

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No. 08-O-10778-DFM (08-O-11673)
)	
GLORIA MARGARET GONG)	
)	
Member No. 163418,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, respondent Gloria Margaret Gong is charged with five counts of professional misconduct. The court finds, by clear and convincing evidence, that she is culpable of three of the five charged acts of misconduct. Based on the present misconduct and respondent's extensive aggravation, the court recommends that she be disbarred.

II. Pertinent Procedural History

The Notice of Disciplinary Charges (NDC) was filed on November 24, 2008, and was properly served on respondent on that same date at her official membership records address (official address), by certified mail, return receipt requested, as provided in Business and Professions Code section 6002.1, subdivision (c).¹ Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This mailing was subsequently returned to the State Bar as undeliverable.

¹ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

On December 8, 2008, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for January 8, 2009. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on December 8, 2008, addressed to respondent at her official address. The notice was subsequently returned to the State Bar Court as undeliverable.

Respondent did not file a responsive pleading to the NDC. On February 5, 2009, the State Bar filed a motion for entry of default. The motion was properly served on respondent at her official address by certified mail, return receipt requested.² The motion advised respondent that the State Bar would seek her disbarment if she were found culpable of the alleged misconduct. Respondent did not file a response to the motion for entry of default.

On February 27, 2009, the court entered respondent's default and enrolled her inactive effective three days after service of the order. The order was filed and properly served on respondent at her official address on that same date by certified mail, return receipt requested. The order was subsequently returned to the State Bar Court as undeliverable.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

The court took this matter under submission on March 19, 2009, following the filing of the State Bar's brief on culpability and discipline which requested waiver of a hearing in this matter.

² Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's official membership address history.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Jurisdiction

Respondent was admitted to the practice of law in California on December 2, 1992, and has been a member of the State Bar of California at all times since that date.

The Sotelo Matter [Case No. 08-O-10778]

In or about December 2001, Itzel Rodriguez filed for an immigrant visa on behalf of her father, Alberto Sotelo (Sotelo). On or about September 14, 2003, the government notified Sotelo that his application for status as a legal resident was denied.

On or about October 2, 2003, Sotelo consulted with respondent and paid \$40.00 for the consultation. On the same date, respondent was hired by Sotelo to file a Motion to Reconsider the denial of Sotelo's application for status as a legal resident. On or about October 22, 2003, respondent was paid \$467.50 by Sotelo for attorney fees. On or about January 28, 2004, respondent was paid \$400 by Sotelo for attorney fees.

Between October 2, 2003, and October 1, 2007, respondent did not file a Motion to Reconsider, as was agreed in the retainer agreement with Sotelo.

On or about October 1, 2007, Sotelo hired new counsel, Angela McGill (McGill) to represent him in the immigration matter. Subsequently, McGill filed documents in the appropriate court regarding the Sotelo immigration matter.

On or about February 27, 2008, the State Bar opened an investigation of respondent's representation of Sotelo after receiving a complaint from Sotelo. On or about July 16, 2008, a

State Bar investigator wrote respondent regarding her representation of Sotelo. The investigator's letter was placed in a sealed envelope addressed to respondent at her State Bar of California membership records address. The letter was mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The investigator's July 16, 2008, letter requested that respondent respond in writing by July 30, 2008, to specific allegations of misconduct being investigated by the State Bar in the Sotelo representation.

On or about July 23, 2008, the State Bar received the July 16, 2008, letter returned from respondent's membership record's address that indicated the following: "attempted not known; unable to forward."

On or about July 29, 2008, a second letter was sent to respondent at her membership record's address. The investigator's letter was placed in a sealed envelope addressed to respondent at her State Bar of California membership records address. The letter was mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The investigator's July 29, 2008, letter requested that respondent respond in writing by August 12, 2008, to specific allegations of misconduct being investigated by the State Bar in the Sotelo representation.

On or about August 5, 2008, the State Bar received the July 29, 2008, letter returned from respondent's membership record's address that indicated the following: "not deliverable as addressed; unable to forward."

On or about July 29, 2008, and August 15, 2008, an outgoing telephone call was placed by a State Bar investigator to respondent's membership record's office telephone number. On

each occasion, the State Bar investigator received a message indicating that the phone number was disconnected.

