

**PUBLIC MATTER**

**FILED**

JUL 30 2003

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

In the Matter of  
**DOUGLAS KEITH HALLEN,**  
Member No. 53685,  
A Member of the State Bar.

Case No. 99-O-13121-PEM  
02-O-11079  
**DECISION AND ORDER OF  
INVOLUNTARY INACTIVE  
ENROLLMENT**

**INTRODUCTION**

The Office of the Chief Trial Counsel of the State Bar of California ("OCTC") was represented by Esther Rogers. Respondent Douglas Keith Hallen did not appear in person or through counsel.

After considering the matter, the Court recommends that respondent be disbarred.

**SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges ("NDC") was filed on October 28, 2002, and was properly served on respondent on that same date at his official membership records address by certified mail, return receipt requested, as provided in Business and Professions Code section<sup>1</sup> 6002.1(c) ("official address"). A courtesy copy was also mailed to an alternate address. Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On November 4, 2002, an Amended NDC was filed and properly served on respondent at his official address by certified mail, return receipt requested. A courtesy copy was also mailed

---

<sup>1</sup>All future references to "section" are to the Business and Professions Code.



1 to an alternate address.

2 On November 7, 2002, respondent was properly served at his official address with a  
3 notice advising him, among other things, that a status conference would be held on January 6,  
4 2003. The United States Postal Service ("USPS") returned it to the State Bar Court on  
5 November 25, 2002, with the notation: "Undeliverable as addressed. No forwarding order on  
6 file."

7 Respondent did not file a responsive pleading to the NDC. On December 4, 2002, a  
8 motion for entry of default was filed and properly served on respondent at his official address by  
9 certified mail, return receipt requested. A courtesy copy was also mailed to an alternate address.  
10 The motion advised him that minimum discipline of two years stayed suspension, two years  
11 probation<sup>2</sup> and one year actual suspension would be sought if he was found culpable. He did not  
12 respond to the motion.

13 On December 23, 2002, the Court entered respondent's default and enrolled him inactive  
14 effective three days after service of the order. The order was properly served on him at his  
15 official address on that same date by certified mail, return receipt requested. The USPS returned  
16 it to the State Bar Court with the notation: "Not deliverable as addressed. Unable to forward."

17 On April 3, 2003, the Court filed an order vacating the entry of default and the inactive  
18 enrollment *nunc pro tunc* to December 23 and 26, 2002, respectively, because there was an  
19 incomplete proof of service on the motion for entry of default.

20 On April 7, 2003<sup>3</sup>, a motion for entry of default again was filed and properly served on  
21 respondent at his official address by certified mail, return receipt requested. A courtesy copy was  
22 also mailed to an alternate address. The motion advised him that minimum discipline of two  
23 years stayed suspension, two years probation and one year actual suspension would be sought if  
24 he was found culpable. He did not respond to the motion.

---

25  
26 <sup>2</sup>Probation is not available as discipline in a default proceeding in which actual suspension is  
27 recommended. (Rule 205(a).)

28 <sup>3</sup>The proof of service indicates the year as "2004", an obvious typographical error.

1 On April 23, 2003, the Court entered respondent's default and enrolled him inactive  
2 effective three days after service of the order. The order was properly served on him at his  
3 official address on that same date by certified mail, return receipt requested. The USPS returned  
4 it to the State Bar Court on May 9 2003, with the notation: "Undeliverable as addressed. No  
5 forwarding order on file."

6 OCTC's attempts to contact respondent by mail and telephone were fruitless.

7 Exhibit A of the Amended NDC is admitted into evidence. The Court judicially notices  
8 respondent's official address history pursuant to OCTC's request.

9 The matter was submitted for decision without hearing on May 13, 2003.

#### 10 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 The Court's findings are based on the allegations contained in the Amended NDC as they  
12 are deemed admitted and no further proof is required to establish the truth of those allegations.  
13 (Section 6088; Rule 200(d)(1)(A), Rules Proc. of State Bar.) The findings are also based on any  
14 evidence admitted.

