

**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

IN THE MATTER OF A	§	
MEMBER OF THE BAR OF THE	§	No. 432, 2013
SUPREME COURT OF THE	§	
STATE OF DELAWARE	§	ODC File No. 2012-0228-B
	§	ODC File No. 2012-108242-B
CHRISTOPHER POVERMAN	§	
ESQUIRE,	§	
	§	

Submitted: September 20, 2013  
Decided: November 7, 2013

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices

**ORDER**

This 7<sup>th</sup> day of November, 2013, the Board on Professional Responsibility having filed its Report with this Court on September 20, 2013, pursuant to Rule 9(d) of the Rules of the Board on Professional Responsibility; and the respondent and the Office of Disciplinary Counsel having filed no objections to the Board's Report; and, the Court having reviewed the matter pursuant to Rule 9(e) of the Rules of the Board on Professional Responsibility,

NOW, THEREFORE, IT IS ORDERED, that the Board's report filed on September 20, 2013 (attached) is hereby APPROVED with the recommendation of a public reprimand to include the following conditions: (1) if Respondent does not seek inactive status within thirty days of the Court's Order, he must undergo a mental health evaluation and monitoring by DE-LAP for a period of one year, and

(2) payment of the Continuing Legal Education Commission late fees and ODC costs.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

EFiled: Sep 20 2013 09:22AM EDT  
Filing ID 54247477  
Case Number 432,2013



Susan H. Kirk-Ryan  
302 Brockton Road  
Wilmington, DE 19803

September 20, 2013

**BY ELECTRONIC TRANSMISSION**

**CONFIDENTIAL**

Ms. Cathy L. Howard  
Clerk, Supreme Court of Delaware  
55 The Green  
Dover, DE 19901

**Re: *IMO: Christopher W. Poverman, Esquire, No. 432, 2013***  
**(Board Case Nos. 2012-0228-B; 108242-B) E-FILED**

Dear Ms. Howard:

Pursuant to the September 10, 2013 request of the Court., enclosed please find the redacted version of our Panel's August 16, 2013 report and recommendation in the above-captioned matter.

Please contact me if the Court should require anything further.

Respectfully submitted,

Susan H. Kirk-Ryan (I.D.# 1070)

Enclosure

cc: Christopher W. Poverman, Esquire (with enclosures)  
Jennifer-Kate Aaronson, Esquire (with enclosures)  
Ms. Carey C. McDaniel (with enclosures)  
Patricia O. Vella, Esquire (with enclosures)

**BOARD ON PROFESSIONAL RESPONSIBILITY  
OF THE SUPREME COURT OF DELAWARE**

IN THE MATTER OF A MEMBER )  
OF THE BAR OF THE SUPREME )  
COURT OF DELAWARE, ) Board Case Nos. 2012-0228-B, 108242-B  
CHRISTOPHER W. POVERMAN, )  
RESPONDENT )

**BOARD REPORT AND RECOMMENDATION OF SANCTIONS  
[Portions Redacted]**

**I. Procedural Background**

Pending before a panel of the Board on Professional Responsibility (the “Board”) are two Petitions for Discipline: Board Case No. 2012-0228-B, dated March 6, 2013, and Board Case No. 108242-B, dated May 1, 2013, involving Christopher W. Poverman, Esquire (“Respondent”), a member of the bar of the Supreme Court of Delaware. A hearing was scheduled for Board Case 2012-0228-B for May 23, 2013, but the hearing was continued and the two cases were consolidated, at the unopposed request of the Office of Disciplinary Counsel (“ODC”).

Respondent filed a Response to the Petition in Board Case No. 2012-0228-B dated April 19, 2013, but never filed a response to the petition in Board Case No. 108242-B.

The Board heard the two cases on June 10, 2013. At the hearing, Respondent admitted to violations of both counts of the first petition, Board Case 2012-0228-B: 3.4(c) (“Respondent knowingly disobeyed an obligation under the rules of a tribunal”) and 8.4 (d) (“Respondent engaged in conduct prejudicial to the administration of justice”). Respondent also admitted to violations of both counts of the second petition, Board Case No. 108242-B: 8.4 (c) (“Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation”) and 8.4 (d) (“Respondent engaged in conduct prejudicial to the administration of justice”).

ODC and Respondent submitted Amended Joint Exhibits prior to the hearing, and an Amended Joint Stipulation of Fact at the hearing. Because Respondent

admitted to the violations in all counts of both petitions, the hearing focused on the appropriate sanction for those violations.

ODC called Respondent as a witness at the hearing, and Respondent also testified on his own behalf.

Pursuant to Rule 9(d) of the Delaware Lawyers' Rules of Disciplinary Procedure, this is the Board's Report and Recommendation of Sanctions.

## **II. Factual Findings of the Board**

### **A. Background**

Respondent was admitted to the Bar of the Supreme Court of Delaware on March 8, 1991. Amended Joint Stipulation of Fact ("Stipulation") ¶1.

Respondent was admitted to the Bars of New Jersey, Pennsylvania, Maryland, and the District of Columbia at approximately the same time period. Joint Exhibit ("Exhibit") A, Deposition Transcript ("Deposition") page 2.

From 1999 to 2005, Respondent was on inactive status with the Delaware Bar. Petition for Reinstatement, ¶4 and 5, Exhibit K3.

Respondent was issued a Rule to Show Cause on March 28, 2005, for his failure to file his 2005 Annual Registration Statement, and directed to appear in person before the Supreme Court of Delaware on April 20, 2005. Exhibit K1.

Respondent failed to appear before the Court on April 20, 2005, and as a result was suspended as a member of the State of Delaware, by Order of the Supreme Court. Exhibit K2.

Nearly four years later, on February 10, 2009, Respondent filed a Petition for Reinstatement, Exhibit K3, citing among other things as reasons for his delay in responding to the 2005 Court Order:

- [Redacted]
- [Redacted]
- While the Respondent had his old firm forwarding his mail to his Virginia home, he failed to inform them of his new Baltimore address, so he was "not getting forwarded mail on a timely basis."
- Respondent received a large packet of mail in May 2005, which included the Registration application and Rule to Show Cause. Respondent contacted ODC and learned he was suspended, and would have to petition for reinstatement.

- In July 2005, Respondent [Redacted] “lost track of my responsibility to resolve my registration problem.”
- In late 2005 [Redacted] “I froze.”
- Respondent contacted ODC to begin reinstatement in 2007[Redacted]. Respondent eventually filed the 2009 petition.
- If Respondent were reinstated, he said he would “continue to adhere to the strong standards to which Delaware attorneys are held.” “I continue to attend CLE even though the states that I practice in...do not require it.” Reinstatement Petition letter, Exhibit K4.

The Supreme Court reinstated Respondent as an active lawyer in good standing on March 10, 2009, rescinding its April 2005 suspension. Exhibit K5.

