

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-PM-13807-RAH
)	
JENNY WONG,)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION AND ORDER OF
Member No. 248111,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Introduction¹

In this probation revocation proceeding, respondent Jenny Wong (respondent) is charged with violating certain probation conditions imposed by the California Supreme Court. The Office of Probation of the State Bar of California (Office of Probation) seeks to (1) revoke her probation; (2) impose upon respondent the entire period of suspension previously stayed;² (3) require respondent to comply with California Rules of Court, rule 9.20; and (4) involuntarily enroll respondent as an inactive member of the State Bar.

¹ Unless otherwise indicated, all statutory references are to the Business and Professions Code.

² The Office of Probation also recommends that respondent remain on actual suspension until she makes specified restitution and, if she remains suspended for two years or more, until she also complies with the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii) (all further references to standard(s) or std. are to this source).

The court finds, by preponderance of the evidence, that respondent has violated certain probation conditions and hereby grants the Office of Probation's 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 she be actually suspended for one year and until she makes specified restitution. If she remains suspended for two years or more, respondent must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated. (Std. 1.4(c)(ii).)

Significant Procedural History

On July 12, 2013, the Office of Probation filed and properly served a motion to revoke probation on respondent by certified mail and regular mail.³ Respondent did not file a response.

The court took this matter under submission on August 8, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 9, 2007, and has been a member of the State Bar at all times since.

Probation Violations

On January 10, 2012, in Supreme Court case No. S197533, 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, and that she be placed on probation for three years subject to

³ The copy of respondent's address history from January 9, 2007, to July 1, 2013, included in exhibit one attached to the Office of Probation's motion to revoke respondent's probation, is not sufficient to establish that the motion was properly served on respondent on July 12, 2013. Accordingly, the court takes judicial notice of the State Bar's official membership records pursuant to Evidence Code section 452, subdivision (h), which reflect that the motion was properly served on respondent on July 12, 2013.

certain conditions, including 90 days' suspension, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed September 13, 2011 (State Bar Court case Nos. 10-O-05311 (10-O-05318); 11-O-15313 (11-O-15429; 11-O-15494); 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 of each year, stating under penalty of perjury whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all probation conditions during the preceding calendar quarter (quarterly report); and
 - B. Within one year of the effective date of discipline (by February 9, 2013), respondent was to provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School and passage of the test given at the end of that session.

The Supreme Court order became effective on February 9, 2012, 30 days after it was entered. (Cal. Rules of Court, rule 9.18(a).) It was properly served on respondent.

On January 23, 2012, the Office of Probation sent a letter to respondent outlining certain terms and conditions of her probation, including her quarterly reporting requirement and her Ethics School requirement. Included with the letter were, among other things, the Supreme Court's January 10, 2012, order imposing discipline; that portion of the stipulation approved by the hearing department setting forth the terms and conditions of probation; a quarterly report form and a quarterly report instruction sheet; and the Ethics School schedule and enrollment information.

On February 13, 2012, respondent met by telephone with probation deputy Ivy Cheung of the Office of Probation. At the meeting, respondent's probation conditions were discussed, and Ms. Cheung reminded respondent of all her probation conditions and deadlines. Ms. Cheung also verified that respondent had received a reminder probation letter and supporting documents.

Respondent timely filed her quarterly reports due on April 10, July 10 and October 10, 2012, and January 10, 2013. On February 8, 2013, the Probation Office received a "Final Report" from respondent. The report was not filed because respondent's probation was not scheduled to terminate until February 9, 2015. Thereafter, respondent failed to file the quarterly report due April 10, 2013.

The Office of Probation sent a letter to respondent dated April 22, 2013, advising respondent that the Office of Probation had not received her quarterly report due April 10, 2013. Respondent was advised to submit the report immediately. Respondent was also reminded that she was ordered to provide satisfactory proof to the Office of Probation of attendance at a session of Ethics School and passage of the test given at the end of that session by February 9, 2013, but respondent had failed to do so. Respondent was advised that the Office of Probation did not intend to send any further reminder letters regarding the above non-compliance or any future compliance due dates or lack of receipt of compliance documentation. Respondent was also advised that her non-compliance could be referred for review and determination of further action which could lead to additional discipline. Enclosed was a copy of the January 23, 2012, letter from the Office of Probation.

