

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case No.: 14-PM-03874-DFM  
)  
DANA ALLAN GODFREY, ) AMENDED ORDER GRANTING MOTION  
Member No. 152913, ) TO REVOKE PROBATION;<sup>1</sup> ORDER OF  
) INVOLUNTARY INACTIVE ENROLLMENT  
A Member of the State Bar. ) (Bus. & Prof. Code, § 6007, subd. (d)(1))

Introduction<sup>2</sup>

The Office of Probation of the State Bar of California (Probation Office), represented by Supervising Attorney Terrie Goldade, filed a motion seeking to revoke the two-year disciplinary probation that the Supreme Court imposed on Respondent **DANA ALLAN GODFREY**<sup>3</sup> (Respondent) in its August 14, 2013, order in *In re Dana Allan Godfrey on Discipline*, case No. S211303 (State Bar Court case Nos. 12-O-12875 and 12-O-13576) (*Godfrey I*). (§ 6093, subds. (b); Rules Proc. of State Bar, rule 5.310 et seq.) Respondent did not participate in this probation revocation proceeding.

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<sup>1</sup> The court filed its original order granting motion to revoke probation and order of involuntary inactive enrollment on October 3, 2014. Thereafter, on October 9, 2014, the State Bar's Office of Probation filed a motion for reconsideration of that order seeking modifications with respect to court's restitution recommendation. For good cause shown, the court GRANTS the motion for reconsideration. This amended order granting motion to revoke probation includes not only modifications regarding restitution, but also includes, on the court's own motion, the addition of a period of stayed suspension to the recommended discipline.

This amended order supersedes the court's October 3, 2014, order granting motion to revoke probation. This amended order does not affect the October 3, 2014, order of involuntary inactive enrollment, under which Respondent was involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (d)(1) effective October 6, 2014.

<sup>2</sup> Unless otherwise indicated, all statutory references are to the Business and Professions Code and all references to rules are to the State Bar Rules of Professional Conduct.

<sup>3</sup> Respondent was admitted to the practice of law in California on June 6, 1991, and has been a member of the State Bar of California since that time. As discussed below, Respondent has two prior records of discipline.

As set forth below, the court finds, by a preponderance of the evidence (§ 6093, subd. (c); Rules Proc. of State Bar, rule 5.311), that Respondent willfully failed to comply with four of the conditions of his probation. Accordingly, the court grants the motion to revoke probation and recommends, inter alia, that Respondent be actually suspended from the practice of law for one year and until he completes making restitution to two former clients; and that Respondent be placed on a new two-year period of probation with conditions of probation, discussed below, comparable to those imposed on him under the Supreme Court's August 14, 2013, order.

### **Procedural History**

On July 14, 2014, the Probation Office filed and properly served its motion to revoke probation by certified mail, return receipt requested, addressed to Respondent at his latest address shown on the official membership records of the State Bar of California. (§ 6002.1, subd. (c); Rules Proc. of State Bar, rules 5.25, 5.314(A); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108 [service in a State Bar Court proceeding is deemed complete when mailed even if the attorney does not receive the pleading]; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.) On July 14, 2014, the Probation Office also mailed a courtesy copy of the motion to Respondent at his latest address on the State Bar's records by first-class mail, regular delivery.

The Probation Office did not request a hearing on its motion to revoke probation.

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.

On September 3, 2014, the Probation Office filed a request that the court take judicial notice of certified copies of (1) the notice of disciplinary charges in State Bar Court case number 13-O-13456-RAP (*Godfrey II*); (2) Respondent's answer to that notice; and (3) the stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with the Office of the Chief Trial Counsel of the State Bar of California (OCTC) and which the State Bar Court

approved in an order filed on May 28, 2014, in *Godfrey II* (*Godfrey II* stipulation). Even though the Supreme Court has not yet filed an order in *Godfrey II*, the foregoing three pleadings in that matter are properly considered to be a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(e), 1.5(a).)<sup>4</sup> Respondent never filed a response to the Probation Office's request for judicial notice. The court grants the Probation Office's request and takes judicial notice of the three pleadings from *Godfrey II*.

