

**PUBLIC MATTER**

**FILED**

SEP 22 2016

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

In the Matter of

PAUL CONG NGUYEN,

Member No. 204713,

A Member of the State Bar.

) Case No.: 16-V-15525-YDR  
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**DECISION GRANTING PETITION FOR  
RELIEF FROM ACTUAL SUSPENSION**

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

The issue presented in this matter is whether Paul Cong Nguyen (Petitioner) has established, by a preponderance of the evidence, his rehabilitation, present fitness to practice law, and present learning and ability in the general law so that he may be relieved from the actual suspension imposed on him by the California Supreme Court. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)<sup>2</sup>

Based on Petitioner's verified petition for relief from actual suspension and the State Bar's response, the court finds that Petitioner has shown, by a preponderance of the evidence, that he has satisfied the requirements of standard 1.2(c)(1) and, therefore, that his actual suspension should be terminated. Accordingly, this court **GRANTS** Petitioner's petition for relief from actual suspension from the practice of law.

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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.

<sup>2</sup> All further references to standards are to this source.

### **Significant Procedural History**

On August 15, 2016, Petitioner filed and served a verified petition for relief from actual suspension, seeking the termination of his actual suspension and claiming he has satisfied the requirements of standard 1.2(c)(1). On August 30, 2016, the Office of Chief Trial Counsel (OCTC) filed a response, stating it did not oppose Petitioner's request. This matter was submitted for decision on September 13, 2016.

### **Findings of Fact**

Petitioner was admitted to the practice of law in California on December 7, 1999, and has been a member of the State Bar of California at all times since that date.

### **Background and Underlying Discipline**

In this proceeding, Petitioner has the burden of proving, by a preponderance of the evidence, that he is rehabilitated, is fit to practice law, and has the requisite present learning and ability in the general law pursuant to standard 1.2(c)(1). (Rules Proc. of State Bar, rule 5.404.) The court looks to the nature of the underlying misconduct to determine the point from which to measure a petitioner's rehabilitation and present fitness to practice. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.) "[I]t is appropriate to consider the nature of the misconduct, as well as the aggravating and mitigating circumstances surrounding that misconduct . . . in determining the amount and nature of rehabilitation that may be required to comply with standard [1.2(c)(1)]." (*Ibid.*) The amount of rehabilitation evidence required to justify the termination of an attorney's actual suspension varies according to the seriousness of the misconduct underlying the suspension. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

**First Discipline Matter – (State Bar Court case Nos. 13-O-12516; 13-O-14072; 13-O-14107; 13-O-14232; 13-O-14316; 13-O-14392; 13-O-14394; 13-O-14673; 13-O-14826; 13-O-14846; 13-O-15033; 13-O-15098; 13-O-15160; 13-O-15241; 13-O-15424; 13-O-15475; 13-O-15627; 13-O-15933; 13-O-15935; 13-O-16449; 13-O-16880; 13-O-17349)**

In December 2013, Petitioner stipulated to violating 22 counts of professional misconduct involving 22 client matters. From November 2011 through April 2013, Petitioner focused his practice of law in the area of loan modification. In each client matter, Petitioner stipulated that the client hired him to perform residential mortgage loan modification services and paid him advanced attorney fees for those services. Although Petitioner performed legal services for his clients, Petitioner was unsuccessful in obtaining a loan modification acceptable to each client. In all but one of the client matters, Petitioner failed to refund any part of the fee paid by the client. Petitioner stipulated that he willfully violated section 6106.3 by collecting an advanced fee to perform mortgage loan modification services on behalf of a client, in violation of Civil Code section 2944.7. Multiple acts of misconduct and client harm were aggravating circumstances. The mitigating factors were Petitioner's 12 years of discipline-free practice, cooperation, and community service.

As a result, on May 13, 2014, the Supreme Court filed an order suspending Petitioner from the practice of law for three years, stayed, and placing him on three years of probation with an actual suspension of two years, commencing June 12, 2014, and until he made restitution to 21 clients and provided proof of his rehabilitation, fitness to practice law, and learning and ability in the general law under standard 1.2(c)(1). Petitioner was also required to file an affidavit under California Rules of Court, rule 9.20, and to take and pass the MPRE during his actual suspension.

