

FILED
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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 18-Q-10612
)	
HANS ALBERT GILLINGER,)	RECOMMENDATION ON
)	RESIGNATION
A Member of the State Bar, No. 243973.)	
_____)	

On January 22, 2018, Hans Albert Gillinger filed a resignation with charges pending. On March 23, 2018, the Office of Chief Trial Counsel of the State Bar (OCTC) filed a motion to extend time for filing (1) a Stipulation of Facts and Conclusions of Law (Stipulation), and (2) a report and recommendation regarding respondent's resignation (Report). We granted the motion on March 29, 2018, extending the deadline of filing to April 9, 2018. On April 9, 2018, OCTC filed its Stipulation and Report. On May 24, 2018, we filed an order requesting that OCTC file a Supplemental Report, which OCTC timely filed by June 4, 2018.

OCTC recommends that the resignation be accepted. Based on OCTC's recommendation and in light of the grounds set forth in California Rules of Court, rule 9.21(d),¹ as detailed below, we recommend that the Supreme Court accept the resignation.



¹ All further references to rule(s) are to this source unless otherwise noted.

I. BACKGROUND

Gillinger was admitted to practice law in California on September 1, 2006, and has no prior record of discipline. When Gillinger filed his resignation on January 22, 2018, there were two disciplinary proceedings pending against him, which were in the investigation stage—charges had not been filed. On April 9, 2018, the parties stipulated to the following facts and conclusions of law as to both matters.

1. Investigation Case No. 16-O-15588

On October 5, 2015, A.S. employed Gillinger to represent her minor daughter in a lawsuit against two schools. Between December 8, 2015, and January 22, 2016, Gillinger repeatedly informed A.S. that he would file the complaint, but failed to meet the deadlines he set for himself. On February 5, 2016, in order to avoid the statute of limitations deadline, Gillinger filed an incomplete draft of the complaint in pro per, and on February 8, 2016, informed A.S. of the need to amend the complaint. Between February 10 and 23, 2016, A.S. texted and emailed Gillinger, inquiring about the status of the amended complaint. Gillinger failed to reply to all messages. On February 24, 2016, Gillinger texted A.S. saying he would file the amended complaint the next day. Instead, on February 26, 2016, Gillinger filed a Notice of Appearance as Attorney of Record on the minor's behalf in the District Court.

Between February 25 and May 10, 2016, A.S. sent Gillinger 22 texts inquiring about the amended complaint. Gillinger did not respond, nor did he file the amended complaint or serve the summons and complaint on defendants in accordance with Federal Rules of Civil Procedure, rule 4(m). On May 17, 2016, the District Court issued an Order to Show Cause, specifically ordering Gillinger to show cause why the court should not dismiss the matter for failure to prosecute. Gillinger failed to comply with the order, and the action was dismissed without

prejudice on June 14, 2016. A.S. emailed Gillinger requesting the minor's file, which Gillinger failed to provide until October 12, 2017.

Based on these facts, the parties stipulated that Gillinger is culpable of violating the Rules of Professional Conduct, rule 3-110(A) (intentional, reckless, or repeated failure to perform competently), rule 3-700(D)(1) (failure to return papers, property, and fees to client upon termination), and Business and Professions Code section 6068, subdivision (m) (failure to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of case) and section 6103 (willful disobedience or violation of a court order requiring which he ought in good faith be done).

2. Investigation Case No. 17-O-04875

On July 6, 2014, B.F. employed Gillinger to co-represent two minors in an action against a school district. B.F., the minor's father, acted as lead counsel. On May 8, 2017, the parties in the action reached a settlement mediation, requiring that a minor's compromise be filed for approval by the court. On June 26, 2017, Gillinger accepted employment with the law firm that mainly represents school districts, and failed to notify B.F. of this development.

On June 27, 2017, B.F. emailed Gillinger that he would be traveling the "last two weeks of July" and said the minor's compromise was due during that time, on July 21, 2017. B.F. also emailed other reminders to Gillinger on July 6 and 15, 2017. Gillinger did not respond to the reminders, but instead filed a Request for Approval of Withdrawal of Counsel from the civil matter on July 19, 2017, after B.F. left for his travels. Gillinger subsequently informed B.F. via email of his intent to withdraw and his intent to request continuances of the deadline to file the minor's compromise. This was the first time Gillinger informed B.F. of his previously accepted employment at the law firm, and stated that potential conflicts of interest may exist. On July 21, 2017, the District Court granted respondent's request to withdraw from representation.

