

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – SAN FRANCISCO**

In the Matter of	)	Case No.: <b>07-H-11875-LMA</b>
	)	
<b>CRAIG M. SILMAN, JR.,</b>	)	
	)	<b>DECISION</b>
<b>Member No. 218914,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

In this reproval violation proceeding, respondent **CRAIG M. SILMAN, JR.**, is charged with violating three of the seven conditions which were attached to a private reproval that was imposed on him in June 2006 in State Bar Court case number 05-O-00339-PEM (hereafter *Silman I*). For the reasons set forth *post*, the court finds that respondent is culpable of the charged misconduct. The court recommends, inter alia, that respondent be placed on 90 days' actual suspension.

**II. PERTINENT PROCEDURAL HISTORY**

The Office of Chief Trial Counsel of the State Bar of California (hereafter State Bar) initiated this proceeding by filing a notice of disciplinary charges (hereafter NDC) against respondent on July 5, 2007. Respondent filed his response to the NDC on August 23, 2007.

The State Bar filed a first amended NDC on November 9, 2007. Respondent filed his response to the first amended NDC on December 5, 2007.

Trial was held on March 25, 2008. At the end of trial on March 25, 2008, the court took the case under submission for decision.

The State Bar was represented by Deputy Trial Counsel Sherrie B. McLetchie and Treva R. Stewart. Respondent represented himself.

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

This court's findings of fact are based on respondent's response to the amended NDC as well as the documentary evidence and testimony presented at trial. A number of the court's findings of fact are based in large part on credibility determinations, which determinations the court carefully made after considering multiple relevant factors (e.g., Evid. Code, § 780).

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on March 7, 2002, and has been a member of the State Bar of California since that time.

#### **B. Findings of Fact**

On April 4, 2006, the State Bar and respondent entered into a stipulation regarding facts, conclusions of law, and disposition in *Silman I*. In that stipulation, respondent admitted to engaging in professional misconduct in a single client matter. Specifically, respondent admitted to recklessly failing to perform legal services with competence (Rules Prof. Conduct, rule 3-110(A)) and failing to adequately communicate with the client (Bus. & Prof. Code, § 6068, subd. (m)). Moreover, in the stipulation, respondent agreed (1) to receive a private reproof for his misconduct and (2) to comply, for one year, with seven specified conditions that would be attached to that reproof.

On May 16, 2006, after finding "that the stipulation protects the public and that the interests of Respondent will be served by [the seven] conditions attached to the reproof," the State Bar Court filed an order in *Silman I* in which it approved the parties' stipulation and

imposed the stipulated private reproof on respondent. Also on May 16, 2006, the State Bar Court served a copy of the private reproof (including the seven conditions attached to it) on respondent by mail. Shortly thereafter, respondent actually received that service copy of the reproof.<sup>1</sup> (E.g., Evid. Code, § 641 [mailbox rule].)

At the time the court signed its May 16, 2006, order, the State Bar had not filed an NDC against respondent in *Silman I*. Because the court approved the parties' stipulation and imposed the stipulated reproof on respondent before the State Bar had filed an NCD against respondent in *Silman I*, the State Bar did not disclose the reproof to the public or report it on the State Bar's web page even though it is part of respondent's official State Bar membership records. In fact, the record of the proceeding in which a private reproof is imposed before an NDC has been filed is not available to the public except as part of the record in any subsequent proceeding in which it is introduced as evidence of a prior record of discipline, just as respondent's private reproof has been admitted into evidence in this proceeding to prove his prior record.

The private reproof in *Silman I* became effective on June 6, 2006. Accordingly, for one year from June 6, 2006, through June 6, 2007, respondent had an independent professional duty to comply with the seven conditions attached to the reproof. (Rules Prof. Conduct, rule 1-110; Cal. Rules of Court, rule 9.19 [formerly rule 956].)

One of the conditions attached to respondent's reproof required that he contact and meet with the State Bar's Office of Probation as follows:

Within thirty (30) days from 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.

