. Rptr. 103, "because the section 6103 charge was duplicative of the found rule 1-110 ... violation,
24 [section 6103 charge is] dismissed ... with prejudice." (*Id.* at p.108.) Accordingly, section 6103
25 charge is hereby dismissed with prejudice.

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27 ²References to rules are to the current Rules of Professional Conduct, unless indicated
28 otherwise.

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2 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

3 **A. Mitigation**

4 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
5 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

6 **B. Aggravation**

7 There are several aggravating factors present in this matter. (Std. 1.2(b).)

- 8 (1) Respondent's prior discipline record is an aggravating factor. (Std. 1.2(b)(i).) In the
9 underlying matter, Respondent was publicly reprovved for his failure to perform legal
10 services competently and his failure to cooperate and participate in the State Bar's
11 investigation. (State Bar Court Case No. 00-O-13635).
- 12 (2) Respondent harmed the administration of justice as his failure to comply with the
13 conditions of his reprovral made it more difficult for the State Bar to appropriately
14 monitor him in seeking to insure the protection of the public and the courts. (Std.
15 1.2(b)(iv).)
- 16 (3) Respondent's failure to participate in this disciplinary matter prior to the entry of his
17 default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

18 **V. DISCUSSION**

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

23 Standard 1.7(a) states, in pertinent part, "If a member is found culpable of professional
24 misconduct in any proceeding in which discipline may be imposed and the member has a record of
25 one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall
26 be greater than that imposed in the prior proceeding" Respondent's record is not unblemished.

27
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³All further references to standards are to this source.

1 The requirement that he file quarterly reports with the Probation Unit arose from a prior disciplinary
2 proceeding. Thus, pursuant to the subject standard, the Court should recommend a sanction greater
3 than a public reproof, which was the discipline imposed in Respondent's prior case.

4 Standard 2.9 recommends suspension when a member fails to comply with conditions
5 attached to reprovals, in violations of rule 1-110.

6 The standards prescribe suspension in this matter. The standards, however, are only
7 guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review
8 Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) Each case must be resolved on its own
9 particular facts and not by application of rigid standards. (*Id.* at p. 251.)

10 The State Bar recommends that Respondent be suspended for one year, stayed, and that he
11 be actually suspended from the practice of law for 90 days. The State Bar argues that because
12 Respondent was publicly reproofed, and then failed to file quarterly reports, and has failed to
13 participate in this proceeding, greater discipline is warranted than in *Conroy v. State Bar* (1990) 51
14 Cal.3d 799, where the attorney, who defaulted at the disciplinary hearing, was actually suspended
15 for 60 days for violating the conditions attached to a private reproof. Unlike Respondent, *Conroy*
16 belatedly complied with his condition three months after the deadline and took and passed a
17 Professional Responsibility Examination.

18 In *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, his third
19 disciplinary proceeding, the attorney was actually suspended for 90 days for committing the same
20 misconduct as in his second disciplinary matter, which was failure to file quarterly reports and
21 complete MCLE courses.

22 In *In the Matter of Stansbury, supra*, 4 Cal. State Bar Ct. Rptr. 103, the attorney was actually
23 suspended for 90 days and until his suspension terminates under rule 205 for his failure to attend
24 State Bar Ethics School and to make restitution. He had one prior record of discipline in which he
25 also defaulted. *Stansbury's* underlying misconduct was more serious than that of *Conroy* and
26 *Meyers*. However, the Review Department noted: "[W]e are not measuring discipline for that
27 underlying misconduct, which discipline was measured in *Stansbury's* initial proceeding. Rather,

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1 we measure appropriate discipline for the similar offence of Stansbury's failure to comply with
2 conditions in a reproof." (Id. at p. 109.) The Court's focus was on the obligation of an attorney
3 subject to conditions attached to a reproof.

4 Respondent has not participated in this proceedings. Despite his promise to call the Deputy
5 Trial Counsel on April 26, 2003, Respondent did not call the Deputy Trial Counsel. Respondent's
6 failure to appear and participate in this disciplinary matter shows that Respondent comprehends
7 neither the seriousness of the charges against him nor his duty as an officer of the court to participate
8 in disciplinary proceedings. (*Conroy v. State Bar, supra*, 53 Cal.3d 495, 507-508.) Such failure
9 leaves the court without information about the underlying cause of Respondent's failure to comply
10 with the conditions attached to his reproof or of any mitigating circumstances surrounding his
11 misconduct. The evidence before the Court demonstrates that after agreeing to the conditions
12 attached to the reproof imposed in the prior matter, Respondent did not bother to file even the first
13 quarterly report. It appears that Respondent, in essence, has walked away from his obligation to
14 comply with the conditions attached to his reproof, and that he is not concerned about the
15 consequences of his failure to meet his obligation. In view of the case law and the lack of any
16 mitigating factors to counter the aggravating evidence, placing Respondent on an actual suspension
17 for 90 days, among other things, would be appropriate to protect the public and to preserve public
18 confidence in the profession.

19 **VI. RECOMMENDED DISCIPLINE**

20 Accordingly, the court hereby recommends that Respondent **MICHAEL F. GALLIGAN**
21 be suspended from the practice of law for two years, that said suspension be stayed, and that
22 Respondent be actually suspended from the practice of law for 90 days and until he files and the
23 State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule
24 205.)

25 It is also recommended that Respondent be ordered to comply with any probation conditions
26 hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.
27 (Rule 205(g) of the Rules of Proc.)
28

1 If the period of actual suspension reaches or exceeds two years, it is recommended that he
2 remain actually suspended until he has shown proof satisfactory to the State Bar Court of his
3 rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard
4 1.4(c)(ii).

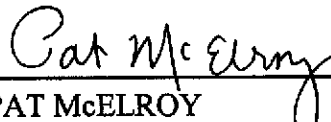
5 It is further recommended that Respondent be ordered to comply with rule 955, California
6 Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and
7 40 days, respectively, from the effective date of the Supreme Court order herein. **Wilful failure to**
8 **comply with the provisions of rule 955 may result in revocation of probation; suspension;**
9 **disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.**

10 It is recommended that Respondent be ordered to take and pass the Multistate Professional
11 Responsibility Examination given by the National Conference of Bar Examiners within one year
12 from the effective date of the Supreme Court's order or during the period of his actual suspension,
13 whichever is longer, and furnish satisfactory proof of such to the Probation Unit within said period,
14 provided he did not submit such proof as ordered in the underlying matter..

15 **VII. COSTS**

16 The court recommends that costs be awarded to the State Bar pursuant to Business and
17 Professions Code section 6086.10, and paid in accordance with section 6140.7.

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19
20 Dated: August 25, 2003

21 
22 PAT McELROY
23 Judge of the State Bar Court
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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 25, 2003, I deposited a true copy of the following document(s):

DECISION

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

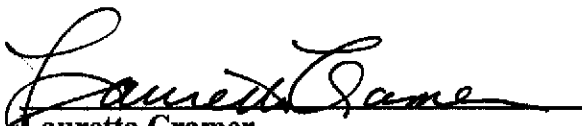
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MICHAEL FRANCIS GALLIGAN
1730 S AMPHLETT BLVD #215
SAN MATEO CA 94402

- [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 25, 2003.**


Laretta Cramer
Case Administrator
State Bar Court