Based on these facts, the parties stipulated that Gillinger is culpable of violating Rules of Professional Conduct, rule 3-700(A)(2) (withdrawal from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the client's rights), and Business and Professions Code sections 6068, subdivision (m) (failure to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of case).

II. AGGRAVATION AND MITIGATION

The parties stipulated that in aggravation, Gillinger committed multiple acts of misconduct in two client matters. In mitigation, he is entitled to slight credit for no prior record of discipline in nine years of law practice.

III. CLIENT SECURITY FUND CLAIMS FOR REIMBURSEMENT PENDING AT THE TIME OF RESIGNATION

OCTC reports that there were no Client Security ("CSF") claims pending at the time Gillinger filed his resignation, and that CSF has not paid any claims based on his misconduct.

IV. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)

We have considered Gillinger's resignation under the grounds set forth in rule 9.21(d). We summarize below the relevant information OCTC has provided for each ground:

1. Whether the preservation of testimony is complete.

OCTC reports that preservation of the evidence is not necessary in the pending matters.

2. Whether after transfer to inactive status, Gillinger has practiced law or has advertised or held himself out as entitled to practice law.

OCTC reports that it has no evidence that Gillinger has practiced law in California or held himself out as entitled to practice law in California since he tendered his resignation or since he transferred his status to inactive on January 22, 2018.

3. Whether Gillinger performed the acts specified in rule 9.20(a)-(b).

Gillinger filed a rule 9.20(c) compliance affidavit with the State Bar Court on March 22, 2018, in which he averred under penalty of perjury that he had no clients, and no client papers or other property to which clients were entitled, had earned all fees paid to him, and did not represent any clients in pending matters. OCTC reports that it appears there were no acts that Gillinger was required to perform pursuant to rule 9.20(a)-(b).

4. Whether Gillinger provided proof of compliance with rule 9.20(c).

Gillinger filed a rule 9.20(c) compliance affidavit with the State Bar Court on March 22, 2018, as noted above.

5. Whether the Supreme Court has filed a disbarment order.

The Supreme Court has not filed a disbarment order.

6. Whether the State Bar Court has filed a decision recommending disbarment.

The State Bar Court has not filed a decision or opinion recommending Gillinger's disbarment.

7. Whether Gillinger previously resigned or has been disbarred and reinstated to the practice of law.

Gillinger has not previously resigned or been disbarred in California.

8. Whether Gillinger entered a stipulation with OCTC as to facts and conclusions of law regarding pending disciplinary matters.

Gillinger and OCTC entered into a stipulation as to facts and conclusions of law for case investigations nos. 16-O-15588 and 17-O-04875, attached as an exhibit to OCTC's report on resignation. There are no unresolved disciplinary matters or investigations other than the aforementioned matters pending against Gillinger.

9. Whether accepting Gillinger's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

We recommend accepting Gillinger's resignation for the reasons OCTC presented in its filings in this matter. Gillinger: (1) has not practiced law in California since being placed on not eligible to practice law status; (2) filed a rule 9.20 compliance declaration; (3) cooperated with OCTC by entering into the Stipulation regarding investigation case nos. 16-O-15588 and 17-O-04875, which establishes a complete account of Gillinger's misconduct and is available to the public and any licensing agency or other jurisdiction; and (4) has no other unresolved disciplinary matters, investigations, or Client Security Fund claims pending against him. Under these circumstances, we believe that accepting the resignation will not undermine public confidence in the discipline system and it will be consistent with the need to protect the public, the courts, and the legal profession.

V. RECOMMENDATION

We recommend that the Supreme Court accept the resignation with charges pending of Hans Albert Gillinger, State Bar number 243973. We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6068.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL

Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 Los Angeles, on July 26, 2018, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED JULY 26, 2018

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

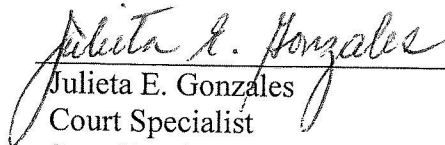
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ARTHUR LEWIS MARGOLIS
MARGOLIS & MARGOLIS LLP
2000 RIVERSIDE DR
LOS ANGELES, CA 90039

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

Suzanna Bezikian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 26, 2018.



Julieta E. Gonzales
Court Specialist
State Bar Court