#### **B. Board Case No. 2012-0228-B: The CLE Deficiency**

Respondent worked for Chartwell Law Offices, out of their Wilmington office (“Chartwell Wilmington”) at 300 Delaware Avenue, Wilmington, DE, from August 1, 2011, until May 31, 2012, and out of their Baltimore Office (“Chartwell Baltimore”) at 2200 Eastern Avenue, Baltimore, MD, until June 15, 2012. Thereafter Respondent was of counsel for Michael Zwaig, Esq., at the same 2200 Eastern Avenue address. Respondent was terminated on March 11, 2013. Hearing Transcript (“Hearing”) pages 8, 21-22, 26.

Respondent’s 2011 Annual Registration Statement, filed on March 21, 2011, listed his office as Funk & Bolton, P.A., 36 S. Charles Street, his home address as 2906 E. Pratt Street, Baltimore, and his email as [cpoeverman@fblaw.com](mailto:cpoeverman@fblaw.com). Exhibit H.

Respondent’s 2012 Annual Registration Statement listed his office address at Chartwell Wilmington; his home address as 143 S. Linwood Ave., Baltimore, and his email as [cpoeverman@chartwelllaw.com](mailto:cpoeverman@chartwelllaw.com). Exhibit I.

Respondent’s 2013 Annual Registration, filed on March 27, 2013, lists no office address; the 143 S. Linwood Ave. home address; an alternate “home” address, 2200 Eastern Avenue, and an email address of [chrispoeverman@verizon.net](mailto:chrispoeverman@verizon.net). Exhibit J.

Respondent continues to maintain the 2200 Eastern Avenue address: “Technically I still keep that office. You still send me mail there.” Hearing page 23.

As an active member of the Delaware Bar, Respondent was required to complete continuing legal education (CLE) requirements and submit a verified transcript

by February 1, 2012. Even if he had not completed the required CLE, Respondent was obliged to submit a transcript and plan of completion. Stipulation ¶7.

Respondent did not complete 1.7 general credits of the required credit hours of CLE or certify a 2011 transcript, and Executive Director Margot Millar sent Respondent a June 27, 2012 email, a July 19, 2012 letter by facsimile and U.S. mail, and a second email on August 14, 2012, about Respondent's failure to complete his CLE requirements. The emails were addressed to ccoverman@chartwelllaw, and letters to the Chartwell Wilmington address, per the Respondent's 2012 Registration statement. Respondent did not answer any of the correspondence. Stipulation ¶8, Exhibits B1, 2, and 3.

Ms. Millar sent an August 15, 2012 Statement of Noncompliance regarding Respondent to ODC, with a Notice and copy to Respondent. Stipulation ¶9, Exhibit B4.

Patricia Schwartz, Esq., notified Respondent on August 23, 2012, that Ms. Millar had referred the Respondent's non-compliance with CLE to the ODC. At that time Respondent provided ODC his office address as 2200 Eastern Avenue, and provided his cell phone number. Stipulation ¶10.

Ms. Schwartz sent an August 24, 2012 letter to Respondent at the 2200 Eastern Avenue address, about the CLE referral and requested documentation of compliance by September 7, 2012. Respondent denies receiving the letter, but in any event, did not respond. Response to Petition for Discipline ¶6, Stipulation ¶11, Exhibit C1.

Ms. Schwartz sent a September 19, 2012 follow-up letter to Respondent at the 2200 Eastern Avenue address, citing her August 24 letter, reminding him of ODC's request, and of Respondent's duty under Rule 8.1 (b) of the Delaware Lawyer's Rules for Professional Conduct to respond to ODC's demand for information. Respondent admits he received the letter, and admits that he did not respond to it. Stipulation ¶12, Exhibit C2.

Jennifer-Kate Aaronson, Chief Counsel of ODC, sent an October 26, 2012 letter, also to 2200 Eastern Avenue, referring to Ms. Schwartz' August 24 and September 19, 2012 letters, noting Respondent's violation of 8.1 (b), and informing Respondent of a

formal ODC investigation and scheduled presentation to the Preliminary Review Committee (PRC) on Wednesday, December 5, 2012. ODC gave Respondent until Wednesday, November 21, 2012, to provide any written submission he might want to be considered by the PRC in advance of its meeting, although written submissions received before December 5 could be submitted at the meeting. Exhibit C3.

Respondent admits he received Ms. Aaronson's October 26, 2012 letter, and admits that he did not respond to it. Stipulation ¶13.

ODC sent a November 15, 2012 letter to Respondent, noting a November 2, 2012 telephone call to ODC from Amy Dana, Respondent's wife, and attempts to return Ms. Dana's call. ODC left a message for Respondent, on the cell phone number he provided to ODC. Stipulation ¶14.

Respondent telephoned ODC on November 21, 2012 (the date his written submission was due for advance consideration by the PRC), acknowledging receipt of the September 19 and October 26 ODC letters. Respondent told ODC that he would contact the CLE Commission and arrange a make-up plan to correct his CLE deficiencies for the reporting period ending December 31, 2011. Stipulation ¶15.

Respondent contacted the CLE Commission on December 6, 2012, arranging completion of a make-up plan, preferably by December 14, but definitely by December 31, 2012. Ms. Millar of the CLE Commission confirmed their conversation by a December 7, 2012 email, in which she recommended specific online CLE programs and noted the accrual of late fees for continued noncompliance, some of which could be waived upon certification of Respondent's transcript. Ms. Millar requested that Respondent notify her immediately upon completion of the credit. Stipulation ¶16, Exhibit B5.

Ms. Millar of the CLE Commission sent a further email reminder to Respondent on December 7, 2012, which Respondent received, reminding him that he must update his contact information with the Supreme Court. Exhibit B6, Hearing page 21.

Respondent did not complete the CLE by December 31, 2012, and did not communicate with the CLE Commission or with ODC.



ODC sent a February 18, 2013 notice to Respondent at 2200 Eastern Avenue, advising that ODC would present its case to the PRC on March 6, 2013, and that Respondent could send written submissions for consideration by February 27, 2013, for advance consideration by the PRC, or before March 6 for submission at the hearing. The letter summarized the petition to be filed in Case 2012-0228-A. ODC offered Respondent a private admonition and two year private probation, if he consented in writing by February 27, 2013. Exhibit C5.

ODC sent a March 12, 2013 letter to Respondent at 2200 Eastern Avenue, advising that the PRC found probable cause to support a Petition for Discipline, and again offering a private admonition with private probation, provided Respondent accepted the terms of the letter by March 29, 2013. Exhibit C6.

Respondent did not complete the required credit hours of CLE until after Respondent was served with an April 10, 2013 notice of this hearing. He completed a portion of a CLE seminar (1.7 credit hours) on April 30, 2013, the day Respondent was deposed in connection with this case, and completed the seminar on May 15, 2013. Joint Stipulation ¶17, Exhibit A, Deposition page 61, Exhibit F.

### **C. Board Case No. 108242-B: The 2013 Annual Registration Statement**

Respondent was required under Supreme Court Rule 69(b) to file an online Annual Registration Statement by March 1, 2013. Members of the Bar are sent email notification with a link to register. Stipulation ¶18.

Respondent failed to complete his 2013 Annual Registration Statement by March 1, 2013. Stipulation ¶19.

