

**PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION**

**Filed August 11, 2009**

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

In the Matter of	)	<b>06-O-10817</b>
	)	
<b>MICHAEL BRUCE PRICE,</b>	)	
	)	
A Member of the State Bar.	)	<b>OPINION ON REVIEW</b>
_____	)	

BY THE COURT<sup>1</sup>

Michael Bruce Price seeks review of a decision that found him culpable of misconduct in two matters and recommended his disbarment. Price was admitted to practice in 1972, but since 2001, he has been disciplined two times for professional misconduct in a total of six matters. In the absence of compelling mitigating circumstances, we find that disbarment is the appropriate recommendation to protect the public, the courts and the legal profession, and to preserve public confidence in the legal profession.

**I. FINDINGS IN THE HEARING DEPARTMENT**

Upon our independent review (Cal. Rules of Court, rule 9.12), we adopt the hearing judge’s findings of fact and conclusions of law. In these proceedings, Price was charged with and found culpable of a single ethical violation in two matters.

In the first matter (the “UPL matter”), the hearing judge found that Price willfully practiced law and held himself out as entitled to practice law while suspended from the practice of law pursuant to a Supreme Court disciplinary order in late December 2005, in violation of Business and Professions Code sections 6125 and 6126. Price admits to culpability for holding

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

himself out as entitled to practice while under suspension. While suspended, he filed a motion and supporting papers for a client's family law proceeding in San Mateo County Superior Court, which included Price's supporting declaration, signed under penalty of perjury, stating he was "an attorney duly licensed to practice law." We adopt the hearing judge's findings that Price improperly practiced law and held himself out as entitled to practice while on a disciplinary suspension order.

In the second matter (the "Jablonski matter"), the hearing judge found that in May 2005 Price was hired and accepted \$1,350 in advance fees to represent Christabell Jablonski, who was seeking to dissolve her marriage. Jablonski expressed her urgency to resolve the matter promptly for financial reasons, including her desire to protect the community home from lien claims. Price promptly filed a petition for dissolution, but then delayed for over a year in completing a draft marital settlement agreement. He finally completed the draft in September 2006, but only after Jablonski had filed a State Bar complaint about Price's inaction. After he provided the draft, another nine months elapsed before Price finalized the dissolution in June 2007. We adopt the hearing judge's findings and conclusion that Price willfully violated rule 3-110(A) by intentionally, recklessly, and repeatedly failing to perform legal services with competence.

## **II. ARGUMENTS ON REVIEW**

Price makes two essential claims on review. First, he asserts that the evidence in the Jablonski matter is insufficient to show his culpability because Jablonski caused the delay in proceedings by failing to timely provide Price with needed documents. Second, he urges that disbarment is excessive.

Price's claim of insufficient evidence in the Jablonski matter is not supported by the record. Shortly after Jablonski hired him in May 2005, Price admittedly was non-communicative

for a period of time, for which he apologized in late June 2005. Thereafter, however, Jablonski continued to have difficulty communicating with Price, including scheduling a time to drop off the requested information. Finally, by October 2005, Jablonski did provide by e-mail the specific information Price sought from her about assets and liabilities.

Even if the information Jablonski furnished was inadequate for Price to proceed, as he contends, he had received sufficient documents and information to continue with the dissolution by June 2006 at the latest. Yet, thereafter, he clearly delayed completing the matter for an unreasonable time and without sufficient excuse while reassuring Jablonski that he knew she was leaving the area and that he would complete the matter in a timely fashion. For these reasons, we adopt the hearing judge's finding that Price willfully violated rule 3-110(A) in the Jablonski matter.

We thus turn to the key question in our review: the appropriate degree of discipline. We first look at the balance of mitigating and aggravating factors. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Stds. 1.2 and 1.6.<sup>2</sup>) We accord minimal weight to Price's community work at a youth tennis organization because he presented only limited evidence about the nature and extent of his service. We also give minimal weight to the character testimony of four attorneys on Price's behalf. Not only did some of the witnesses have limited recent contact with Price, but their knowledge of his prior discipline matters was largely from their own reading of publications. Price had done little, if anything, to apprise the witnesses of his past misconduct in light of the current charges. Finally, the testimony of four attorney witnesses does not establish a "wide range of references in the legal and general communities." (Std. 1.2(e)(vi).)

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<sup>2</sup> All further references to standards are to this source.

