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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 15-C-10384
)	
ERIC L. MERL,)	RECOMMENDATION OF
)	SUMMARY DISBARMENT
A Member of the State Bar, No. 117068.)	
_____)	

On October 31, 2013, Respondent Eric L. Merl pled guilty to violating 18 United States Code sections 371 (conspiracy to commit wire fraud under title 18 United States Code section 1343) and 1001 (false statements). Sentencing is set for December 1, 2015.

On March 12, 2015, the Office of the Chief Trial Counsel of the State Bar (OCTC) transmitted Merl's record of conviction to the State Bar Court. Effective April 29, 2015, Merl was placed on interim suspension. On August 11, 2015, OCTC filed a Motion for Summary Disbarment based on the felony convictions. Supplementing their motion, on August 26, 2015, OCTC filed Merl's waiver of finality, signed by him on July 22, 2015. In the waiver, Merl states that he is waiving finality of his convictions before sentencing based on his desire to "promptly resolve" the instant matter. He also states: "I understand that upon waiving finality, the California State Bar may seek to summarily disbar me."

We grant OCTC's motion and recommend that Merl be summarily disbarred. When an attorney is convicted of a crime involving moral turpitude, the attorney is placed on interim suspension "until the time for appeal has elapsed, if no appeal has been taken, or until the

judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the court.” (Bus. & Prof. Code, § 6102, subd. (a).) The attorney is then summarily disbarred after the conviction from subdivision (a) becomes final “if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude.” (Bus. & Prof. Code, § 6102, subd. (c).)

To begin, Merl’s waiver of finality establishes that his conviction is final for purposes of summary disbarment. (Rules Proc. of State Bar, rule 5.344 [member may waive finality before conviction becomes final].) In addition, Merl’s record of conviction establishes that his offenses are felonies. (18 U.S.C. § 3559(a) [classifying offenses based on sentencing ranges]; see 18 U.S.C. §§ 371, 1001 [conspiracy for wire fraud punishable with imprisonment up to 5 years, false statements punishable with imprisonment up to 5 years].)

Further, Merl’s convictions involve moral turpitude. The moral turpitude classification of the crime of conspiracy depends upon the object of the conspiracy. (*In re McAllister* (1939) 14 Cal.2d 602, 603 [if the commission of an offense involves moral turpitude, then a conspiracy to commit the offense would also involve moral turpitude].) Section 1343 provides in pertinent part: “Whoever, having devised or intending to devise any scheme or artifice to defraud . . . transmits or causes to be transmitted by means of wire . . . any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be [guilty of a crime against the United States].” An element of a wire fraud violation is the specific intent to deceive or defraud. (*Odom v. Microsoft Corp.* (9th Cir. 2007) 486 F.3d 541, 554.) Therefore, the conspiracy conviction involves moral turpitude because the object of the conspiracy involved the intent to deceive or defraud. (Bus. & Prof. Code, § 6102, subd. (c); see *In re Fahey* (1973) 8 Cal.3d 842, 849.)

As to the false statements conviction, an element of the offense is making a false or fraudulent statement with knowledge of its falsity. (*United States v. Yermian* (1984) 468 U.S. 63, 64; *United States v. Boone* (9th Cir. 1991) 951 F.2d 1526, 1544 [essential elements of offense are statement, falsity, materiality, specific intent, and agency jurisdiction].) Such an offense not only involves moral turpitude, but it is a specific ground for summary disbarment under the summary disbarment statute as it involves the specific intent to make a false statement.

When an attorney's conviction meets the requirements of Business and Professions Code section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Eric L. Merl, State Bar number 117068, be disbarred from the practice of law in this state. We also recommend that he be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order. Finally, we recommend that the costs be awarded to the State Bar in accordance with section 6086.10 of the Business and Professions Code and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

PURCELL

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 of California. 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 September 15, 2015, I deposited a true copy of the following document(s):

ORDER FILED SEPTEMBER 15, 2015

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

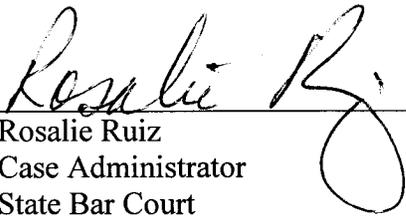
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ERIC L. MERL
710 NE 7TH ST # 304
BOYNTON BEACH, FL 33435

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

Charles A. Murray, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 15, 2015.



Rosalie Ruiz
Case Administrator
State Bar Court