Count 1: Failure to Perform with Competence (Rules of Professional Conduct, Rule 3-110(A))³

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence. By failing to file a Motion to Reconsider on behalf of Sotelo, respondent recklessly failed to perform legal services with competence, in wilful violation of rule 3-110(A).

Count 2: Failure to Cooperate with State Bar Investigation (Section 6068, subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

The State Bar alleges that respondent wilfully failed to cooperate in a disciplinary matter by failing to provide a written response to the allegations in the Sotelo complaint. The court disagrees. There is no indication in the record that respondent had any knowledge of the Sotelo complaint. Each of the State Bar investigator's mailings was returned as undeliverable. Accordingly, the court finds that the State Bar failed to demonstrate, by clear and convincing evidence, respondent's wilful violation of section 6068, subdivision (i). (See *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 578-579.)

The Furr Matter [Case No. 08-O-11673]

On or about March 13, 2006, respondent was hired by Greg Furr (Furr) to complete all work related to obtaining legal immigration status for his wife, Anacoreta. Respondent told Furr

³ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

that the representation would cost \$1,500. Furr paid \$100 to respondent towards the representation.

On or about March 21, 2006, Furr paid respondent an additional \$500 towards the representation. On or about December 6, 2006, Furr paid respondent an additional \$900 towards the representation. In total, respondent was paid \$1,500 for the representation of Anacoreta in the immigration matter.

On or about July 17, 2006, respondent filed an *Immigrant Petition for Relative, Fiance, or Orphan* (Petition) with the U.S. Citizenship and Immigration Service. Following the filing of the Petition, respondent performed no further services on behalf of Anacoreta.

In or about June 2007, and without completing any of the services she was hired to perform, respondent notified Furr that she was retiring. Further, respondent stated that she was giving Anacoreta's file to another attorney, William Edwards (Edwards), for future handling. Neither Furr nor Anacoreta agreed to Edwards working on the immigration matter.

On or about July 17, 2007, Furr hired Marcos Camacho (Camacho) to represent them in the immigration matter. Subsequently, Camacho was able to obtain, among other things a green card and social security number for Anacoreta. Respondent did not perform any services of value for Furr or Anacoreta.

On or about June 18, 2008, Furr requested a refund from respondent of fees paid. As of November 21, 2008, respondent had not refunded any fees paid to her by Furr.⁴

On or about April 29, 2008, the State Bar opened an investigation of respondent's representation of Furr and Anacoreta after receiving a complaint from Furr. On or about July 3, 2008, a State Bar investigator wrote respondent regarding her representation of Furr and

⁴ There is no indication in the record that respondent has since refunded any fees paid to her by Furr.

Anacoreta. The investigator's letter was placed in a sealed envelope addressed to respondent at her State Bar of California membership records address. The letter was mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The investigator's July 3, 2008, letter requested that respondent respond in writing by July 18, 2008, to specific allegations of misconduct being investigated by the State Bar in the Furr and Anacoreta representation. On or about July 23, 2008, the State Bar received the July 3, 2008, letter returned from respondent's membership record's address that indicated that it was undeliverable at that address and that there was no forwarding address.

On or about September 12, 2008, an additional letter was sent by a State Bar investigator to respondent at 7534 Leecast Ct, Richmond, TX 77407. The investigator's September 12, 2008, letter requested that respondent provide a written response to the allegations of misconduct being investigated by the State Bar in the Furr and Anacoreta representation by September 26, 2008. The State Bar has not received any response from respondent to the September 12, 2008, letter. The United States Postal Service did not return the investigator's September 12, 2008, letter as undeliverable or for any other reason.

Count 3: Failure to Perform with Competence (Rule 3-110(A))

By not completing any of the services she was hired to perform, respondent recklessly failed to perform legal services with competence, in wilful violation of rule 3-110(A).

