

**PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION**

Filed August 8, 2011

**STATE BAR COURT OF CALIFORNIA  
REVIEW DEPARTMENT**

In the Matter of	)	Case No. 09-R-14271
	)	
RAUNDA MARIANNE FRANK,	)	OPINION
	)	
Petitioner for Reinstatement.	)	
_____	)	

BY THE COURT:<sup>1</sup>

**I. SUMMARY OF THE CASE**

Raunda Marianne Frank requests review of a hearing judge’s decision denying her reinstatement to the practice of law. In 2002, as an elected city councilwoman, Frank sold her vote for \$100,000. After law enforcement discovered her illegal act, she was charged with a felony. In federal court in 2003, Frank entered a guilty plea to conspiracy to commit extortion under color of official right, and resigned from the State Bar with charges pending. In April 2006, she was discharged early from probation. Thirty-nine months later on August 7, 2009, she filed her petition for reinstatement. The hearing judge found that, given the seriousness of Frank’s crime, 39 months did not prove her reform by a sustained period of exemplary conduct. Frank seeks review, contending that she proved the requisite period of rehabilitation and should be reinstated. The State Bar’s Office of the Chief Trial Counsel (State Bar) requests that we affirm the hearing judge.

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<sup>1</sup> Before Remke, P. J., Epstein, J., and Purcell, J.

After independent review of the record (Cal. Rules of Court, rule 9.12), we find that the hearing judge's decision presents a careful, eminently fair and objective rendition of the evidence and soundly applies the governing law. We fully adopt it. Rather than recount the extensive detailed facts supporting the ruling, we summarize the hearing judge's findings and conclusions, and focus our opinion on the key issue on review: Did Frank present overwhelming proof of her rehabilitation by a *sustained* period of exemplary conduct? Like the hearing judge, we conclude she did not.

## **II. FRANK COMMITTED SERIOUS MISCONDUCT**

The hearing judge found that Frank's misconduct was "reprehensible, involving dishonesty and a serious breach of the public trust." We agree and briefly examine the facts surrounding her wrongdoing.

After being admitted to practice law in California in 1992, Frank worked for ten years in the Public Defender's Office in Carson, California. Her final assignment was with the Public Integrity Assurance Section where she prosecuted those accused of public corruption. In 1999, Frank was elected to the city council for a four-year term. During this time, Frank lived with her husband, an attorney who was abusing alcohol, and their two small children.

Shortly after her election, Frank became aware of corruption among council members but failed to take any action or report it. Then in 2001, she was asked to join two other council members in a conspiracy to sell their three-vote majority to approve a new waste-hauling contract. Frank was promised \$100,000 in \$5,000 installments. She was hesitant about the plan because she knew it was wrong. So she discussed it with her husband who, to her surprise, pressured her to participate. Frank agreed to the conspiracy and on February 19, 2002, cast her illegal vote. A few months later, law enforcement discovered her involvement when she talked

about the conspiracy with another council member who was wearing a “wire.” By this time, Frank had received two \$5,000 installments.

Frank was charged with one count of conspiracy to interfere with commerce by extortion in violation of Title 18 United States Code section 1951. In May 2003, she pled guilty and in July, she resigned with charges pending from the State Bar, effective August 27, 2003. She agreed to cooperate with law enforcement to prosecute a co-conspirator. In February 2004, the federal court sentenced Frank to four months’ home detention and ordered that she pay a \$10,000 fine, perform 100 hours of community service and serve five years on supervised felony probation.

### **III. FRANK HAS MADE SUBSTANTIAL PROGRESS TOWARD REHABILITATION**

The hearing judge found that Frank has made “substantial progress toward proving her rehabilitation” and is “well on her way to reinstatement.” At trial, Frank presented evidence of those efforts in four important areas of reform: (1) genuine remorse; (2) extensive psychotherapy; (3) significant community service; and (4) impressive character witness testimony. Also, Frank was discharged in 2006 after only two years on probation.

Viewing the totality of Frank’s proof of reform, the hearing judge was encouraged because she established “dedication to her rehabilitation.” He was particularly impressed by the character witnesses who testified to Frank’s fitness to practice law. We give these findings great weight “because the hearing judge heard and saw the witnesses and observed their demeanor. [Citations.]” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315; see also Rules Proc. of State Bar, former rule 305(a);<sup>2</sup> *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055 [on matters of credibility, court reluctant to reverse hearing department].)

