

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 12-PM-10988-RAP
	)	
<b>PATRICK J. GRANNAN,</b>	)	
	)	<b>ORDER GRANTING MOTION TO</b>
<b>Member No. 115693,</b>	)	<b>REVOKE PROBATION &amp; ORDER OF</b>
	)	<b>INACTIVE ENROLLMENT (Bus. &amp; Prof.</b>
A Member of the State Bar.	)	<b>Code, § 6007, subd. (d))</b>
_____	)	

I. INTRODUCTION

In this probation revocation proceeding (Bus. & Prof. Code, § 6093; Rules Proc. of State Bar, rule 5.310 et seq.), the State Bar's Office of Probation charges respondent **PATRICK J. GRANNAN**<sup>1</sup> with a total of six violations of two of the conditions of probation that were imposed on him under the Supreme Court's April 21, 2011 order in *In re Patrick J. Grannan on Discipline*, case number S190514 (State Bar Court case number 08-O-12917) (*Grannan II*).

As set forth below, the court finds that respondent is culpable on each of the six charged probation violations. Even though four of the six violations are rather nominal, the court concludes, in light of the entire record, that the appropriate level of discipline is the revocation of respondent's probation and the imposition of the full three-year stayed suspension imposed on

---

<sup>1</sup> Respondent was admitted to the practice of law in this state on December 3, 1984, and has been a member of the State Bar of California since that time. He has two prior records of discipline.

respondent in *Grannan II*, which will continue until respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).<sup>2</sup> Moreover, the court finds that it is appropriate to order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding or further court order. (Bus. & Prof. Code, § 6007, subd. (d); *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531-532.)

## II. PERTINENT PROCEDURAL HISTORY

On February 9, 2012, the Office of Probation filed the motion to revoke probation in this proceeding and, in accordance with Business and Professions Code section 6002.1, subdivision (c)<sup>3</sup> and Rules of Procedure of the State Bar, rules 5.25 and 5.314(A), properly served a copy of the motion on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar. That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.) In addition, the Office of Probation mailed a courtesy copy of the motion on respondent by first class mail, regular delivery.

Respondent never filed a response to the motion to revoke probation, and the time for respondent to do so under Rules of Procedure of the State Bar, rule 5.314(B) has expired. Accordingly, on March 6, 2012, the court filed an order taking the motion to revoke probation under submission for decision without a hearing.

---

<sup>2</sup> All further references to standards are to this source.

<sup>3</sup> Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Exhibits 1, 2, and 3 that are attached to the motion to revoke probation are received into evidence. (Rules Proc. of State Bar, rule 5.314(H).) In addition, the court grants the Office of Probation's March 9, 2012 motion to late file a request for judicial notice and request for judicial notice of respondent's prior record of discipline in Supreme Court case number S126954 (State Bar Court case number 02-O-15605, etc.) (*Grannan I*).

Because respondent failed to file a response to the motion, the *factual* allegations (not the legal conclusions or the charges) in the motion and the three exhibits attached to the motion are deemed admitted. (Rules Proc. of State Bar, rule 5.314(C).)

#### A. Quarterly-Probation-Reporting Condition

Respondent's quarterly-probation-reporting condition requires that, on every January 10, April 10, July 10, and October 10, respondent submit, to the Office of Probation, a written probation report stating, under penalty of perjury, whether he has complied with the State Bar Act (§ 6000, et seq.) and the Rules of Professional Conduct of the State Bar during the preceding calendar quarter.

The record establishes, by a preponderance of the evidence, that respondent willfully violated his probation-reporting condition because respondent submitted each of his first three probation reports (which were due on July 10 and October 10, 2011 and on January 10, 2012, respectively) one day late.

#### B. Restitution Condition

Respondent's restitution probation condition requires that respondent pay restitution to H. Kontoes in the principal sum of \$7,605 plus 10 percent interest thereon per year from November 16, 2009. That condition further requires that respondent (1) pay Kontoes at least \$1,500 per

calendar quarter beginning in the second quarter of 2011 and (2) provide satisfactory proof of his \$1,500-minimum-quarterly payment with each of his probation reports.

