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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION			PUBLIC MATTER
<p>Counsel For The State Bar</p> <p>Rosalba L. Gutierrez Deputy Trial Counsel State Bar of California 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1671</p> <p>Bar # 270469</p>	<p>Case Number(s): 11-O-13516-RAH; (Investigation No.) 11-O-18171</p>	<p>For Court use only</p> <div style="text-align: center; padding: 20px;"> <p style="font-size: 2em; font-weight: bold; margin: 0;">FILED</p> <p style="font-size: 1.2em; font-weight: bold; margin: 5px 0;">APR 19 2012</p> <p style="font-size: 0.8em; font-weight: bold; margin: 0;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>	
<p>In Pro Per Respondent</p> <p>Thomas D. Pham, Jr. Pham & Associates 17111 Beach Blvd Ste 100 Huntington Beach, CA 92647 (714) 260-4321</p> <p>Bar # 183521</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>		
<p>In the Matter of: Thomas D. Pham, Jr.</p> <p>Bar # 183521</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted August 26, 1996.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 16 pages, not including the order.



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- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: two (2) billing cycles following the effective date of the Supreme Court order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
 - (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct. See Attachment p. 13.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

1. No Prior Discipline: Respondent was admitted in 1996 and has no prior record of discipline.
2. Cooperation: Respondent acknowledged his wrongdoing and has cooperated with the State Bar by entering into a stipulation to settle this matter.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of one (1) year.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of one (1) year, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of sixty (60) days.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

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- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her 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.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, 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. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason:

- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

(Effective January 1, 2011)

Actual Suspension

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and 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's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

FEE ARBITRATION:

1. Respondent must offer binding fee arbitration to Kanchana Taveesub ("Taveesub") in the manner set forth below:

A. Duty to Notify Individuals of Right to Mandatory Fee Arbitration

No later than thirty (30) days after the effective date of discipline, Respondent agrees to send a letter by certified mail, return receipt requested, to the individual set forth below and agrees to therein offer to initiate, pay any costs and fees associated with the fee arbitration, and participate in binding fee arbitration with said individual, upon the request of such individual, regarding fees Respondent received for representation of the former client set forth below, unless Respondent has previously sent such a written offer to said individual. The letter shall include the address and phone number of the Office of Probation along with a statement that the Office of Probation will be monitoring his fee arbitration conditions and may be contacted by the individual.

Respondent must offer Taveesub the option of participating in binding fee arbitration for the \$1,500 in fees that Taveesub paid Respondent for the bankruptcy matter.

Within forty (40) days after the effective date of discipline, Respondent agrees to provide the Office of Probation with a copy of the letter offering to initiate and participate in fee arbitration with the individual set forth above, along with a copy of the return receipt from the U.S. Postal Service, or other proof of mailing.

B. Upon the Individual's Consent to Mandatory Fee Arbitration, Duty to Initiate Fee Arbitration

Respondent agrees to advise the Office of Probation, in writing, of any request to participate in fee arbitration made by the individual set forth above within thirty (30) days after any such request. Respondent agrees to provide the Office of Probation with any information requested to verify Respondent's compliance, including submission of any written request for fee arbitration or the submission of a declaration from the individual setting forth the date arbitration was requested.

Respondent agrees to initiate fee arbitration within thirty (30) days of any request, including making any payment required by the organization conducting the fee arbitration. Respondent agrees to fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration with respect to the above individual.

Respondent further agrees to accept binding arbitration on the arbitration request form. If the arbitration proceeds as non-binding, however, Respondent hereby agrees to abide by the arbitration award and foregoes the right to file an action seeking a trial de novo in court to vacate the award.

C. Duty to Comply with the Arbitration Award

Within thirty (30) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, Respondent agrees to provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent agrees to abide by any award, judgment or stipulated award of any such fee arbitration and agrees to provide proof thereof to the Office of Probation within thirty (30) days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, Respondent is to make full payment within sixty (60) days of the issuance of any such award, judgment or stipulated award.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, Respondent will be given credit for such payment(s) provided satisfactory proof of such payment(s) is or has been shown to the Office of Probation.

D. Obligation to Pay Restitution to the Client Security Fund.

If the State Bar Client Security Fund has reimbursed the above individual for all or any portion of any award, judgment or stipulated award pursuant to fee arbitration, Respondent agrees to pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5. To the extent the Client Security Fund has paid only principal amounts, Respondent will still be liable for interest payments to such individuals. Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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E. Effect of Failure to Comply with Fee Arbitration Conditions.

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court ordering Respondent to pay back the full amount of attorneys' fees paid to Respondent by each of the individuals listed plus 10% interest from the date Respondent received the fees.

2. Respondent retains the right to pursue fee arbitration for the work that his office performed regarding the loan modifications for Taveesub's three properties. Taveesub paid Respondent \$8,000 to complete three loan modifications.