The Delaware Supreme Court issued a March 12, 2013, Rule to Show Cause, mailed to Respondent at his home address (143 S. Linwood Ave., Baltimore), compelling Respondent to appear in person before the Delaware Supreme Court on March 27, 2013, at 3:30 p.m. to “show cause why [Respondent] should not be suspended or sanctioned...for...failure to comply with Rule 69, as evidenced by [Respondent’s] apparent failure to file [his] 2013 Annual Registration Statement, pay...assessments and the \$300 late filing fee.” Exhibit E, Stipulation ¶20.

ODC sent a March 19, 2013 letter to Respondent's 2200 Eastern Avenue address, enclosing the Court's Rule to Show Cause which directed Respondent to appear on March 27. Exhibit C7, Stipulation ¶21.

On March 27, 2013, the date Respondent was due to appear before the Supreme Court to respond to the Rule to Show Cause, Respondent telephoned Cathy Howard, Clerk of the Supreme Court, and advised her that he would complete his Annual Registration Statement online. Stipulation ¶22.

Based on Respondent's conversation with her, Ms. Howard believed that Respondent had two strokes, which impeded his completion of his Annual Registration Statement. Ms. Howard sent a March 27, 2013 email to ODC stating: "[Respondent] recently had two strokes. He is going to ...complete and pay his annual registration today – I told him it needed to be done before 3:30 p.m. [the time for Respondent's scheduled appearance before the Court]." Exhibit G.

Respondent was never formally diagnosed as having had a stroke. Stipulation ¶23.

Respondent completed his 2013 Annual Registration Statement on March 27, 2013, and the Court withdrew its Rule to Show Cause. Joint Stipulation ¶24, Exhibit J.

In his 2013 Annual Registration Statement, in applying for a Certificate of Inactive Status, Respondent certified that:

"[T]here are no charges pending or threatened against me before any Court, the Board on Professional Responsibility, or any other similar disciplinary agency in this or any other jurisdiction. I further certify that I do not know of any facts respecting my conduct which would result in the filing of charges or disciplinary action against me."

Stipulation 25, Exhibit J.

Thus, at the time the Respondent made that certification in his 2013 Annual Registration Statement, he was aware of his failure to complete CLE as required, and was on notice of ODC's open investigation of the CLE deficiency as referred to ODC by the CLE Commission in August 2012. Respondent was aware that the ODC had planned to present his case to the PRC in October 2012, and that he did not follow through on a corrective plan he agreed to by December 31, 2012. ODC sent notice, to the address provided by Respondent, that ODC was again presenting its case to the PRC in

March 2013. By the time he filed the Annual Registration on March 27, 2013, Respondent had not yet completed his CLE requirements for 2011.

### **III. Standard of Proof**

The allegations of misconduct set forth in the ODC Petitions for Discipline must be established by clear and convincing evidence. Del. Disc. Proc. R. 15.

### **IV. Violations of the Rules**

As the ODC Petitions set forth, and as Respondent eventually admitted at the June 10, 2013 hearing, Respondent violated several of the Delaware Lawyers' Rules of Professional Conduct:

#### **Board Case No. 2012-0228-B**

In Board Case No. 2012-0228-B, Respondent violated Rule 3.4(c) (Count One), which states that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal." Respondent failed to meet his CLE requirements under Delaware Continuing Legal Education (CLE) Rule 5(a) for the period ending in December 2011, and failed to include a transcript and plan for making up deficiencies. Respondent admits the violation. Response to Petition, Exhibit D2 ¶¶14, Hearing pages 5-6.

Respondent also violated Rule 8.4(d) (Count Two), by engaging in "conduct that is prejudicial to the administration of justice," in that he failed to respond to communications from the CLE Commission and failed to complete the CLE requirements. Respondent admits the violation. Hearing pages 5-6.

In fact, Respondent did not fully complete the CLE requirements and obtain a Certificate of Completion for the final general credits for his 2011 requirements until May 15, 2013, after both petitions in this case were filed with the Board on Professional Responsibility, and the case had been scheduled to be heard by the Board. Exhibit F.

#### **Board Case No. 108242-B**

In Board Case No. 108242-B, Respondent violated Rule 8.4(c) (Count One), by engaging in "conduct involving dishonesty, fraud, deceit or misrepresentation," in that he falsely certified to the Delaware Supreme Court in his 2013 Annual

Registration that “there are no charges pending or threatened against me before any court, the Board on Professional Responsibility, or any similar disciplinary agency in this or any other jurisdiction.” Respondent further certified that he did not know of “any facts respecting my conduct which would result in the filing of charges or disciplinary action against me.” Exhibit J. Respondent admits the Count One violation. Hearing page 6.

By this conduct, Respondent also violated Rule 8.4(d) (Count Two), engaging in conduct “prejudicial to the administration of justice.” Respondent admits the Count Two violation. Hearing page 6.

#### **V. The June 10 Board hearing**

Because all violations were admitted, the Board hearing addressed sanctions. Respondent was the only witness.

During the course of his testimony before the Board, Respondent testified that he left Chartwell Wilmington at the end of May 2012, and admitted that he did not notify the Delaware Supreme Court of his change of firm address (required within 30 days under Supreme Court Rule 69(h)) nor did he notify the Delaware State Bar Association. Hearing pages 8-9.

Although Respondent admitted the violations, he maintained in his response to the petition in Board Case No. 20120-0228-B, in his April 30, 2013 deposition, and in his testimony at the hearing that he did not receive some critical letters and notices from the Supreme Court, from the CLE Commission, and from ODC (although the correspondence was sent to the address he provided), and that he had attempted to notify the Court of his change of address through his wife. Respondent offered various reasons for not responding to the CLE Commission and ODC, or completing the requirements:

- Respondent indicated that he filed an answer to the second petition, which was not received: “I did – well, I asked my wife to put in the mail...” Hearing page 6.
- Respondent did not notify the Court of his change of address after May 31, 2012: “I personally did not. I thought -- my wife was helping me. The Baltimore office was just me, I did not have any administrative assistan[t]. My wife was primarily my administrative assistan[t]. I had asked her to take care of that, but...did not properly supervise her...” Hearing page 8.

- Respondent did not notify the Bar Association of his change of address: “The same answer. My wife was helping me, I had asked her to take care of that. In my discussions with her she claims that she did do that, but apparently, again, I did not properly supervise her in that, so apparently it was not changed.” Hearing page 9.
- Respondent said he did not actually receive the June 27, July 19, and August 14, 2012 attempts by the CLE Commission to contact him about his CLE deficiencies, because his former employer (Chartwell Wilmington) only sent mail “intermittently until the end of May, and then after May I was not...receiving anything from them.” Hearing page 10.
- Respondent admitted speaking to ODC’s Ms. Schwartz on August 23, 2013, about CLE’s referring his case to ODC. Hearing page 11.
- Respondent admitted receiving Ms. Schwartz’s September 19, 2012 letter, including her reference to her August 24, 2012 letter and the September 7, 2012 deadline for a response, and a reference to Rule 8.1(b) violation if Respondent failed to respond to ODC. Hearing page 12.
- Respondent admitted he did nothing in response to the September 19, 2012 ODC letter, but said, “[I]t wasn’t intentional, but yes....I had been traveling a lot of this time....[Redacted]. I was in Europe and I was traveling to other places. So it was one of those situations where hours turned to days, days turned to weeks, and you don’t realize how much time has passed [redacted] ... I was scrambling, my wife was scrambling.” Hearing pages 13-14.
- Respondent admitted that he eventually made an agreement with Ms. Millar of the CLE Commission to complete the missing 1.7 hours of 2011 CLE credit (for which Ms. Millar suggested several online course options) by December 31, 2012, but failed to do so. Hearing pages 18-19.
- Respondent gave as reasons for his failure to complete the 1.7 hours - which could have been completed online at any time and place (Exhibit A, Deposition page 28) - between his December 6, 2012 agreement, and December 31, 2012:
  - His travel to Florida for work from December 11-13;
  - His becoming ill for a week, beginning December 18 (Hearing page 53);
  - Christmas week; and