#### 15 **Jurisdiction**

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

#### 18 **Case No. 02-O-11079 - The Capellan Matter - Counts One through Five**

#### 19 **Facts**

20 On March 16, 2000, Rico Capellan employed respondent to represent him in a dissolution  
21 of marriage proceeding. Respondent charged Capellan a flat fee of \$500 plus \$193 in court costs.  
22 Respondent and Capellan agreed that Capellan would pay respondent \$200 at that time, another  
23 \$200 on April 2, 2000, and \$100 monthly payments thereafter until fully paid.

24 Capellan paid respondent the first two payments of \$200 as advanced fees as agreed.

25 On April 5, 2000, respondent filed a Declaration Under the Uniform Child Custody  
26 Jurisdiction Act in Sacramento County Superior Court, case no. 00FL02145 ("UCCJA  
27 declaration").

28 Capellan paid respondent \$100 on May 3 and in June 2000 and \$93 on October 24, 2000.

1 Capellan paid respondent a total of \$693.

2 On October 24, 2000, Capellan asked respondent for a status update on his dissolution  
3 proceeding. Respondent told him that it was "already done" and that he was waiting for a call  
4 from the court to proceed to the next step.

5 Respondent did not attend a meeting he scheduled with Capellan to discuss the status of  
6 the case in late October 2000. He called Capellan later that evening and told him that they would  
7 have to meet some other time.

8 About one week later, Capellan telephoned respondent's office but the number was no  
9 longer in service. He then went to respondent's office several times but it was closed. He tried  
10 to reach respondent by email but respondent's email address was no longer in service. As a  
11 result, it was not possible for Capellan to request the return of the advanced fees and costs from  
12 respondent.

13 Respondent abandoned his law practice in November 2000 and never told Capellan. He  
14 did not give Capellan the opportunity of finding other counsel and did not return any papers  
15 Capellan may have given him. He took no steps to avoid reasonably foreseeable prejudice to  
16 Capellan.

17 Respondent performed no services for Capellan other than filing the UCCJA declaration  
18 which had no value to Capellan since respondent did not complete the dissolution. Capellan  
19 obtained a dissolution of marriage in Nevada. Respondent did not return the \$500 advanced fees  
20 Capellan paid him.

21 On February 28, 2002, the State Bar opened an investigation regarding the Capellan  
22 matter.

23 On March 4, 2002, a State Bar investigator wrote to respondent regarding allegations of  
24 misconduct in the Capellan matter. The investigator's letter was placed in a sealed envelope  
25 correctly addressed to respondent at his membership records address and was properly mailed by  
26 first-class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course  
27 of business. The USPS did not return the investigator's letter as undeliverable or for any other  
28 reason.

1 The letter asked respondent to respond in writing by March 18, 2002, to the allegations of  
2 misconduct being investigated by the State Bar in the Capellan. He did not do so.

3 **Legal Conclusions**

4 **Count One - RPC 3-110(A) (Failing to Perform Competently)**

5 RPC 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to  
6 perform legal services competently.

7 By not completing Capellan's dissolution of marriage, respondent intentionally,  
8 recklessly or repeatedly did not perform competently in wilful violation of RPC 3-110(A).

9 **Count Two - Section 6068(m) (Failure to Communicate)**

10 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries  
11 of clients and to keep clients reasonably informed of significant developments in matters with  
12 regard to which the attorney has agreed to provide legal services.

13 By not telling Capellan that he took no action other than filing the UCCJA declaration  
14 and that he had abandoned his law practice, respondent did not keep Capellan reasonably  
15 informed of significant developments.

16 **Count Three - RPC 3-700(D)(2) (Failure to Return Unearned Fees)**

17 RPC 3-700(D)(2) requires an attorney whose employment has terminated to promptly  
18 return any part of a fee paid in advance that has not been earned. This rule does not apply to true  
19 retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a  
20 matter.

21 By not returning the \$500 Capellan paid as advanced fees, respondent did not return an  
22 advanced, unearned fee in wilful violation of RPC 3-700(D)(2).

23 **Count Four - RPC 3-700(A)(2) (Improper Withdrawal from Representation)**

24 RPC 3-700(A)(2) prohibits an attorney from withdrawing from employment until he or  
25 she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client,  
26 including giving due notice to the client, allowing time for employment of other counsel,  
27 complying with RPC 3-700(D) and with other applicable laws and rules.

