

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

In the Matter of)
RICHARD WONG,)
Member No. 192970,) **Case Nos. 05-O-01429; 06-O-10069-RAH**
A Member of the State Bar.) **DECISION**

I. Introduction

In this default disciplinary matter, respondent **Richard Wong** is found culpable, by clear and convincing evidence, of failing to cooperate with the State Bar and of violating his probation conditions, as ordered by the California Supreme Court on February 17, 2005, in S129717.

In view of respondent’s misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, and that he be actually suspended from the practice of law for one year and until the State Bar Court grants a motion to terminate respondent’s actual suspension. (Rules Proc. of State Bar, rule 205.)

II. Pertinent Procedural History

On January 12, 2007, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly served on respondent a two-count Notice of Disciplinary Charges (NDC) at his official membership records address. The NDC was not returned as undeliverable.

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On the State Bar’s motion, respondent’s default was entered on March 14, 2007, and respondent was enrolled as an inactive member on March 17, 2007, under Business and Professions

Code section 6007, subdivision (e).¹ An order of entry of default was sent to respondent's official address by certified mail.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on March 20, 2007, following the filing of the State Bar's brief on culpability and discipline.

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).)

Respondent was admitted to the practice of law in California on December 9, 1997, and has been a member of the State Bar of California at all times since that date.

A. The Li Matter

In investigating a complaint filed by Kai Q. Li, the State Bar wrote to respondent on five separate occasions in 2005 – March 2, April 25, May 10, October 7, and October 25 – informing him of the allegations in the Li matter and requesting a response to the allegations. Respondent received each letter but did not respond to any of them or otherwise communicated with the State Bar.

Count 1: Failure to Cooperate With the State Bar (§ 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. Respondent failed to cooperate with the State Bar in wilful violation of section 6068, subdivision (i), by failing to respond to the State Bar's five letters or participate in the investigation of the Li matter.

B. Supreme Court Case No. S129717

On February 17, 2005, the California Supreme Court ordered respondent suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years subject to the conditions of probation, including an actual suspension of 60

¹All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

days, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed October 18, 2004 (Supreme Court case No. S129717, State Bar Court case No. 04-O-10153). The order became effective March 19, 2005, and was duly served on respondent.

Among other probation conditions, respondent was required to:

1. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation stating under penalty of perjury whether he had complied with the State Bar Act and the Rules of Professional Conduct;
2. Attend and pass the State Bar Ethics School within one year of the effective date of the Supreme Court order;
3. Join the Law Practice Management and Technology Section of the State Bar of California within 30 days of the effective date of the Supreme Court order;
4. File with each required quarterly report a certificate from respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, which certificate contains certain statements and representations (financial certificate); or, if respondent does not possess any client funds, property or securities during the entire period covered by the report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period; and
5. Attend and pass the State Bar Ethics School Client Trust Accounting School within one year of the effective date of the Supreme Court order.²

Respondent did not file the quarterly reports or the financial certificates (if required) due July 10 and October 10, 2005, and January 10, April 10, July 10, and October 10, 2006. Respondent did not attend the State Bar Ethics School or the Client Trust Accounting School by March 19, 2006, or at any time since. Furthermore, he has not furnished satisfactory proof of his membership in the

²To take and pass the Multistate Professional Responsibility Exam is a condition imposed by the Supreme Court, but it is not a probation condition as alleged in the NDC.

Law Practice Management and Technology Section of the State Bar of California to the Office of Probation.

Count 2: Failure to Comply With Probation Conditions (Bus. & Prof. Code, § 6068, Subd. (k))

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

By failing to timely file the July 10 and October 10, 2005, and the January 10, April 10, July 10, and October 10, 2006 quarterly reports and financial certificates (if required); by failing to attend the State Bar Ethics School or the Client Trust Accounting School; and by failing to furnish satisfactory proof of his membership in the Law Practice Management and Technology Section of the State Bar, respondent failed to comply with conditions attached to his probation under S129717, in wilful violation of section 6068, subdivision (k).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

B. Aggravation

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

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) In the underlying matter, respondent stipulated to a two-year stayed suspension, two-year probation and 60-day actual suspension. His misconduct involved one client matter, in which he failed to maintain and promptly pay client funds, committed an act of moral turpitude, and failed to communicate. (Supreme Court case No. S129717; State Bar Court case No. 04-O-10153.)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) He violated several probation conditions.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by failing to comply with the probation conditions even after the

³All further references to standards are to this source.

NDC in the instant proceeding was filed. (Std. 1.2(b)(v).) He has yet to attend courses in ethics and trust accounting.

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct included repeated violations of his probation conditions and failure to cooperate with the State Bar. The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7 and 2.6.)

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.) The court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The extent of the discipline to recommend in this matter is dependent, in part, on the nature of the probation violation and its relationship to respondent's prior misconduct. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The State Bar urges an actual suspension of two years, citing *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, *In the Matter of Potack, supra*, 1 Cal. State Bar Ct. Rptr. 525 and *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646 in support of its recommendation.

In *Howard*, the attorney was actually suspended for one year because he failed to submit two quarterly probation reports, to timely deliver financial records to a former client's accountant, and defaulted in the disciplinary proceeding. The attorney's lack of cooperation with the State Bar was

a serious concern.

In *Potack*, in consideration of two probation violation cases, the Review Department recommended an aggregate actual suspension in both matters not exceeding two years for the attorney's failure to timely file a probation report and to timely make restitution to six clients.

And, in *Rose*, the attorney had four prior records of discipline and a history of serious professional misconduct during 18 of the 26 years of his practice, including client abandonments, probation violations and failure to file timely the affidavit required by the Rules of Court, rule 955. As a result, the Review Department found that he had ample opportunity to conform his conduct to the ethical requirements of the profession, but had repeatedly failed or refused to do so in his 26 years of practice and that, therefore, disbarment was appropriate.

The court finds that the misconduct found in *Potack* and *Rose* is more serious than that of respondent and that *Howard* is more analogous to this matter. Thus, an actual suspension of two years would be excessive.

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.) Thus, respondent’s failure to file quarterly reports warrants significant discipline.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent’s misconduct or of any mitigating circumstances surrounding his misconduct.

Therefore, in view of respondent’s misconduct, the case law and the aggravating evidence, placing respondent on an actual suspension for one year would be appropriate to protect the public

and to preserve public confidence in the profession.

VI. Discipline Recommendation

Accordingly, the court hereby recommends that respondent **Robert Wong** be suspended from the practice of law for two years, that said suspension be stayed, and that respondent be actually suspended from the practice of law for one year and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

It is recommended that respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

If the period of actual suspension reaches or exceeds two years, it is recommended that he remain actually suspended until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Wilful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁴

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination as he was previously ordered to do so in S129717.

VII. 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.

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

VIII. Order Regarding Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(d)(3). (Rules Proc. of State Bar, rule 564.)

Dated: May ___, 2007

RICHARD A. HONN
Judge of the State Bar Court