- [Redacted]. Hearing page 19.
- Respondent said he failed to notify the CLE Commission that he did not meet the December 31, 2012 extended deadline because, “Seriously, it was one of many things that I...was unable to accomplish because I was going in too many directions.” Exhibit A, Deposition page 30. Respondent “totally forgot about what was going on. I had, I had forgotten about a lot of things, actually.” Hearing page 20.
- Although Ms. Millar had reminded Respondent by email on December 7, 2012, to update his addresses with the Supreme Court (an email he admitted receiving), Respondent did not do so, and said he did not receive ODC’s subsequent [February and March 2013] letters about his CLE deficiencies because the letters were sent to his 2200 Eastern Avenue address - the address he provided to ODC in August 2012, and the office he still keeps. Hearing pages 21-23.
- Regarding Respondent’s statement in his April 22 letter to ODC (Exhibit D2) that at the time of his 2013 Annual Registration, he had “no knowledge that any disciplinary action was being taken against” him, Respondent said,

“I think what I meant was I was unaware of the petition. That’s poor wording on my part...when I go back and think...I was aware that you [ODC] were investigating the situation and were going to present it ...to the panel. I think what would have been a better statement would have been that I was not aware that a petition for discipline had been filed.”  
Hearing pages 24-25.
- Responding to ODC’s point that the Annual Registration certifies that there are no charges pending or threatened before any court, the Board, or any similar disciplinary action, and thus Respondent’s March 27, 2013 statement was false, Respondent said:

“Technically it is, absolutely. As I said to you in my deposition, it was a mistake. [ODC: A clerical error?] I would view it that way, yes...I was trying to remember if it was the night before or the day of the filing of the registration, I had been cleaning the house, going through some mail I had. [Redacted]. I was cleaning the house. I found the letter, the [March 12] notice to show cause that had been sent to my house actually by Cathy

Howard, so I immediately took care of it as soon as I saw it. And so I was dealing with that at that time and I was rushing and as I was filling it out I, you know, stupid on my part. So, you know, under the *Doughty* case...I feel like based upon the way the case is read, that my mistake, any mistake really is negligence...and would be considered a misrepresentation – or misrepresentation can be a negligent misrepresentation...Technically, yes, it was a misrepresentation, but I believe that it was a clerical misrepresentation, if you will.” Hearing pages 26-27.

Respondent admitted to saying “[s]omething akin to” a statement that he suffered strokes to the Clerk of the Court, Ms. Howard, on March 27, 2013. Hearing page 33-34.

Respondent sent an April 9, 2013 email to Ms. Kimberly Jones of ODC, stating that he had a “second stroke in December [2012].” Respondent said, “The doctor thinks I had one, in, the first time, first one would have been December. It was the second one in January when I ended up in the hospital and then left...I meant January [in email to Ms. Jones].” Hearing page 35.

Respondent acknowledges that he has never been formally diagnosed as having had a stroke. Hearing page 36, Stipulation ¶23. Respondent has not seen his primary care representative [redacted] for a physical examination. His wife spoke to [redacted] by telephone on Respondent’s behalf, and Respondent eventually spoke to her by telephone as well. Exhibit A, Deposition pages 31-33, Hearing pages 36-37, 46-48.

When asked about the parallels between Respondent’s 2009 letter to the Supreme Court regarding his failure to timely file his 2005 Annual Registration and the two Board cases at issue in this hearing, including statements about not getting his mail forwarded on a timely basis, [redacted], Respondent stated:

[Redacted]

In testifying on his own behalf, Respondent noted, among other things:

- “I’m absent minded. I’ve always relied on secretarial help and things to make sure that I didn’t forget things. ... I cannot find all of my certificates, but I feel very confident that I had completed my CLE. ... I had asked my wife, who was acting as

my administrative assistant...to take care of finding out, when I got notification of these problems... . I had asked her to change the Delaware address... . When I look at what the obligations are under the rules, it is my obligation to supervise my wife...as my administrative assistant. I definitely, in looking back on it, did not handle that properly, I'm not going to try to make any excuses for that." Hearing pages 42-44.

- “[W]hen I spoke with ...Ms. Schwartz...in September I was both traveling and...looking for another job...I know Ms. Aaronson...believes that I blew her off. ... However, that was not my intention. ... It was truly a situation where time got away from me. I asked Amy, my wife, to follow up with what was going on when I realized that time had slipped away. I had every intention of taking care of everything. ... [Redacted]” Hearing pages 44-46.
- “[Redacted]... If I were in [ODC’s] shoes I would have sanctioned me as well, ...for no other reason than letting this get away from me.” Hearing pages 49- 50.
- Regarding the Annual Registration/false certification: “[D]aily I think about why did I answer that question that way... . What was I thinking?... I didn’t, because I didn’t have the petition, I didn’t think of it that way. Even though I knew I did, why did I answer—I’m not even sure I properly read the question. [Redacted]. I don’t even know why I answered that way...I was rushing. Had I thought through the process, I would never have answered that way. ... It was not my intention to misrepresent anything.” Hearing pages 50-51.
- “[I]f you look at the timing of things... let’s assume three days [for ODC’s October 26 letter to reach respondent], that’s October 29. ...November 15 my wife called Ms. Aaronson on my behalf...I still spoke with her within six days of that [on November 21]. ... So I was responsive to that, in my opinion.” Hearing pages 51-52.
- “[Redacted]”
- “[Redacted]”
- “[Redacted]”
- “[Redacted]. ... Between all of that I forgot. I just plain out forgot. [Redacted] What the reasons were, you know, the fact is I forgot. ...I’m telling you the truth.” Hearing pages 55-56.



## VI. Recommended Sanctions

### A. Positions of ODC and Respondent

ODC sought a public admonition with the conditions that Respondent a) pay late fees to the CLE Commission (\$1,285.00); b) pay ODC's costs; and c) undergo an appropriate probationary period. [Redacted] Hearing pages 65-66.

ODC noted that this case deals with violations of duties to the legal profession and the legal system, and cited *In re McDonald*, 755 A.2d 389, (Del.), in which a respondent was given a public reprimand for knowingly disobeying a ruling of a tribunal (the respondent had been disciplined previously, and he had failed to respond to ODC), and *In re Doughty*, 832 A.2d 724 (Del. 2003) (public reprimand for negligent misrepresentation on a certificate of compliance regarding books and records). Hearing pages 57-58.

