

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	<b>Case No. 06-O-12856-PEM</b>
<b>QUINCY N. HOANG,</b>	)	<b>DECISION</b>
<b>Member No. 219421,</b>	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default matter, respondent **Quincy N. Hoang** is found culpable, by clear and convincing evidence, of misconduct in a single client matter, involving failure to perform services, failure to communicate, failure to return unearned fees, and failure to obey a court order.

The court recommends, among other things, that respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, and that respondent be actually suspended from the practice of law for 75 days and until he makes restitution 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 November 30, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a four-count Notice of Disciplinary Charges (NDC) at his official membership records address. The NDC was returned by the United States Postal Service as unclaimed.

The State Bar located an alternate address and telephone number for respondent. On or before January 7, 2007, the deputy trial counsel (DTC) assigned to this matter had a telephone

conversation with respondent, informing him that disciplinary charges had been filed against him. The DTC also informed respondent that a January 8, 2007 initial status conference was scheduled in the matter. Additionally, the DTC mailed respondent, among other things, a letter and the NDC.

Respondent failed to appear at the January 8, 2007 status conference and at a January 22, 2007 status conference. On January 22, 2007, the DTC received a faxed courtesy copy of a document entitled, "Answer to Notice of Disciplinary Charges," which was never filed with the court.

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

On the State Bar's motion, respondent's default was entered on April 27, 2007, and respondent was enrolled as an inactive member on May 1, 2007, under Business and Professions Code section 6007, subdivision (e).<sup>1</sup> An order of entry of default was sent to respondent's official address by certified mail.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on May 17, 2007, following the filing of the State Bar's brief on culpability and discipline.

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

#### **A. Jurisdiction**

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).)

Respondent was admitted to the practice of law in California on June 4, 2002, and has been a member of the State Bar of California at all times since that date.

#### **B. The Regan Matter**

On January 3, 2006, Christopher Regan (Regan) hired respondent to represent him in a

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

criminal matter in Alameda County Superior Court arising out of Regan's arrest for driving under the influence. In January 2006, Regan made an initial payment to respondent of \$1,000. From March 13 through November 1, 2006, Regan made monthly payments of \$45. Thus Regan paid respondent a total of \$1,405 in fees.

Respondent instructed Regan that he would appear on Regan's behalf for all court appearances and that Regan should not appear for court appearances, because he was charged with misdemeanor violations.

Respondent sent an attorney to appear on Regan's behalf for a January 26, 2006 court appearance in Regan's case. At that January 26, 2006 court matter, the court set another court date for March 8, 2006. Although respondent was informed of the March 8, 2006 hearing, he failed to appear. The court continued the hearing to March 9, 2006, but, respondent also failed to appear at that hearing. The court then issued a bench warrant for Regan's arrest.

On May 19, 2006, respondent appeared in court on Regan's behalf, requested that the bench warrant be recalled, and told the court that he accepted responsibility for the nonappearance. The court withdrew the bench warrant. The court also ordered respondent and Regan to appear on June 2, 2006.

On May 30, 2006, respondent sent Regan a letter notifying him that a hearing was set for June 2, 2006, and that his appearance was required at that hearing. Respondent also informed Regan that he had requested that the bench warrant be recalled. Respondent stated in his letter that the court had ordered him to advise Regan that it would be in Regan's best interest to obtain new counsel. Respondent indicated that he would elaborate further when he and Regan could speak by telephone or in person. Prior to the May 30, 2006 letter, respondent had not informed Regan about the outstanding bench warrant. Regan did not receive the letter from respondent until after the hearing on June 2, 2006.

When neither respondent nor Regan appeared at the June 2, 2006 hearing, the court issued another bench warrant. On July 3, 2006, the court issued an Order to Show Cause (OSC) ordering respondent to show cause why sanctions should not be imposed for his failure to appear on June 2, 2006. The OSC hearing was set for July 28, 2006. Respondent received notice of the July 28, 2006

hearing, but failed to appear.

Respondent did not inform Regan that he failed to appear on June 2 and July 28, 2006. Nor did respondent inform Regan that another bench warrant was issued on June 2, 2006.