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In the Matter of: Thomas D. Pham, Jr.	Case Number(s): 11-O-13516--RAH, 11-O-18171 (inv)
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Kanchana Taveesub	\$8,500	May 11, 2011

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than one (1) year following the effective date of the disciplinary order.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
 - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Thomas D. Pham, Jr.

CASE NUMBER(S): 11-O-13516-RAH, 11-O-18171(inv)

A. WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY:

The parties waive any variance between the Notice of Disciplinary Charges (“NDC”) filed on December 6, 2011 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended NDC and waive the right to a formal hearing on any charges herein.

B. FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 11-O-13516 (Complainant: Rosalia Vega)

FACTS:

1. On October 26, 2007, Rosalia Vega (“Vega”) hired Respondent on a contingency fee basis to represent her in a personal injury matter. On October 16, 2009, Respondent filed suit on Vega’s behalf in the matter entitled *Vega vs. Superior Super Warehouse*, Riverside County Superior Court Case No. RIC538234.

2. On October 16, 2009, the Riverside County Superior Court (“the court”) served Respondent with notice of Non-Proof of Service Hearing, a non-appearance hearing, scheduled for January 14, 2010 and a Notice of Case Management Conference scheduled for April 15, 2010. On January 14, 2010, the court issued an Order to Show Cause as to why sanctions should not be ordered for Vegas’s failure to file proof of service of summons and complaint and scheduled the hearing on the OSC for April 15, 2010. On January 27, 2010, the court served Respondent with notice of the April 15, 2010 OSC hearing. Respondent received notice of the OSC hearing. Respondent failed to file the proof of service of the summons and complaint on Superior Super Warehouse. Respondent also failed to appear on April 15, 2010 at the OSC hearing and the court dismissed Vega’s case without prejudice.

3. On May 15, 2010, Vega mailed a letter to Respondent in which she stated that due to the lack of communication from Respondent for an “extensive period of time” she was concerned about the status of her case. Respondent received the letter.

4. In June 2010, Vega went to Respondent’s office and a member of Respondent’s staff gave Vega a letter signed by Respondent which stated that there was a “[h]earing on motion” in July 2010. In the letter, Respondent informed Vega that he would contact her after the July 2010 hearing and that he had advised two of Vega’s medical providers that her case was still pending.

5. On September 17, 2010, Respondent filed a motion to set aside the dismissal of Vega's case based on his mistake. On October 27, 2010, the court granted Respondent's motion to set aside the dismissal and ordered Respondent and Vega, jointly and severally, to pay sanctions in the amount of \$250 ("sanction order"). The sanctions were to be paid within 30 days of October 27, 2010. At that same hearing, the court scheduled a Case Management Conference for November 30, 2010, as well as an OSC hearing regarding Dismissal of the complaint unless an answer or default was entered prior to the November 30, 2010 OSC hearing. Respondent received notice of the November 30, 2010 Case Management Conference and OSC hearing.

6. Respondent failed to appear on November 30, 2010, at the Case Management Conference and the OSC hearing. As a result, the court again dismissed Vega's case. On December 1, 2010, the court served Respondent with notice of the dismissal of Vega's case. Respondent received notice of the dismissal.

7. On March 14, 2011, Respondent's office informed Vega that she had to be in court the following day, March 15, 2011, at 8:30 a.m. On March 15, 2011, Vega went to the courthouse, but Respondent was not there.

8. In July 2011, Vega's husband went to Respondent's office and spoke with Respondent's secretary. The secretary called Respondent and Respondent told the secretary that the new court date for Vega's case was scheduled for September 1, 2011.

9. On September 1, 2011, Respondent informed Vega that the court date had been changed to September 6, 2011, and that Respondent would contact Vega regarding her case after the court hearing on that date. No hearing occurred in Vega's case on September 6, 2011, nor was one ever scheduled by the court for that date because the case had been dismissed.

10. On November 4, 2011, Respondent filed a motion to set aside the dismissal of Vega's case. On December 14, 2011, the court granted Respondent's motion. Vega's case is back on calendar and Respondent continues to represent Vega.

11. To date, Respondent has failed to pay any portion of the \$250 in sanctions ordered by the court on October 27, 2010. Respondent did not appeal or otherwise seek relief from the sanction order.

CONCLUSIONS OF LAW

12. By failing to prosecute Vega's case, including failing to file the proof of service and failing to appear at the OSC hearings and case management hearing, which caused Vega's case to be dismissed twice, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

13. By providing false information to Vega and her husband, including false court dates in Vega's case, when Respondent knew that Vega's case had been dismissed, Respondent made misrepresentations to his client, thereby committing acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106 of the Business and Professions Code.

14. By failing to pay the sanctions by the date set forth in the sanction order or at any time, Respondent willfully disobeyed or violated an order of the court, in willful violation of section 6103 of the Business and Professions Code.

