

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No. 08-PM-12514-DFM
	)	
GLORIA MARGARET GONG,	)	ORDER GRANTING MOTION TO
	)	REVOKE PROBATION AND FOR
Member No. 163418,	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this probation revocation proceeding, respondent **Gloria Margaret Gong** is charged with violating the probation conditions previously ordered by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to revoke her probation, to impose on 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 a preponderance of the evidence, that respondent has violated her probation conditions and hereby grants the motion. The court recommends, among other things, that respondent's probation be revoked, that the previously stayed one year suspension be lifted, and that respondent be actually suspended from the practice of law for one year.

**II. Pertinent Procedural History**

On June 26, 2008, the Office of Probation filed and properly served on respondent this motion to revoke probation under rules 60 and 563(a) of the Rules of Procedure of the State Bar

of California.<sup>1</sup> The motion was mailed to respondent's official membership records address (official address) by certified mail on June 26, 2008. Respondent did not file a response within 20 days of the service of motion, as required by rule 563(b)(1).

The court took this matter under submission on September 3, 2008.

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

All factual allegations contained in the motion to revoke probation and supporting documents are deemed admitted upon respondent's failure to file a response. (Rule 563(b)(3).)

#### **A. Jurisdiction**

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

#### **B. Probation Conditions in Supreme Court Order**

On December 20, 2007, in Supreme Court case No. S157400, the California Supreme Court ordered that:

1. Respondent be suspended from the practice of law for one year, that execution of the suspension be stayed;
2. Respondent be placed on probation for two years, including 60 days actual suspension, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed on August 22, 2007 (State Bar Court case No. 06-O-12708);
3. Respondent comply with the probation conditions previously recommended by the State Bar Court Hearing Department, including, but not limited to:
  - a. Contacting the Office of Probation within 30 days of the effective date of discipline and scheduling a meeting with her assigned probation deputy to discuss the terms and conditions of respondent's probation; and

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<sup>1</sup>References to rules are to the Rules of Procedure of the State Bar, unless stated otherwise.

- b. Submitting written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the probationary period.

Notice of the Supreme Court's order was properly served on respondent in the manner prescribed by rule 8.532(a) of the California Rules of Court at respondent's official address in accordance with Business and Professions Code section 6002.1.<sup>2</sup>

### **C. Probation Violations**

On January 2, 2008, the Office of Probation sent a letter to respondent, at her official address, reminding her of her probation conditions, including the requirement that she schedule a meeting within 30 days of the effective date of discipline with her assigned probation deputy. This letter was returned by the United States Postal Service on June 19, 2008, as undeliverable.

Respondent neither scheduled the required meeting nor met with her probation deputy, as required by the Supreme Court's order.

Respondent was obligated to file her first quarterly written probation report on April 10, 2008. She failed to do so, either on a timely basis or at all.

On May 9, 2008, Cindy Jollotta (Jollotta), the Office of Probation deputy who was assigned to maintain and monitor respondent's file, sent a letter to respondent regarding her noncompliance with her contact and quarterly reporting requirements. The letter was returned to the Office of Probation by the United States Postal Service as undeliverable.

On May 14, 2008, Jollotta telephoned respondent at her membership records telephone number. The outgoing message stated that the number had been changed and provided a "new" number. Jollotta then called the new number. But, because the voice-mail box for that number was full, Jollotta was unable to leave a message.

On May 29, 2008, Jollotta again telephoned respondent at her membership records telephone number. The outgoing message again stated that the number had been changed and provided the same "new" number as that which had been previously provided to Jollotta. Jollotta

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<sup>2</sup>References to sections are to the Business and Professions Code.

once more called the new number, but the outgoing message again stated that the voice-mail box was full. Therefore, Jollota was unable to leave a message.

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.)

Based on the evidence submitted by the Office of Probation, respondent failed to do the following:

1. Contact the Office of Probation within 30 days of the effective date of discipline and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of respondent’s probation; and
2. Submit the quarterly report due on April 10, 2008.

Therefore, the State Bar has demonstrated by a preponderance of the evidence that respondent willfully violated the probation conditions ordered by the Supreme Court in its December 20, 2007 order. As a result, the revocation of respondent’s probation in California Supreme Court case No. S157400 is warranted.

#### **D. 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. (Rules Proc. of State Bar, tit. IV, Stds. for Attorney Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>3</sup>

#### **E. Aggravation**

There are several aggravating factors. (Std. 1.2(b).)

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) Effective August 22, 2007, in the underlying matter, respondent, upon stipulation, was ordered suspended for one year,

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<sup>3</sup>All further references to standards are to this source.

stayed, and placed on probation for two years including 60 days actual suspension, for failing in one client matter to provide competent legal services and for improperly withdrawing from employment.

Respondent committed multiple acts of wrongdoing, including failing to submit the quarterly report due on April 10, 2008, and failing to contact the Office of Probation within 30 days of the effective date of discipline and schedule a meeting with her assigned probation deputy. (Std. 1.2(b)(ii).)

An attorney's continued failure to comply with her 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. (Std. 1.2(b)(v); *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

Respondent's failure to participate in this proceeding is also an aggravating factor. (Std. 1.2(b)(vi).)