The record establishes, by a preponderance of the evidence, that respondent willfully violated his restitution condition because (1) respondent made his first \$1,500-minimum-quarterly payment five days' late on July 5, 2011, and (2) respondent failed to provide proof, with his second and third probation reports, which were due October 10, 2011, and January 10, 2012, respectively, that he made the required \$1,500-minimum-quarterly payment to Kotoes in the third and fourth quarterly of 2011.

#### **IV. AGGRAVATION AND MITIGATION**

##### **A. Aggravation**

###### **1. Prior Records of Discipline**

Respondent has two prior records of discipline, which are serious aggravating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)<sup>4</sup>

###### **a. *Grannan I***

In *Grannan I*, respondent's first prior record of discipline, the Supreme Court placed respondent on two years' stayed suspension and three-years probation with conditions, but no actual suspension. The Supreme Court imposed that discipline on respondent in accordance with a stipulation that respondent entered into with the State Bar and that was approved by the State Bar Court in an order filed on July 11, 2004. In that stipulation, respondent stipulated to willfully failing to perform legal services competently in four separate client matters (Rules Prof. Conduct, rule 3-110(A)) and to failing to promptly release the client file (Rules Prof. Conduct,

---

<sup>4</sup> All further references to standards are to this source.

rule 3-700(D)(1)) in one of the four client matters. In aggravation, respondent committed multiple acts of misconduct. In mitigation, he had no prior record of discipline over many years of practice.

**b. *Grannan II***

In *Grannan II*, respondent's second prior record of discipline, the Supreme Court placed respondent on three year's stayed suspension and four years' probation on conditions, including a 90-day (actual) suspension and paying \$7,605 (plus interest) in restitution to Kontoes. The Supreme Court imposed that discipline on respondent in accordance with a stipulation that was approved by the State Bar Court in an order filed on December 20, 2010, in *Grannan II*. In *Grannan II*, respondent willfully failed to perform legal services competently (Rules Prof. Conduct, rule 3-110(A)), willfully failed to communicate (§ 6068, subd. (m)), and willfully failed to cooperate in the State Bar's disciplinary investigations (§ 6068, subd. (i)) in two separate client matters.

Moreover, in the first client matter, respondent also willfully failed to account to the client for an unearned, advanced fee (Rules Prof. Conduct, rule 4-100(B)(3)) and willfully failed to refund the unearned fee (Rules Prof. Conduct, rule 3-700(D)(2)). And, in the second client matter, respondent also willfully failed to release the client file (Rules Prof. Conduct, rule 3-700(D)(1)) and willfully engaged in acts involving moral turpitude (§ 6106) by lying to his client regarding the status of the client's case (the client's case had been dismissed because of respondent's failure to perform).

In aggravation, respondent had a prior record of discipline, committed multiple acts of misconduct, and caused significant client harm to his clients in each of the client matters. In mitigation, respondent cooperated with the State Bar. In addition, at the time respondent committed the misconduct he suffered from both severe financial and emotional stress.

## 2. Multiple Acts

Respondent's present misconduct involves six probation violations. (Std. 1.2(b)(ii).)

## B. Mitigation

Because respondent did not appear in this probation revocation proceeding, he did not establish any mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) Nor is any mitigating circumstance otherwise apparent from the record.

## V. DISCUSSION

The Office of Probation seeks the revocation of respondent's probation and the imposition of the entire three-year stayed suspension that was imposed on him in *Grannan II*.<sup>5</sup> In addition, the Office of Probation seeks an order involuntarily enrolling respondent as an inactive member of the State Bar under section 6007, subdivision (d)(1).

The purposes of disciplinary proceedings are to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline for respondent's probation violations, the court first considers standard 1.7(a), which provides that, when an attorney has a prior record of discipline, "the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."<sup>6</sup> Of course,

---

<sup>5</sup> The Office of Probation failed to cite any authority to support its position that respondent's probation violations warrant three years' suspension.

<sup>6</sup> Standard 1.7(b), which provides for disbarment when an attorney has two or more prior records of discipline, is not applicable in probation revocation proceedings. (*In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 257, fn. 13.)

standard 1.7(a) is not to be applied in a talismanic fashion when, as here, there is no common thread or course of conduct running through the past and present misconduct. (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 534.)

