

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No.: 13-PM-13867-DFM (S203034)
	)	
<b>THOMAS D. PHAM, JR.,</b>	)	<b>ORDER GRANTING MOTION TO</b>
	)	<b>REVOKE PROBATION AND FOR</b>
<b>Member No. 183521,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

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

In this probation revocation proceeding, Respondent Thomas D. Pham, Jr., 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. Therefore, the court orders that Respondent be involuntarily enrolled as an inactive member of the State Bar. The court also recommends, among other things, that Respondent's probation be revoked, that the previously stayed, one-year suspension be lifted, and that he be actually suspended for one year and until he makes restitution. If he remains suspended for two years or more, Respondent must also provide proof

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

to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.4(c)(ii).)

### **Significant Procedural History**

On July 16, 2013, the Office of Probation filed and properly served a motion to revoke probation<sup>2</sup> on Respondent. The motion was mailed to Respondent's official membership records address. Respondent did not file a response within 20 days of the service of the motion.

The court took this matter under submission on August 15, 2013.

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

Respondent was admitted to the practice of law in California on August 26, 1996, and has been a member of the State Bar of California at all times since that date.

#### **Facts**

On August 16, 2012, in Supreme Court case No. S203034, the California Supreme Court ordered, among other things, that:

1. Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed, that he be placed on probation for one year, and that he be actually suspended for 60 days, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed April 19, 2012 (State Bar Court case Nos. 11-O-13516 et al.); and
2. Respondent comply, among other things, with the following probation conditions:
  - A. During the period of probation, Respondent was required to submit a written report to the Office of Probation on January 10, April 10, July 10 and October 10

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<sup>2</sup> The court takes judicial notice of the certified copy of Respondent's prior record of discipline attached to the motion.

of each year, or part thereof, during which the probation is in effect, stating under penalty of perjury that he has complied with provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report); and

- B. Respondent was ordered to offer binding fee arbitration to Kanchana Taveesub in relation to the \$1,500<sup>3</sup> in fees paid to Respondent for her bankruptcy matter.

Respondent was to mail Taveesub a letter no later than 30 days after the effective date of discipline – by October 15, 2012. Within 40 days after the effective date of discipline – by October 25, 2012, Respondent was to provide the Office of Probation with a copy of the letter he had mailed to Taveesub along with a copy of the return receipt from the U.S. Postal Service, or other proof of mailing.

The Supreme Court order became effective on September 15, 2012, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on Respondent.<sup>4</sup>

On August 31, 2012, the Office of Probation wrote a letter to Respondent, properly sent to him at his official address, reminding him of certain terms and conditions of his suspension and the probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, and instruction sheets or forms to use in submitting quarterly reports.

The letter was not returned as undeliverable.

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<sup>3</sup> Another probation condition is that Respondent must pay restitution to Kanchana Taveesub in the amount of \$8,500, plus interest of 10% per annum, by September 15, 2013.

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

Respondent met with probation deputy Maricruz Farfan by phone on November 2, 2012. The probation deputy reviewed with him all of his probation conditions and their deadlines and told him that he was late providing proof of his written fee arbitration letter.

Respondent has failed to file his first three quarterly reports due January 10, April 10, and July 10, 2013.

Although Respondent told probation deputy Farfan that he had sent a fee arbitration letter to Taveesub on November 26, 2012, Taveesub informed the Office of Probation that she had not received a fee arbitration letter from Respondent. Respondent has not provided the Office of Probation with a copy of a letter to Taveesub or proof that any letter offering fee arbitration was mailed to Taveesub.

### **Conclusions**

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. 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.)

Respondent did not comply with the conditions of probation, as ordered by the Supreme Court in S203034: (1) Respondent has failed to file his first three quarterly reports due January 10, April 10, and July 10, 2013; and (2) Respondent has failed to mail a letter to Taveesub offering fee arbitration and failed to provide the Office of Probation with a copy of such a letter.

As a result, the revocation of Respondent's probation in California Supreme Court order No. S203034 is warranted.

## **Aggravation<sup>5</sup>**

### **Prior Record of Discipline (Std. 1.2(b)(i).)**

Respondent has one prior record of discipline.

In the underlying matter, Respondent stipulated to culpability in two client matters for failing to perform services, making misrepresentations to a client, failing to obey a court order, failing to render an accounting, aiding a person in the unauthorized practice of law, and violating Civil Code section 2944.7 regarding mortgage loan modifications. He was ordered suspended for one year, stayed, placed on probation for one year, and actually suspended for 60 days. (Supreme Court case No. S203034, effective September 15, 2012; State Bar Court case Nos. 11-O-13516 et al.)

### **Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)**

Respondent committed multiple acts of wrongdoing, including failing to file his first three quarterly reports and failing to send a letter offering fee arbitration to his former client.

### **Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)**

An attorney's continued failure to comply with his probation conditions after being notified of that noncompliance is properly considered a substantial aggravating circumstance. It demonstrates indifference toward rectification of or atonement for the consequences of one's misconduct. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Although the motion to revoke his probation was filed in July 2013, which put Respondent on notice that his probation status was in jeopardy, Respondent still failed to file the quarterly reports or send a fee arbitration letter to his client.

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<sup>5</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

**Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)**

Respondent's failure to participate in this proceeding is also an aggravating factor.

**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. (Std. 1.2(e).)

**Discussion**

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding, but any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rules Proc. of State Bar, rule 5.312.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and Respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The Office of Probation requested that Respondent be actually suspended for the full amount of stayed suspension and that he should remain suspended until (1) he makes restitution to Taveesub in the amount of \$8,500, plus interest (*In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 687); (2) he pays Taveesub in the amount of \$1,500<sup>6</sup> for the bankruptcy fees, plus interest; and (3) until he complies with standard 1.4(c)(ii), if the actual suspension exceeds two years. (*In the Matter of Luis* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.) The court agrees.

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<sup>6</sup> Respondent stipulated that failure to comply with his fee arbitration conditions may result in this court ordering him to pay back Taveesub the full amount of attorney fees (\$1,500) paid to him, plus 10% interest from April 18, 2010.

## **Recommendations**

The court recommends that the probation of Respondent Thomas D. Pham, Jr., member No. 183521, imposed in Supreme Court case No. S203034 (State Bar Court case Nos. 11-O-13516 et al.) be revoked; that the previous stay of execution of the suspension be lifted; and that Respondent be actually suspended from the practice of law for one year and he will remain suspended until the following requirements are satisfied:

1. Respondent makes restitution to Kanchana Taveesub in the amount of \$8,500 plus 10 percent interest per year from May 11, 2011, and in the amount of \$1,500 plus 10 percent interest per year from April 18, 2010 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Kanchana Taveesub, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
2. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

### **Multistate Professional Responsibility Examination**

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he was previously ordered to do so in Supreme Court case No. S203034.

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

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.<sup>7</sup>

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<sup>7</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

### **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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

Section 6007, subdivision (d)(1), provides for an attorney's involuntary inactive enrollment for violating probation if: (A) the attorney is under a suspension order any portion of which has been stayed during a period of probation, (B) the court finds that probation has been violated, and (C) the court recommends that the attorney receive an actual suspension due to the probation violation or other disciplinary matter. The requirements of section 6007, subdivision (d)(1) have been met.

Respondent is ordered to be involuntarily enrolled inactive under section 6007, subdivision (d)(1).<sup>8</sup> This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: October \_\_\_\_\_, 2013

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>8</sup>The court recommends that any period of involuntary inactive enrollment be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)