

**PUBLIC MATTER**

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**THE STATE BAR COURT**

**HEARING DEPARTMENT – SAN FRANCISCO**

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In the Matter of )  
PATRICK JAMES McDONOUGH, )  
Member No. 66780, )  
A Member of the State Bar. )

Case No. 05-H-02861-JMR  
  
**DECISION**

**I. Introduction**

In this reproof violation proceeding, respondent **Patrick James McDonough** is found culpable, by clear and convincing evidence, of violating a condition attached to a private reproof previously imposed on him by the State Bar Court.

The court recommends, among other things, that respondent be suspended from the practice of law for one year, 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 respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

**II. Pertinent Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly filed and served a Notice of Disciplinary Charges (NDC) on respondent at his official membership records address on July 18, 2005. (Rules Proc. of State Bar, rule 60.) The mailing was returned as undeliverable. A courtesy copy of the NDC was also sent to respondent at 16 B La Corsa Place, Walnut Creek, California 94596. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On motion of the State Bar, respondent's default was entered on September 1, 2005.



1 Respondent was enrolled as an inactive member under Business and Professions Code section  
2 6007(e)<sup>1</sup> on September 4, 2005.

3 Respondent did not participate in the disciplinary proceedings.

4 The court took this matter under submission on September 21, 2005, after the filing of State  
5 Bar's Evidence Brief.

### 6 **III. Findings of Fact and Conclusions of Law**

7 All factual allegations of the NDC are deemed admitted upon entry of respondent's default  
8 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule  
9 200(d)(1)(A).)

#### 10 **A. Jurisdiction**

11 Respondent was admitted to the practice of law in California on December 18, 1975, and has  
12 since been a member of the State Bar of California.

#### 13 **B. Violation of Probation Condition**

14 In February 2004, respondent and the State Bar entered into a stipulation regarding facts and  
15 disposition in State Bar Court case No. 02-O-11151. On March 18, 2004, the State Bar Court  
16 approved the stipulation and imposed upon respondent discipline consisting of a private reproof  
17 with attached conditions (order) for a period of one year.

18 On March 19, 2004, the order was properly served on respondent at his official membership  
19 records address. It became effective on April 9, 2004.

20 The conditions attached to the reproof required that, among other things, respondent do the  
21 following: Attend the State Bar Ethics School within one year of the effective date of the reproof  
22 and pass the test given at the end of such session.

23 On May 7, 2004, the Office of Probation wrote to respondent, reminding him of the terms  
24 and conditions of his private reproof. The letter was mailed to respondent's official membership  
25 records address but was returned as undeliverable.

26 Respondent did not attend the State Bar Ethics School by April 9, 2005, and to date has still  
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28 <sup>1</sup>References to section are to the Business and Professions Code, unless otherwise noted.

1 not attended the State Bar Ethics School.

2 Therefore, respondent has not complied with a condition of the private reproof imposed by  
3 the order.

4 ***Counts 1 and 2: Rule 1-110 of the Rules of Professional Conduct and Business and Professions***  
5 ***Code Section 6103***

6 The State Bar alleges that respondent violated rule 1-110 and section 6103.

7 Rule 1-110 requires State Bar members to comply with conditions attached to reproofs.

8 The State Bar has proved by clear and convincing evidence that respondent wilfully violated  
9 rule 1-110 by failing to attend the State Bar Ethics School by April 9, 2005.

10 Section 6103 provides that “[a] wilful disobedience or violation of an order of the court  
11 requiring [respondent] to do or forbear an act connected with or in the course of his profession . . .  
12 constitute causes for disbarment or suspension.”

13 But because the section 6103 charge was based on the identical facts relied on in finding a  
14 violation of rule 1-110, the section 6103 charge is therefore dismissed with prejudice. (*In the Matter*  
15 *of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 108.)

16 **IV. Mitigating and Aggravating Circumstances**

17 **A. Mitigation**

18 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.  
19 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>2</sup>

20 **B. Aggravation**

21 There are several aggravating factors. (Std. 1.2(b).)

22 Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

- 23 1. Respondent was publicly reproofed with two years probation for engaging in the  
24 unauthorized practice of law during his administrative suspension for failure to pay  
25 State Bar dues (State Bar Court case No. 91-O-01126, effective January 15, 1993);  
26 and

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<sup>2</sup>All further references to standards are to this source.

1         2.     Respondent was privately reprovved with one year probation for failing to  
2                   communicate with a client (State Bar Court case No. 02-O-11151, effective April 9,  
3                   2004).

4             Respondent's failure to participate in this disciplinary matter before the entry of his default  
5     is also a serious aggravating factor. (Std. 1.2(b)(vi).)