Price argues that a character reference declaration signed by Alan Simon should have been admitted. He contends that the State Bar should be estopped from even objecting to the declaration based on conversations the deputy trial counsel had with Price at trial that led him to believe that the declaration would be accepted in lieu of Simon's live testimony. It is well settled law that written declarations of character witnesses should be excluded unless the hearsay objection is waived. (*In re Ford* (1988) 44 Cal.3d 810, 818; *In the Matter of McCray* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 373, 383.) Here, there was no waiver. The State Bar deputy trial counsel agreed only to consider receiving Simon's evidence by declaration and waive any hearsay objection. He made no assurances to definitely forego such an objection. We do not find this position to be unfair to Price. Had he wanted to ensure that Simon's evidence was considered, Price could have offered Simon as a witness in person or made some other arrangement agreeable to the court and the State Bar to receive Simon's testimony. Moreover, given that Price had presented four live character witnesses, presenting Simon as a fifth witness would neither have been determinative nor significant. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys entitled to limited weight].)

Price also urges his cooperation with the State Bar as a mitigating factor and claims it was not adequately weighed. Although he did enter into a factual stipulation with the State Bar, it was very brief and consisted of easily provable facts. Accordingly, we give this factor nominal weight.

In aggravation, the decisive factor is that Price has two prior records of discipline. (Std. 1.2(b)(i).) On September 24, 2001, the State Bar Court filed an order imposing a private reproof based on Price's failure to communicate with clients and to refund unearned fees promptly in two client matters. This misconduct occurred in 1999 and 2000. In aggravation,

Price was culpable of multiple acts of misconduct. In mitigation, he had no prior record of discipline, displayed spontaneous candor and cooperation, demonstrated remorse, made full restitution (after complaints were filed against him), established extensive community service and pro bono work, and had experienced office difficulties due to the retirement of his long-time secretary at the time of the violations.

On November 14, 2005, the Supreme Court filed an order imposing a one-year stayed suspension, a two-year probation, and a 30-day actual suspension. This second discipline was based on Price's misconduct in four client matters during 2003 and 2004. In that case, he failed to perform legal services competently, failed to communicate with clients, failed to take steps to avoid foreseeable prejudice to clients upon withdrawal from representation, failed to promptly release client papers to clients upon request, and failed to provide appropriate accountings to clients. In aggravation, Price had one prior record of discipline and committed multiple acts of misconduct. In mitigation, he experienced extreme family difficulties at the time of his misconduct.

Viewing all three of Price's disciplinary proceedings, the issue of great concern for the protection of the public, courts and legal profession (std. 1.3) is that Price has committed similar misconduct in a total of seven of his eight matters in the most recent 10 years of his practice. This proceeding shows in the Jablonski matter a repetition of earlier misconduct in failing to perform legal services for clients competently and diligently. Moreover, the UPL matter demonstrates that even during actual suspension, Price was, at a minimum, oblivious to the strictures of that suspension. The normal degree of discipline contemplated by the standards for an attorney with two prior instances of discipline is disbarment unless the most compelling mitigating circumstances clearly predominate. (Std. 1.7(b); *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, 388.) Price has provided only limited evidence in

mitigation that does not clearly predominate over his recurring misconduct during the past 10 years. Although we acknowledge that standard 1.7(b) and other standards are not to be applied rigidly (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977-978), when considering the appropriate level of discipline, the Supreme Court has placed great weight on whether or not there is a “common thread” among the various prior disciplinary proceedings or a “habitual course of conduct” which justifies disbarment. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 780.) Here Price’s prior and present discipline reflects a continuing inability to fully appreciate the fiduciary duties he owes his clients. Indeed, we find his continuing failure to fully perform his duties toward his clients presents “a disturbing repetitive theme.” (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.) We are also concerned with Price’s indifference to disciplinary orders. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.)

Given these factors, we cannot justify departure from disbarment, which is specified in standard 1.7(b). Price practiced without disciplinary difficulties for over 25 years, which was a factor considered in his favor in imposing his 2001 private reproof. Regrettably, the previous and more lenient discipline has not impressed upon Price the need to attend diligently to his duties to clients, the courts and the administration of justice. His misconduct in the Jablonski matter started just before and continued after his second discipline was imposed, and, in the UPL matter, it occurred immediately after that second discipline was imposed. Thus, we find that further suspending Price would not adequately address the purposes of attorney discipline.

### **III. RECOMMENDATION**

For the foregoing reasons, we recommend that Michael Bruce Price be disbarred and his name be stricken from the roll of attorneys.

We further recommend that Michael Bruce Price be required to comply with rule 9.20 of the California Rules of Court and 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 herein.

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

The order of the hearing judge below that Michael Bruce Price be enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), shall continue in effect pending the consideration and decision of the Supreme Court on this recommendation.