**Second Discipline Matter – (State Bar Court case Nos. 14-O-01959; 14-O-02983; 14-O-03738)**

After the Supreme Court disciplined Petitioner in May 2014, three additional complaints arose involving Petitioner's loan modification practice. In September 2014, Petitioner stipulated to violating three counts of professional misconduct involving three client matters. In each matter, Petitioner had agreed to perform legal services in connection with obtaining loan modifications for his clients. He collected fees before completing all of the loan modification services he agreed to perform on his client's behalf. Petitioner stipulated that he willfully violated section 6106.3 by charging, collecting and receiving fees from his clients before fully performing each and every service he contracted to perform, in violation of Civil Code section 2944.7. The prior record of discipline,<sup>3</sup> multiple acts of misconduct, client harm and the failure to make restitution were aggravating circumstances. The mitigating factors were Petitioner's cooperation and community service.

As a result, on February 10, 2015, the Supreme Court filed an order suspending Petitioner from the practice of law for two years, stayed, and placing him on three years of probation.

**Rehabilitation and Fitness to Practice Law**

In determining whether a petitioner's evidence sufficiently establishes his rehabilitation, the court first considers the prior misconduct, and then examines the petitioner's actions since the imposition of discipline to determine whether his actions, in light of the prior misconduct, sufficiently demonstrate rehabilitation. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.) At a minimum, the petitioner must show that: (1) he has strictly complied with the terms of probation imposed on him under the Supreme Court's disciplinary order; (2) he has engaged in exemplary conduct since being disciplined; and (3) "the conduct evidencing

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<sup>3</sup> In determining the level of discipline, Petitioner's first and second disciplines were considered together because all of the misconduct occurred at the same time and the type of misconduct was the same.

rehabilitation is such that the court may make a determination that the conduct leading to the discipline. . . is not likely to be repeated.” (*Ibid.*) The OCTC does not oppose Petitioner’s petition.

#### **Compliance with Probation Conditions**

Petitioner has complied with the conditions of his probation. He has timely submitted all required probation reports to the Office of Probation and has paid his installment of costs. On August 21, 2014, Petitioner attended and successfully completed State Bar Ethics School. Petitioner has also complied with the restitution requirement, completing restitution to all 21 clients in his first discipline matter and making full restitution to all three clients in his second discipline.

In addition to complying with the terms of his probation, Respondent timely complied with his Rule 9.20 obligations, and he passed the March 2015 Multistate Professional Responsibility Exam (MPRE) with a scaled score of 99.

#### **Petitioner’s Conduct Since Being Disciplined**

Petitioner has taken full responsibility for the misconduct leading to his discipline. Petitioner’s disciplinary matters were caused by his reliance on a non-attorney’s view that California law permitted attorneys to collect advance fees for loan modification services before fully performing all of the contracted services. Petitioner recognizes that as the attorney, he was responsible for researching and understanding the loan modification laws, and that he was careless in carrying out his fiduciary duties to his clients. He also acknowledges that his failure to fulfill his ethical obligations harmed his clients, causing them uncertainty and additional anxiety about the difficulties surrounding their mortgages. Petitioner has learned that it is his responsibility to ensure that he fulfills his duties as an attorney and acts within the bounds of the law. He has learned from his past experiences and will be mindful of his ethical obligations and

the impact he has on others, especially his clients. Petitioner has demonstrated an understanding and insight into the nature and scope of his past misconduct.

Since his suspension, Petitioner has utilized his real estate license to assist clients with purchasing homes, obtaining financing, and securing refinancing. His work in real estate has been his means of monetary support.