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<sup>1</sup> Even if respondent never actually received this service copy of the reproof in *Silman I*, the court would still find that respondent was given and had sufficient notice of the private reproof (including the seven conditions attached to it) shortly after it was issued on May 16, 2006, because he stipulated to it before the State Bar filed a notice of disciplinary charges against him.

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.

Another one of the conditions required respondent to submit quarterly reports to the State Bar's Office of Probation as follows:

Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.

Another one of the conditions required respondent to complete the State Bar's Ethics School as follows:

Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

On June 13, 2006, probation deputy Eddie Esqueda (hereafter PD Esqueda) sent respondent a letter in which he stated:

The purpose of this letter is to remind you of the terms of your private reproof imposed by the State Bar Court effective June 6, 2006.

In order to comply with the terms and conditions of your reproof, you must report the status of your compliance, in

each and every respect, by letter with any attachments, executed under penalty of perjury, and addressed to the Office of Probation. **You must also – within 30 days from the effective date of discipline – schedule a meeting with me to discuss the terms and conditions of your discipline.**

\* \* \*

Further, please be advised that the Office of Probation **does not** have the authority to extend compliance due dates or modify the terms and conditions of the reprobation. **Failure to timely** submit reports or any other proof of compliance **will result in a non-compliance referral** to the Enforcement Unit, Office of the Chief Trial Counsel.

**Request for extension of time or modification of the terms and conditions** of the reprobation **should be directed to** the State Bar Court Hearing Department. A copy of the motion should be served upon the Office of Probation.

Enclosed are copies of the conditions of probation, Quarterly Report form with instructions, and Notice of Counsel Representation. Also enclosed is scheduling and enrollment information for the State Bar's Ethics School.

(Exhibit 2, original bolding.)<sup>2</sup> Moreover, PD Esqueda's June 13, 2006, letter clearly notified respondent that his first quarterly report was due October 10, 2006. Respondent actually received PD Esqueda's letter shortly after it was mailed to respondent.

On April 13, 2007, PD Esqueda sent respondent a second reminder letter. In his second letter, PD Esqueda notified respondent that the Office of Probation had not received respondent's first two quarterly reports and instructed respondent to “***submit the required reports immediately.***” (Exhibit 4, original italics and bolding.)<sup>3</sup> In his second letter, PD Esqueda went on to state:

You were also required to contact me by July 6, 2006, to discuss the terms of your probation. The Office of Probation

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<sup>2</sup> The instructions to the quarterly report form included in PD Esqueda's June 13, 2006, letter clearly notified respondent that each “report [is to] contain an original signature.”

<sup>3</sup> As the State Bar notified respondent on June 14, 2007, PD Esqueda's April 13, 2007, letter incorrectly states that respondent's first quarterly report was due January 10, 2007. The court finds that the error was harmless and immaterial.

has not received a telephone call, nor any correspondence from you to address this.

The Office of Probation will not send any further reminder letters regarding compliance due dates or lack of receipt of compliance documentation. In the future these matters will be automatically referred for review and determination of further action.

Likewise, *if for any reason, you cannot timely comply with the terms and conditions of the discipline imposed, and to avoid a non-compliance referral, you must file the proper motion with the . . . State Bar Court, prior to the compliance due date. A copy of the motion should be served on the Enforcement Unit, Office of the Chief Trial Counsel. The Office of Probation does not have the authority to extend compliance due dates or modify the terms and conditions of the discipline order.*

(Exhibit 4, original italics.) Respondent actually received PD Esqueda's second reminder letter shortly after it was mailed to respondent.

The record suggests, but does *not* establish, that, in May 2007, respondent called the State Bar's once and left a voicemail message for PD Esqueda in response to the two letters he sent to respondent. At 4:42 p.m. on June 4, 2007, respondent faxed a letter to PD Esqueda in which he stated, inter alia, that he wanted to request permission to attend the June 22, 2007, session of ethics school. Of course, respondent's June 4, 2007, letter was simply too little too late particularly since respondent knew that neither PD Esqueda nor the Office of Probation can grant attorney requests for extensions of time and particularly since respondent knew that his one-year compliance period ended two days later on June 6, 2007.

