

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No.: 13-O-13557-PEM
	)	
STEPHEN PAUL NARATIL,	)	DECISION
	)	
Member No. 174825,	)	
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

In this disciplinary proceeding, respondent Stephen Paul Naratil is charged with and found culpable of one count of misconduct, not complying with disciplinary probation conditions, in willful violation of section 6068, subdivision (k).

Based on the nature and extent of the misconduct, mitigating and aggravating circumstances and the applicable law, the court recommends among other things, that respondent be actually suspended for two years and until he proves rehabilitation pursuant to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, 1.4(c)(1).<sup>2</sup>

**Significant Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on February 7, 2014, to which

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

<sup>2</sup> Future references to standards or std. are to this source.

a response a filed on March 3, 2014. On June 12, 2014, the parties submitted a stipulation of facts; a one-day trial was held; and the case was submitted for decision.

The State Bar was represented by Manuel Jimenez and respondent represented himself.

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

Respondent was admitted to the practice of law in California on December 9, 1994, and has been a member of the State Bar of California at all times since that date.

#### **Case No. 13-O-13557 – The Probation Matter**

##### **Facts**

On January 11, 2011, the California Supreme Court filed an order in case number S187668 (State Bar case nos. 06-O-14047, 07-O-11392, 08-O-10609 and 10-O-05062), effective February 10, 2011, suspending respondent for one year, stayed, and placing him on two years' probation on conditions including making restitution, after respondent and the State Bar stipulated to four charges of professional misconduct, including violations of California Rules of Professional Conduct, rules 1-320(A) (sharing legal fees with a non-attorney) and three counts of violating 3-700(D)(2) (not returning unearned fees). The parties stipulated to multiple acts of misconduct as the aggravating factor. In mitigation, the parties agreed to respondent's candor and cooperation (including launching his own investigation into the State Bar's allegations and quickly recognizing and accepting responsibility for his misconduct); remorse (including paying in excess of \$32,000 in restitution to clients prior to entering into the stipulation and agreeing to pay over \$29,000 in restitution to two other clients); lack of prior discipline; and good character. Respondent was aware of the conditions of probation imposed.

On April 23, 2012, the Supreme Court filed an order in case number S187668 (State Bar case no. 11-PM-17824), effective May 23, 2012, revoking respondent's probation on the prior disciplinary case, suspending him for two years, stayed, and placing him on probation for two

years on conditions, including actual suspension for one year and until he made specified restitution, among other things. If, as is now the case, respondent remained suspended for two years or more as a result of not satisfying the preceding requirements, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated. (Former std. 1.4(c)(ii).<sup>3</sup>) In this case, respondent was found culpable of untimely filing two quarterly reports and of not making restitution as ordered, although he had begun to do so. In aggravation, the court found a prior disciplinary record; multiple acts of misconduct; client harm; indifference; and lack of cooperation. Respondent did not participate in this probation violation proceeding, so no mitigating factors were found.

The Supreme Court order became effective on May 23, 2012, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.<sup>4</sup>

Respondent was aware of and violated the following probation conditions in the instant case:

- a. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period; and

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<sup>3</sup> This is now standard 1.4(c)(1).

<sup>4</sup> Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. It is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

b. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session.

Respondent did not timely file the quarterly reports due on the 10<sup>th</sup> of July and October 2012 until January 7, 2013. He did not file the quarterly report due on the 10<sup>th</sup> of April 2013 at all. The October 2012 report was incomplete in that he did not certify his compliance with the State Bar Act, the Rules of Professional Conduct and his probation conditions. He also did not submit proof of compliance with the Ethics School provision by May 23, 2012, as required.

On May 4, 2012, Terese Laubscher, Probation Deputy with the State Bar Office of Probation, wrote to respondent at his membership records address, informing him of the conditions of probation, and attaching the Supreme Court's order and the relevant portions of the Hearing Department decision in State Bar case no. 11-PM-17824, a blank quarterly report form and instructions, a 2012 Multistate Professional Responsibility Examination (MPRE) schedule, a Proof of Payment Information sheet, and a State Bar Ethics/CTA School information, schedule and enrollment forms. Respondent received the letters.

