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MAR 30 2016

STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)
)
TAM NGUYEN,)
)
A Member of the State Bar, No. 159601.)
)
)
)

Case No. 15-Q -15735
RECOMMENDATION ON
RESIGNATION

On November 30, 2015, Respondent Tam Nguyen filed his resignation with charges pending and was transferred to inactive status. On January 29, 2016, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed its report on the resignation. OCTC recommends that the resignation be rejected. Respondent has not filed a response. We recommend that the Supreme Court reject the resignation based on OCTC's recommendation and in light of the grounds set forth in California Rules of Court, rule 9.21(d),¹ as detailed below,

I. BACKGROUND

Respondent was admitted to practice law in California on June 8, 1992. He has one prior record of discipline. On November 24, 2004 (effective December 24, 2004), the Supreme Court ordered respondent suspended for five years, execution stayed, and placed on probation for five years subject to the conditions of probation, including a 45-day period of actual suspension. (*In re Tam Nguyen on Discipline* (S127690), State Bar Court Case No. 00-O-11507.) Respondent stipulated that he misused his client trust account by writing checks against insufficient funds,

¹ All further references to rules are to this source unless otherwise noted.



releasing checks to clients prior to their funds actually being in the account and depositing and commingling personal and client funds. In mitigation, he had no prior record of discipline, cooperated with State Bar's investigation. Also, his clients had demanded the immediate release of settlement funds, and respondent felt an obligation to comply with their demands, even though the settlement checks had not cleared.

Charges are pending against respondent in State Bar Court case number 14-O-05978. Although OCTC failed to file the notice of disciplinary charges in its report (Rules Proc. of State Bar, rule 5.426(c) [notices of disciplinary charges must be filed with OCTC's report on resignation]), we know from our review of State Bar records that in case number 14-O-05978, respondent was charged with seven counts of misconduct, including for the misappropriation of client funds.

II. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)

We have considered respondent's resignation under the grounds set forth in rule 9.21(d).

We summarize below the relevant information for each ground:

1. Whether the preservation of testimony is complete.

OCTC reports that respondent filed his resignation two days before trial was set to commence in case number 14-O-05978. The trial dates were vacated, and the matter abated. Consequently, the preservation of testimony was not completed.

2. Whether after transfer to inactive status, respondent has practiced law or has advertised or held himself out as entitled to practice law.

OCTC reports that as far as it is aware that since his transfer to inactive status, respondent has not practiced law, advertised, or held himself out as entitled to practice law.

3. Whether respondent performed the acts specified in rule 9.20(a)-(b).

OCTC reports that it does not have evidence that respondent has performed the acts specified in rule 9.20(a)-(b). On November 30, 2015, respondent filed a rule 9.20 compliance declaration, which was rejected. Respondent has not filed another compliance declaration.

4. Whether respondent provided proof of compliance with rule 9.20(c).

Respondent has not provided proof of compliance with rule 9.20(c).

5. Whether the Supreme Court has filed a disbarment order.

The Supreme Court has not filed a disbarment order.

6. Whether the State Bar Court has filed a decision recommending disbarment.

The State Bar Court has not filed a decision recommending respondent's disbarment.

7. Whether respondent previously resigned or has been disbarred and reinstated to the practice of law.

Respondent has not previously resigned or been disbarred.

8. Whether respondent entered a stipulation with OCTC as to facts and conclusions of law regarding pending disciplinary matters.

Respondent and OCTC have not reached an agreement on a written stipulation as to the facts and conclusions of law regarding respondent's pending disciplinary proceeding. OCTC reports that on December 14, 2015, it sent respondent a proposed stipulation as to facts and conclusions of law regarding respondent's pending disciplinary matters. Respondent has not returned a signed copy of the stipulation and has otherwise failed to communicate with OCTC regarding the stipulation.

9. Whether accepting respondent's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

Acceptance of respondent's resignation would be inconsistent with the need to protect the public, the courts, and the legal profession. Respondent is charged with serious acts of misconduct, including the misappropriation of funds, and he has refused to admit culpability for the charged misconduct. He has also not provided proof of his compliance with rule 9.20(c), and OCTC recommends against acceptance of respondent's resignation. Under these circumstances, respondent should not be allowed the benefit of resigning because it would undermine public confidence in the disciplinary system and the legal profession.

III. RECOMMENDATION

We recommend that the Supreme Court decline to accept the resignation of Tam Nguyen, State Bar number 159601.

PURCELL

Presiding Judge

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 March 30, 2016 deposited a true copy of the following document(s):

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

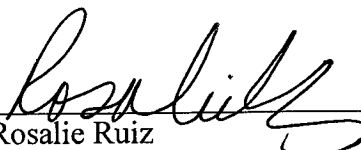
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

TAM NGUYEN
TAM NGUYEN & ASSOCIATES
1091 WOODMINSTER DR
SAN JOSE, CA 95121

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

Susan I. Kagan, Enforcement,

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 30, 2016.



Rosalie Ruiz
Case Administrator
State Bar Court