Count 4: Failure to Refund Unearned Fees (Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By not refunding to Furr or Anacoreta any portion of the \$1,500, which she was paid to complete all work related to

obtaining legal immigration status for Anacoreta, respondent failed to refund unearned fees in wilful violation of rule 3-700(D)(2).⁵

Count 5: Failure to Cooperate with State Bar Investigation (Section 6068, subd. (i))

Similar to Count Two, the State Bar alleges that respondent wilfully failed to cooperate in a disciplinary matter by failing to provide a written response to the allegations in the Furr complaint. Once again, however, there is no indication in the record that respondent had any knowledge of the Furr complaint. The State Bar investigator's first mailing was returned as undeliverable. The investigator's second mailing was inexplicably sent to an unidentified address in Texas. Accordingly, the court finds that the State Bar failed to demonstrate, by clear and convincing evidence, respondent's wilful violation of section 6068, subdivision (i).

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)⁶

The court finds in aggravation the following:

Prior Record of Discipline

Respondent has twice been disciplined in the past. (Std. 1.2(b)(i).)

On December 20, 2007, the California Supreme Court issued an order (\$157400) suspending respondent from the practice of law for one year, stayed, with a two-year period of probation and a 60-day actual suspension. This discipline stemmed from respondent's failure to perform and improper

⁵ The evidence before the court demonstrates that respondent did not earn the entire \$1,500 she was paid to obtain legal immigration status for Anacoreta; however, it is unclear what, if any, portion of those fees were earned by respondent. Therefore, the court lacks sufficient evidence to make an accurate recommendation regarding restitution.

⁶ All further references to standard(s) are to this source.

withdrawal in a single-client matter. In mitigation, respondent had no prior record of discipline and had participated in various pro bono and volunteer activities. In aggravation, respondent's failure to perform caused her client to lose her home.

On April 29, 2009, the California Supreme Court issued an order revoking respondent's probation in Supreme Court case no. S157400.⁷ Consequently, respondent was, among other things, ordered to serve a one year period of actual suspension. In this matter, her probation was revoked for her failure to comply with various probationary conditions including scheduling a meeting with her assigned probation deputy and timely filing quarterly reports. In aggravation, respondent committed multiple acts of wrongdoing, demonstrated indifference toward rectification of or atonement for the consequences of her misconduct, and failed to participate in the probation revocation proceedings. In addition, her prior record of discipline was considered as an aggravating circumstance. No mitigating circumstances were found.

Multiple Acts

Respondent has been found culpable of three counts of misconduct in the present proceeding. The existence of multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Significant Harm

Respondent's misconduct significantly harmed her client. (Std. 1.2(b)(iv).) As a result of respondent's failure to refund unearned fees, Greg Furr has been financially harmed.

⁷ The Supreme Court's order was filed after the State Bar had submitted its brief on culpability and discipline. Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of the Supreme Court's April 29, 2009 order.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) No mitigating factors were shown by the evidence presented to this court.

IV. Discussion

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is “‘not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.’ [Citations.]” (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standards 2.4(b) and 2.10 apply in this matter. Both of these standards advocate reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

Due to respondent's prior record of discipline, standard 1.7(b) is also applicable. In fact, standard 1.7(b) is central to the court's analysis in this case. Standard 1.7(b) provides that, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court and Review Department have not historically applied standard 1.7(b) in a rigid fashion. Instead, the courts have weighed the individual facts of each case, including whether or not the instant misconduct represents a repetition of offenses for which the attorney has previously been disciplined. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977.) When such repetition has been found, the courts have typically found disbarment to be the appropriate sanction. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841; *In the Matter of Thomson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 977.)

Here, respondent's present misconduct is similar to the misconduct that resulted in her first imposition of discipline. Both cases involved her failing to perform with competence resulting in harm to her client. Based on the repetition of respondent's misconduct and her

failure to participate in the present proceedings, the court finds little reason to believe that she no longer poses a threat to public protection.

Respondent's recent disciplinary probation revocation is of equal concern to the court. She has demonstrated an unwillingness or inability to comply with the strictures of disciplinary probation. Therefore, after weighing the evidence and the factors in aggravation, the court finds no compelling reason to deviate from standard 1.7(b). The court agrees with the State Bar's recommendation that respondent should be disbarred.

V. Recommended Discipline

Accordingly, the court recommends that respondent Gloria Margaret Gong be disbarred from the practice of law in California and that her name be stricken from the roll of attorneys.⁸

The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to 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 order in this matter.⁹

⁸ Only active members of the State Bar may lawfully practice law in California. (Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

⁹ Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

VI. 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.

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

Dated: June 1, 2009

DONALD F. MILES
Judge of the State Bar Court