ODC conceded that Respondent has no prior disciplinary history, but points to the two offenses in this consolidated case, where the two offenses were a year apart. Hearing pages 58-59.

ODC argued Respondent could not simply paint himself as forgetful, where ODC itself called and wrote to Respondent regarding his CLE deficiency for at least three months, beginning in August 2012, and Respondent remained noncompliant, although from August until mid-December Respondent did not report illness or work problems. Respondent avoided the first presentation to the PRC in November 2012 by promising to complete his CLE, but neglected to complete the CLE or to pick up his mail with further ODC correspondence and the Supreme Court Rule to Show Cause. Hearing pages 59-61.

ODC argued that Respondent's conduct regarding the false statement on his Annual Registration statement was knowing, since he spoke with ODC, received at least some of their letters, and agreed to a makeup plan which he did not complete. Hearing pages 61-62.

ODC, citing *In Re [Private Admonition] No. 399, 2008 ("Private Admonition 399")*, argued that while there was no actual injury or harm to clients, there is a potential, incalculable injury to the legal system if lawyers can ignore their reporting duties. Hearing pages 62-63.

ODC cited as aggravating factors Respondent's substantial experience with the law; his lack of cooperation with the CLE Commission and ODC; and a pattern of misconduct, namely, the two offenses alleged in these petitions. Hearing page 63.

ODC said that Respondent "simply doesn't get it," Hearing page 63, and that while he admitted the violations, he offered excuses: his wife's failings in not changing his addresses; his former employer (Chartwell) in not forwarding his mail; his medical problems, where he represented to the Court and ODC that he had two strokes, although he was never formally diagnosed with a stroke; [redacted] was too busy with work to finish his CLE, and was going in too many directions, and plain out forgot. Hearing pages 64-65.

ODC pointed out that Respondent offered the some of the same excuses in 2009 when he sought reinstatement [after having failed to file his 2005 Annual Registration Statement]. Hearing page 65.

[Redacted]. Hearing page 66.

Respondent did not object to the imposition of a private admonition or a period of probation, but objected to a public reprimand. Hearing page 68-69.

Respondent conceded that he received ODC notices and "did forget to respond," Hearing page 68.

[Redacted]. Hearing page 69.

[Redacted]. Hearing page 91.

Respondent denied that his eventual November 21, 2012 contact with Ms. Aaronson was to avoid a disciplinary hearing. Hearing page 70. Respondent then said that his work travel did not affect his ability to complete his CLE. Hearing page 70. "The combination of the illness and [redacted] caused me to lose track of that situation. Yes, things were going well for me at work up to that point...[Y]es, I would have to agree...that I should have been more proactive. However, I have been in relatively constant communication with [Ms. Aaronson] throughout this process." Hearing pages 70-71.

Respondent distinguished *McDonald* because the respondent in that case had been disciplined previously for the same behavior, and *Doughty* dealt with books and records, which could affect a client and client funds. Respondent said that *Private*

*Admonition 399* was a private admonition, and it also addressed financial aspects, such as taxes, books and records. Hearing page 74.

Respondent conceded his conduct was negligent, and “it annoys the heck out of me that this happened,” but “[w]e are not talking about a situation where we are affecting clients...[not] paying taxes...[or] [not]accounting for escrow. We are talking about 1.7 hours of CLE, not to minimize, but that’s what we’re discussing.” Hearing pages 74-75.

Respondent agreed he had a lot of experience, and knows his obligations. “[M]y lack of response to the disciplinary process occurred really over a two-month period as opposed to the much more extended period that Ms. Aaronson would like to have you believe, because she would like to have you believe that I am making an excuse that I did not receive the mail from Chartwell, which is just not the case. I was not receiving it.” Hearing page 75.

“Within another six days following the [Thanksgiving] holiday or maybe more than that, I spoke with Ms. Millar. I was on the way to getting that done. So I was not – once I was fully engaged in the situation, I was not unresponsive.” Hearing page 76.

“Now...Ms. Aaronson...appears to want to minimize what has been a very trying situation for me with respect to my health, I am -- I was communicating to people what I was told and what I believed the situation to be. Chances are had I not been friendly with Ms. Howard, I might not have mentioned anything to [her]...other than that I wasn’t feeling well. With respect to my email to Ms. Jones...I was in the car typing on my cell phone and I was just typing away, this is what happened, I forgot, I’m sorry. I think we have to look at what those mean in the state of mind. The state of mind was negligent, when you look at the three, intentional, knowing and negligent.” Hearing pages 76-77.

“With respect to the handling of the CLE, we are talking about negligence. ... I’m not going to disagree on a technical level, that the fact that I did not pick up my mail at a place where I maintained a mailing address is my fault. However, the office was, had generally been very good about forwarding or at least sending me an e-mail telling me that I had mail. ...They didn’t send me an e-mail about the

fact that these letters were there. Why that is? I don't know." Hearing pages 77-78.

"Had I received the March letter in time, I would have accepted the private reprimand along with the probation. When I – you know, just annoys me. I'm sorry." Hearing page 78.

Respondent said mitigating factors included:

"[W]hen situations like mine arise [redacted]. It is not that this isn't important, but it was not at the forefront of my mind, whether it is right, wrong or indifferent." Hearing pages 78-79.

"[W]e have to take into consideration [as mitigating factors] that there were a number of things happening that took my attention away. ...[I]t wasn't as if I had too many cases. In fact, I had too few. It wasn't as if I was extending myself beyond what is legitimate within the profession...I think it is important to keep in mind...I was no longer practicing in Delaware. ...[O]nce I had got notice of [the issues in this case] I was not practicing law at all. I am not practicing law now." Hearing page 79.

[Regarding the 2013 Annual Registration]: "What I recall was either the day before the show cause hearing or the day of the show cause hearing, picking up this letter and saying, oh my goodness, it was sitting on a table... . We have our mail stacked up. I was helping my wife, was cleaning, sorting through things. I looked at that, I said, okay, I need to take care of this. I immediately got on the phone, I took care of it and I flew through the application process." Hearing page 80.

"Yes, I answered the question that I did not know of anything, answered affirmatively. Had I really paid attention I wouldn't have answered it that way. Can I consider that a clerical mistake, checking the wrong box? No, I really can't.... What I am saying is that to the extent that it is negligent, it is the lowest

form of negligence. It is not paying attention to what I was doing, because I was rushing.” Hearing page 80.

“I don’t know why I was not offered the opportunity to correct it...go back to whatever active status I needed to be on until this proceeding was done and I can file for inactive status... . In fact, the petition for discipline was filed so quickly after all of that happened... .” Hearing page 81.

“I didn’t want to waste the Court’s time. I could easily have gotten in the car and driven to Dover and participated in the [Rule to Show Cause] hearing. But that would have been a waste of the Court’s time. I wanted to get it taken care of. I called Ms. Howard, got it squared away, thought everything was all right. Just was not paying proper attention, didn’t read the question properly. ... These are not rationalizations. These are simply facts. They are not excuses. It is just what happened. ... I’m not trying to divert you from your job in what I think is an appropriate situation to reprimand somebody.” Hearing pages 81-82.