The record clearly establishes that, without any credible, plausible, or valid excuse or explanation, respondent not only failed to meet with PD Esqueda by July 6, 2006, but also that respondent failed to even contact PD Esqueda or the Office of Probation to schedule such a meeting. In addition, the record clearly establishes that, without any credible, plausible, or valid excuse or explanation, respondent failed to submit a single quarterly report during his one-year

compliance period from June 6, 2006, to June 6, 2007.<sup>4</sup> Likewise, the record clearly establishes that, without any credible, plausible, or valid excuse or explanation, respondent failed to submit the final report that was due during the last 20 days of his one-year compliance period. Finally, the record clearly establishes that, without any credible, plausible, or valid excuse or explanation, respondent failed to attend the State Bar’s Ethics School during (or after) his one-year compliance period.

### **C. Conclusions of Law**

The record clearly establishes that respondent willfully violated rule 1-110(A) of the Rules of Professional Conduct, which provides that attorneys must “comply with conditions attached to public or private reprovls or other discipline administered by the State Bar . . . .”

Specifically, respondent violated rule 1-110 (1) by failing to schedule a meeting with and then meet with PD Esqueda by July 6, 2006; (2) by failing to submit the three quarterly reports that were due on October 10, 2006; January 10, 2007; and April 10, 2007; (3) by failing to submit the final report that was due during the last 20 days of his compliance period; and (4) by failing to attend a session of the State Bar’s Ethics School by June 6, 2007.

## **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

### **A. Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>5</sup> Respondent, however, failed to prove any mitigating circumstances by clear and convincing evidence.

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<sup>4</sup> Even though respondent faxed, to the Office of Probation, the quarterly report that was due January 10, 2007, it was properly rejected because it did not contain respondent’s original signature.

<sup>5</sup> All further references to standards are to this source.

Respondent testified that he suffers from serious depression and bipolar disorder and that, as a result, he has serious difficulties in performing administrative tasks and following up on those tasks. Even though the court finds that respondent's testimony is sufficient to establish that he suffers from one or more mental problems that require psychiatric treatment to justify the imposition of a probation condition requiring respondent to obtain psychiatric treatment (e.g., *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 128, 153-154), the court does not find respondent's testimony sufficiently credible to establish that there is a causal connection between his mental problems and his failure to comply with the conditions attached to his reproof.<sup>6</sup> Accordingly, the court is unable to give respondent any mitigating credit for his emotional difficulties under standard 1.2(e)(iv).

## **B. Aggravation**

### **1. Prior Record of Discipline**

Respondent has one prior record of discipline, which is the underlying private reproof in *Silman I.* (Std. 1.2(b)(i).)

### **2. Multiple Acts**

Respondent's misconduct involves seven separate violations of the conditions attached to his private reproof in *Silman I.* (Std. 1.2(b)(ii).) Four of the seven violations are for failing to submit the required three quarterly reports and the required final report. "When an attorney commits multiple violations of the same [reproof] condition, the gravity of each successive violation increases. Respondent's [fourth] successive failure to timely file one of his probation reports unquestionably warrants [a very significant] level of discipline." (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531.)

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<sup>6</sup> Likewise, the court does not find respondent's testimony regarding his pro bono activities credible.



### **3. Indifference**

Respondent's failure to rectify his misconduct by belatedly filing his three quarterly reports, by belatedly filing his final report, and by belatedly taking ethics school once he learned of this reproof violation proceeding establishes his indifference towards rectification. That indifference is an aggravating circumstance. (Std. 1.2(b)(v); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702.)

### **4. Lack of Cooperation**

Respondent has engaged in both unprofessional conduct and unacceptable aggressive conduct in his dealings with the State Bar's Office of the Chief Trial Counsel.<sup>7</sup> (Std. 1.2(b)(vi).) Respondent's unacceptable conduct also supports the court's recommendation that respondent be required to obtain psychiatric treatment.

## **V. 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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate 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.) As the review department noted more than 17 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36

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<sup>7</sup> Even though the record clearly establishes that respondent engaged in unacceptable aggressive conduct in his dealings with the Office of the Chief Trial Counsel, the record does not clearly establish that respondent assaulted DTC McLetchie.

Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Second, the court looks to decisional law for guidance. (*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.)

The applicable standard in this proceeding is standard 2.9, which provides that a willful violation of rule 1-110 must result in suspension. The case of *In the Matter of Meyer, supra*, 3 Cal. State Bar Ct. Rptr. 697, is instructive on the issue of discipline. In *Meyer*, the attorney was placed on two years' stayed suspension, three years' probation, and ninety days' actual suspension because he failed to file two quarterly reports and to provide proof of his completion of six hours of continuing legal education. Even though there might be greater aggravation in *Meyer*, there is more misconduct in the present proceeding. Thus, on balance, the court concludes that the appropriate level of discipline in this proceeding is two years' stayed suspension, three years' probation, and ninety days' actual suspension.

## **VI. RECOMMENDED DISCIPLINE**

The court recommends that respondent **CRAIG M. SILMAN** be suspended from the practice of law in the State of California for two years; that execution of the two-year suspension be stayed; and that he be placed on probation for three years on the following conditions.

1. Silman is to be actually suspended from the practice of law in the State of California for the first 90 days of his probation.
2. Silman is to comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all of the conditions of this probation.
3. Silman is to maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes (Bus. & Prof. Code, § 6002.1, subd. (a)(1)). In addition, Silman is to maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Silman's home address and telephone number is not to be made available to the general public unless it is his official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).)

4. Silman is to submit written quarterly reports to the State Bar's Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury under the laws of the State of California, Silman must state whether he has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

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 any applicable privilege, Silman is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.
6. Within the first year of his probation, Silman is to attend and satisfactorily complete the California State Bar's Ethics School; and to provide satisfactory proof of completion of that program to the State Bar's Office of Probation. The program is offered periodically at either 180 Howard Street, San Francisco, California 94105-1639 or at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Silman's Minimum Continuing Legal Education requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)
7. Silman must obtain psychiatric help/treatment from a duly licensed psychiatrist at his own expense a minimum of three times each month and must furnish satisfactory evidence thereof to the Office of Probation with each quarterly report. Help/treatment should commence immediately, and in any event, no later than 30 days after the effective date of the discipline in this matter. Treatment must continue for the period of probation or until a motion to modify this condition is granted or a stipulation to modify this condition has been approved and that ruling becomes final.

If Silman's treating psychiatrist determines that there has been a substantial change in his condition, Silman or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court in accordance with rule 550 of the Rules of Procedure of the State Bar. Alternatively, the parties may file a stipulation to modify this condition in accordance with rule 551 of the Rules of Procedure of the State Bar. Any such rule 550 motion or rule 551 stipulation must be supported by a written statement from the psychiatrist by affidavit or under the penalty of perjury.

Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given

to anyone except members of the Office of Probation, the Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing, or adjudicating the compliance with this condition.

8. This probation will commence on the effective date of the order of the California Supreme Court imposing discipline in this matter. At the expiration of the period of this probation, if Silman has complied with all the terms of probation, the order of the California Supreme Court suspending him from the practice of law for two years will be satisfied and the suspension will be terminated.

## **VII. MPRE, RULE 9.20 & COSTS**

The court further recommends that Silman be ordered to take and pass the Multistate Professional Responsibility Examination (hereafter MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same year. Failure to pass the MPRE within the specified time results in actual suspension by the review department, without further hearing, until passage. (But see also Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rules 320, 321(a).)

The court also recommends that Silman be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and that he be ordered to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this proceeding.<sup>8</sup>

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<sup>8</sup> Silman is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, and revocation of any pending disciplinary probation. (Cal. Rules of Court, rule 9.20(d).)

Finally, the court recommends that costs be awarded to the State Bar in accordance with California Business and Professions Code section 6086.10 and are enforceable both as provided in California Business and Professions Code section 6140.7 and as a money judgment.

Dated: June 23, 2008.

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**LUCY ARMENDARIZ**  
Judge of the State Bar Court