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<sup>2</sup> The Rules of Procedure of the State Bar were amended effective January 1, 2011. However, the former rules apply to this proceeding as the request for review was filed prior to the effective date. (Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 2.)

Recognizing that the hearing judge is in the best position to assign the proper weight to Frank's rehabilitative evidence, and upon our own reading of the record, we concur that she has made substantial progress toward completing her rehabilitation.

#### **IV. FRANK FAILED TO PROVE REHABILITATION BY A SUSTAINED PERIOD OF EXEMPLARY CONDUCT**

Notwithstanding Frank's progress, the hearing judge found that she failed to prove her reform by *sustained* exemplary conduct for a sufficiently lengthy period, noting that she "needs some more time to meet this heavy burden." He further explained: "Considering petitioner's dishonesty and very grievous breach of the public trust, the court believes that 39 months is insufficient to demonstrate genuine reform." We agree.

Frank faces a heavy burden to prove rehabilitation and good moral character by evidence that is "the most clear and convincing." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092.) In fact, she must offer stronger evidence of present honesty and integrity than when she originally sought admission when her character was not in question. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) And such evidence must be considered in light of Frank's moral shortcomings – more serious misconduct requires a stronger showing of rehabilitation. (*Id.*; see *In re Menna* (1995) 11 Cal.4th 975, 989 [conviction of crime of moral turpitude alone may justify denying applicant admission].) Therefore, Frank must show rehabilitation by sustained exemplary conduct over an extended period of time. (*In re Giddens* (1981) 30 Cal.3d 110, 116.)

The hearing judge correctly found that the most relevant period of Frank's rehabilitation is the 39 months from the time she completed probation (April 27, 2006), when she was no longer supervised by law enforcement, until she filed her petition for reinstatement (August 7, 2009), when she came under the State Bar's scrutiny. The Supreme Court has cautioned that "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not

commit additional crimes . . . while on probation . . . .” (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) But we have not merely counted the number of years in measuring Frank’s rehabilitation (*In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 464) because there is both a qualitative and a quantitative aspect to the determination of rehabilitation, i.e., whether post-misconduct behavior is “exemplary” and if such exemplary behavior has been sustained for a sufficient period of time. (*Id.* at p. 468.) In looking to *Bodell* as a precedent, we have given some weight to Frank’s good conduct during her probationary period. (*Id.* at p. 464.) But *Bodell* further guides us to give “far greater weight” to the period of time after Frank completed her probation. (*Ibid.*) In that regard, “[t]he passage of an appreciable period of time” is necessary to demonstrate that sufficient rehabilitative progress has been made. (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1095.)

Frank has made steady rehabilitative gains since her conviction, particularly during her unsupervised 39 months. But we must weigh this evidence against the dishonesty of her crime. Frank violated “ “the fundamental rule of [legal] ethics-that of common honesty-without which the profession is worse than valueless in the place it holds in the administration of justice” [citation].’ ” (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 60.) Given her grievous misconduct and breach of public trust, we do not consider, and decisional law does not support, 39 months as enough time to demonstrate a period of sustained exemplary conduct.<sup>3</sup> We conclude that Frank has not yet met her heavy burden of showing “ “ ‘overwhelming [] proof of reform . . . which

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<sup>3</sup> (See, e.g., *In re Menna, supra*, 11 Cal.4th at p. 989 [five and one-half years of unsupervised good conduct not sufficient for felony theft and drug convictions]; *In the Matter of Bellicini* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 883 [three years of exemplary conduct after sobriety from alcohol and gambling not sufficient for misappropriation and incompetence]; *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423 [nine years between misappropriation and petition sufficient]; compare *In the Matter of Bodell, supra*, 4 Cal. State Bar Ct. Rptr. 459 [10 years between resignation and reinstatement hearing sufficient for mail fraud where three years’ good conduct followed five years’ criminal probation].)

we could with confidence lay before the world in justification of a judgment again installing [her] in the profession . . . .’ ” ’ [Citation.]” (*In re Menna, supra*, 11 Cal. 4th at p. 989.)

## **V. CONCLUSION**

We affirm the hearing judge’s decision and deny Frank’s petition for reinstatement.