“But is a public reprimand really the way to go? Certainly it is important for people to know that they need to file their registration and look at them carefully. But I think that if they are mishandled, that’s...not ... a matter for the public to consider. Especially when – I mean, what are we going to tell the legal community? Read your stuff more carefully? I think everybody knows that.” Hearing page 82.

“I spoke with Ms. Schwartz at the end of August...I received a letter from her in September. I started a new job and I let it slip my mind. In...late October...then I started to get on the situation and started to respond. ... I didn’t get the February or March materials. ...I wasn’t going to the office on a regular basis. ...As soon as I got the e-mail from Ms. Jones I immediately went over to that office and picked up everything. I did not know that I was not being responsive to Ms. Aaronson in February or March. Had I got it I would have been responsive, as evidenced by the fact that I was being responsive in November and December. I

don't know how that applies in this situation with respect to the *McDonald* case, where there was a long series of him not replying." Hearing pages 83-85.

"[I]n the end I didn't hurt anybody as a client. None of my actions were such that the public was hurt. And to the extent that the legal system was hurt, I think it is minimal and I think that, you know, we are talking about the fact – it wasn't like I missed all 24 hours of CLE, it wasn't even like I missed 12 hours. It was 1.7, and it was always my intention to take...a class." Hearing page 85.

ODC conceded that private admonition would generally be appropriate for a CLE failure to certify, but argued that this involves a second, knowing misrepresentation to the Court regarding the annual registration. ODC distinguished *Private Admonition 399*, because that case involved sincere remorse, apology, and mental health issues, and argued if Respondent here denies any mental health issues, the alternative is that he is "recalcitrant to following rules and simply thumbs his nose at the Court." Hearing pages 89 - 90.

ODC said that what the Respondent considered "mitigating factors" – not practicing law in Delaware, and that he did not want to waste the Court's time by appearing at a Rule to Show Cause hearing, are not recognized under the ABA Standards. ODC cited the need to educate Respondent, the public and to protect confidence in the profession as objectives to be served by a public reprimand. Hearing page 90.

Respondent found it "personally offensive to me" that ODC cited his lack of remorse: "I have repeatedly apologized to [Ms. Aaronson]...I am very disappointed in myself over what happened. I think that if that statement is not taken as remorse, then I'm going to put it right out there, that is remorse. I can't believe that I let this happen." Hearing page 91. "I sincerely hope that none of you...ever have to deal with the things that I have had to deal with in the last 10 years, [redacted]. I'm sorry. I think if any of you were in this situation you would have [found] it very difficult to keep track of certain things." Hearing page 92. "I think Ms. Aaronson has overstepped her bounds by saying that I have a lack of remorse for this or that I somehow knowingly intentionally decided to thumb my nose at the system." Hearing page 93.

## **B. The Board's Analysis**

The Board considered the ABA Standards for Imposing Lawyer Sanctions (1991 & Supp. 1992), (the "ABA Standards"), applying the four factors to be applied regarding lawyer misconduct: the ethical duties violated by the lawyer; the lawyers' mental state; the potential or actual injury caused by the lawyer's misconduct; and the existence of aggravating or mitigating factors.

### 1. Duties Violated by Respondent

The Board finds that Respondent's violations of Rules 3.4 (c) (knowingly disobeying an obligation under the rules of a tribunal), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and two instances of 8.4(d) (engaging in conduct prejudicial to the administration of justice), are of duties owed to the legal system and to the profession.

### 2. Respondent's Mental State

The Board finds that Respondent's mental state was "knowing" with respect to (i) his failure to respond to communications from the CLE Commission and failing to complete the CLE, and (ii) by making false certifications on his 2013 Annual Registration Statement.

Even putting aside Respondent's many attempts to shift blame or offer reasons why it would be reasonable for him to "just plain forget," it is undisputed that he failed to finish his CLE by the end of 2011, or to report it as required early in 2012. His failure to provide updated addresses, both email and postal, where he would have received communications from the CLE Commission, was entirely his own.

Respondent blamed his wife freely on the record, both at his deposition and at the hearing, for his failure to update his addresses as required by the Supreme Court:

"I had my wife step in to help me get everything squared away. We were both spread a little too thin. So one of the things I had asked her to do was get my address changed with all my various bars. When I got the [September 19, 2012 letter] I asked her to find out what my CLE situation was. ... I remember she tried to call or I kept bugging her... I was bugging her to take care of some stuff.

Because what happened was I started learning that things hadn't gotten done the right way. And I don't mean to throw my wife under the bus. I really don't. ...And so I was asking her -- and, you know, it just wasn't getting done between the two of us." Exhibit A, Deposition pages 9-12.

Regarding his failure to notify the Delaware Supreme Court of a change of firm address: "My wife was helping me, I had asked her to take care of that. In my discussions with her she claims that she did do that, but, apparently, again, I did not properly supervise her in that, so apparently it was not changed." Hearing page 9.

In any case, Respondent admits he knew by his August 23, 2012 conversation with Ms. Schwartz of ODC that he was deficient in his CLE and that the CLE Commission, lacking a response to its several notifications to Respondent, had referred the case to ODC. Despite this knowledge, Respondent did not complete his CLE requirements until at least eight months later - April 30, 2013, or May 15, 2013, the date of the CLE Certificate of Completion.

Respondent did nothing to respond after his August 23, 2012 conversation with Ms. Schwartz; and made no response to her September 19, 2012 letter, in which she reminded him of his ethical obligation under Rule 8.1 (b) to respond to ODC's demand for information. He made no response to Ms. Aaronson's October 26, 2012 letter, notifying him of a formal investigation into his conduct.

Nearly three months after he admits he was contacted by ODC (August 2012), and after ODC's October 26 and November 15, 2012 letters, after his case was scheduled for presentation to the PRC, Respondent contacted ODC by telephone, indicating he would contact the CLE Commission and establish a make-up plan.

Although he did contact the CLE Commission on December 6, 2012, and promised Ms. Millar that he would complete his missing CLE by December 31, 2012, he did not do so, nor did he contact her or ODC when he failed to complete the plan as promised. Respondent explained: "Seriously, it was one of many things that I, you know, was unable to accomplish because I was going in too many directions." Exhibit A, Deposition page 30.



Regarding the requirement that he submit a 2013 Annual Registration Statement, the Respondent, as a member of the Bar, is aware that an annual filing is required. Respondent failed to file his registration on time.

Ms. Howard of the Supreme Court mailed the March 12, 2013 Rule to Show Cause, compelling his March 27 appearance, to Respondent's home address. Previously Respondent complained that ODC had mailed documents to the 2200 Eastern Avenue work address he provided the ODC himself: "[I]t's on the record with the Delaware bar as to what the Delaware Supreme Court is as to what my home address is. ... I mean, if you are not getting responses for something, you could just have sent them to me." Exhibit A, Deposition pages 51-52.

Respondent admitted he had the Rule to Show Cause for a number of days before he contacted Ms. Howard of the Court:

"I was just looking through the mail and found it. But I definitely had it, I definitely got it before the weekend [prior to contacting Ms. Howard] because it was on my mind. ... I remember, saying I've got to take care of this. I've got to take care of this. And all [of a] sudden the 27<sup>th</sup> was upon me and I realized that I hadn't done it yet. ... [I]t was one of those things where it caught up with me. And all [of a] sudden I realized it was on my to-do list and I hadn't done it." Exhibit A, Deposition pages 45-46.