On September 10, 2014, the court took the motion to revoke probation under submission for decision without a hearing.

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

The court admits exhibits 1, 2, and 3 to the motion to revoke probation into evidence. (Rules Proc. of State Bar, rule 5.314(H).)

Because Respondent failed to file a response to the motion to revoke probation, the court treats as admissions the *factual* allegations (not the legal conclusions or the charges) in the motion to revoke probation and its three exhibits. (Rules Proc. of State Bar, rule 5.314(C).)

In its August 14, 2013, order in *Godfrey I*, the Supreme Court placed Respondent on one year's stayed suspension and two years' probation with conditions, including a 30-day actual suspension. The Supreme Court imposed that discipline, including each of the probation conditions, on Respondent in accordance with a stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with OCTC and which the State Bar Court approved in an order filed on April 17, 2013, in *Godfrey I*. Thus, Respondent's misconduct here results from his failure to comply with his own agreement.

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

The Supreme Court's August 14, 2013, order in *Godfrey I* became effective on September 13, 2014, and has continuously remained in effect since that time. At all times material to the motion to revoke probation, Respondent had actual knowledge of that order.

### **Probation Violations**

#### **Probation-Deputy-Meeting Condition**

Under Respondent's probation-deputy-meeting condition, Respondent was required, within 30 days from the effective date of discipline, to contact the Probation Office and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of his probation and to thereafter meet with the probation deputy as directed by the Probation Office.

The record establishes, as charged, that Respondent willfully violated his probation-deputy-meeting condition by failing to contact the Probation Office to schedule a meeting with his probation deputy within 30 days from the effective date of discipline. Respondent did not contact the Probation Office to set up a meeting until October 17, 2013.

#### **Probation-Reporting Condition**

Respondent's probation-reporting condition requires, inter alia, that Respondent submit written-quarterly-probation reports to the Probation Office on every January 10, April 10, July 10, and October 10 during his probation. The record establishes, as charged, that Respondent willfully violated his probation-reporting condition (1) by submitting his first probation report due on January 10, 2014, on January 17, 2014; (2) by submitting an incomplete second report on April 10, 2014; and (3) by failing to submit his third report due on July 10, 2014.

#### **Accounting Condition**

Respondent's accounting condition required that Respondent account to Norma Contreras<sup>5</sup> for a \$5,000 advanced fee and to Marissa Boone for a \$3,500 advanced fee no later

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<sup>5</sup> Contreras was formerly known as Norma Guillen.

than 30 days after the effective date of the discipline herein and provide proof of such to the Probation Office with his next due quarterly report. The record establishes that Respondent willfully violated his accounting probation condition by failing to account to Contreras or Boone no later than 30 days after the effective date of discipline.

Respondent did not account to Contreras until March 20, 2014. Respondent did not account to Boone until February 5, 2014. Respondent timely reported his late accounting because he reported them with or before his “next due quarterly report.”<sup>6</sup>

**Restitution Condition<sup>7</sup>**

Respondent’s restitution condition requires, inter alia, that Respondent pay Contreras restitution in the amount of \$2,375 plus interest; that Respondent pay Boone restitution in the amount of \$1,945 plus interest; that Respondent make minimum monthly restitution payments of \$200 to Contreras and \$200 to Boone beginning no later than October 14, 2013; and that Respondent “provide satisfactory proof of [his minimum monthly restitution payments] to the Office of Probation with each quarterly probationary report, or as otherwise directed by the Office of Probation.”

The record establishes, as charged, that Respondent willfully violated his restitution condition (1) by failing to provide proof that he made any of the required restitution payments to Contreras for the five-month period from February through June 2014; and (2) by failing to provide proof that he made any of the required restitution payments to Boone for the five-month period from February through June 2014.<sup>8</sup>

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<sup>6</sup> The court rejects the Probation Office’s contention that Respondent failed to provide proof of his accounting to Contreras because Respondent submitted a copy (and not the original) of Contreras’s acknowledgement of Respondent’s accounting and \$800 payment on his restitution obligation to Contreras.