6   **V. Discussion**

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

11            Respondent's misconduct involved failure to comply with a probation condition. The  
12    standards provide a broad range of sanctions ranging from suspension to disbarment. (Stds. 1.7(b)  
13    and 2.9.)

14            Standard 1.7(b) provides that where an attorney has two prior records of discipline, the  
15    degree of discipline imposed in the current proceeding shall be disbarment unless the most  
16    compelling mitigating circumstances clearly predominate.

17            Standard 2.9 recommends suspension for violation of rule 1-110.

18            The standards, however, are only guidelines and do not mandate the discipline to be imposed.  
19    (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach  
20    case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at  
21    p. 251.) Here, even though respondent had two prior records of discipline, the nature and extent of  
22    those prior records lacked sufficient severity to warrant disbarment.

23            The State Bar urges one year stayed suspension and 90 days actual suspension. In support  
24    of its recommended discipline, the State Bar cited *In the Matter of Meyer* (Review Dept. 1997) 3  
25    Cal. State Bar Ct. Rptr. 697. The court agrees.

26            In *Meyer*, an attorney who had two prior records of discipline (private reprovalls) was actually  
27    suspended for 90 days with a two years' stayed suspension and a three years' probation for failing  
28    to file quarterly reports and complete MCLE courses. He violated the same probation conditions

1 attached to his first and second prior record of discipline.

2 In a similar default case, *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar  
3 Ct. Rptr. 103, the attorney was actually suspended for 90 days and until his suspension terminates  
4 under rule 205 of the Rules of Procedure of the State Bar for his failure to attend State Bar Ethics  
5 School and to make restitution. He had one prior record of discipline which he also defaulted.

6 Although respondent participated in his previous disciplinary proceedings, he defaulted in  
7 this matter. Failing to appear and participate in this hearing shows that respondent comprehends  
8 neither the seriousness of the charges against him nor his duty as an officer of the court to participate  
9 in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Such failure to  
10 participate in this proceeding leaves the court without information about the underlying cause of  
11 respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

12 In view of respondent's misconduct, the case law and the aggravating evidence, placing  
13 respondent on an actual suspension for 90 days would be appropriate to protect the public and to  
14 preserve public confidence in the profession.

#### 15 VI. Recommended Discipline

16 Accordingly, the court hereby recommends that respondent **Patrick James McDonough** be  
17 suspended from the practice of law for one year, that said suspension be stayed, and that respondent  
18 be actually suspended from the practice of law for 90 days and until he files and the State Bar Court  
19 grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

20 It is also recommended that respondent be ordered to comply with any probation conditions  
21 hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.  
22 (Rules Proc. of State Bar, rule 205(g).)

23 It is further recommended that the Supreme Court order respondent to comply with California  
24 Rules of Court, rule 955, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective  
25 date of its order imposing discipline in this matter. Wilful failure to comply with the provisions of  
26 rule 955 may result in revocation of probation; suspension; disbarment; denial of reinstatement;

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1 conviction of contempt; or criminal conviction.<sup>3</sup>

2 It is also recommended that if respondent is actually suspended for two years or more, he will  
3 remain actually suspended until he has shown proof satisfactory to the State Bar Court of his  
4 rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard  
5 1.4(c)(ii).

6 It is further recommended that respondent take and pass the Multistate Professional  
7 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,  
8 Multistate Professional Responsibility Exam Application Department, P.O. Box 4001, Iowa City,  
9 Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation,  
10 within one year after the effective date of this order or during the period of his actual suspension,  
11 whichever is longer. Failure to pass the MPRE within the specified time may result in actual  
12 suspension by the Review Department, without further hearing, until passage. But see California  
13 Rules of Court, rule 951(b), and rule 321(a)(1) and (3) of the Rules of Procedure of the State Bar.

#### 14 VII. Costs

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

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21 Dated: December 8, 2005

  
22 **JOANN M. REMKE**  
23 Judge of the State Bar Court

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28 <sup>3</sup>Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers*  
*v. State Bar* (1988) 44 Cal.3d 337, 341.)

**CERTIFICATE OF SERVICE**  
[Rule 62(b), Rules Proc.; 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 December 8, 2005, I deposited a true copy of the following document(s):

**DECISION**

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

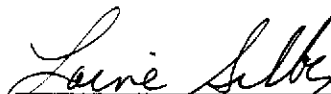
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**PATRICK JAMES MCDONOUGH**  
**1600 RIVIERA AVE #145**  
**WALNUT CREEK CA 94596**

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

**ESTHER ROGERS, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **December 8, 2005**.



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**Laine Silber**  
Case Administrator  
State Bar Court