In discussing his misrepresentation on the Annual Registration, Respondent said, "Had I really paid attention I wouldn't have answered it that way. Can I consider that a clerical mistake, checking the wrong box? No, I really can't. I mean I would love to sit here and argue that it was and I'm not. What I am saying is that to the extent that it is negligent, it is the lowest form of negligence. It is not paying attention to what I was doing, because I was rushing." Hearing page 80.

Respondent noted a litany of reasons why he "did not pay attention to this the way I should have":

"Did I make a lot of mistakes? Yes. But there were things going on in my life... . [Redacted]. None of this is intentional. ... I would never intentionally do anything to mislead a bar, particularly this one." Exhibit A, Deposition pages 52-55.

Despite his protestations, however, Respondent had actual knowledge of the pitfalls of failing to update his addresses, and with the deadlines for Annual Registration: He failed to complete his 2005 Annual Registration, and the Court issued a Rule to Show Cause compelling his appearance. When he failed to appear, Respondent was suspended as a member of the Bar. Exhibit K2.

It took Respondent nearly four years to apply for reinstatement. In 2009, Respondent gave as reasons for his failures [redacted]; his former employer's failure to forward his mail on a timely basis (thus allegedly missing both the Annual Registration materials and the Rule to Show Cause, mailed to the address on record, until after his suspension); [redacted]; his dealing with "multiple difficult situations at once." Exhibit K4.

Thus, Respondent knew from his 2005 suspension and 2009 reinstatement that he needed to update addresses in order to ensure receipt of communications from the Court, and that he had to file a timely Annual Registration statement or face a Rule to Show Cause.

Respondent claims he did not pick up his mail at his office and thus did not have ODC's February or March correspondence offering him a private admonition or enclosing the terms of ODC's petition. When he certified that "there are no charges pending or threatened against me before any court, the Board on Professional Responsibility, or any similar disciplinary agency" and "I do not know of any facts respecting my conduct which would result in the filing of charges or disciplinary action against me," Exhibit J, he was, in fact, aware that:

- The CLE Commission referred his noncompliance to ODC;
- ODC, after repeated attempts to contact him, had prepared a case for presentation to the PRC in the fall of 2012 for Respondent's failure to complete his 2011 CLE, and that the ODC also cited his continued refusal to comply with ODC's requests;
- Respondent had gotten a temporary reprieve by a promise to complete his CLE by December 31, 2012; and
- Respondent had not completed the CLE (and thus, was still deficient in the eyes of both ODC and the CLE Commission).

Given these facts, Respondent's misrepresentation on the Annual Registration certification was "knowing."

### 3. Injury Caused by Respondent's Misconduct

There was no evidence of injury or potential injury to a client in this case. Failure to complete CLE requirements, failure to cooperate with ODC, and false statements on an Annual Registration can cause potential harm to the integrity of the legal system.

Respondent's misconduct has been established. Prior to consideration of aggravating and mitigating circumstances, a public reprimand appears appropriate, under ABA Standard 7.3: "Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

### 4. Aggravating and Mitigating Circumstances

#### 1. Aggravating Factors

- a. Prior disciplinary offenses. There is no evidence of a prior disciplinary offense.
- b. Dishonest or selfish motive. Respondent admitted making a false certification on his 2013 Annual Registration statement.
- c. Pattern of misconduct. Respondent's continued failure to comply with Court Rules, such as failing to file a timely Annual Registration, and his repeatedly ignoring directions and requests of ODC and the CLE Commission demonstrate a pattern of misconduct.
- d. Multiple offenses. Respondent failed to comply with 2011 CLE requirements; disregarded numerous letters and requests from ODC and the CLE Commission; failed to complete his 2013 Annual Registration on time; and made a false certification when he finally did file it.
- e. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent's repeated instances of ignoring ODC's and the CLE Commission's directions, his failure to comply with CLE requirements from the time they were to be completed

(December 2011) until he finished them (May 2013), and his failure to complete his Annual Registration, then filing a false certification, are the basis for this case.

- f. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process. Respondent, both verbally and in writing, told ODC and the Clerk of the Court that he had suffered two strokes, when he has never been diagnosed with a stroke and never even been physically examined by the one nurse practitioner he cited as having told him he likely had strokes.
- g. Refusal to acknowledge wrongful nature of conduct. Respondent continued to trivialize his noncooperation with ODC, his lengthy delay in completion of his CLE requirements, and his false statement on his 2013 Registration: “I don’t think for example, that my behavior is really any different than [ODC’s]. I sent [Ms. Aaronson] an e-mail not too long ago and it took her a couple of days for her paralegal to respond to me.” Hearing page 71. “[T]he issue is one of strictly to the legal system and is a minimal situation.” Hearing page 73. “My ...lack of response to the disciplinary process occurred really over a two-month period as opposed to the much more extended period that Ms. Aaronson would like to have you believe...” Hearing page 75. “[T]he idea that I lack remorse...it is personally offensive to me. ...[W]hen I have repeatedly apologized to [Ms. Aaronson]. ... I am very disappointed in myself over what happened. I think that if that statement is not taken as remorse, then I’m going to put it right out there, that is remorse. I can’t believe that I let this happen.” Hearing page 91.
- h. Vulnerability of victim. This factor does not apply.
- i. Substantial experience in the practice of law. Respondent and ODC agree Respondent has substantial experience in the law. He was admitted to the Delaware Bar in 1991 and has been admitted in multiple jurisdictions.
- j. Indifference to making restitution. This factor does not apply.
- k. Illegal conduct, including that involving the use of controlled substances. This factor does not apply.

## 2. Mitigating Factors

- a. Absence of a prior disciplinary record. The fact that Respondent has no prior disciplinary record is a mitigating factor in this case.
- b. Absence of dishonest or selfish motive. This is not a mitigating factor.
- c. Personal or emotional problems. Respondent cited a number of “personal problems” in his testimony [redacted]. However, a number of these issues are years old and cited previously by Respondent in his 2009 plea for reinstatement. His brief illnesses from December 18-24, 2012 and on January 28, 2013, and [redacted], do not account for Respondent’s recalcitrance from December 2011, when his CLE should have been completed, until December 18, 2012, when he became ill, and indeed, do not account for his noncompliance from February 1, 2013, through May 15, 2013, when he completed his CLE, and his false certification when he filed his 2013 Annual Registration Statement on March 27, 2013.
- d. Timely good faith effort to make restitution or to rectify consequences of misconduct. This factor does not apply.
- e. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. This factor does not apply. Respondent was not cooperative during the investigation.
- f. Inexperience in the practice of law. This factor does not apply.
- g. Character or reputation. There was no evidence to support this factor.
- h. Physical or mental disability or impairment. Respondent denies any mental disability or impairment, and any evidence of alleged physical illness was for a minimal time period during the extensive period of noncompliance. Thus, it is not a mitigating factor here.
- i. Delay in disciplinary proceedings. This factor does not apply.
- j. Interim Rehabilitation. This factor does not apply.
- k. Imposition of other penalties or sanctions. This factor does not apply.
- l. Remorse. The Board does not find this factor to apply here.
- m. Remoteness of prior offenses. This factor does not apply.