<sup>7</sup> The motion to revoke probation charges Respondent only with failing to provide proof of his \$200 monthly restitution payments. The motion does not charge Respondent with failing to make the required \$200 monthly payments.

## **Aggravation**

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

Respondent has two prior records of discipline. In his prior record of discipline, *Godfrey I*, the Supreme Court placed Respondent on one year's stayed suspension and two years' probation on conditions, including thirty days' actual suspension. In *Godfrey I*, Respondent stipulated to six charged violations involving two client matters. Those violations were: failing to communicate (§ 6068, subd. (m)); failing to perform (rule 3-110(A)); failing to account for an advanced fee (two counts) (rule 4-100(B)(3)); and failing to cooperate in a disciplinary investigation (two counts) (§ 6068, subd. (i)). In aggravation, Respondent stipulated to two uncharged counts of failing to refund unearned fees (rule 3-700(D)(2)). In mitigation, Respondent had 21 years of misconduct free practice.

In Respondent's second prior record of discipline, *Godfrey II*, Respondent stipulated to one year's stayed suspension and two years' probation on conditions, including a thirty-day period of actual suspension. Respondent also stipulated to the following four ethical violations in a single client matter: failing to account for an advanced fee (rule 4-100(B)(3)); failing to perform (rule 3-110(A)); failing to communicate (§ 6068, subd. (m)); and failing to pay court ordered sanctions (§ 6103). Respondent also stipulated to the following three aggravating circumstances: prior record of discipline; client harm; and multiple acts of misconduct. In mitigation, Respondent entered into a pretrial stipulation of facts, culpability, and discipline.

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<sup>8</sup> The court rejects the Probation Office's contention that Respondent failed to provide proof of his March 20, 2014, \$800 payment to Contreras for the four restitution payments that were due in October, November, and December 2013 and January 2014 because Respondent submitted a copy (and not the original) of Contreras's acknowledgement of the \$800 payment. Moreover, because the charge is unclear, the court does not find Respondent culpable of violating his probation based on his providing proof of his February 5, 2014, \$800 payment to Boone for the four restitution payments that were due in October, November, and December 2013 and January 2014. Moreover, the Probation Office is directed to give respondent credit for (1) the \$800 he paid to Contreras on March 20, 2014, and (2) the \$800 he paid to Boone on February 5, 2014.

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

Respondent's present misconduct involves multiple violations of probation.

### **Mitigation**

There is no evidence of any mitigating circumstance as Respondent did not appear, and none can be gleaned from the record.

### **Discussion**

Public protection and attorney rehabilitation are the primary goals of attorney disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

“[T]here has been a wide range of discipline imposed for probation violations from merely extending probation . . . to a revocation of the full amount of the stayed suspension and imposition of the amount as an actual suspension.” (*In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

In determining the appropriate level of discipline in a probation revocation proceeding, the court is to consider the “total length of stayed suspension which could be imposed as an actual suspension and the total amount of actual suspension earlier imposed as a condition of the discipline at the time probation was granted.” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) The court is to also consider the seriousness of the probation violations, the Respondent's recognition of his or her misconduct, and the Respondent's efforts to comply with the conditions of probation. (*Ibid.*)

Furthermore, “[t]he violation of a probation condition significantly related to the attorney's prior misconduct merits the greatest discipline, especially if the violation raises a serious concern about the need to protect the public or shows the attorney's failure to undertake steps toward rehabilitation.” (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 151.) “The degree of discipline ultimately imposed must, of necessity, correspond

to some reasonable degree with the gravity of the misconduct at issue.” (*In re Nevill* (1985) 39 Cal.3d 729, 735.)

In addition, the court considers standard 1.8(a), which provides:

If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

The court does not consider standard 1.8(b), which provides for disbarment when an attorney has two prior records of discipline, because that standard is not applicable in probation revocation proceedings. (Rules Proc. of State Bar, rule 5.312; *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 244, 257, fn. 13.)

