

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case No.: 08-H-11041-LMA  
 )  
JAMES S. PARTRIDGE, ) DECISION  
 )  
Member No. 136207, )  
 )  
A Member of the State Bar. )

I. Introduction

In this reproof violation proceeding, respondent **James S. Partridge** is found culpable, by clear and convincing evidence, of violating conditions attached to a public reproof previously imposed on him by the State Bar Court.

The court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be actually suspended from the practice of law for 90 days and until the State Bar Court grants a motion to terminate respondent’s actual suspension. (Rules Proc. of State Bar, rule 205.)

II. Pertinent Procedural History

On May 9, 2008, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing and properly serving a Notice of Disciplinary Charges (NDC) on respondent by certified mail, return receipt requested, at his official

membership records address (official address) under Business and Professions Code section 6002.1, subdivision (a). On May 28, 2008, a return receipt was received by the State Bar signed by James Partridge.

Because respondent recently had been on disciplinary probation, the Deputy Trial Counsel (DTC) assigned to this matter reviewed various documents sent by the probation deputy to ascertain whether the Office of Probation had any other address to use for respondent. All correspondence, regarding respondent, that the DTC reviewed bore only respondent's official address, which is the same address used by the State Bar when initiating the instant proceeding.

The DTC tried to contact respondent by telephone and by e-mail on May 12, 2008. She telephoned respondent at his official membership records telephone number. When an answering machine, which identified respondent by name picked up, the DTC left a message asking respondent to return her call. The DTC also sent a message to an e-mail address reflected in respondent's official membership records. On May 12, 2008, at 6:30 p.m., respondent left a message on the DTC's voice mail, indicating that he wanted to talk to her and would try to reach her during regular business hours. But, as of June 12, 2008, the filing date of the State Bar's motion for entry of default, the State Bar had not had any contact with respondent other than the return telephone message that respondent had left for the DTC after business hours on May 12, 2008.

On May 13, 2008, the DTC once more telephoned respondent. She left him a message, informing him of the time frame in which he had to respond to the NDC and provided additional information. On June 11, 2008, the DTC again tried to reach respondent at his official membership records phone number, but his voice mailbox was full.

Respondent did not file a response to the NDC as required. (Rules Proc. of State Bar, rule 103.)

On motion of the State Bar, respondent's default was entered on July 1, 2008. Respondent was enrolled as an inactive member under Business and Professions Code, section 6007(e)<sup>1</sup> on July 4, 2008.

Respondent did not participate in the disciplinary proceedings.

The court took this matter under submission. Thereafter, on October 30, 2008, the court filed a notice of its intent to take judicial notice of respondent's prior record of discipline in State Bar Court case No. 05-O-00751. The court ordered that any response to its notice of intent be filed and served within ten days after service of the order. The court also ordered the State Bar to file with the court, within fifteen days after service of its notice of intent, a certified copy of respondent's prior record of discipline. The court further ordered that the submission date be vacated and that the matter to be resubmitted for decision upon the State Bar's filing of the certified copy of respondent's prior record of discipline.

On November 7, 2008, the State Bar filed a certified copy of respondent's disciplinary record. A copy of such record was properly served on respondent on November 7, 2008, by regular mail, addressed to respondent at his official address. The instant matter was resubmitted for decision on November 7, 2008, pursuant to the court's October 30, 2008 order.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

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<sup>1</sup> References to section (§) are to the Business and Professions Code, unless otherwise noted.

**A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 7, 1988, and has since been a member of the State Bar of California.

**B. Violation of Repeval Conditions**

On March 10, 2006, respondent and the State Bar entered into a stipulation regarding facts and disposition in State Bar Court case No. 05-O-00751. On April 14, 2006, the State Bar Court approved the stipulation and imposed discipline upon respondent consisting of a public reprovall with attached conditions for a period of two years (Order).

On April 14, 2006 the Order was properly served on respondent at his official membership address. Respondent received the Order. It became effective on or about May 4, 2006.

On or about May 9, 2006, the Office of Probation mailed respondent a reminder letter setting forth the conditions of the reprovall. Respondent received this letter shortly thereafter.

Pursuant to the Order, respondent was required to comply with the conditions of the reprovall for a period of two years from the effective date of the Order, including the following:

1. Within 30 days of the effective date of discipline, respondent was required to contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss the terms and conditions of his reprovall;<sup>2</sup>
2. Respondent was required to: submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period during which the public reprovall is in effect and file a final report no earlier than 20 days prior to the expiration of the reprovall period and no later than the last day

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<sup>2</sup> Although both the NDC and the actual language of the condition itself refer to the conditions of respondent's "probation," these are actually conditions of respondent's reprovall.

of the period. Respondent was, therefore required to submit quarterly reports no later than July 10 and October 10, 2006, January 10, April 10, and October 10, 2007, and January 10, 2008.

