PUBLIC MATTER – DESIGNATED FOR PUBLICATION

ORIGINAL

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **DEMETRA PASYANOS,** A Member of the State Bar.	**02-O-11558** **OPINION ON REVIEW**

BY THE COURT[1]

The principal question presented in this matter is: whether respondent Demetra Pasyanos's failure to update an Application for Determination of Moral Character submitted to the Committee of Bar Examiners (CBE) in order to disclose a 2001 misdemeanor complaint charging battery and disobedience of a restraining order warrants cancellation of respondent's Bar license or, alternatively, discipline.

In an original disciplinary proceeding brought after respondent's admission to practice, based on the foregoing, the hearing judge found that respondent knowingly failed to disclose a material fact in violation of rule 1-200(A) of the Rules of Professional Conduct[2] in connection with her application for admission. The judge found no intent of respondent to conceal or to mislead the CBE, but rather found an oversight or innocent mistake on the part of respondent. As a result, the hearing judge found no violation of section 6106 of the Business and Professions

[1]Before Stovitz, P. J., Watai, J. and Epstein, J.

[2]Unless noted otherwise, all further references to rules are to these Rules of Professional Conduct.

Code.[3] She determined that cancellation of respondent's law license "would be grossly excessive" and recommended public reproval.

The State Bar urges cancellation of respondent's license to practice law and the revocation of her admission to the practice of law, contending that the CBE was denied the right to make a full and informed evaluation of respondent while a candidate for admission to the State Bar and that respondent should be placed in the same position she would have been in had she disclosed the misdemeanor complaint against her. According to the State Bar, respondent's failure to update her application to disclose the criminal charges was an act of moral turpitude.

Respondent points to her testimony that her failure to report the charges to the CBE or to the State Bar was inadvertent and an oversight, done without any intent to mislead the CBE. She contends that the oversight was not of a material fact. She does not dispute the public reproval recommended below.

On review, we granted a motion to augment the record submitted by the State Bar, reserving consideration and weight to be given to this additional evidence which documented respondent's criminal court s entencing. We find that this evidence, which was not before the hearing judge, bears only remotely on the issues before us, therefore justifying only negligible weight.

After independently reviewing the record (Cal. Rules of Court, rule 951.5; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), we conclude that this is an

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[3]Unless noted otherwise, all further references to sections are to the Business and Professions Code.

appropriate case in which to recommend discipline, rather than license cancellation. We shall adopt the hearing judge's findings and her recommendation as to discipline and impose public reproval on respondent on the conditions set forth in the hearing judge's decision.

FACTUAL AND PROCEDURAL BACKGROUND

The pertinent events are not disputed and may be summarized partly in tabular form as follows:

Mar. 2000	Respondent filed her Application for Determination of Moral Character.
Feb. 26, 2001	Misdemeanor Complaint charging violation of Penal Code sections 243, subdivision (e)(1) and 166, subdivision (a)(4) was filed. The charges were not reported to the CBE.
Mar. 28 to Nov. 16, 2001	Respondent personally appeared in superior court on the charges.
Nov. 19, 2001	Respondent was admitted to the practice of law in California.
Jan. 18, 2002	During an appearance on the criminal charges, respondent disclosed to the superior court that she was an attorney.
Feb. 1, 2002	The criminal charges were amended to charge respondent with one misdemeanor count of Penal Code section 415, subdivision (1) (challenging another person in a public place to fight). Respondent pleaded nolo contendere to the charge and all other charges were dismissed. Respondent was released on her own recognizance on the condition that she comply with five specified conditions.

Sentencing was continued to February 2004, at which time, if respondent had complied with the conditions of her release and if she could establish her rehabilitation, she would be able to seek an order dismissing the conviction or reducing it to an infraction. The conviction was not reported to the CBE or any other office of the State Bar.

July 18, 2002 — Notice of disciplinary charges (NDC) was filed by the State Bar charging rule 1-200(A) (false statement regarding admission) and section 6106 (acts of moral turpitude, dishonesty or corruption).

Dec. 17, 2002 — Respondent and the State Bar entered into a partial stipulation of facts.

May 8, 2003 — Hearing judge's decision filed with the finding of culpability of rule 1-200(A) in count 1, knowingly failing to disclose a material fact in connection with an application for admission to the State Bar. She found no culpability of section 6106 in count 2, commission of any act involving moral turpitude.