Case No. 11-O-18171 (Complainant: Kanchana Taveesub)

FACTS:

15. On April 18, 2010, Kanchana Taveesub ("Taveesub") hired Respondent to handle loan modifications involving three properties. Taveesub paid Respondent \$8,000 for the loan modification service and an additional \$2,000 for a bankruptcy case, which included a \$500 filing fee. Taveesub paid Respondent the \$1,500 for the bankruptcy but paid the \$500 in filing costs to a member of Respondent's staff. Although the bankruptcy was not filed because the trustee sale of Taveesub's home was postponed, Respondent did substantial legal work in preparing the bankruptcy filing. On May 2, 2011, Taveesub requested a refund from Respondent. Although the filing costs were paid to Respondent's staff, Respondent has agreed to reimburse the filing costs to Taveesub. To date, Respondent has not provided an accounting or a refund for the advanced fees and costs he received from Taveesub.

16. During the time that Taveesub was represented by Respondent, Taveesub never met Respondent and was never able to speak directly with Respondent. All of the information and legal advice that Taveesub received from Respondent's office was given by Respondent's non-attorney staff. Respondent knew or was grossly negligent in not knowing that his non-attorney staff was giving legal advice to Taveesub.

CONCLUSIONS OF LAW:

17. By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving fees from Taveesub prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of subsection (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated Business and Professions Code section 6106.3.

18. By failing to provide an accounting to Taveesub, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in willful violation of rule 4-100(B)(3), Rules of Professional Conduct.

19. By allowing his non-attorney staff to give legal advice to Taveesub, Respondent aided a person or entity in the unauthorized practice of law in willful violation of rule 1-300(A) of the Rules of Professional Conduct

MITIGATION

Remorse: Respondent filed motions to set aside the dismissal of Vega's case before Vega submitted a complaint to the State Bar.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 28, 2012.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3 provides that the primary purposes of attorney discipline are, "the protection of the public, the courts and the legal profession; the maintenance of high legal professional standards by attorneys and the preservation of public confidence in the legal profession."

Standard 2.2(b) provides that culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of a member an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Standard 2.4 provides that culpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of a violation of sections 6068 or 6103 of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

In *Gold v. State Bar*, (1989) 49 Cal. 3d 908, the court found the attorney culpable of two matters of failing to perform services and failing to communicate properly with clients with deceit in one matter. The attorney in that case had no prior record of discipline in 25 years of practice. The court imposed a 30-day actual suspension coupled with a three year stayed suspension period. In *Levin v. State Bar* (1989) 47 Cal. 3d 1140, the attorney's misconduct involved two matters for abandonment and deceit to obtain a loan. The attorney had no prior record of discipline in 10 years of practice. The attorney in that case received a three year stayed suspension coupled with a one year actual suspension period and until she proved rehabilitation. (See also *In the Matter Peterson* (1990) 1 Cal. State Bar Ct. Rptr. 73, involving three matters. The attorney abandoned the clients and deceived two of his three clients as to the status of their matters and failed to participate in State Bar investigation. The court imposed a three year stayed suspension coupled with a three year probationary period and a one year actual suspension).

In this case, Respondent does not have a prior record of discipline and has been in practice for sixteen years. However, Vega's case has been dismissed twice and Respondent has failed to complete any substantive work on the case since he filed the initial lawsuit on Vega's behalf in 2009.

Based on the facts, standards and case law cited above, discipline consisting of a one year stayed suspension, coupled with a one year probationary period and a 60-day actual suspension is appropriate.

DISMISSALS

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
11-O-13516	Two	Section 6068(m) Failure to Inform Client of Significant Event

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of, March 27, 2012, the prosecution costs in this matter are approximately \$4,161. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

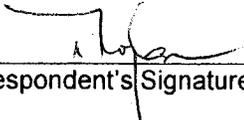
(Do not write above this line.)

In the Matter of:
Thomas D. Pham, Jr.

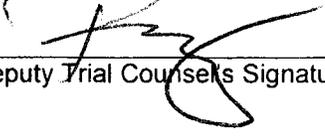
Case number(s):
11-O-13516-RAH; 11-O-18171(inv)

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

3-28-2012  Thomas D. Pham, Jr.
Date Respondent's Signature Print Name

Date Respondent's Counsel Signature Print Name

3/28/12  Rosalba L. Gutierrez
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: Thomas D. Pham, Jr.	Case Number(s): 11-O-13516-RAH; 11-O-18171(inv)
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ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

As an additional condition of probation, during the period of his probation, Respondent must present satisfactory proof to the Office of Probation that he has paid the \$250 sanction award previously ordered by the Riverside Superior Court in *Vega v. Superior Super Warehouse*.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

4/17/12
Date


DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 19, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

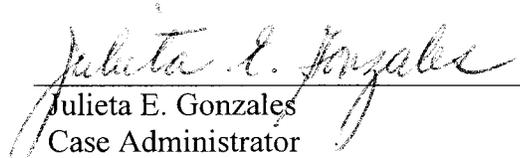
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

THOMAS PHAM JR ESQ
PHAM & ASSOCIATES
17111 BEACH BLVD STE 100
HUNTINGTON BEACH, CA 92647

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Rosalba L. Gutierrez, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 19, 2012.



Julieta E. Gonzales
Case Administrator
State Bar Court