On May 3, 2013, the Office of Probation also emailed the April 22, 2013, letter to respondent. The email also included a copy of the January 23, 2013, letter. That same day, respondent sent an email to the Office of Probation advising, in part, that she could not afford to comply with the Ethics School requirement.

Respondent thereafter failed to file the quarterly report due July 10, 2013, and failed to provide proof of completion of any session of Ethics School.

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 probation conditions as ordered by the Supreme Court in S197533. She (1) failed to file the quarterly reports due on April 10 and July 10, 2013; and (2) failed to provide to the Office of Probation satisfactory proof of her attendance at Ethics School and passage of the test given at the end of such session.

As a result, the revocation of respondent's probation in California Supreme Court order No. S197533 is warranted.

Aggravation

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

Respondent has one prior record of discipline. In the underlying matter (S197533), respondent stipulated that she shared legal fees with a non-lawyer; failed to participate or cooperate in a disciplinary matter; charged and accepted an advanced fee in connection with loan modification services in violation of California Civil Code section 2944.7(a)(1) (two matters); and intentionally, recklessly or repeatedly failed to perform legal services with competence with regard to three clients. There were no aggravating or mitigating circumstances.

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

Respondent committed multiple acts of wrongdoing by failing to file two quarterly reports and failing to provide proof of completion/passage of Ethics School.

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

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. (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) Although respondent was notified that the Office of Probation had not received her quarterly report due April 10, 2013, and that she had failed to provide satisfactory proof of attendance at a session of Ethics School and passage of the test given at the end of such session, respondent still failed to comply with these conditions.

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 participate in this proceeding, 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(a) 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 her misconduct and

her efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

Although respondent sent an email to the Office of Probation advising, in part, that she could not afford to comply with the Ethics School requirement, the court has no way to evaluate this contention and no other information about the underlying cause of her probation violations or of any mitigating circumstances surrounding her misconduct since she did not participate in this proceeding. Furthermore, this does not explain respondent's failure to submit her April and July 2013 quarterly reports. Respondent was aware of the terms and conditions of her disciplinary probation, yet failed to comply with them despite repeated reminders from the Office of Probation.

The Office of Probation requested, among other things, that respondent be actually suspended for the full amount of stayed suspension and until she makes specified restitution which was a probation condition ordered in her underlying disciplinary proceeding.⁴ The court agrees.

Recommendations

The court recommends that the probation of respondent Jenny Wong, member No. 248111, imposed in Supreme Court case No. S197533 (State Bar Court case Nos. 10-O-05311 (10-O-05318); 11-O-15313 (11-O-15429; 11-O-15494)) be revoked; that the previous stay of execution of the suspension be lifted; that respondent be suspended from the practice of law for a minimum of one year and that she remain suspended until the following requirements are satisfied:

- i. She makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance

⁴ Respondent was ordered to make restitution to three payees by January 10, 2015, in Supreme Court case No. S197533. As of July 12, 2013, respondent had not provided proof of payment of any amount of restitution to any of the payees.

with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:

- (1) Soo Young Song in the amount of \$2,500 plus 10 percent interest per year from July 1, 2010;
 - (2) Won Kyung Park in the amount of \$2,500 plus 10 percent interest per year from July 1, 2010;
 - (3) Teresa Osuna in the amount of \$3,500 plus 10 percent interest per year from July 1, 2010;
- ii. If she remains suspended for two years or more as a result of not satisfying the preceding condition, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her 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 she was previously ordered to do so in Supreme Court case No. S197533 and remains under an obligation to comply with this requirement.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of 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, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.⁵

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.

⁵ 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.)

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).⁶ This inactive enrollment order will be effective three calendar days after the date upon which this order is served.

Dated: September _____, 2013

RICHARD A. HONN
Judge of the State Bar Court

⁶ 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).)