Respondent stipulated that she failed to update her application for admission. She testified that she had no intention to mislead the CBE and that the non-disclosure was an innocent oversight. She pointed to the fact that she had disclosed at least ten litigated matters, including three matters between herself and David Yardley, the victim of her criminal conviction at issue here. Respondent and Yardley have an extensive history of a continuing feud, as

supported by the many incidents and restraining orders between them. William J. Hardy, an attorney for whom respondent worked for about six months and who represented her in the underlying criminal incident, testified that Yardley and respondent have joint custody of their son and that their relationship has been contentious. He further testified that charges of battery and vandalism have been directed at each other and Yardley has been arrested and prosecuted and respondent has been arrested and prosecuted for these charges.

As to the particular incident in question, respondent testified that she had arranged with Yardley to obtain $20 from him. He instructed her to meet him at a theater. When she approached him, he took the bill out of his wallet and offered it to her, but wouldn't release it when she grasped it. They struggled over the money and fell to the ground with respondent on top. She left the theater without the money. Yardley filed a criminal complaint against her and she ultimately pleaded nolo contendere to violation of Penal Code section 415, subdivision (1), making a challenge to fight in public. All other charges were dismissed. Sentence was deferred to February 2004, and respondent was released on her own recognizance with conditions.

Respondent presented seven character witnesses, including two attorneys and five lay persons, who attested to her honesty and trustworthiness. They also agreed, unequivocally, as a general matter that the CBE should be given all pertinent information for proper evaluation but that respondent did not demonstrate dishonesty in not revealing the misdemeanor charges. Respondent testified about her pro bono work through law school and continuing today.

No evidence was presented to contradict this character evidence, and the hearing judge found no aggravating circumstances. At oral argument, the State Bar stated that it was not

seeking to discipline respondent in this proceeding for any misconduct surrounding the incident with Yardley, other than for her non-disclosure of it to the CBE.

DISCUSSION

When a member of the Bar is alleged to have committed misconduct prior to admission to practice law, the decisional law offers two alternatives: the State Bar may undertake an original disciplinary proceeding as occurred here and seek the attorney's discipline (*Stratmore v. State Bar* (1975) 14 Cal.3d 887, 890-891; see also *In re Bogart* (1973) 9 Cal.3d 743, 749), or it may seek to recommend that the Supreme Court cancel or revoke the law license previously issued (e.g., *Goldstein v. State Bar* (1989) 47 Cal.3d 937; *State Bar v. Langert* (1954) 43 Cal.2d 636; *In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483). Although these two alternatives exist, it appears, as we shall note, that the Supreme Court considers cancellation, rather than discipline, the appropriate step when an applicant has wrongfully obtained the benefits of admission such as by intentional misrepresentation which prevents the CBE from adequately considering the applicant's fitness to practice.

Prior to considering each alternative, we have concluded that respondent should have disclosed timely to the CBE, by updating her application, her arrest and ultimate conviction of the misdemeanor offense. She had a duty to do so under the CBE rules[4] and it bore upon her

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[4]Rule VI, section 7, of the rules Regulating Admission to Practice Law in California, in effect during the pendency of respondent's application, reads as follows: "Until they have been admitted, applicants are under a continuing obligation to keep their applications current and must update responses whenever there is an addition to or a change to information previously furnished the Committee. Applicants shall annually file during the month of their birth a statement made under penalty of perjury that there have been no changes to the information provided in their previously filed application or if there have been changes, the nature of the

application to practice law even though, as we shall conclude, her non-disclosure was not intended to and did not in this case result in conferring wrongfully on respondent the benefit of law licensure.

License cancellation.

We review first the alternative of license cancellation as urged here by the State Bar.

The State Bar cites *State Bar v. Langert, supra*, 43 Cal.2d 636, to support its argument to justify revoking the order admitting respondent to practice in California. We do not agree with the State Bar's reading of the case.

