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**STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)

FRANK MARTIN ENNIX III,)

A Member of the State Bar, No. 40459.)

Case No. 10-Q-08405

RECOMMENDATION ON
RESIGNATION

On September 21, 2010, Frank Martin Ennix III, State Bar number 40459, submitted his resignation with disciplinary charges pending. In light of the grounds set forth in rule 9.21(d) of the California Rules of Court,¹ we recommend that Ennix's resignation not be accepted. We make this recommendation on the following grounds: (1) Ennix failed to comply with rule 9.20 in this resignation matter; (2) he failed to pay restitution of almost \$3,600 of client funds; and (3) acceptance of his resignation would undermine public confidence in the discipline system and legal profession, and would be inconsistent with the need to protect the public, the courts, and the legal profession.

I. BACKGROUND

Ennix was admitted to practice law in California on June 13, 1967, and has been disciplined on three prior occasions. In 2010, he was suspended for five years, execution of which was stayed, and he was placed on probation for five years subject to conditions, including suspension for a minimum of 18 months and until he demonstrated his rehabilitation, fitness to practice and ability in the general law. (Supreme Court case no. S182595; State Bar Court case

¹ Unless otherwise noted, all further references to "rule(s)" are to these rules.

no. 06-0-12235.) In three client matters, Ennix was found to have failed to perform legal services competently, improperly limited liability to a client, and failed to communicate with a client.

In 1991, Ennix was suspended from the practice of law for five years, execution of which was stayed, and he was placed on probation for five years on conditions, including suspension for a minimum of three years and until he demonstrated his rehabilitation, fitness to practice and ability in the general law. (Supreme Court case no. S019460; State Bar Court case nos. 88-0-13283, 89-O-11049.) In 10 client matters, Ennix was found to have misappropriated almost \$7,000 of client funds withheld from settlement proceeds to pay medical liens; practiced law while suspended; and failed to perform legal services competently, deposit settlement funds in his client trust account, communicate with clients, maintain complete records of client funds, and cooperate with the State Bar.

In 1979, Ennix was suspended for 18 months, execution of which was stayed and he was placed on probation for 18 months on conditions including 60 days' suspension. (Supreme Court case no. BM 4095; State Bar Court case no. 76-6-101.) In a single client matter, Ennix commingled client funds with his own, failed to maintain complete records of client funds, and failed to properly disburse client funds as directed by his client.²

There are four cases currently pending against Ennix. The parties stipulated to the misconduct in these cases as part of this resignation proceeding. The stipulation establishes that Ennix failed to perform legal services competently, failed to communicate with a client, improperly represented multiple clients whose interests potentially conflicted, failed to pay a client's medical bill of almost \$3,600 from settlement funds he had collected on behalf of the

² We take judicial notice of the State Bar Court records regarding the prior discipline and direct the Clerk to include copies of the records in this resignation proceeding.

client, and failed to comply timely with rule 9.20 as ordered by the Supreme Court in his 2010 discipline case.

On December 10, 2010, the Office of the Chief Trial Counsel of the State Bar (State Bar) filed a report regarding Ennix's resignation, recommending that it be declined. (Rules Proc. of State Bar, rule 658(b).) Ennix did not file a response to the report.

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

We have considered Ennix's resignation in light of the grounds set forth in rule 9.21(d). Below is a summary of the relevant information as to each ground:

1. Whether the preservation of testimony is complete.

The State Bar reports that perpetuation of testimony is unnecessary since it has sufficient evidence to present a full and accurate picture of Ennix's misconduct in a future matter.

2. Whether Ennix committed the unauthorized practice of law after he submitted his resignation.

The State Bar reports that it has no evidence that Ennix continued to practice law or held himself out as entitled to practice law since he tendered his resignation.

3. Whether Ennix performed the acts specified by rule 9.20(a)-(b).

The State Bar reports that it has no evidence showing that Ennix performed the acts required by rule 9.20(a)-(d) after the filing of his resignation.