### **Character References**

Petitioner submitted eight favorable character witness declarations in support of his petition. Petitioner's character witnesses include two attorneys, a loan processor, microbiologist, bankruptcy document preparer, teacher, development manager and an optometrist. The microbiologist and optometrist were Petitioner's relatives. The declarants described Petitioner as a hard worker and a man of faith. They indicated that he is fair, knowledgeable, and believes in helping his fellow man. These witnesses also demonstrated an understanding of Petitioner's misconduct and the measures he has taken to achieve rehabilitation. Each witness indicated that Petitioner has taken full responsibility for his actions, expressed remorse and is determined to fulfill his ethical responsibilities in the future. All believe Petitioner deserves a second chance and urged that he should be allowed to return as an active member of the State Bar.

Petitioner has shown an understanding of and remorse for the misconduct that led to his actual suspension. He has spoken openly with others about the mistakes of his past and has taken full responsibility for his misconduct. Petitioner's favorable character reference letters from attorneys and his friends are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) The court finds the favorable character evidence to be of sufficient value to support Petitioner's rehabilitation and present fitness.

**Present Learning and Ability in the Law**

As noted, Petitioner completed the State Bar Ethics School requirement on August 21, 2014 and took and passed the MPRE in March 2015. Petitioner has also completed 25 hours of self-study and 26.25 hours of participatory Minimum Continuing Legal Education courses. Petitioner took courses on a variety of topics including, legal ethics, elimination of bias, prescription drug abuse and addiction, improved client relationships and communications, business law, transactional law, tax, family law, personal injury, and legal writing, among others.

Additionally, an attorney who has known Petitioner for 15 years, provided a declaration attesting to Petitioner's legal knowledge and ability. She allowed Petitioner to review some of her files that contained issues surrounding family law, real estate law, business law, contracts and community property. Upon review of the files, Petitioner was able to give a thorough analysis of each file and proved to the attorney that he has sustained his knowledge and ability in the general law and is intellectually ready to return to the practice of law.


Based upon the record as a whole, the court finds that Petitioner has demonstrated by a preponderance of the evidence that he possesses present learning and ability in the general law, and so meets the requirement of this prong of standard 1.2(c)(1).

**Conclusion**

The court finds that petitioner Paul Cong Nguyen has satisfied the requirements of standard 1.2(c)(1) and that he has demonstrated, by a preponderance of the evidence and to the satisfaction of this court, that he is rehabilitated, that he is presently fit to practice law, and that he has present learning and ability in the general law.

Accordingly, Paul Cong Nguyen's petition for relief from actual suspension from the practice of law pursuant to standard 1.2(c)(1) is hereby **GRANTED**. It is further ordered that Petitioner's actual suspension from the practice of law in California is hereby terminated and he is entitled to resume the practice of law in California upon the payment of all applicable State Bar fees and costs.

Dated: September 22, 2016

  
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YVETTE D. ROLAND  
Judge of the State Bar Court



**CERTIFICATE OF SERVICE**

**[Rules Proc. of State Bar, rule 5.400(B); Code Civ. Proc., §§ 1011, 1013]**

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. Following standard court practice, in the City and County of Los Angeles, I served a true copy of the following document(s):

**DECISION GRANTING PETITION FOR RELIEF FROM ACTUAL  
SUSPENSION**

as follows:

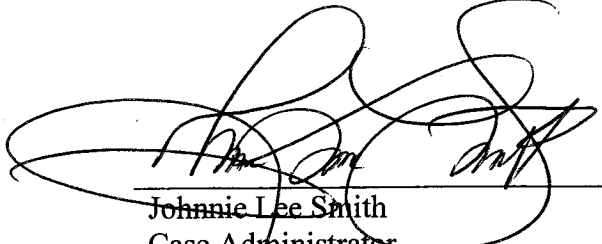
- ☒ by OVERNIGHT MAIL by enclosing the documents in a sealed envelope or package designated by an overnight delivery carrier and placing the envelope or package for collection and delivery with delivery fees paid or provided for, addressed as follows:

**SUSAN LYNN MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039**

- ☒ By PERSONAL MAIL by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

**DREW MASSEY  
STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL  
845 S. FIGUEROA STREET  
LOS ANGELES, CA 90017-2515**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 22, 2016.

  
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Johnnie Lee Smith  
Case Administrator  
State Bar Court