In *State Bar v. Langert, supra,* 43 Cal.2d 636, there was a deliberate concealment of material facts in a verified application to the CBE in 1944. Langert stated in his application that he had never held a license; that he had never been reprimanded, censured or otherwise disciplined as an attorney; that no charges had ever been made or filed against him; that he had worked in several capacities, none of which was the practice of law; and he gave his Illinois addresses in Chicago, Peoria, and Henry. It was then learned that Langert had been admitted to the Bar in Illinois, had practiced law in Rock Island, Illinois, for his entire legal practice from 1927 to 1938, had been charged with unprofessional conduct and, after a hearing in 1941, there was a recommendation that Langert be disbarred. The Supreme Court held that it was Langert's duty to truly answer the questions asked by the CBE and that the facts with respect to his prior conduct in the practice of the law in Illinois might have justified an order refusing to allow him

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changes. The annual filing shall not be required of an applicant until at least twelve (12) months have elapsed since the filing of his or her Application for Determination of Moral Character."

to take the bar examination in this State. The court concluded that the CBE's approval of Langert was based on the admitted false answers in his application. Thus, the Supreme Court vacated its order admitting Langert and cancelled his license to practice law.

We are also directed to *Goldstein v. State Bar, supra,* 47 Cal.3d 937. Goldstein had been denied admission to the State Bar in 1983 because he did not possess the requisite moral character and had been allowed to re-apply after three years. He re-applied after only two years in 1985 and failed to disclose that he had been denied admission once before. His failure to disclose this prior denial of admission was found to be willful, and he was found to have been admitted to the State Bar without adequate consideration of his moral character. His law license was cancelled. The court considered the State Bar's suggestion that it disbar Goldstein but determined that the appropriate step, as in *State Bar v. Langert, supra,* 43 Cal.2d 636, was to withdraw from him the benefits he obtained wrongfully by his dishonesty.

In *In the Matter of Ike, supra,* 3 Cal. State Bar Ct. Rptr. 483, a conviction referral matter, Ike had been admitted to the practice of law after eight unsuccessful attempts at taking the examination. He concealed from the CBE, by not updating his application form, his arrest and pending trial on 11 felony charges, including conspiracy to commit theft, grand theft of more than $25,000 and forgery. After admission to the practice of law, he pleaded to two of the felony charges. He, then, notified the State Bar of his guilty pleas. Ike's non-disclosure of the felony charges was found to be willful, especially in light of his eight separate applications filed with the CBE in which he was reminded that disclosure or update was required. We considered the facts and circumstances of Ike's convictions of theft and conspiracy to commit theft and

determined that Ike lacked the essential qualities of honesty and trustworthiness and was unfit to practice law. We held that " 'where an attorney at the time of his application for admission has made a false affidavit, knowing it to be untrue, the fraud of the attorney has been established and his license [is to be] revoked. [Citations.]' [Citation.]" (*Id.* at p. 492.) We recommended that the Supreme Court vacate its order admitting Ike to the practice of law or in the alternative recommended that he be disbarred.

Summarizing these cases cited above, Langert failed to disclose his background as an attorney who had been disbarred; Goldstein failed to disclose the fact that he had been found not morally fit to practice law two years before; and Ike failed to disclose 11 felony charges of conspiracy to commit theft, grand theft and forgery. The facts and circumstances surrounding their undisclosed matters clearly established that they intentionally concealed material facts which deprived the CBE from any reasonable ability to assess these applicants' moral fitness.

Attorney discipline.

The lead precedent involving attorney discipline for pre-admission misconduct is *Stratmore v. State Bar*, *supra*, 14 Cal.3d 887. Stratmore was admitted to the Bar in 1972. He was ordered to show cause why the order admitting him to the practice of law should not be revoked for his misconduct committed about a year before his admission to the practice of law. He was charged with knowingly making false representations in 1971 to 11 New York law firms regarding his job interview expenses with the intent to deceive and wrongfully obtain money. The Supreme Court found that it was irrelevant that Stratmore's misconduct preceded his admission to practice and noted that the court's concern lies in protecting the public's right to

representation by attorneys who are worthy of trust. The court held that under its inherent power, it could "discipline an attorney for conduct 'either in or out of [his] profession' which shows him to be unfit to practice (*The People v. Turner* [(1850)] 1 Cal. 143, 150). . . ." (*Id.* at p. 890.) Stratmore was suspended from the practice of law for two years, execution stayed, and placed on probation for two years on condition that he was actually suspended for the first nine months. Although the court noted at the outset that the proceeding had sought Stratmore's license cancellation, in deciding the case, it discussed only lawyer discipline.

