

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 06-PM-11405-RAP
)	
HAO-NHIEN Q. VU,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND FOR
Member No. 177529,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this probation revocation proceeding, respondent **HAO-NHIEN Q. VU** is charged with violating his probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to revoke his probation, to impose upon respondent the entire period of suspension previously stayed, and to involuntarily enroll respondent as an inactive member of the State Bar.

The court finds, by preponderance of the evidence, that respondent has violated his probation conditions and hereby grants the motion. The court recommends, among other things, that respondent's probation be revoked, that the previous stay of execution of the two year suspension be lifted, and that respondent be actually suspended from the practice of law for two years.

II. Pertinent Procedural History

On March 17, 2006, the Office of Probation filed and properly served a motion to revoke probation on respondent, under rules 60 and 563(a) of the Rules of Procedure of the State Bar of California.¹ The motion was mailed to respondent's official membership records address. Respondent did not file a response within 20 days of the service of motion, as required by rule

¹References to rules are to the Rules of Procedure of the State Bar.

563(b)(1).

The court notes that on April 17, 2006, it received a letter dated April 14, 2006, from respondent which was addressed to both the court and the Office of Probation. In his letter respondent stated:

I accept the revocation of probation and the suspension. I have been facing difficult personal circumstances that made it difficult for me to comply with the probation conditions, as well as to participate fully in these current proceedings.

Regardless of my personal circumstances, however, objectively speaking I agree with the State Bar that I should not be practicing law for the duration of the suspension.

Accordingly, I accept the revocation of probation and the suspension.

The court took this matter under submission on April 18, 2006.

III. Findings of Fact and Conclusions of Law

All factual allegations contained in the motion to revoke probation and supporting documents are deemed admitted upon respondent's failure to file a response. (Rules Proc. of State Bar, rule 563(b)(3).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on August 4, 1995, and has been a member of the State Bar since that time.

B. Probation Conditions in Supreme Court Case No. S126321

On September 30, 2004, in Supreme Court case No. S126321 (SCO), the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for two years and until he shows proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, that execution of the suspension be stayed;
2. Respondent be placed on probation for two years on condition that he be actually suspended for 30 days, as recommended by the Hearing Department of the State Bar Court, in its order approving stipulation filed on June 8, 2004. (State Bar case Nos.

03-O-01551; 03-O-05007); and

3. Respondent comply with certain probation conditions, including, but not limited to:
 - a. Submitting quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation;
 - b. Attending the State Bar Ethics School and passing the test given at the end of the session within one year from the effective date of discipline, and providing proof of compliance to the Office of Probation; and
 - c. Completing six hours of live continuing education in legal ethics in excess of those hours required for his license and providing proof of compliance to the Office of Probation within one year of the effective date of the order approving stipulation filed on June 8, 2004, by the Hearing Department of the State Bar Court (State Bar case Nos. 03-O-01551; 03-O-05007).

Notice of the SCO was properly served upon respondent in the manner prescribed by rule 24(a) of the California Rules of Court at respondent's official address in accordance with Business and Professions Code section 6002.1.²

C. Probation Violations

The Office of Probation mailed a letter to respondent, dated November 23, 2004, outlining the terms and conditions of his probation. The letter was not returned as undeliverable to the Office of Probation.

In a letter to respondent dated November 18, 2005, the Office of Probation informed respondent that his quarterly reports due April 10, July 10 and October 10, 2005, had not been received and that proof of completion of the State Bar Ethics School and continuing education also had not been received. The letter requested that respondent submit his quarterly reports immediately and contact the Office of Probation regarding his non-compliance with his probation conditions. The letter was not returned as undeliverable.

On August 22, 2005, the Office of Probation telephoned respondent's membership records

²References to sections are to the Business and Professions Code.

telephone number and left a message asking that he return the phone call. Respondent did not do so.

Respondent has failed to do the following:

1. Submit quarterly reports due on April 10, July 10, and October 10, 2005, and January 10, 2006;
2. Provide proof of attendance at the Ethics School and passage of the test given at the end of that session by October 30, 2005; and
3. Complete six hours of live continuing education in legal ethics within one year of the effective date of the order approving stipulation filed on June 8, 2004, by the Hearing Department of the State Bar Court (State Bar case Nos. 03-O-01551; 03-O-05007) and provide proof of completion of said continuing education.

