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STATE BAR COURT
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LOS ANGELES

NOT FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 15-O-11103-YDR
)	
CHARLES PRINTY REILLY,)	DECISION AND PRIVATE REPROVAL
)	
Member No. 41527,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this matter, Charles Printy Reilly (“Respondent”) is charged with one count of misconduct: violating section 6106 by certifying under penalty of perjury that he had complied with the Minimum Continuing Legal Education (“MCLE”) requirements when, in fact, he had not taken any courses during the relevant reporting period. The Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) has the burden of proving these charges by clear and convincing evidence.² This court finds by clear and convincing evidence that Respondent is culpable of violating section 6106 based on his gross negligence and orders him privately reprovved.

¹ Unless otherwise indicated, all statutory references are to the Business and Professions Code.

² Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (“NDC”) on June 16, 2015. Respondent filed a response to the NDC on July 10, 2015.

The parties filed a Stipulation as to Facts and Admission of Documents on September 10, 2015, (“Stipulation”). Trial took place on September 18, 2015. The State Bar was represented by Deputy Trial Counsel Drew Massey, Esq. Respondent was represented by James I. Ham, Esq. The State Bar and Respondent both filed their closing briefs on October 2, 2015. The matter was submitted for decision on October 2, 2015.

Findings of Fact and Conclusions of Law

The following findings of fact are based on the stipulation previously filed by the parties and the documentary and testimonial evidence admitted at trial.

Respondent was admitted to the practice of law in California on January 5, 1968, and has been a member of the State Bar of California at all times since that date.

Case No. 15-O-11103 – The MCLE Matter

Facts

Respondent was required to complete 25 hours of MCLE during the applicable compliance period of February 1, 2011 through January 31, 2014. Respondent acknowledged that he was aware of the MCLE requirement and compliance period.

Respondent testified that he believed he had fulfilled his MCLE obligations. He knew that it was his custom to take a “bundle” of MCLE courses toward the end of the compliance period, but that created a great deal of stress. Thus, for the February 1, 2011 through January 31, 2014 compliance period, he recalled deciding to complete his MCLE requirements early in the applicable period. His recollection was incorrect; he had not taken any MCLE courses from February 1, 2011 through January 31, 2014.

On November 13, 2013, Respondent had a medical visit at the Pulmonary Medicine Clinic at UCLA Medical Center with Dr. Joseph P. Lynch III, M.D. During the visit, Dr. Lynch confirmed that Respondent suffers from idiopathic pulmonary fibrosis (“IPF”). IPF is a progressive terminal lung disease. The rate of progression is “highly variable.” Dr. Lynch informed Respondent that there was no proven effective medical treatment for a person of his age. Although the disease was not imminently life-threatening, the survival rate was as low as 1 to 2 years to as high as 10 years. The doctor was unable to provide Respondent with information on where Respondent fell on the spectrum, but informed him that the five-year survival rate for patients over age 70 was less than 30%. Respondent was 70 at the time of his diagnosis.

Respondent testified that after receiving the news about his terminal illness, his focus and energy were dedicated to obtaining as much information as possible on how long he could survive, how long he would be healthy and able to live a normal life, how he was going to deal with his mortality and, planning for his wife’s future. He said he and his wife were consumed with all of these issues and it caused extreme “psychological stress.”

While being preoccupied with thoughts of his own mortality, on December 7, 2013, Respondent electronically certified to the State Bar of California that he had satisfied his MCLE requirements for the period of February 1, 2011 through January 31, 2014. The certification was made under the penalty of perjury, however, Respondent’s certification was false.

In 2014, Respondent was randomly selected for an MCLE audit. In order to respond to the audit, Respondent searched his records and was unable to locate any documentation corroborating his recollection that he had purchased and completed a bundle of MCLE courses during the applicable compliance period. At that point, Respondent purchased an MCLE bundle and completed the coursework between July 11, 2014 and July 20, 2014.

On July 29, 2014, Respondent answered the MCLE audit, enclosing his certificates of completion for his recently completed classes. In his letter to the State Bar Records and Compliance Department, Respondent stated "These certificates of completion refer to courses of study completed subsequent to my most recent report of compliance submitted earlier this year. I have been unable to find the certificates of completion or other documentation relating to the courses contemplated in my earlier report of compliance, which courses I completed in Calendar year 2011. By way of explanation, I can only offer that I have been retired since January 2000 and over the past 14 years, the lack of office and clerical support has diminished my record keeping, maintenance and the file retrieving capabilities." At this point, although Respondent could not find any documentation, he still believed he had taken the requisite MCLE courses during the compliance period.