#### **IV. Discussion**

Public protection and attorney rehabilitation are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.)

In determining the level of discipline to be imposed, the court must consider the "total length of stayed suspension which could be imposed as an actual suspension and the total amount of actual suspension earlier imposed as a condition of the discipline at the time probation was granted." (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) The extent of the discipline to be recommended is dependent, in part, on the nature of the probation violation and its relationship to respondent's prior misconduct. (*Ibid.*)

Respondent's prior misconduct included her failure to competently perform legal services and her withdrawal from employment without taking steps to avoid reasonably foreseeable prejudice to her client. In the instant matter, the primary probation violation found was her

failure to comply with the rehabilitation conditions. Respondent failed to file her first quarterly report. She also failed to contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the conditions of her probation.

The use of attorney discipline probation has increased with such frequency that it is now posed in almost every disciplinary proceeding in which either actual or stayed suspension is ordered. (*In the Matter of Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 298.) The Review Department has repeatedly held that the primary goals of attorney discipline probation are protection of the public and rehabilitation of the attorney. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452; *In the Matter of Marsh, supra*, 1 Cal. State Bar Ct. Rptr. at p. 298.) What is more, because an attorney has an independent statutory duty to comply with all conditions attached to any disciplinary probation (Section 6068, subd. (k)), an attorney's violation of a disciplinary probation condition is grounds for both (1) revoking the attorney's probation and (2) disciplining the attorney. (Section 6093, subd. (b); see also rule 562.)

Disciplinary probation is effective "only when the attorneys placed on probation are effectively monitored to ensure (1) that they do not engage in misconduct and (2) that they are undertaking to conform their conduct to the ethical strictures of the profession." (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763.) Consequently, the review department has repeatedly held that "an attorney probationer's filing of quarterly probation reports is an important step towards the attorney's rehabilitation. [Citations.]" (*Ibid.*) In addition, the probationer's filing of such quarterly reports is a recognized and important means of protecting the public because it permits the State Bar to monitor the attorney's compliance with the State Bar Act and the Rules of Professional Conduct. (*In the Matter of Meyer, supra*, 3 Cal. State Bar Ct. Rptr. at p. 705.) In light of the foregoing, this court concludes that

respondent's continued unwillingness or inability to comply with her quarterly reporting probation condition alone creates serious public protection concerns. These failures, when coupled with her demonstrated and repeated indifference to the need to comply with her professional obligations, demonstrate that respondent has not begun to engage in the rehabilitative process since the Supreme Court issued its order in December 2007. Accordingly, this court concludes that respondent's present probation violation warrants imposition of the previously stayed one year's actual suspension, which is the greatest level of actual suspension that this court may recommend. (Rule 562; *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 574, fn. 5.)

In addition, this court concludes that just placing respondent on actual suspension for one year is inadequate to protect the public or to effectuate respondent's rehabilitation. Respondent has demonstrated both an indifference to the need to comply with her professional obligations and to begin the rehabilitative process. The attitude reflected by her response to the motion to revoke her probation, described above, causes this court to conclude that it is highly unlikely that the passage of an additional one year of actual suspension will be adequate time for there to be any level of comfort that the public will not be endangered, should respondent reenter the practice. As a result, it is this court's conclusion that it is necessary to require respondent to demonstrate that she is now willing and capable of engaging the rehabilitative process by complying with the probation conditions that were originally imposed on her under the Supreme Court's order (and to which she stipulated) by imposing virtually identical conditions on her prospectively for two years. (*In the Matter of Meyer, supra*, 3 Cal. State Bar Ct. Rptr. at p. 705.)

#### **V. Recommended Discipline**

Accordingly, the court recommends as follows:

- A. That the probation of respondent **Gloria Margaret Gong**, previously ordered in Supreme Court case No. S157400 (State Bar Court case No. 06-O-12708), be revoked;
- B. That the previous stay of execution be lifted;
- C. That respondent be actually suspended from the practice of law for one year; and
- D. That that she be placed on probation for two years on the following conditions:
1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
  2. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.
  3. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of her probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion



thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

(a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

(b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

4. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.

5. 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. In addition, within six (6) months of the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of no less than six (6) hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. These requirements are

separate from any MCLE requirement, and respondent will not receive MCLE credit for attending these courses (Rule 3201.) Courses meeting the above criteria, taken by respondent since the Supreme Court's December 2007 order but before the effective date of the Supreme Court's order resulting from this recommendation, shall be credited toward respondent's satisfaction of the requirements of this subparagraph.

6. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

E. It is also recommended that the Supreme Court order respondent 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 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to comply with the provision of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>4</sup>

F. It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination or take and pass the as she was previously ordered to do so in Case no. S157400.

## **VI. Costs**

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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<sup>4</sup>Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

## **VII. Order of Involuntary Inactive Enrollment**

Respondent is ordered to be involuntarily enrolled inactive under Business and Professions Code section 6007, subdivision (d)(1).<sup>5</sup> The inactive enrollment order will be effective three calendar days after the date on which this order is served.

Dated: September 4, 2008

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>5</sup>Any period of involuntary inactive enrollment will be credited against the period of actual suspension ordered. (Bus. & Prof. Code, § 6007, subd. (d)(3).)