28 By not telling Capellan that he was abandoning his law practice, not giving him time to

1 retain other counsel and not returning any documents Capellan may have given him, respondent  
2 did not take steps to avoid reasonably foreseeable prejudice to his client. Respondent improperly  
3 withdrew from employment in wilful violation of RPC 3-700(A)(2).

4 **Count Five - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

5 Section 6068(i) requires an attorney to participate and cooperate in any disciplinary  
6 investigation or other disciplinary or regulatory proceeding pending against him- or herself.

7 By not responding to the State Bar investigator's letter, respondent did not participate in  
8 the investigation of the allegations of misconduct regarding the Capellan case in wilful violation  
9 of 6068(i).

10 **Case No. 99-O-13121 - The Formoso Matter - Counts Six through Nine**

11 **Facts**

12 From January 1992 through December 1997, respondent and Johnny Formoso, a non-  
13 attorney, agreed to and did, in fact, operate a law partnership. Respondent knew at all relevant  
14 times that Formoso was a capper and employed him in that capacity.

15 In January 1992, Formoso leased an office with the intention of operating a fee-splitting,  
16 capping scheme with an attorney regarding personal injury cases. In January 1992, Formoso and  
17 respondent formed a law partnership in which Formoso would be responsible for the financial  
18 aspects of the practice, including leasing office space and equipment, hiring and supervising  
19 staff, paying salaries and the operating expenses of the firm.

20 The firm generally charged clients a one-third contingency fee. Formoso and respondent  
21 agreed that respondent would receive 30% of the contingency fee and Formoso would receive  
22 70%.

23 At all relevant times, respondent maintained a client trust account at Sanwa Bank,  
24 account number 2220 03753 ("CTA"), and also a business account, account number 0759 08331  
25 ("business account").

26 At all relevant times, Formoso had exclusive control of the following entities: Henry J.  
27 Amigable, Jr., Marketing and Management and Metro Sac Management and Marketing  
28 (collectively "Formoso's entities").

1 Formoso sought out clients for the firm. He also employed cappers who were paid \$300  
2 plus five percent of the contingency fee collected for each case referred. Formoso or one of his  
3 staff would work on the cases and, when needed, obtained respondent's involvement. Formoso  
4 was responsible for making most of the decisions about how cases were handled and settled.

5 Settlement checks were deposited in the CTA. Then, in most instances, Formoso would  
6 prepare a check transferring the firm's contingency fee from the CTA to the business account.  
7 Respondent routinely signed these checks. After the funds were transferred to the business  
8 account, in most cases, Formoso would prepare a check transferring 70% of the contingency fee  
9 from the firm's business account to one of Formoso's entities. Respondent routinely signed these  
10 checks.

11 Respondent's practice was primarily, if not exclusively, founded on his illegal payments  
12 to cappers. Pursuant to their fee-splitting agreement, respondent paid Formoso. From December  
13 20, 1995, through December 16, 1997, at least \$549,047.12. Between December 20, 1995, and  
14 December 19, 1997, there are at least 224 payments from the firm's business account to  
15 Formoso's entities.

16 In late 1997, a case involving client Dang Lor settled for over \$1 million. Formoso  
17 claimed that he was entitled to his usual 70% of the \$300,000 contingency fee. Respondent  
18 refused to pay Formoso and, instead, vacated the office space. In February 1998, respondent and  
19 Formoso dissolved their partnership.

20 Section 6152(a)(1) makes it unlawful for a person to act as a runner or capper for an  
21 attorney. Formoso violated this section by acting as a capper for respondent's firm. Respondent  
22 violated Penal Code section 182, which prohibits engaging in a conspiracy to commit a crime, by  
23 conspiring with Formoso to commit the crime of unlawful solicitation by using a capper.

24 Respondent's conspiracy to unlawfully solicit clients by capping involved corruption and  
25 gross negligence.

26 **Legal Conclusions**

27 **Count Six - RPC 1-310 (Forming a Partnership with a Non-Lawyer)**

28 By entering into an agreement with Formoso to form and run the law firm, respondent

1 formed a law partnership with a non-lawyer in wilful violation of RPC 1-310.

