

**PUBLIC MATTER  
FILED**

DEC 09 2004

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO**THE STATE BAR COURT  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of

**CHARLES M. MARX,****Member No. 124630,****A Member of the State Bar.****Case No. 04-N-11129-JMR****DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT****I. INTRODUCTION**

In this disciplinary matter which proceeded by default, Maria J. Oropeza appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent, Charles M. Marx, did not appear in person or by counsel.

Respondent is charged with failing to obey an order of the California Supreme Court requiring him to comply with rule 955 of the California Rules of Court.<sup>1</sup> After considering the evidence and the law, the court finds by clear and convincing evidence that Respondent is culpable of violating section 6103 of the Business and Professions Code.<sup>2</sup>

Accordingly, the court recommends that Respondent be disbarred.

**II. PROCEDURAL HISTORY**

On June 14, 2004, the State Bar filed a Notice of Disciplinary Charges (NDC) in case number 04-N-11129. On that same date the State Bar properly served the NDC on Respondent at his official

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<sup>1</sup>Unless otherwise noted, all further references to "rule 955" are to rule 955 of the California Rules of Court.

<sup>2</sup>Unless otherwise noted, all further references to "section" refer to the Business and Professions Code.

1 membership records address, by certified mail, return receipt requested, as provided in Business and  
2 Professions Code section 6002.1 (c). The U.S. Postal Service did not return the NDC as  
3 undeliverable or for any other reason.

4 On June 24, 2004, Respondent was properly served at his official membership records  
5 address with a notice advising him, among other things, that an initial status conference would be  
6 held on July 26, 2004. Respondent did not appear at the July 26, 2004, status conference.

7 Respondent did not file a responsive pleading to the NDC. On August 12, 2004, the State  
8 Bar filed and properly served a motion for entry of default on Respondent at his official membership  
9 records address. The State Bar sent a courtesy copy of the motion to an alternate address.<sup>3</sup> The  
10 motion advised Respondent that minimum discipline of disbarment would be sought if he was found  
11 culpable. Respondent did not respond to the motion.

12 On August 30, 2004, the court entered Respondent's default and enrolled him inactive  
13 effective three days after service of the order. The order was served on Respondent at his  
14 membership records address and the alternate address.

15 On September 20, 2004, the State Bar filed a request for waiver of default hearing and a brief  
16 on culpability and discipline. The State Bar included certified copies of Respondent's prior record  
17 of discipline and recommended that Respondent be disbarred from the practice of law in California.  
18 On that same day the court took this matter under submission for decision.

### 19 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 Unless ordered by the court based on contrary evidence, the factual allegations set forth in  
21 the NDC are deemed admitted upon entry of default and no further proof is required to establish the  
22 truth of such facts. (Bus. & Prof. Code section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)  
23 The court's factual findings are based on the allegations contained in the NDC.

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26 <sup>3</sup>On August 11, 2004, a State Bar investigator found another address for Respondent at 7  
27 Vista Verde Way, Portola Valley, CA 94028, but no telephone number could be discovered. The  
28 State Bar learned through Directory Assistance that the telephone number under Respondent's  
name is unlisted.

1           **Facts**

2           Respondent was admitted to the practice of law in California on December 11, 1986, and has  
3           been a member of the State Bar at all times since.

4           On December 12, 2003, the California Supreme Court filed a final disciplinary order in *In*  
5           *re Charles Macnish Marx on Discipline*, Supreme Court Case No. S107542 (State Bar Court Case  
6           No. 03-PM-01559). In its order the Supreme Court suspended Respondent from the practice of law  
7           for one year.

8           The Supreme Court also ordered Respondent to comply with subdivisions (a) and (c) of rule  
9           955 of the California Rules of Court within 30 and 40 days, respectively, after the effective date of  
10          the Supreme Court's order. The order became effective on January 11, 2004.

11          Upon filing of the December 12, 2003, order, in accordance with rule 24(a) of the California  
12          Rules of Court, the Office of the Clerk of the Supreme Court of California served Respondent with  
13          a copy of the Supreme Court's order imposing discipline and directing Respondent's compliance  
14          with rule 955. (*See* Evid. Code, section 664.)

15          On January 2, 2004, the Office of Probation of the State Bar sent to Respondent, among other  
16          things, a letter reminding him of his obligation to comply with rule 955 along with a copy of the  
17          Supreme Court order by first-class mail, postage prepaid, to Respondent's official membership  
18          records address. The U.S. Postal Service did not return the mailing as undeliverable or for any other  
19          reason.

20          Respondent was obligated to comply with subdivision (a) of rule 955 by February 10, 2004,  
21          and to comply with subdivision (c) of rule 955 by February 20, 2004. To date, Respondent has not  
22          complied with rule 955 and has offered no explanation to this court for his non-compliance.

23           **Legal Conclusions**

24           **Section 6103 (Failure to Obey Court Order)**

25          Section 6103 prohibits an attorney from wilfully disobeying or violating an order of the court  
26          requiring him to do or forbear an act connected with or in the course of his profession, which he  
27          ought in good faith to do or forbear.