Other than arranging for an attorney to appear on Regan's behalf at the January 26, 2006 hearing and appearing in court on Regan's behalf on May 19, 2006, respondent took no steps to provide legal services for Regan. Although respondent's services were of little or no value to Regan, he did not refund any money to Regan. Moreover, throughout the pendency of his case, Regan called respondent on several occasions to determine the status of his case, leaving messages for respondent to return his calls. Although respondent received the messages, he failed to respond.

***Count 1: Failure to Perform with Competence (Rules Prof. Conduct, Rule 3-110(A))<sup>2</sup>***

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A) by failing to appear for three scheduled court hearings on March 8, March 9, and June 2, 2006, by failing to appear for the July 28, 2006 OSC hearing, and by not taking any steps to provide legal services of value in the case.

***Count 2: Failure to Communicate (§ 6068, Subd. (m))***

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to respond to Regan's case status inquiries, by failing to inform Regan of the bench warrant that the court issued on June 2, 2006, and by failing to inform Regan of the June 2 and July 28, 2006 missed court appearances, all of which were significant case developments, respondent failed to respond promptly to reasonable status inquiries of a client and failed to inform his client of significant developments, in wilful violation of section 6068, subdivision (m).

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<sup>2</sup>References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

***Count 3: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly any part of a fee paid in advance that has not been earned. When respondent failed to appear at the June 2 and July 28, 2006 hearings, when he failed to inform Regan that he did not appear at those hearings, and when he failed to inform Regan that a bench warrant had issued on June 2, 2006, respondent ceased to provide the services for which he was retained, thereby abandoning his client and effectively terminating his employment. (See, *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 641-642.) And, by providing services of little or no value to Regan, respondent did not earn the advance attorney fees paid to him. Therefore, respondent wilfully violated rule 3-700(D)(2) by failing to return any portion of the total \$1,405 advance fees he received from Regan.

***Count 4: Failure to Obey Court Order (§6103)***

Section 6103 requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

By failing to comply with the July 3, 2006 OSC, regarding why sanctions should not be imposed against him for his failure to appear at the June 2, 2006 hearing, respondent wilfully disobeyed and violated a court order requiring him to do an act connected with or in the course of his profession, which he ought to have done in good faith, in wilful violation of section 6103.

**IV. Mitigating and Aggravating Circumstances**

**A. Mitigation**

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Std. 1.2(e).)<sup>3</sup>

**B. Aggravation**

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

Respondent committed multiple acts or wrongdoing, including failing to perform competently, failing to communicate, failing to return unearned fees, and failing to obey a court

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<sup>3</sup>All further references to standards are to this source.

order. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed his client and the administration of justice. (Std. 1.2(b)(iv).) Respondent's failure to return unearned fees deprived Regan of his funds. Moreover, two bench warrants issued as a result of respondent's misconduct, taxing the resources of the court.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to refund any portion of the unearned fees he received.

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

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 one client matter. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.4(b), 2.6 and 2.10.)

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.) The court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges one year stayed suspension, one year probation and 90 days actual suspension and until respondent makes restitution of \$1,405 to Regan. In support of its recommended discipline, the State Bar cited, among other cases, *Carter v. State Bar* (1988) 44 Cal.3d 1091; *Snyder v. State Bar* (1976) 18 Cal.3d 286; *In the Matter of Trillo* (Review

Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59; and *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.

In *Carter*, the attorney was given two years probation with six months actual suspension for his misconduct in a single client matter, where he failed to perform legal services competently, repeatedly failed to communicate with his client, improperly withdrew from employment without taking steps to avoid foreseeable prejudice to the client, failed to return client papers, failed to return unearned fees and client files, and intentionally deceived the client. The attorney had a prior disciplinary record of neglect of two other clients.

In *Snyder*, the Supreme Court found disbarment appropriate discipline for the attorney, where in a two separate client matters he engaged in what the court described as “grievous misconduct and abuse of court process and procedure.” (*Snyder v. State Bar, supra*, 18 Cal.3d 286, 291.) Snyder’s acts involved dishonesty and moral turpitude, wilful disobedience of court orders and repeated breaches of his oath and duties as an attorney and misdemeanors [proscribing deceit of the court or any party].) Snyder falsified documents filed with the court, made misrepresentations to the court, and filed legal actions for the purpose of harassment and delay.