2 **Count Seven - RPC 1-320(A) (Sharing Legal Fees with a Non-Lawyer)**

3 By sharing legal fees with a non-lawyer, respondent wilfully violated RPC 1-320(A).

4 **Count Eight - Section 6068(a) (Noncompliance with Laws)**

5 By engaging in a conspiracy with Formoso to commit a crime in violation of Penal Code  
6 section 182, respondent did not support the Constitution or laws of the United States or  
7 California in wilful violation of section 6068(a).

8 **Count Nine - Section 6106 (Dishonesty or Moral Turpitude)**

9 Section 6106 makes it a cause for disbarment or suspension to commit any act involving  
10 moral turpitude, dishonesty or corruption, whether the act is committed in the course of his or her  
11 relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

12 There is clear and convincing evidence that respondent violated section 6106 of the  
13 Business and Professions Code. His conspiracy to unlawfully solicit clients by capping involved  
14 corruption and gross negligence amounting to moral turpitude in wilful violation of section 6106.

15 **LEVEL OF DISCIPLINE**

16 **Aggravating Circumstances**

17 Respondent's misconduct evidences multiple acts of wrongdoing as to the Capellan  
18 matter. (Standard 1.2(b)(ii).) As to the Formoso matter, it demonstrates a pattern of misconduct  
19 over a two-year period.

20 Respondent's misconduct caused client harm. (Standard 1.2(e)(iv).) As a result of  
21 respondent's misconduct, Capellan had to obtain the dissolution of his marriage elsewhere.  
22 Respondent also misled Capellan as to the status of his case.

23 **Mitigating Circumstances**

24 Respondent did not participate in these proceedings and he bears the burden of  
25 establishing mitigation by clear and convincing evidence. The Court, therefore, has been  
26 provided no basis for finding mitigating circumstances, except approximately 20 years of  
27 unblemished practice at the time the misconduct commenced in 1992. (Standard.1.2(e)(i).) This  
28 is a significant mitigating factor.



1 **Discussion**

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

6 Standard 1.6 provides that the appropriate sanction for the misconduct found must be  
7 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of  
8 imposing discipline. If two or more acts of professional misconduct are found in a single  
9 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.  
10 (Standard 1.6(a).) The standards, however, are guidelines from which the Court may deviate in  
11 fashioning the most appropriate discipline considering all the proven facts and circumstances of a  
12 given matter. (*In re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51  
13 Cal.3d 215.) They are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary*  
14 *v. State Bar* (1988) 44 Cal.3d 820, 828.)

15 In the instant case, the recommended level of discipline ranges from reproof to disbarment.  
16 (Standards 2.3, 2.4(b), 2.6(a) and 2.10.) The most severe sanction is prescribed by standard 2.3,  
17 which suggests actual suspension or disbarment for culpability of an act of moral turpitude, fraud,  
18 intentional dishonesty or concealment of a material fact from a court, client or other person. The  
19 level of discipline depends upon the extent to which the victim is harmed or misled, the magnitude  
20 of the misconduct and the degree to which it relates to the practice of law.

21 OCTC recommends "at least" three years stayed suspension, three years probation<sup>4</sup> and two  
22 years actual suspension, among other things. (Closing brief, page 3, lines 27 - 28.) The closing brief  
23 indicates that this case "does not rise to the level of disbarment, since there is no showing of client  
24 harm or harm to third parties." (Closing Brief, page 2, lines 16 - 17.) The Court disagrees. After  
25 considering the serious misconduct and balancing the aggravating and mitigating circumstances, the  
26

27  
28 <sup>4</sup>As previously noted, probation is not available as discipline in a default proceeding in which  
actual suspension is recommended. (Rule 205(a).)