3. Within two years from the effective date of the Order, respondent was required to: (a) pay a total of \$3,500 in sanctions to the Alameda County Superior Court and provide satisfactory evidence of payment of the sanctions to the Office of Probation; (b) include with each required quarterly report satisfactory evidence of all sanction payments made in the reporting period; (c) make monthly payments of not less than \$100 toward satisfying the sanction payments; and (d) provide the Office of Probation with a copy of any subsequent court order regarding the sanctions.<sup>3</sup>
4. Within one year of the effective date of the Order, respondent was required to provide satisfactory proof to the Office of Probation of attendance at a session of the Ethics School and passage of the test given at the end of that session.

As set forth below, respondent did not comply with the following conditions attached to his public reproof:

1. During the 30-day period, beginning on or about May 4, 2006, respondent failed to contact the Office of Probation to schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his reproof, and failed to participate in such a meeting.

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<sup>3</sup> As stated in the NDC, the stipulated reproof condition erroneously referred to the Office of Probation as the Probation Unit and erroneously referred to the satisfaction of the sanction as “restitution.”

2. Respondent, who was required to submit reports on or before January 10 and October 10, 2006, January 10, April 10, July 10 and October 10, 2007, and January 10, 2008, violated this reporting condition by failing to file any of the required reports.
3. As of May 9, 2008, the date of the filing of the NDC in the instant matter, respondent had not provided to the Office of Probation any evidence that he had paid any part of the \$3,500 sanctions, nor did he provide a copy of a court order reducing the amount of the sanctions. Thus, respondent failed to comply with the reprobation condition requiring him to pay a total of \$3,500 in sanctions to the Alameda County Superior Court and provide satisfactory evidence of such payment to the Office of Probation.
4. As of May 9, 2008, respondent had not attended Ethics School and had not submitted proof of attendance and successful completion of Ethics School to the Office of Probation.

***Rule 1-110 of the Rules of Professional Conduct of the State Bar of California<sup>4</sup>***

By failing to: (1) contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his reprobation; (2) submit any of the required quarterly reports to the Office of Probation; (3) pay any part of the \$3,500 sanctions, as required, or provide the Office of Probation with a court order modifying the sanction order; and (4) attend Ethics School and provide proof thereof to the Office of Probation, respondent failed to comply with conditions attached to a reprobation administered by the State Bar pursuant to

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<sup>4</sup> Although the NDC charged respondent with a violation of rule 1-110(A), the court notes that no subdivision (A) exists. However, the court finds that respondent had sufficient notice that he was charged with a violation of rule 1-110 for failing to comply with conditions attached to an earlier reprobation.

Business and Professions Code sections 6077 and 6078 and former rule 956 (now rule 9.19) of the California Rules of Court in willful violation of rule 1-110 of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct).

#### **IV. Mitigating and Aggravating Circumstances**

##### **A. Mitigation**

As respondent's default was entered in this matter, no mitigating circumstances were proven. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>5</sup>

##### **B. Aggravation**

There are several aggravating factors. (Std. 1.2(b).)

Respondent has a prior record of discipline.<sup>6</sup> (Std. 1.2(b)(i).) Effective on or about May 4, 2006, respondent was publicly reprovved with conditions for two years in State Bar Court case No. 05-O-00751. In the underlying matter, respondent stipulated to a violation of rule 3-700(A) of the Rules of Professional Conduct and section 6103 of the Business and Professions Code. In mitigation, respondent had no prior record of discipline. In aggravation, respondent's conduct significantly harmed a client.

Respondent also engaged in multiple acts of misconduct by violating several conditions of his reprovval. (Std. 1.2(b)(ii).)

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<sup>5</sup> All further references to standards are to this source.

<sup>6</sup> Pursuant to this court's October 30, 2008 "Notice of Court's Intent to Take Judicial Notice: Order Regarding Filing of Respondent's Prior Record of Discipline; Order Vacating Submission Date," the court takes judicial notice of respondent's prior record of discipline in State Bar Court case No. 05-O-00751. (Rules Proc. of State Bar, rule 306(b); Evidence Code § 452, subds. (c), (d).) Such record consists of the stipulation to a public reprovval, as well as the NDC that gave rise to the discipline in case No. 05-O-00751.

Respondent's failure to participate in this disciplinary matter before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

## **V. Discussion**

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct involved failure to comply with conditions attached to a reproof.

For guidance in determining the appropriate discipline recommendation, the court first looks to the standards. (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) In this case, standard 2.9 provides that a willful violation of rule 1-110 of the Rules of Professional Conduct must result in suspension.