In *Trillo*, the attorney, who was ordered to make restitution, was also given a three-year stayed suspension and a three-year probation, and an actual suspension of one year. In a two client matter, the attorney ceased to perform services, failed to communicate with his clients, made misrepresentations to his clients, and misappropriated unearned advance fees and costs, which were acts of dishonesty. In aggravation the attorney’s misconduct harmed his clients. He also acted in bad faith toward his clients and failed to participate in the disciplinary proceedings.

In *Peterson*, the attorney failed to perform competently and abandoned his clients’ interests in three separate client matters, and failed to cooperate in the State Bar’s investigation of his conduct. In addition, Peterson deceived two clients about the status of their cases. Taking into consideration the lengthy time period over which respondent’s misconduct occurred, the extensive deceit he practiced on his clients and the harm he caused them, and his failure to participate in State Bar Court proceedings, the court imposed a three-year suspension, stayed, a three-year probation, and an actual suspension of one year.

In each of the above-cited cases, the misconduct of the attorneys was far more extensive and egregious than that of respondent Hoang.

Thus, this court finds that the State Bar's recommendation of a 90-day actual suspension is too harsh for misconduct in this single client matter involving failure to return unearned fees of \$1,405, failure to perform competently, failure to communicate, and failure to obey a court order. Moreover, this court cannot agree with the State Bar's recommendation for the imposition of probation at this time. 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.)

The court finds the following cases to be instructive in determining the appropriate discipline in this matter:

In *In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, the attorney was given a one-year stayed suspension and three-year probation, including 45 days actual suspension and restitution of \$3,000, for his misconduct in a single client matter. The attorney was culpable of failure to perform services competently, improper withdrawal from employment while the client was incarcerated, failure to render an accounting of unearned fees, and failure to return unearned fees. The attorney had no prior record of discipline in 20 years. But, in aggravation the attorney was found to have caused significant harm to his client by leaving her stranded in jail and was found to have been very uncooperative during the disciplinary process.

*In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, involved two client matters. The attorney was found culpable of two serious instances of reckless failure to perform legal services, improper withdrawal from employment in one matter, failure to communicate, failure to maintain the respect due to the courts, failure to obey a court order, failure to return a client file, and failure to cooperate with State Bar investigations. The court determined that the attorney's misconduct warranted a discipline recommendation of 18-months stayed suspension, two years of probation, and a 90-day actual suspension. The attorney had



defaulted in the disciplinary proceedings.

In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney, who had no prior record of discipline in 12 years of practice, was actually suspended for 60 days for misconduct in a single client matter. The attorney failed to communicate with his client and failed to perform competently, which caused his client to lose her case. He also improperly held himself out as entitled to practice law and engaged in an act of moral turpitude by misleading his client into believing he was still working on her case while he was on suspension for not paying his State Bar dues. He defaulted in the disciplinary proceedings as well.

Hoang, like the attorneys in *Greenwood* and *Johnston*, defaulted. Failure to appear and participate in this hearing 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.) Respondent's failure to participate in this proceeding leaves the court without information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct.

Balancing the appropriate factors, including respondent's misconduct, the standards for attorney sanctions for professional misconduct, the case law, and the aggravating evidence, placing respondent on actual suspension for 75 days and until he makes restitution would be appropriate to protect the public and to preserve public confidence in the profession.

Moreover, it has long been held that "[r]estitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at 1093) Therefore, respondent should refund all legal fees to his client.

## **VI. Recommended Discipline**

Accordingly, the court hereby recommends that respondent **Quincy N. Hoang** be suspended from the practice of law for one year, that said suspension be stayed, and that respondent be actually suspended from the practice of law for 75 days and until he makes

restitution to Christopher Regan in the amount of \$1,405 plus 10% interest per annum from July 28, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Christopher Regan, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes proof thereof to the State Bar's Office of Probation and until he files and the State Bar grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.) Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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

It is further recommended that if respondent is actually suspended for two years or more, he will remain actually suspended until he has shown proof satisfactory to the State Bar Court of 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 take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order or during the period of his actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn.8.)

If respondent remains actually suspended for 90 days or more, it is also recommended that respondent be ordered to comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein. Wilful 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>4</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: August \_\_\_, 2007

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PAT McELROY  
Judge of the State Bar Court

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<sup>4</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (See, *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)