On December 20, 2012, Laubscher sent respondent an email that included a December 21, 2012 letter informing him that the Office of Probation had not received his July and October 2012 quarterly reports. A copy of the May 4, 2012 letter with attachments was attached as well. The letters were also mailed to respondent's membership records address on December 21, 2012. Respondent received the email and letter.

On January 7, 2013, respondent filed quarterly reports due on the 10<sup>th</sup> of July and October 2012 and January 2013. On June 12, 2013, Laubscher informed respondent by email that she was unable to file his October 2012 quarterly report because he failed to check the box stating that he had complied with the State Bar Act, Rules of Professional Conduct and all conditions of probation and that he had to resubmit the form. The email also noted that she had

not received his April 10, 2013 quarterly report and that he had not submitted proof of successful completion of Ethics School. Respondent received the email.

At the hearing in this matter respondent credibly testified that he believed that once he took, but did not pass, the MPRE and was unable to make monthly restitution payments of \$500, he was no longer on probation since he was enrolled inactive and could not practice law. He credibly stated that he was not in his right mind (“fog”) and was experiencing much anger frustration, and angst.

Respondent also credibly testified that shortly after he received notice that he was enrolled inactive, he became extremely depressed and did not read mail sent to him by the State Bar. The depression was a result of the initial disciplinary case as he found that he could no longer make a living as a lawyer given that his misconduct was posted on the State Bar’s website. Respondent was unemployed for 11 months. He eventually sought and was granted bankruptcy protection. Prior to his disciplinary record, respondent had been a lawyer for 16 years and made a good living. For a period of time, he was at a loss as to how to make a living. Marital problems coincided with his inability to make a living. After consultation with a psychiatrist and his parish priest and undergoing marital counseling, respondent was able to resolve many of the emotional difficulties associated with his attorney discipline and subsequent unemployment. Evidence that respondent has recovered from his depression includes his current employment by the Knights of Columbus as an insurance agent and, more importantly, the fact that he now has read all the mail the State Bar has sent him and thus, has been able to fully participate in this proceeding. Furthermore, respondent is no longer under crushing debt as it was discharged in bankruptcy.

This court believes that respondent is extremely motivated to comply with the conditions of any probation this court may recommend because disbarment will adversely impact his

current employment. Employment is important to him as he has four children, ages 16, 13, 10, and 9, all of whom he must support.<sup>5</sup> Respondent credibly testified that, now that he is employed, he will finish making restitution to the remaining victims of his initial disciplinary case.

### **Conclusions**

#### ***Count 1 - (§ 6068, subd. (k) [Failure to Comply with Probation Conditions])***

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. In the instant case, respondent has not complied with the conditions attached to his disciplinary probation in S187668 (State Bar case no. 11-PM-17824) as set forth above.

### **Aggravation**

#### **Prior Record of Discipline (Std. 1.5(a).)**

Respondent has two prior records of discipline, as noted above, arising from the same original facts.

#### **Multiple Acts (Std. 1.5(b).)**

Respondent engaged in multiple acts of misconduct.

#### **Indifference Toward Rectification/Atonement (Std. 1.5(g).)**

Respondent's failure to comply with the probation conditions, after being reminded by the Office of Probation, demonstrates indifference toward rectification of or atonement for the consequences of his misconduct.

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<sup>5</sup> Respondent intends to continue his employment as an insurance agent and a disbarment order would result in the loss of his employment.

## **Mitigation**

### **Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

Respondent and the State Bar entered into a stipulation of facts which conserved judicial resources and demonstrated respondent's acceptance of responsibility for his misconduct.

### **Extreme Emotional/Physical/Mental Difficulties (Std.1.6(d).)**

As a result of the initial disciplinary case, respondent was unemployed for 11 months, sustained extreme financial difficulties and suffered marital discord. Respondent worked through the problems with the help of marital counseling, consultation with a parish priest and a psychiatrist. He was granted a discharge of his debts in bankruptcy. He now has employment with the Knights of Columbus as an insurance agent.