1 Court recommends that respondent be disbarred.

2 OCTC believes that the case most analogous to the instant matter is *In the Matter of Jones*  
3 (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. In *Jones*, the attorney was relatively  
4 inexperienced and had been admitted about two years when his misconduct began. Respondent  
5 Jones was a full time associate at a law firm. At the same time and for a two-year period, he entered  
6 into an agreement with a non-lawyer to establish a law corporation and to split fees. The non-lawyer  
7 handled all aspects of the personal injury practice without appropriate supervision. The non-lawyer  
8 used illegal means to solicit clients and, without respondent's knowledge, practiced law, collected  
9 over \$600,000 in attorney fees although no attorney had performed services and misused nearly  
10 \$60,000 in settlement funds withheld to pay medical providers, all in respondent's name. Respondent  
11 did not take realistic action to stop these practices even after receiving reliable information that they  
12 were occurring. Respondent eventually reported the non-lawyer to the police, turned himself in to  
13 the State Bar and cooperated fully in the prosecution of his discipline case as well as the criminal  
14 case against the non-lawyer. Mitigating factors besides substantial, spontaneous candor and  
15 cooperation, include good character, community activities and paying \$57,000 from his own funds  
16 to lienholders unpaid by the non-lawyer.

17 The Review Department suspended the attorney for three years, stayed, placed him on a  
18 three-year probation and actually suspended him for two years and until he complied with standard  
19 1.4(c)(ii), for abdicating "basic professional responsibilities and allow[ing] a non-lawyer almost free  
20 rein to perform such responsibilities in the lawyer's name." (*Id.* at p. 415.)

21 *Jones*, however, is distinguishable. Unlike respondent herein, Respondent Jones was  
22 inexperienced, reported the non-lawyer to the police, turned himself in to the State Bar and  
23 cooperated fully in the prosecution of his discipline case as well as the criminal case against the non-  
24 lawyer. There were other mitigating factors present as well. The instant case does not offer any  
25 mitigating factors except longevity and merits more discipline than that imposed in *Jones*.

26 Respondent's misconduct is egregious. The harm to clients and others is inherent in his  
27  
28

1 behavior.<sup>5</sup> For a two-year period, this experienced attorney engaged in an extensive, lucrative  
2 pattern of misconduct which resulted in a non-lawyer being responsible for operating respondent's  
3 firm and making most of the decisions on how cases were handled and settled. Respondent, in  
4 essence, sold his license to practice law to Formoso, a non-lawyer, for 30% of the "take" on his  
5 clients' cases. He acted with complete disregard for his profession and his clients. He later  
6 abandoned a client and his law practice. Although there is a significant mitigating circumstance in  
7 respondent's 20 years of blemish-free practice prior to the commencement of the misconduct, no  
8 explanation has been offered that might render disbarment inappropriate and the Court can glean  
9 none. The Court has no reason to believe that respondent could or would conform his behavior to  
10 the ethical rules, particularly in light of his failure to participate herein.

11 It would undermine the integrity of the disciplinary system and damage public confidence  
12 in the legal profession if respondent were not disbarred for his misconduct. If he desires to practice  
13 law again, he will bear the heavy burden of demonstrating by the most clear and convincing evidence  
14 his rehabilitation and fitness to practice. Accordingly, the Court recommends disbarment.

#### 15 DISCIPLINE RECOMMENDATION

16 IT IS HEREBY RECOMMENDED that Respondent **DOUGLAS KEITH HALLEN** be  
17 **DISBARRED** from the practice of law in the State of California and that his name be stricken from  
18 the rolls of attorneys in this state.

19 It is also recommended that the Supreme Court order respondent to comply with rule 955,  
20 paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the  
21 Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph  
22 (c) within 40 days of the effective date of the order showing his compliance with said order.

23  
24  
25 ///

---

26  
27 <sup>5</sup>As the closing brief notes: "...while there is no evidence that any of the claims was bogus or  
28 settled inadequately, the minimal involvement of respondent created the risk that either may have  
occurred. [Citation omitted.]" (Closing Brief at page 3, lines 1 - 3.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

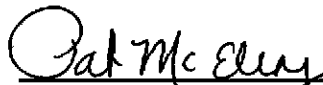
**COSTS**

The Court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

**ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July 29, 2003

  
\_\_\_\_\_  
PAT McELROY  
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 July 30, 2003, 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:

**DOUGLAS KEITH HALLEN  
HALLEN & ASSOCIATES  
1014 4TH ST  
SACRAMENTO CA 95814**

- 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 **July 30, 2003**.

---

**Laretta Cramer**  
Case Administrator  
State Bar Court