An attorney’s failure to strictly comply with the conditions of his or her disciplinary probation “ ‘demonstrates a lapse of character and a disrespect for the legal system that directly relate to [the attorney’s] fitness to practice law and serve as an officer of the court. [Citation.]’ [Citation.]” (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

In short, the court concludes that Respondent’s probation violations require the imposition of actual suspension. In that regard, the court finds *In the Matter of Howard, supra*, 2 Cal. State Bar Ct. Rptr. 445 instructive on the appropriate length of that actual suspension. In *Howard*, the attorney, who failed to participate in the probation revocation proceeding, was placed on one year’s actual suspension because she failed to file two probation reports, failed to deliver a former client’s personal financial records to an accountant, and failed to otherwise establish that she had complied with a prior civil court order to turn over files and financial records to the former client.

Moreover, the court independently concludes that public protection requires that Respondent demonstrate that he is now willing and capable of fully engaging in the rehabilitative process and strictly complying with Supreme Court disciplinary orders. Accordingly, the court



will also recommend that Respondent be placed on a new two-year period of probation on conditions that are substantially identical to those imposed on him under the Supreme Court's August 14, 2013, order in *Godfrey I.*<sup>9</sup> (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.)

The court does not recommend that Respondent be again ordered to take and pass a professional responsibility examination because he was ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) in the Supreme Court's August 14, 2013, order in *Godfrey I.* That portion of the Supreme Court's August 14, 2013, order will remain in effect even after Respondent's probation is revoked in this proceeding. Accordingly, if Respondent fails to take and pass the MPRE within the time prescribed in the Supreme Court's August 14, 2013, order (or as it may be modified by the State Bar Court), Respondent will be suspended from the practice of law until he provides proof that he has passed the examination. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

#### **Discipline Recommendation**

The court orders that the Office of Probation's July 14, 2014, motion to revoke probation is GRANTED. Accordingly, the court recommends that the probation imposed on Respondent **DANA ALLAN GODFREY** in the Supreme Court's August 14, 2013, order in case number S211303 (State Bar Court case numbers 12-O-12875 and 12-O-13576), be revoked; that the stay of execution of the one-year suspension be lifted; and that **DANA ALLAN GODFREY** again be suspended from the practice of law in the State of California for one year, that execution of that suspension be stayed, and that he be placed on a new two-year period of probation on the following conditions:

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<sup>9</sup> No Ethics School requirement is included because Respondent recently attended and completed that program. (Rules Proc. of State Bar, rule 5.135(A).)

1. Respondent is suspended from the practice of law for a minimum of the first year of his probation (with credit given for the period of involuntary inactive enrollment which commenced on October 6, 2014, in accordance with Business and Professions Code section 6007, subdivision (d)(3)), and he will remain suspended until the following conditions are satisfied:
  - a. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:
    - (1) Norma Contreras in the amount of \$2,375 plus 10 percent interest per year from December 9, 2010, with credit given for the \$800 payment Respondent made to Contreras on March 20, 2014; and
    - (2) Marissa Boone in the amount of \$1,945 plus 10 percent interest per year from July 29, 2010, with credit given for the \$800 payment Respondent made to Boone on February 5, 2014.
  - b. If Respondent remains suspended for two years or more as a result of not satisfying the preceding restitution conditions, 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 the suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. 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.
3. Within 30 days after the effective date of the Supreme Court order in this matter, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. Respondent must promptly meet with the probation deputy as directed and upon request.
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 telephone number or, if no office is maintained, Respondent's address to be used for State Bar purposes, Respondent must report such change in writing to the State Bar's Membership Records Office and Office of Probation.
5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report,

containing the same information, is due no earlier than 20 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. Respondent's new two-year probation will commence on the effective date of the Supreme Court order in this probation revocation proceeding.
8. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

### **Rule 9.20**

The court further recommends that **DANA ALLAN GODFREY** 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.

### **Costs**

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **Order of Involuntary Inactive Enrollment**

Pursuant to section 6007, subdivision (d)(1), the court orders that **DANA ALLAN GODFREY** remain involuntarily enrolled as an inactive member of the State Bar of California. (See also Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 5.315.)

Dated: October \_\_\_\_, 2014.

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**DONALD F. MILES**  
Judge of the State Bar Court