In *In the Matter of Ike, supra*, 3 Cal. State Bar Ct. Rptr. at page 494, we discussed the basis for our alternative recommendation of disbarment for Ike's conviction of crimes inherently involving moral turpitude arising prior to his admission to practice law, and undisclosed to the CBE. As noted, *ante*, the Supreme Court chose to cancel Ike's license rather than to discipline him.

Comparison of the two alternatives and applicability to this case.

In *Goldstein v. State Bar, supra,* 47 Cal.3d 937, and *State Bar v. Langert, supra*, 43 Cal.2d 636, the Supreme Court expressly chose license cancellation over discipline. In *Stratmore v. State Bar, supra,* 14 Cal.3d 887, the court discussed only discipline. This does not necessarily create only one appropriate course for all cases of pre-admission misconduct or failure to disclose material facts on an application for admission. Depending on the balance of facts and circumstances unique to each case, either or both alternatives could be considered in appropriate cases. (See *In the Matter of Ike, supra,* 3 Cal. State Bar Ct. Rptr. 483.) In this case,

we conclude, as did the hearing judge, and as the Supreme Court concluded in *Stratmore, supra,* 14 Cal.3d 887, that attorney discipline is the appropriate resolution.

There is no evidence that respondent's non-disclosure was intended to thwart the CBE's consideration of her moral fitness, and she revealed to the CBE other matters involving Yardley. Given the formal record of the events surrounding respondent's misdemeanor charges now before us, we cannot agree with the State Bar's position that the CBE was deprived of the opportunity to adequately consider respondent's fitness to practice so that respondent wrongfully obtained the benefit of law licensure. For this reason, we do not recommend cancellation of her license. However, we cannot condone respondent's failure to disclose the misdemeanor charges in a timely manner, which, as we discuss below, constituted a breach of the duties prescribed by rule 1-200(A). We therefore consider the alternative of attorney discipline and, by independently reviewing the record, determine whether the State Bar proved by clear and convincing evidence grounds for respondent's discipline, based on her non-disclosure.

Attorney discipline: rule 1-200(A) and section 6106.

Rule 1-200(A) prohibits a member from knowingly making a false statement regarding a material fact or knowingly omitting a material fact in connection with an application for admission to the State Bar. The hearing judge found that respondent knowingly failed to disclose a material fact to the CBE in violation of rule 1-200(A). We agree. Respondent stipulated that she did not disclose to the CBE the pending misdemeanor charges against her, nor did she disclose to the State Bar (after admission to the practice of law) her conviction of Penal Code section 415, subdivision (1). In these circumstances, we find respondent satisfied the knowledge

requirement of rule 1-200(A) as she was well aware that these charges were the type to be disclosed timely to the CBE, since she had disclosed other, similar information concerning her contacts with Yardley on her application to the CBE. (See, e.g., *King v. State Bar* (1990) 52 Cal.3d 307, 313-314 [establishing the level of knowledge for a violation of the Rules of Professional Conduct].)

At the time that respondent was charged criminally, there was no formal record of those events before the CBE. It was therefore incumbent on respondent to timely and candidly disclose the charges and her later conviction so that the CBE could make adequate inquiry. Accordingly, we consider the criminal charges and subsequent convictions to be "material facts" within the meaning of rule 1-200(A). Adapting the Supreme Court's definition of materialty for a perjury conviction based on failure to comply with disclosure requirements of the Political Reform Act (Gov. Code, § 8100 et. seq.); (*People v. Hedgecock* (1990) 51 Cal.3d 395, 406-407), we conclude that an apt definition of "materiality" used in the context of rule 1-200(A) is a "substantial likelihood that a reasonable person would consider it important in evaluating" whether an applicant for admission to the practice of law is of requisite good moral character (*Hedgecock,* at p. 406). We wish to make clear that materiality for the purposes of rule 1-200 does *not* mean facts that are necessarily outcome-determinative of a finding of moral character. Information is material for purposes of rule 1-200 when it is specifically required to be disclosed on the application for admission or is of the nature that it comes within the continuing duty to update the application. The application for admission expressly required respondent to disclose the charges and conviction arising out of the incident with Yardley. We have no doubt as well

that this information, when taken in the context of respondent's application for admission, would have been considered by the CBE as relevant to its determination of respondent's moral fitness or capacity to practice law. We therefore find the non-disclosed information to be material, even though the surrounding information, when developed, in all likelihood would not have affected the ultimate determination of her moral fitness to practice law.[5]