28          Whether Respondent is aware of the requirements of rule 955 or of his obligation to comply

1 with those requirements is immaterial. "Wilfulness" in the context of rule 955 does not require  
2 actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys  
3 whose failure to keep their official addresses current prevented them from learning that they had  
4 been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

5 Thus, the State Bar has established by clear and convincing evidence that Respondent  
6 wilfully failed to comply with rule 955, as ordered by the Supreme Court in its December 12, 2003,  
7 order. Respondent's failure to comply with rule 955 constitutes a violation of section 6103, which  
8 provides for disbarment or suspension for attorneys who wilfully disobey court orders.

#### 9 **IV. LEVEL OF DISCIPLINE**

##### 10 **A. Factors in Mitigation**

11 There are no factors in mitigation presented by the record in this proceeding. (Standard  
12 1.2(e), Rules of Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct  
13 (Standards).)

##### 14 **B. Factors in Aggravation**

15 1. Respondent's prior record of discipline is an aggravating circumstance. (Standard  
16 1.2(b)(i).)

17 In Supreme Court case number S088399 (State Bar Court case number 00-J-10069), effective  
18 August 26, 2000, Respondent was suspended for one year, stayed, and was actually suspended for  
19 30 days. Respondent stipulated that he improperly withdrew from employment and failed to  
20 communicate with respect to four clients, and that he violated lawful orders of the court.

21 In Supreme Court case number S107542 (State Bar Court case number 01-O-03998),  
22 effective October 4, 2002, Respondent received a stayed suspension of one year and until he has  
23 shown proof of his rehabilitation, fitness to practice and learning and ability in the general law  
24 pursuant to standard 1.4(c)(ii) for failing to comply with his probation conditions.

25 In Supreme Court case number S107542 (State Bar Court case number 03-PM-01559),  
26 effective January 11, 2004, the underlying matter, Respondent was suspended from the practice of  
27 law for one year. Respondent's probation was revoked as a result of his failure to comply with the  
28 conditions of his probation.

1           2. Respondent demonstrated indifference toward rectification of or atonement for the  
2 consequences of his misconduct by failing to comply with rule 955 even after the NDC in this  
3 proceeding was filed. (Standard 1.2(b)(v).)

4           3. Respondent's failure to participate in this disciplinary matter prior to the entry of his  
5 default is a serious aggravating factor. (Standard 1.2(b)(vi); *Conroy v. State Bar* (1991) 53 Cal.3d  
6 495, 507.)

7           **Discussion**

8           Respondent's wilful failure to comply with rule 955 is extremely serious misconduct for  
9 which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990)  
10 50 Cal.3d 116, 131.) Such failure undermines the rule's prophylactic function of ensuring that all  
11 concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar*  
12 (1988) 45 Cal.3d 1181, 1187.)

13           Respondent has demonstrated an unwillingness to comply with the professional obligations  
14 and rules of court imposed on California attorneys. By failing to comply with rule 955 and failing  
15 to participate in this proceeding, Respondent also exhibits a disregard for both the Supreme Court's  
16 and the State Bar Court's efforts to fulfill their respective responsibilities to oversee the practice of  
17 law in the State of California.

18           The court is unaware of any facts or circumstances justifying a departure from the usual  
19 sanction of disbarment for Respondent's wilful violation of rule 955 and his concomitant violation  
20 of section 6103. Respondent's disbarment is necessary to protect the public, the courts and the legal  
21 community, to maintain high professional standards and to preserve public confidence in the legal  
22 profession. It would undermine the integrity of the disciplinary system and damage public  
23 confidence in the legal profession if Respondent were not disbarred for his unexplained wilful  
24 disobedience of the Supreme Court order.

25           **V. DISCIPLINE RECOMMENDATION**

26           Accordingly, it is hereby recommended that Respondent CHARLES M. MARX be disbarred  
27 from the practice of law in the State of California and that his name be stricken from the rolls of  
28 attorneys in this State.

1 It is also recommended that the Supreme Court order Respondent to comply with rule 955,  
2 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the  
3 effective date of its order imposing discipline in this matter.

4 **VI. COSTS**

5 The court recommends that costs be awarded to the State Bar pursuant to section 6086.10 and  
6 that those costs be payable in accordance with section 6140.7.

7 **VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

8 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant  
9 to section 6007(c)(4) and rule 220(c), Rules of Procedure of the State Bar of California. The inactive  
10 enrollment shall become effective three days after the date this order is filed.

11  
12  
13 Dated: December 9, 2004

  
JOANN M. REMKE  
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 December 9, 2004, 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:

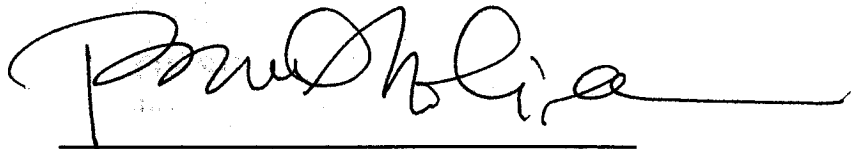
**CHARLES M. MARX**  
**1001 PAGE ST #27**  
**SAN FRANCISCO CA 94117**

**COURTESY COPY**  
**CHARLES M. MARX**  
**7 VISTA VERDE WAY**  
**PORTOLA VALLEY CA 94208-8142**

- ☒ 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 **December 9, 2004.**



**Bernadette C. O. Molina**  
Case Administrator  
State Bar Court