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

Ennix failed to provide proof of compliance with rule 9.20(c). He filed an affidavit of compliance with rule 9.20 on September 21, 2010, the same day that he filed his resignation. However, Ennix was ordered by the Supreme Court in his 2010 discipline case to file an affidavit of compliance with rule 9.20 by September 3, 2010. It is unclear whether the affidavit submitted for filing on September 21 was in compliance with the requirements of this resignation

proceeding or was an untimely attempt to comply with the requirements of the Supreme Court order in the 2010 discipline case. Regardless, we find the affidavit does not show that Ennix complied with the requirements of rule 9.20.

The affidavit is on a form provided by the State Bar Court that contains several boxes to check, showing compliance with particular provisions of rule 9.20. Ennix improperly checked all the boxes on the form. As a consequence, it is unclear whether Ennix notified all clients and co-counsel in pending matters of his disqualification to act as an attorney, delivered all client papers and property to his clients, and refunded all unearned fees to his clients, or whether he had no clients, client property or unearned fees at the time he submitted his resignation. We therefore conclude that Ennix failed to comply with rule 9.20 as required in this resignation proceeding.

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 recommending Ennix's disbarment.

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

Ennix has not previously resigned or been disbarred.

8. Whether Ennix entered a stipulation with the State Bar as to facts and conclusions of law regarding the pending disciplinary matter.

Ennix entered into a stipulation to facts and conclusions of law regarding the four pending disciplinary matters, which was filed on September 21, 2010. As set forth above, the stipulation establishes that Ennix failed to perform legal services competently, failed to communicate with a client, improperly represented multiple clients whose interests potentially

conflicted, failed to pay a client's medical bill of almost \$3,600 from settlement funds he had collected on behalf of the client, and failed to comply timely with rule 9.20 as ordered by the Supreme Court in his 2010 discipline case.

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

Ennix has committed serious professional misconduct in the pending discipline cases. His failure to pay his client's medical bill is tantamount to misappropriation of client funds. Although Ennix stipulated to that misconduct, he has otherwise failed to participate in this resignation proceeding and has not offered any explanation for his failure to pay the medical bill or return the money to his former client. Further, Ennix failed to comply with rule 9.20 in this resignation matter and stipulated that he failed to comply timely with the rule as ordered in his 2010 discipline. The failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

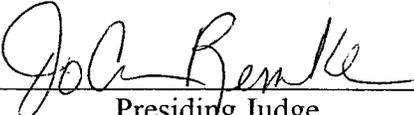
We also note that the pending disciplinary matters will be Ennix's fourth discipline. Disbarment is generally warranted for the third imposition of discipline unless the most compelling mitigating circumstances clearly predominate. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.7(b).) The only mitigating factor was Ennix's cooperation in entering into a stipulation, which is greatly diminished by his subsequent failure to pay restitution and comply with rule 9.20. Thus, if Ennix's resignation is not accepted, he is facing the possibility of a disbarment recommendation in the pending disciplinary cases.

By evading the disparagement of his potential disbarment, Ennix clearly would benefit from being able to resign. He should not be entitled to the benefit of resignation when he has in effect misappropriated nearly \$3,600, offered no explanation for the theft, failed to repay the

money, and has again failed to comply with rule 9.20. To allow Ennix to resign under these circumstances would undermine public confidence in the disciplinary system and the legal profession. Based on the above, we find that the acceptance of Ennix's resignation would be inconsistent with the need to protect the public, the courts, and the legal profession.

III. RECOMMENDATION

We recommend that the Supreme Court decline to accept the resignation of Frank Martin Ennix III, State Bar number 40459.



Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 Los Angeles, on February 24, 2011, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED FEBRUARY 24, 2011

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

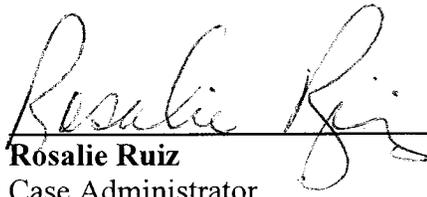
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**FRANK M. ENNIX III
LAW OFC FRANK M ENNIX
576 10TH ST
OAKLAND, CA 94607**

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

TAMMY M. ALBERTSEN-MURRAY, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 24, 2011.



Rosalie Ruiz
Case Administrator
State Bar Court