

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 10-H-08580
)	
JOHN HAYS GRIFFIN)	DECISION
)	
Member No. 220368)	
)	
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary matter, Mark Hartman appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent did not appear in person or through counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be suspended from the practice of law for two years; that execution of that suspension be stayed, and that he be actually suspended for one year and until he successfully completes Ethics School and the Multistate Professional Responsibility Examination and provides satisfactory proof thereof to the OP; and until he complies with former rule 205, Rules Proc. of State Bar,¹ among other things.

¹ Future references to the Rules of Procedure are to the former Rules of Procedure in effect until December 31, 2010.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on November 16, 2010, and was properly served on respondent on that same date at his then-official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section² 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) It was returned unclaimed by the United States Postal Service.

On November 22, 2010, respondent was properly served at his then-official address with a notice advising him, among other things, that a status conference would be held on January 3, 2011.

Respondent did not appear at the status conference. On January 3, 2011, he was properly served with a status conference order at his then-official address by first-class mail, postage prepaid.

Respondent did not file a responsive pleading to the NDC. On January 20, 2011, a motion for entry of default was filed and properly served on respondent at his then-official address by certified mail, return receipt requested. The motion advised him that minimum discipline of actual suspension for 90 days and until he successfully completed Ethics School and the Multistate Professional Responsibility Examination and until he complied with former Rule of Procedure 205 would be sought if he was found culpable. Respondent did not respond to the motion.

On February 7, 2011, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his then-official address on that same date by certified mail, return receipt requested. It was

²Future references to section are to the Business and Professions Code.

returned unclaimed by the United States Postal Service.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing after the State Bar filed a brief on February 25, 2011.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Procedure, former rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on July 12, 2002, and has been a member of the State Bar at all times since.

B. Facts

On August 2, 2009, respondent signed a stipulation in State Bar Court case number 08-0-11520, agreeing to a public reproof with specified conditions. The court filed an order imposing the reproof on August 25, 2009. Soon thereafter, respondent had notice and actual knowledge of the order, which became effective on September 15, 2009.

Respondent was ordered to comply with the following reprobation conditions, among others, for one year after the reprobation's effective date:

1. Within 30 days of the effective date of the reprobation, contact the Office of Probation (OP), schedule and participate in a meeting to discuss the reprobation conditions;
2. Submit written quarterly reports to the OP on each January 10, April 10, July 10, and October 10 of the condition period attached to the reprobation, certifying under penalty of perjury whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reprobation during the preceding calendar quarter. A final report is due no earlier than 20 days before the end of the reprobation period and no later than the last day of the reprobation period;
3. Provide the OP with satisfactory proof of attendance at a session of the State Bar's Ethics School and passage of the test given at the end of that session; and
4. Provide proof of passage of the MPRE to the OP within one year of the effective date of the reprobation.

Respondent did not comply with these conditions as follows:

1. He did not schedule or conduct the meeting with the OP until June 30, 2010;
2. He did not submit the quarterly reports due to the OP on the tenth of January and April 2010 until July 6, 2010. He also has not submitted the final report due no later than September 15, 2010;
3. He has not provided to the OP proof of successful completion of Ethics School; and
4. He has not provided to the OP proof of passage of the MPRE.

On September 24, 2009, the OP mailed a letter to respondent reminding him of all of the conditions of his reprobation. The envelope contained forms for respondent's use in complying with the reprobation conditions. Respondent received the letter shortly thereafter.

On June 24, 2010, the OP sent respondent a letter reminding him of his probation conditions and specifically notifying him that he had not filed the quarterly report that was due on January 10, 2010 and that he had not scheduled a meeting with the OP. On the same day, the OP left a voicemail message for respondent, reminding him of his duty to comply with the reproof conditions. Respondent received the letter and voicemail shortly thereafter. He did not have the discussion with the OP regarding the reproof conditions until June 30, 2010.

C. Conclusions of Law

Rule 1-110 requires an attorney to comply with the conditions attached to a reproof or other discipline administered pursuant to Business and Professions Code sections 6077 and 6078 and rule 9.19, California Rules of Court.

By not complying with the aforementioned reproof conditions, respondent wilfully violated rule 1-110.

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct³, std. 1.2(b).)

Respondent has two prior instances of discipline. (Std. 1.2(b)(i).) As previously noted, in State Bar Court case no. 08-O-11520, a public reproof with conditions was imposed for violations of rules 3-110(A), 3-700(D)(1) and (2) and section 6068(m) in one client matter. The parties stipulated to multiple acts of misconduct in aggravation and to candor and cooperation in mitigation.

In Supreme Court order no. S187871, filed January 12, 2011, respondent received a one-

³Future references to standard or std. are to this source.

year stayed suspension and four years' probation on conditions including 60 days' actual suspension. The parties agreed that, in two client matters, respondent violated rules 3-110(A) (two counts), 3-700(D)(1) and (2) and 1-110 as well as sections 6068(m) and 6068(a)/6125/6126. Multiple acts of misconduct and prior discipline were factors in aggravation and candor and cooperation was the mitigating circumstance.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent significantly harmed the administration of justice as his lack of compliance with the reproof conditions of his probation made it more much difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Further, respondent's noncompliance with the reproof conditions after being reminded by OP demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

C. Discussion

The purpose of State Bar 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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of

imposing discipline.

Standard 2.9 applies in this matter and calls for suspension for culpability of wilful violation of rule 1-110.

Standard 1.7(b) also applies. It provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar seeks respondent’s actual suspension for one year, among other things. The court agrees.

Analogizing to cases addressing the violation of probation conditions, the court believes that greater discipline is warranted for violations of conditions that are significantly related to the misconduct that led to the reproof, particularly when respondent has not taken rehabilitative steps or where there is a serious concern about the need for public protection. (Cf., *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 311.) In the prior disciplinary matters, respondent had been ordered to take certain steps to address the causes of his misconduct by requiring that he complete Ethics School and the MPRE and to report to the OP regarding his compliance with his ethical duties, among other things. He did not take those steps. Significant discipline, but less than disbarment, is merited.

Given his noncompliance with terms of his reproof, the court is not convinced that a

finite period of actual suspension, alone, would be productive or an appropriate discipline for respondent's misconduct. As such, the court recommends that respondent should be suspended for two years, stayed, and that he be actually suspended for one year and until he successfully completes Ethics School and the MPRE and provides satisfactory proof thereof to the OP; and until he complies with former rule 205, Rules Proc. of State Bar, among other things, as sufficient to protect the public in this instance.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent JOHN HAYS GRIFFIN be suspended from the practice of law for two years; that said suspension be stayed; and that he be actually suspended from the practice of law for one year and until

(1) He provides to the State Bar Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar);

(2) He takes and passes the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provides proof of passage to the State Bar Office of Probation

Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until

passage. But see rule 9.10(b), California Rules of Court, and rule 5.162, Rules of Procedure of the State Bar; and

(3) The State Bar Court grants a motion to terminate respondent's actual suspension at its conclusion or upon such later date ordered by the court. (Former rule 205(a), (c), Rules of Proc. of State Bar.)

It is also recommended that he be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. (See also, former rule 205(b).)

It is also recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court (rule 9.20) within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.⁴

COSTS

It is recommended that costs be awarded to the State Bar in accordance with

⁴Noncompliance with rule 955 of the California Rules of Court (now rule 9.20) could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (Cf. *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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: May _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court