Bad faith is not a requirement for a finding of culpability in a probation violation matter; “instead, a ‘general purpose or willingness’ to commit an act or permit an omission is sufficient.” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

Section 6093, subdivision (b), provides that violation of a probation condition constitutes cause for revocation of any probation then pending, and may constitute cause for discipline. Section 6093, subdivision (c), provides that the standard of proof is the preponderance of the evidence.

Therefore, the State Bar has demonstrated by a preponderance of the evidence that respondent wilfully violated the probation conditions ordered by the Supreme Court in its September 30, 2004 order. Respondent failed to submit quarterly reports to the Office of Probation that were due on April 10, July 10, and October 10, 2005 and January 16, 2006. Respondent failed to attend Ethics School and submit proof of attendance by October 30, 2005. Additionally, respondent failed to attend six hours of live continuing education instruction in legal ethics and provide proof thereof within one year the effective date of the order approving stipulation filed on June 8, 2004, by the Hearing Department of the State Bar Court (State Bar case Nos. 03-O-01551; 03-O-05007).

As a result, the revocation of respondent’s probation in California Supreme Court case No. S126321 is warranted.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Since respondent did not file a response to the probation revocation motion, no evidence in mitigation was presented and none is apparent from the record. (Rules Proc. of State Bar, tit. IV, Stds. for Attorney Sanctions for Prof. Misconduct, std. 1.2(e).)³

B. Aggravation

In aggravation, respondent has a prior record of discipline. (Std. 1.2(b)(i).) On September 30, 2004, in the underlying matter, respondent, upon stipulation, was ordered suspended for two years and until he complies with standard 1.4(c)(ii), stayed, and placed on probation for two years on condition that he be actually suspended for 30 days for his acts of misconduct in two matters. His misconduct involved a failure to perform legal services competently in one matter resulting in a violation of rule 3-110(A) of the Rules of Professional Conduct. In the second matter respondent held himself out to the court as entitled to practice law and actually practiced law when he was not an active member of the State Bar in violation of Business and Professions Code sections 6125, 6126, and 6068, subdivision (a).

Respondent's failure to fully participate in this proceeding is also an aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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

The State Bar recommends that the period of stayed suspension be lifted and that respondent be actually suspended for two years and until compliance with standard 1.4(c)(ii) of the Standards for Professional Misconduct. In addition, the State Bar urges that respondent be placed on involuntary inactive enrollment until the suspension is effective, and that he be ordered to comply with rule 955 of the California Rules of Court.

“[T]here has been a wide range of discipline imposed for probation violations from merely

³All further references to standards are to this source.

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.) The extent of the discipline to be recommended is dependent, in part, on the nature of the probation violation and its relationship to respondent’s prior misconduct. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Respondent’s prior misconduct involved a failure to act competently on behalf of a client and a failure to uphold the law by practicing law when he was not entitled to do so. In the instant matter, the probation violation found was his failure to comply with the rehabilitation conditions. He has failed to file his quarterly reports, attend Ethics School, and attend legal ethics continuing education instruction.

By failing to comply in the instant matter with the probation conditions imposed on him by a Supreme Court order, respondent has demonstrated an inability to comply with his professional obligations and duties. Moreover, in his April 14, 2006 letter to the court and the Office of Probation, respondent recognizes that he should not be practicing law for the duration of his suspension and “accept[s] the revocation of probation and the suspension.” That respondent, through his letter to the court and the Office of Probation, has acknowledged that he should not be practicing law at this time and that he accepts the revocation of probation and suspension is a hopeful sign that he can put the welfare of the public and the profession before his own interests, and that he may well be a candidate for successful rehabilitation in the future.

Thus, in consideration of respondent’s admitted inability to comply with his probation conditions and his inability to participate in these proceedings, the court does not believe it worthwhile at this time to recommend again placing respondent on probation subject to conditions.

Hence, the court finds good cause to GRANT the motion to revoke respondent’s probation and recommends that the entire period of his stayed suspension be imposed.

VI. Recommended Discipline

Accordingly, the court recommends as follows:

1. That the probation of respondent **HAO-NHIEN Q. VU** previously ordered in Supreme Court case No. S126321 (State Bar case Nos. 03-O-01551; 03-O-05007)

be revoked;

2. That the previous stay of execution be lifted; and
3. That respondent be actually suspended from the practice of law for two years and 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), Standards for Attorney Sanctions for Professional Misconduct.

It is also recommended that the Supreme Court order respondent to comply with rule 955, paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

VII. Costs

The court recommends 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.

VIII. Order of Involuntary Inactive Enrollment

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).⁴

Dated: May 17, 2006

RICHARD A. PLATEL
Judge of the State Bar Court

⁴Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)