### **Other - Community Involvement**

From 2002 through 2012, respondent has been involved in good works in his church and in his community. He has been an Elector Prior of the Third Order of the Dominican Order, a lay order of the Catholic Church whose principal purpose is to take care of priests and sisters. He spent approximately 10 hours a month volunteer in this capacity. He is also a member of the Knights of Columbus, the world's largest Catholic fraternal service organization, which is dedicated to providing charitable services. Further, he serves as a sports coach at the local parochial school for six hours a week when basketball, volleyball, baseball and basketball are in season.

## **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. 1.1.)

Standard 1.7 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. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standard 2.10 applies in this matter, calling for actual suspension for noncompliance with a condition of discipline, depending on the nature of the condition violated and the attorney's unwillingness or inability to comply with disciplinary orders.

Standard 1.8(b) also applies in this matter and is the more severe of the two. It indicates disbarment under certain circumstances<sup>6</sup> if an attorney has two or more disciplinary records unless the most compelling mitigating factors clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct.

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; std. 1.1.) 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; std. 1.1.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced

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<sup>6</sup> These circumstances are: (1) where actual suspension was ordered in any one of the prior disciplinary matters; (2) where the prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or (3) where the prior disciplinary matters coupled with the current record demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities.

consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

This case involved noncompliance with two probation conditions. In aggravation, the court considered multiple acts of misconduct, two prior disciplinary records and indifference. Mitigating circumstances include candor and cooperation, extreme emotional/mental difficulties and community involvement.

Notwithstanding its unequivocal language to the contrary, disbarment is not mandated under standard 1.8 even if there are no compelling mitigating circumstances that predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.<sup>7</sup>) That is because the ultimate disposition of the charges varies according to the proof. (*In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 125.) In this case, the facts indicate that disbarment is not necessary to protect the public and the profession.

The court is convinced that respondent's tumultuous personal life, including his severe financial difficulties, marital discord and depression led to his repeated inattention to the terms and conditions of his probation. The court is equally convinced that since he has found employment and had marital counseling, his problems have been resolved and he deserves another chance to demonstrate his ability and willingness to comply with the ethics rules, short of disbarment. He has cooperated fully in these proceedings. He has credibly testified to his extreme motivation to comply with the court's disciplinary recommendations; to make restitution to those to whom it is still owed;<sup>8</sup> and to avoid disbarment. The court believes that respondent

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<sup>7</sup> These cases addressed former standard 1.7(b), the predecessor to standard 1.8(b).

<sup>8</sup> The court notes that, in connection with the initial disciplinary proceeding, respondent initiated his own investigation into the State Bar's allegations of misconduct and quickly accepted responsibility for it prior to the filing of any charges. He also made very significant

has turned his situation around and that he is willing and able to conform to his ethical responsibilities in the future. While respondent's dereliction of his duties is not condoned, it is understood. Accordingly, under these circumstances, lesser discipline than disbarment is appropriate. [Disbarment will not be recommended where there is no evidence that a sanction short of disbarment is inadequate to deter future misconduct and protect the public. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 472.)] Consistent with standard 2.10, a lengthy actual suspension of two years to remain in effect until he satisfies the requirements of standard 1.4(c)(1) will be sufficient to protect the public in this instance and to allow respondent to demonstrate his commitment to the ethics requirements.

### **Recommendations**

1. It is recommended that respondent **Stephen Paul Naratil**, member no. 174825, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>9</sup> for a period of three years subject to the following conditions:
2. Respondent **Stephen Paul Naratil**, is suspended from the practice of law for a minimum of the first two years of probation, and respondent will remain suspended until the following requirement is satisfied:
  - i. Respondent must provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
3. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and

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restitution to clients prior to entering into a stipulation to resolve the case. He made some restitution to the remaining to clients as ordered until he became unemployed. He has indicated, and the court found credible, his intention to complete the outstanding restitution now that he is employed.

<sup>9</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. It is not recommended that respondent attend Ethics School, as he has been ordered to do so in Supreme Court case matter S187668.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

### **Multistate Professional Responsibility Examination**

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he has been ordered to do so in Supreme Court case matter S187668.

### **California Rules of Court, Rule 9.20**

It is not recommended that respondent be ordered to comply with California Rules of Court, rule 9.20 because he already did so in connection with Supreme Court case matter S187668.

**Costs**

It is 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: September \_\_\_\_\_, 2014

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PAT E. McELROY  
Judge of the State Bar Court