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Furthermore, standard 1.7(a) provides that if a member is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding must be greater than that imposed in the prior proceeding, unless the prior discipline was remote in time and the offense was minimal in severity.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid standards.” (*Id.* at p. 251.) Nevertheless, while the standards are not binding, they are entitled to significant weight. (*In re Silvertown* (2005) 36 Cal.4<sup>th</sup> 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains “grave doubts as to its propriety.” (*In re Naney* (1990) 51 Cal.3d 186, 190.) Even though the standards are merely guidelines for the imposition of discipline, there is “no reason to depart from them in the absence of a compelling reason to do so. ([Citation].)” (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of failing to comply with several of the conditions attached to his earlier public reproof. In addition, there are several aggravating circumstances in this matter and no mitigating circumstances.

In its motion for entry of default, the State Bar requested that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for two years, including, a 90-day actual suspension. The State Bar did not submit a brief on culpability and discipline and cited no standards or cases in support of its position regarding the discipline to be imposed in this matter. The court notes that in a default proceeding, “the appropriate time to consider imposing probation and its attendant conditions is when the attorney seeks relief from the actual suspension that may be imposed following his or her default in a disciplinary proceeding.” (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal.State Bar Ct. Rptr. 103, 110.) Thus, the State Bar’s request for probation in this default proceeding is inappropriate.

The court finds the following cases instructive in the instant matter: *Conroy v. State Bar* (1990) 51 Cal.3d 799, *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697; and *In the Matter of Stansbury, supra*, 4 Cal.State Bar Ct. Rptr. 103. They all involve the willful breach of rule 1-110, failing to comply with conditions attached to a reproof.

In *Conroy*, the attorney, who defaulted at the disciplinary hearing, was actually suspended for 60 days for violating his probation condition attached to a private reproof. However, unlike respondent, the attorney belatedly complied with his condition three months after the deadline and took and passed a Professional Responsibility Examination.

In *In the Matter of Meyer*, his third disciplinary record, the attorney was actually suspended for 90 days for failing to comply with the private reproof conditions imposed on him in his second prior record. In fact, he violated the same conditions attached to his first prior record of discipline.

In *In the Matter of Stansbury*, the attorney was suspended for two years, stayed, and actually suspended for 90 days and until he makes restitution to his former client in the sum of \$750, for his failure to comply with the conditions attached to his public reproof. Although, Stansbury's underlying misconduct was more serious than that of Meyer or Conroy, the Review Department noted: "[W]e are not measuring discipline for that underlying misconduct, which discipline was measured in Stansbury's initial proceeding. Rather, we measure appropriate discipline for the similar offence of Stansbury's failure to comply with conditions in a reproof." (*In the Matter of Stansbury, supra*, 4 Cal.State Bar Ct. Rptr. 103,109.)

Similarly, "the condition requiring [respondent] to make restitution to his former client is more substantive than the prophylactic reporting and educational measures set forth in both *Conroy* and *Meyer*. Nonetheless, the obligation of an attorney subject to conditions attached to a

reproval is identical in *Conroy, Meyer* . . . and the present proceeding.” (*In the Matter of Stansbury, supra*, 4 Cal.State Bar Ct. Rptr. 103,109.)

As in *Stansbury* and *Conroy*, respondent defaulted in this matter and has a single prior disciplinary matter. Failing to appear and participate in this matter shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Such failure leaves the court without information about the underlying cause or causes of respondent’s misconduct or of any mitigating circumstances surrounding his misconduct. In view of the case law and the lack of compelling mitigating factors to counter the aggravating evidence, the court concludes that the appropriate discipline in this matter should include a 90-day period of actual suspension.

## **VI. Recommended Discipline**

The court hereby recommends that respondent **James S. Partridge** be suspended from the practice of law for one year, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 90 days and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

It is also recommended that respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar as a condition for terminating his actual suspension.<sup>7</sup> (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that if respondent is actually suspended for two years or more, he must remain actually suspended until he has shown proof satisfactory to the State Bar Court of

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<sup>7</sup> As respondent failed to comply with the reproval condition, requiring him to pay the Alameda County Superior Court a total of \$3,500 in sanctions, he should be required to pay the \$3,500 sanctions to the Alameda County Superior Court, if he has not done so, as part of any probation condition hereinafter imposed by the State Bar Court.

his rehabilitation fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii). (Rules Proc. of State Bar, rule 205.)

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners within one year after the effective date of the discipline imposed herein or during the period of his actual suspension, whichever is longer, and furnish satisfactory proof of such to the State Bar's Office of Probation within said period.

The court also recommends that respondent 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 matter. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>8</sup>

## VII. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: February \_\_\_\_\_, 2009

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LUCY ARMENDARIZ  
Judge of the State Bar Court

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<sup>8</sup> Respondent is required to file a rule 9.20(c) affidavit, even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