## 5. Delaware Precedent

The Delaware Supreme Court's precedent supports a public reprimand.

The respondent in *McDonald* failed to timely file a CLE affidavit and failed to respond to several letters from ODC. The respondent in that case, who had been issued a private admonition for the same violation in 1992, and was late in filing in other years as well, was issued a public reprimand "because [he] has received a prior admonition for similar misconduct in the past, and because he failed to respond to notices and correspondence from the ODC."

While Respondent did not receive a prior admonition for CLE deficiencies, he failed to respond to notices and correspondence from ODC and the CLE Commission, and there are two separate offenses here: the failure to complete his CLE for the period ending December 31, 2011, and the false statement on his 2013 Annual Registration Statement.

The respondent in *Doughty* was given a public reprimand, in part for negligent failure to maintain books and records, and in part for falsely certifying that the books and records were being maintained, and tax obligations met, in compliance with the law. The Court held: "Moreover, as a question of first impression, we hold that a negligent misrepresentation also may form the basis for a charge of misconduct under the literal terms of DLRPC Rule 8.4(c). In *Doughty*'s case, we find clear and convincing evidence in the record that *Doughty*'s negligent misrepresentations to the Court in his Annual Registration Statements violated both DLRPC Rule 8.4(c) and DLRPC Rule 8.4(d)." 832 A.2d at 735.

Since the respondent was the only lawyer in his firm to practice in Delaware, the Court said it was his responsibility to ensure those in charge of the firm's bookkeeping understood Delaware's requirements, and to satisfy himself that the firm was in compliance. "The record reflects that *Doughty* made little effort in this regard." *Id.*

While Respondent correctly points out that *Doughty* involved books and records and a potential harm to clients, Respondent's conduct in the case at issue includes -- in addition to his misrepresentation on his Annual Registration statement -- his failure to complete CLE, and his repeated failure to respond to communications from ODC.

In *Private Admonition 399*, a respondent failed to file two years' Annual Registration statements; and failed to file a CLE transcript and make-up plan for a reporting period. The respondent did not respond to correspondence from the CLE commission and ODC, but agreed to seek assistance from a mental health professional, as respondent's depression caused him to ignore pressure situations. Respondent, who was in continuing treatment, acknowledged to the Board his illness, apologized, and outlined his efforts to change his behaviors. ODC ultimately did not oppose a private admonition with conditions, based on Respondent's remorse. The Board found that the respondent's medical condition explained but did not excuse his conduct, but the mitigating factors in the case outweighed the aggravating ones, enough to support a private admonition.

Citing numerous instances where private admonitions were given at the PRC level for filing to comply with CLE Commission rules and failure to cooperate with the Commission or ODC, the Board in *Private Admonition 399* said:

In considering whether to recommend a private or public sanction, the decision in this case may be a close one. Had the Respondent properly reported and responded to the Lawyer's Fund and the CLE Commission, the ODC would not have needed to become involved in the first instance. Had the Respondent shown a better response to the ODC, formal charges might not have been filed. Even after charges were brought, had Respondent not been averse to accepting the private admonition originally offered by the ODC, this matter would not have reached the Board level. In other words, Respondent alone is responsible for matters being in their present procedural context. That coupled with his failure to respond to the disciplinary process would warrant a public reprimand.

However, the Board is satisfied with the sincerity of the Respondent's stated remorse and apology to the Board and the ODC. Given that apology and the ODC's willingness to roll back its recommendation for public reprimand and to accept a private admonition, the Board recommends the Respondent be sanctioned with a private admonition.

Nevertheless, the Board does not believe that a private admonition sanction by itself is sufficient under the circumstances of this case. The Board does have the authority to recommend conditions.

*Private Admonition 399* Board Report pages 15-16.

The Board recommended "prophylactic sanctions," not as a punishment, but to assure the respondent's continued mental health treatment and fulfillment of his

obligations to the Court and its agencies, and to avoid harm to the public. The conditions included two years' probation under a practice monitor acceptable to ODC; continued psychological counseling, with no missed appointments, continued compliance with taking prescribed medications; waiver of the doctor/patient privilege to allow respondent's therapist to report to the practice monitor; respondent's arranging to have all work documents sent to an address where he would receive them; timely filing of all required reports; and payment of ODC costs. Any noncompliance with the conditions would result in a disciplinary action "with any future sanction almost certainly being public in nature." Page 18.

This case is distinguishable from *Private Admonition 399*, in that the Board is not satisfied that Respondent is remorseful, and ODC does not agree that a private admonition is acceptable. Further, the aggravating factors in the present case outweigh the mitigating factors, as opposed to the findings in *Private Admonition 399*.

While not requiring them as conditions in its recommendation for sanction, the Board makes two suggestions, given Respondent's conduct and testimony in these proceedings.

First, the Board recommends that Respondent's application for a Certificate of Inactive Status be granted. Respondent was on inactive status from 1999 to 2005, when he was administratively suspended for failure to file his 2005 Annual Registration. He was restored to active status following his 2009 petition for reinstatement.

During the course of these proceedings, Respondent testified:

"I was administratively suspended in D.C. [redacted]. I've spoken to somebody at the D.C. bar about, you know, what to do to get reinstated. [Redacted]."

Q: So you currently are in good standing in all the other...jurisdictions in which you are admitted except for D.C.?

A: "I don't know. I assume. I don't know. I don't know where I stand with New Jersey [Respondent did not know if New Jersey was aware of his new mailing



addresses]. ... [I]n Pennsylvania I was inactive. I went inactive a long time ago in Pennsylvania. And I had started the process of becoming active again. But when the whole thing with Chartwell started, I just stopped. So I have no idea where I stand with them.” Exhibit A, Deposition pages 24-25.

“[Redacted].” Hearing page 42.

“I don’t want to go back to private practice for sure. [Redacted]. And all of the other things that are going on.” Exhibit A, Deposition page 55.

“[Redacted].” Exhibit A, Deposition pages 59-60.

“I know Ms. Aaronson at a level believes that it is because I wanted to be on inactive status, which I do.” Hearing page 50.

Based on these statements, if Respondent’s request for inactive status is denied and Respondent continues on active status, the Board would want to consider what additional sanctions, if any, would be appropriate. See, e.g. *Private Admonition 399* (conditioning private admonition on two-year probationary period under the supervision of a practice monitor from either the Lawyer’s Assistance Committee or such other attorney who is willing to serve and who is acceptable to ODC).

Second, the Board recommends that Respondent [redacted].

**Based on the Board’s analysis of the facts and the law, the Board believes that a public reprimand is appropriate, with the condition that Respondent pay both the CLE Commission late fees and ODC costs.**

Respectfully submitted,

**BOARD ON PROFESSIONAL RESPONSIBILITY**

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Susan H. Kirk-Ryan, Esquire, Panel Chair

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Patricia O. Vella, Esquire

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Carey C. McDaniel

Dated: