STATE BAR OF TEXAS



TO:

Board of Directors

FROM:

Toni Nguyen

Chair of the State Bar of Texas' Appeals-Grant Subcommittee (FY2012-2013)

DATE:

June 19, 2013

SUBJECT:

Appeals-Grant Review Subcommittee Meeting - May 23, 2013

APPEAL FROM DECISION OF THE MINIMUM CONTINUING LEGAL EDUCATION COMMITTEE

Denial of MCLE Credit

• Appellant: James B. Smith, Jr., San Antonio, Texas

- MCLE Committee Decision: Denied MCLE credit for participation in the 17th Annual Law Firm Leaders Forum, November 15-16, 2012 in San Francisco, California.
- Appeals/Grants Subcommittee Decision: The State Bar Appeals Committee unanimously affirmed in part and reversed in part the MCLE Committee's decision. The Appeals Committee found the MCLE Committee's decision was supported by substantial evidence as to 1.5 hours of requested credit, but that its decision to deny the remaining 4.5 hours of requested credit was not supported by substantial evidence.
- Summary of Proceedings: On November 29, 2012, James B. Smith, Jr. filed with the MCLE Department an Application for Accreditation of CLE Activity for 6 hours of individual CLE credit for participating in the 17th Annual Law Firm Leaders Forum. The MCLE Department denied accreditation of credit as not meeting Standard II A (substantive or procedural law) and for exclusions under Standard III D (law practice management) of the MCLE Accreditation Standards.

Appellant appealed the decision and on February 21, 2013, the MCLE Committee reviewed the application and supporting materials and denied accreditation as not meeting the definition of Law Practice Management contained in the Accreditation Standards.

Appellant filed a timely appeal with the State Bar, and on May 23, 2013, a quorum of the State Bar Board Appeals-Grant Review Subcommittee met to conduct a hearing to consider the appeal. Appellant appeared by telephone. The Director of the MCLE Department, Nancy Smith, appeared in person on behalf of the MCLE Committee.

After hearing the arguments and deliberating the matter, the Appeals/Grants Subcommittee found that the decision of the MCLE Committee was supported by substantial evidence as to 1.5 CLE hours of requested credit, but was not supported by substantial evidence as to 4.5 CLE hours of requested credit, and voted unanimously to affirm in part and reverse in part the MCLE Committee decision.

• Recommendation: That the Chair of the Appeals-Grant Review Subcommittee issue a letter to Appellant with a copy to the MCLE Committee, advising them that the decision of the MCLE Committee has been affirmed as to 1.5 hours of CLE credit and reversed as to 4.5 hours of CLE credit.

APPEAL FROM DECISION OF THE TEXAS BOARD OF LEGAL SPECIALIZATION

- Appellant: Felix O'Neill Rippy, Round Rock, Texas
- TBLS Decision: One-year active suspension of board certification on the following terms:
 - 1. Suspension to begin when the administrative appeal becomes final.
 - 2. Before the end of the suspension period, the completion of six hours of additional CLE ethics hours primarily related to conflicts of interest and approved by the TBLS.
 - 3. During the active suspension period, Appellant may not hold himself out as "Board Certified" and all references must be removed from Appellant's letterhead, business cards, website, and advertisements.
- Appeals/Grants Subcommittee Decision: The State Bar Board Appeals/Grants Subcommittee found that substantial evidence existed to support the decision of the TBLS and unanimously affirmed the decision.
- Background: On July 23, 2012, Appellant entered into an agreed Judgment of Probated Suspension with the Commission For Lawyer Discipline, stipulating a violation of Rules 1.09(b) and 8.04(a)(1) of the Texas Disciplinary Rules of Professional Conduct. Specifically, the court found that Respondent had committed professional misconduct by representing a client in a family law matter that resulted in a conflict of interest on his part. The term of the disciplinary suspension was one-year and was fully probated. The agreed Judgment was accompanied by a Rule 11 Agreement which reads, "The parties agree as follows: On this date Respondent tendered certified funds for payment in full of attorneys' fees and expenses ordered on June 1, 2012, in the amount of \$22,166.64. Respondent waives his right to appeal."

In accordance with TBLS procedure, the TBLS Family Law Advisory Commission reviewed the Appellant's disciplinary action. The Family Law Advisory Commission found that the misconduct involved a matter in Appellant's area of certification and recommended an active suspension of board certification. On February 5, 2013, the TBLS conducted a hearing to consider this recommendation. Appellant appeared at the hearing and presented testimony. Upon conclusion of the hearing, the TBLS accepted the recommendation of the Commission and decided upon a one-year active suspension as set forth above.

• Summary of Subcommittee Proceedings: Appellant timely appealed the decision of the TBLS to the State Bar and on May 23, 2013, the State Bar Board Appeals/Grants Subcommittee held a hearing to consider the appeal. Appellant appeared by telephone and presented his appeal. The Director of TBLS, Gary McNeil, appeared in person on behalf of the TBLS Board. Appellant argued that the Rule 11

Agreement he entered into with the Commission for Lawyer Discipline should prevent any further action taken against him by the TBLS with regard to his board certification. The Subcommittee considered the materials submitted by Appellant and by the TBLS and unanimously determined that the decision of the TBLS was supported by substantial evidence and should be upheld.

• Recommendation: That the Chair of the Appeals-Grant Review Subcommittee issue a letter to Appellant with a copy to the TBLS, advising him that the decision of the TBLS has been affirmed.