

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: 10-O-4421-LMA
JOSEPH EUGENE PETRILLO) DECISION
Member No. 58010)
A Member of the State Bar.)

I. INTRODUCTION

In this disciplinary matter, Wonder J. Liang appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Joseph Eugene Petrillo did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be actually suspended for 30 days and until he pays certain sanctions and until he complies with rule 205, Rules Proc. of State Bar.¹

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on August 23, 2010, and was

¹ Because this proceeding was conducted and then submitted for decision in November 2010, the court has determined that the “new” Rules of Procedure of the State Bar effective January 1, 2011, are not applicable as an injustice would otherwise result. Instead, the former Rules of Procedure of the State Bar continue to govern this proceeding in the Hearing Department. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 1.) Accordingly, all future references to Rules of Procedure are to the former rules unless otherwise specified.

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 section² 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On August 26, 2010, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on October 4, 2010.³

Respondent did not appear at the October 4 status conference. On that same date, he was properly served with a status conference order at his official address and at a possible alternate address in Florida by first-class mail, postage prepaid.

Respondent did not file a responsive pleading to the NDC. On October 7, 2010, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. A copy was also sent by regular mail to a possible alternate address in Florida. The motion advised him that minimum discipline of actual suspension would be sought if he was found culpable. He did not respond to the motion.

On October 25, 2010, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested and at a possible alternate address in Florida by first-class mail, postage prepaid.

The State Bar's and the court's efforts to contact respondent were fruitless. Respondent, who apparently has retired and was traveling abroad for an extended period of time, contacted the State Bar on October 14, 2010, by email regarding the NDC and on October 25 regarding the

²Future references to section are to the Business and Professions Code.

³This correspondence was returned as undeliverable by the United States Postal Service, marked "attempted – not known. Unable to forward." The status conference order and order entering default, referenced later in this procedural history, were similarly returned.

entry of default. There was no further contact from him. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing after the State Bar filed a brief on November 15, 2010.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 19, 1973, and has been a member of the State Bar at all times since.

B. Facts

Prior to April 8, 2010, David Blackford hired respondent to represent him in a civil matter. (*Carracci v. Blackford*, San Francisco Superior Court case no. CGC-08-487990.) Respondent became Blackford's counsel of record.

Respondent did not appear at a mandatory settlement conference (MSC) held on April 8, 2010, although he had received notice of it.

On April 8, 2010, the court issued an order to show cause (OSC) requiring respondent to show cause why sanctions should not be imposed for his failure to participate in the MSC, and

ordering respondent to appear for an OSC hearing on May 7, 2010. Soon thereafter, respondent received a copy of this order.

Respondent did not appear at the May 7 OSC hearing although he had received notice of it. On that same date, the court issued an order finding that respondent failed to participate in the MSC and OSC hearing and ordered respondent to pay sanctions in the amount of \$300 by June 4, 2010. Soon thereafter, respondent received the order, but did not pay the sanctions.

At all relevant times herein, the May 7, 2010, court order was in full force and effect. As of August 23, 2010, respondent has not paid the sanctions.

On April 9, 2010, the court reported respondent to the State Bar. On April 21, 2010, the State Bar opened an investigation (SBI) against respondent.

On June 11 and 30, 2010, a State Bar investigator sent letters to respondent regarding the SBI case. The letters asked respondent to respond in writing to specified allegations of misconduct being investigated by the State Bar in the SBI case. Soon thereafter, respondent received the letters, but did not provide a written response to the allegations of misconduct

2. Conclusions of Law

a. Count 1 - Section 6103 (Violation of Court Order)

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him to do or to forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear.

By not appearing at the OSC hearing and by not paying the \$300.00 sanction as ordered, respondent disobeyed orders of the court in wilful violation of section 6103.

b. Count 2 - Section 6068(i) (Not Participating in a Disciplinary Investigation)

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

By not providing a written response to the State Bar investigator's letters regarding the allegations in the SBI case or otherwise cooperating in the investigation of the SBI case, respondent did not participate in the investigation of the allegations of misconduct in wilful violation of 6068(i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁴, std. 1.2(b).)

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068(i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors other than practicing law for more than 34 years without discipline, a significant mitigating factor.

C. Discussion

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

⁴.Future references to standard or std. are to this source.

Cooper v. State Bar (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standard 2.6 applies in this matter which recommends suspension or disbarment depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of violations of sections 6103 and 6068(i) in one client matter. In aggravation, the court considered, but gave little weight to, respondent’s lack of cooperation prior to the entry of default in this matter. An important mitigating factor was respondent’s discipline-free practice in excess of 34 years.

The State Bar recommends actual suspension for 30 days and until respondent shows proof that he paid the sanctions.

Respondent’s misconduct and lack of participation in this matter raises concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. No explanation has been offered that might persuade the court otherwise and the court can

glean none. Having considered the evidence and the law, the court believes that a 30-day actual suspension to remain in effect until he provides proof that the sanctions have been paid and complies with former rule 205, among other things, is adequate to protect the public and proportionate to the misconduct found and the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent Joseph Eugene Petrillo be suspended from the practice of law for one year; that said suspension be stayed; and that he be actually suspended from the practice of law for 30 days and until he pays the sanctions ordered by the court in *Carracci v. Blackford*, San Francisco Superior Court case no. CGC-08-487990 and provides satisfactory proof thereof to the State Bar's Office of Probation; and until the State Bar Court grants a motion to terminate respondent's actual suspension at its conclusion or upon such later date ordered by the Court. (Rule 205(a), (c), Rules Proc. of State Bar.)

It is also recommended that he be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (See also, rule 205(b).)

If respondent remains actually suspended for 90 days or more, it is also recommended that he be ordered to comply with the requirements of rule 9.20 of the California Rules of Court within 120 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 130 days of the effective date of the order

showing his compliance with said order.⁵

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within one year from the effective date of the Supreme Court's order or during the period of his actual suspension, whichever is longer, and furnish satisfactory proof of such to the State Bar's Office of Probation within said period. **Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162, Rules of Procedure of the State Bar.**

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: April _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court

⁵ Failure to comply with rule 9.20 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)