In determining the appropriate level of discipline, the court is to consider, among other things, the seriousness of respondent's six -probation violations; respondent's efforts, if any, to comply with the probation conditions; respondent's recognition or lack of recognition of wrongdoing; and the total length of stayed suspension that may be imposed as an actual suspension under Rules of Procedure of the State Bar, rule 5.312. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Respondent's two probation violations for not providing proof that he paid Kontoes at least \$1,500 in the third and fourth quarters of 2010 are serious misconduct. Respondent's failure to appear in this proceeding and explain his efforts to comply with the reporting portion of his restitution condition is particularly troubling because, in *Grannan II*, respondent stipulated to making the required \$1,500-minimum-quarterly-restitution payments and to providing proof of them with his probation reports.<sup>7</sup>

Furthermore, respondent's failure to comply with his restitution probation condition is centrally related to his rehabilitation and to the protection of the public. "Requiring restitution serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney's misconduct." (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 312, citing *Brookman v.*

---

<sup>7</sup> Even if respondent lacked the ability to make the two \$1,500-minimum-quarterly-restitution payments, he was required to seek relief from the restitution condition based on his inability to pay. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868, fn. 4.)

*State Bar* (1988) 46 Cal.3d 1004, 1009.) Thus, respondent's violation of his restitution condition warrants significant discipline. In *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138 and *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81 each of the attorneys was placed on one year's actual suspension for failing to comply with their respective restitution probation conditions. Of course, a notable difference between those cases and the present proceeding is that the attorneys in *Broderick* and *Hunter* appeared and participated in the proceedings, while respondent has not.

Collectively, respondent's probation violations and the seriousness of his two prior records of discipline strongly suggest, if not establish, that respondent is not engaged in the rehabilitative process. Thus, the court concludes that it must recommend that respondent's probation in *Grannan II* be revoked and that the full three-year suspension, which was stayed in *Grannan II*, be imposed on respondent and that the three-year suspension continue until respondent pays restitution to Harry Kontoes, Jr., as previously ordered in *Grannan II* and respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii).

## **VI. ORDER AND DISCIPLINE RECOMMENDATION<sup>8</sup>**

The court orders that the Office of Probation's February 9, 2012 motion to revoke the probation of respondent PATRICK J. GRANNAN is GRANTED. Accordingly, the court RECOMMENDS that the probation imposed on respondent PATRICK J. GRANNAN under the Supreme Court's April 21, 2011 order in *In re Patrick J. Grannan on Discipline*, case number S190514 (State Bar Court case number 08-O-12917) be revoked; that the stay of execution of the

---

<sup>8</sup> The court does not recommend that respondent be ordered to take and pass a professional responsibility examination because respondent was ordered to take and pass the Multistate Professional Responsibility Examination in the Supreme Court's April 21, 2011 order in *Grannan II*. If respondent fails to take and pass that examination as ordered, he will be suspended until he does. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)



three-year suspension in that proceeding be lifted; and that respondent PATRICK J. GRANNAN be actually suspended from the practice of law in the State of California for three years and until he (1) pays restitution to Harry Kontoes, Jr., as previously ordered in Supreme Court case number S190514 (State Bar Court case number 08-O-12917) and (2) provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional misconduct.

### **VII. RULE 9.20 & COSTS**

The court further recommends that respondent PATRICK J. GRANNAN be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this probation revocation proceeding.<sup>9</sup>

The court further recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

The court orders that PATRICK J. GRANNAN be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007,

///

///

---

<sup>9</sup> Grannan is required to file a rule 9.20(c) compliance affidavit even if he has no clients to notify *on the date the Supreme Court files its order in this proceeding*. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) At least in the absence of compelling mitigating circumstances, an attorney's failure to comply with rule 9.20 almost always results in disbarment. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)

subdivision (d)(1), effective three days after service of this order by mail. (Rules Proc. of State Bar, rule 5.315.)

Dated: April 4, 2012.

---

**RICHARD A. PLATEL**  
Judge of the State Bar Court