In late March 2015, Respondent found a file folder in his home containing MCLE materials for prior compliance periods. The file contained materials for the 2002 through 2005 and 2005 through 2008 compliance periods, but there was nothing indicating he satisfied his MCLE obligations for February 1, 2011 through January 31, 2014. It was at this point he began to doubt his recollection about complying with the MCLE requirements.

As of June 12, 2012, Respondent has been voluntarily enrolled as an inactive member of the State Bar of California.

Conclusions

Count One – Section 6106 (Moral Turpitude)

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The State Bar charged Respondent with violating section 6106 by falsely reporting under penalty of perjury that he had complied with his MCLE requirements for the February 1, 2011 to January 31, 2014

compliance period when he knew he or was grossly negligent in not knowing that he had failed to fulfill his MCLE obligations for that period.

The State Bar has failed to provide clear and convincing evidence that Respondent intentionally misrepresented his MCLE compliance. Respondent offered thoughtful, consistent testimony regarding his belief he that had fulfilled his MCLE obligations. The 2005 and 2008 compliance materials support his testimony that he normally takes a bundle of courses at the end of the compliance period, and there is nothing to rebut Respondent's testimony that he remembered telling himself that for the compliance period ending January 31, 2014, he would take the courses in the beginning of the compliance period to avoid unnecessary pressure.

Although Respondent had no intent to deceive, he is culpable of moral turpitude as a result of gross negligence. Respondent declared under penalty of perjury that he complied with his MCLE obligations without making any effort to confirm its accuracy. Failing to "verify [his] MCLE compliance before [declaring under penalty of perjury] constitutes gross negligence amounting to moral turpitude for discipline purposes." (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334.)

Aggravation³

The State Bar did not argue any factors in aggravation, and this court finds none.

Mitigation

No Prior Record (Std. 1. 6(a).)

Respondent has been a licensed California attorney for over 47 years. The State Bar argues he is not entitled to mitigation credit for his years of discipline-free practice because he

³ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

only practiced law for six of those years. The court finds that Respondent's lack of a prior discipline record is a mitigating circumstance.

Standard 1.6 provides a list of mitigating factors, but those factors are not all-inclusive. The standard specifically states that "Mitigating circumstances *may* include" the circumstances listed, but does not limit mitigation to those factors. Moreover, standard 1.2(i) defines mitigating circumstances as "factors surrounding a member's misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard."

During his legal career, Respondent worked at a law firm, clerked for a judge, and acted as general counsel for a company. This totaled a little over six years of practice. While six years of practice is insufficient for mitigation (*In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831), during Respondent's business career, he was subject to Security and Exchange Commission rules and regulations. His thirty-five year professional career has included positions as chief financial officer of a publicly-held OTC company; senior executive vice president and chief development officer of a New York Stock Exchange corporation with annual revenues exceeding \$4 billion; managing general partner of private equity and investment banking firms; and he has served on the boards of three NYSE companies. Since 1987 until his retirement in 2000, Respondent served as managing general partner of a private equity and investment banking firm specializing in the healthcare industry.

Although Respondent's lack of a discipline record was not "over many years of practice" (std. 1.6(a), Respondent maintained his law license and was under SEC scrutiny while pursuing his business career. There have been no complaints or accusations brought against him, and the SEC has never disciplined him. Under these circumstances, Respondent is entitled to significant mitigation for his lack of a discipline record. (Std. 1.2(i).)

Extreme Emotional/Physical/Mental Difficulties (Std. 1.6(d).)

Respondent is entitled to significant mitigation for extreme emotional difficulties. Just prior to misrepresenting his MCLE compliance, Respondent was diagnosed with a terminal lung disease and was unsure whether he was going to live 1 year, 2 years or 10 years. He was extremely focused on his diagnosis and mortality which caused “psychological stress” and anxiety. Respondent testified that his anxiety has subsided and he is no longer consumed with his disease. Respondent’s extreme emotional difficulty surrounding his misconduct is afforded significant weight.

Candor/Cooperation to Victims/State Bar (Std. 1. 6(e).)