We further note that the hearing judge gave credibility to respondent's testimony of innocent mistake and no intent to mislead the CBE. As stated, *ante,* respondent disclosed other litigated matters, including those involving Yardley, and also noted that the non-disclosed charges took place ten or eleven months after the submission of her application. The hearing judge determined that respondent could not have reasonably believed that the disclosure of the misdemeanor charges of a domestic dispute, combined with all of the other information in the application for admission, was crucial and would adversely affect her admission to the practice of law. We agree. We find no evidence to refute this. We properly defer to the hearing judge's credibility finding also, since she was in the best position to observe respondent's demeanor while testifying. (Rules Proc. of State Bar, rule 305(a); see *Connors v. State Bar* (1990) 50 Cal.3d 1047, 1056.)

The hearing judge did not find respondent culpable of violating section 6106, since she did not find by clear and convincing evidence that respondent intended to mislead the CBE or the

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[5]As noted in *Hallinan v. Committee of Bar Examiners* (1966) 65 Cal.2d 447, 459, not every intentional violation of law, standing alone, is grounds for exclusion from law licensure.

State Bar. She found respondent credible when she testified that her failure to disclose was an oversight and a mistake.

Section 6106 prohibits "[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not. . . ." "Moral turpitude" has been defined as " ' " everything done contrary to justice, honesty, modesty, or good morals" [citations] and as "[a]n act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man" [citations].' [Citation.]" *(Hallinan v. Committee of Bar Examiners, supra,* 65 Cal.2d. 447, 452, fn. 4.) "It has been described as any crime or misconduct without excuse [citation] or any dishonest or immoral act. The meaning and test is the same whether the dishonest or immoral act is a felony, misdemeanor, or no crime at all. [Citation.]" (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110.) As broad as these definitions are, they are not without the requirement of, at the very least, gross neglect or recklessness. (E.g., *Baker v. State Bar* (1989) 49 Cal.3d 804, 815-816; *Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020-1021.) Having adopted the hearing judge's factual findings, we agree with the hearing judge's decision finding no violation of section 6106.

Degree of discipline.

Our independent review and the foregoing reasons lead us to the conclusion that some discipline is warranted for the protection of the public and the maintenance of the integrity of the legal profession.

In the area of an attorney's isolated misrepresentation to, false testimony before, or concealment of a material fact from a court, public reproval has been imposed in the appropriate cases. (See, e.g., *DiSabatino v. State Bar* (1980) 27 Cal.3d 159; *Mushrush v. State Bar* (1976) 17 Cal.3d 487; *Mosesian v. State Bar* (1972) 8 Cal.3d 60; *In re Cooper* (1971) 5 Cal.3d 256.)

We conclude that the hearing judge's recommendation also for public reproval should be adopted.

ORDER

It is ordered that respondent Demetra Pasyanos is hereby publicly reproved, effective when this decision becomes final (Rules Proc. of State Bar, rule 270(a)). Finding that the protection of the public and the interests of respondent will be served thereby, we adopt and we incorporate in this decision, the conditions attached by the hearing judge to the public reproval. (Cal. Rules of Court, rule 956(a).)

COSTS

It is further ordered that respondent pay costs to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs are payable in accordance with Business and Professions Code section 6140.7.

NOTICE PURSUANT TO RULE 956

Pursuant to the provision of rule 956(a) of the California Rules of Court, respondent is hereby notified that "An attorney's failure to comply with conditions attached to a public or private reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct" (Cal. Rules of Court, rule 956(b)).

Case No. 02-O-11558

In the Matter of Demetra Pasyanos

Hearing Judge

Pat McElroy

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CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 January 13, 2005, I deposited a true copy of the following document(s):

OPINION ON REVIEW FILED JANUARY 13, 2005

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

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

ERICA TABACHNICK
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[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

KEVIN B. TAYLOR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 13, 2005.**

Rosalie Ruiz
Case Administrator
State Bar Court