Limited weight is assigned to Respondent’s cooperation because he stipulated to facts that were easily proven. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if relevant and assisted prosecution of case].)

Community Service and Civic Endeavors

Respondent has a long history of serving the Beverly Hills community and involvement with organizations benefiting the healthcare system. From 1985 through 1987, he was a member of the governing body of the American Hospital Association (“AHA”), whose mission was to advance the health of individuals and communities. Respondent was the president of the Beverly Hills Chamber of Commerce from 1985 through 1987 where he focused on local issues affecting community businesses and residents. He was also involved with several Bel-Air Country Club committees, becoming President of the Bel Air Country Club in 2006. Respondent was appointed to the Board of Regents Health Services Advisory Committee in 2010, where he served for three years. The Committee’s purpose was to review, debate and analyze the larger issues of policy and strategic direction that face the Academic Health Systems of the University

of California. Finally, Respondent has been a member of the UCLA Ronald Reagan Medical Center Board of Advisors since 2002. He became chairman in 2011, holding that position for three years. He is also a member of the finance committee. Respondent has used his leadership skills and other talents to benefit his community and the healthcare system. The court affords substantial mitigating credit for this community service and civic endeavors. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [community service is a mitigating factor]; *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigating weight for demonstrated zeal in undertaking pro bono activities].)

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; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.) In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Standard 2.11 is the most applicable, and it instructs that “[d]isbarment or actual suspension is the presumed sanction for an act of . . . intentional or grossly negligent misrepresentation” and that the “degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law.”

Respondent’s discipline should be less than that provided for in standard 2.11. Respondent committed a single act of misconduct that was “a one-time error.” (*In the Matter of Yee, supra*, 5 Cal. State Bar Ct. Rptr. at p. 336.) The misconduct was related to the practice of

law, but there was no harm or impact to the administration of justice. Moreover, standard 1.7(c) provides that when the "net effect" of the mitigating and aggravating factors "demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate impose or recommend a lesser sanction than what is otherwise specified in a given Standard." In this case, the mitigation is compelling and there are no aggravating circumstances. Respondent has been a licensed attorney for 47 years and has been retired for 15 years. His lack of a prior record for 32 years, exemplary community service, and the circumstances surrounding his misrepresentation, support a lesser sanction than disbarment or actual suspension.

Respondent made a grossly negligent misrepresentation about his MCLE compliance while under great anxiety after learning he was terminally ill. Moreover, Respondent has been retired since January 2000 and voluntarily enrolled as inactive since June 2015. Once he learned that he had no records demonstrating he had complied with the MCLE requirements, he completed an MCLE bundle of courses. Under the circumstances of this case, a private reproof will adequately serve the goals of attorney discipline since future misconduct is unlikely to recur. (See, e.g., *Yee, supra*, 5 Cal. State Bar Ct. Rptr 330 [active attorney with 10 years of discipline-free practice, cooperation, good character, remorse and pro bono work publically reproofed for misrepresenting MCLE compliance].)

PRIVATE REPROVAL

IT IS ORDERED that Respondent CHARLES PRINTY REILLY, State Bar Number 41527, be privately reproofed. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar of California, the private reproof will be effective when this decision becomes final.

Dated: December 28, 2015


YVETTE D. ROLAND
Judge of the State Bar Court

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 December 28, 2015, I deposited a true copy of the following document(s):

DECISION AND PRIVATE REPROVAL

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

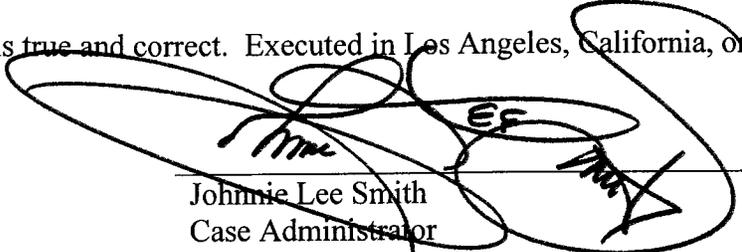
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JAMES IRWIN HAM
PANSKY MARKLE HAM LLP
1010 SYCAMORE AVE UNIT 308
SOUTH PASADENA, CA 91030**

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

DREW MASSEY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 28, 2015.



Johnnie Lee Smith
Case Administrator
State Bar Court