

PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED JULY 15, 2011

**STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT**

In the Matter of) Case Nos. 02-O-10226; 05-O-02193
)
STEVEN JAY STANWYCK,) OPINION AND ORDER
)
A Member of the State Bar, No. 48728.)
_____)

BY THE COURT:¹

I. SUMMARY OF THE CASE

Since 1991, Steven Jay Stanwyck has represented United Computer Systems (UCS)² in protracted litigation against several parties, including AT&T, Lucent Technologies and NCR (collectively AT&T).³ In 2002, the state and federal trial courts declared Stanwyck to be a vexatious litigant and the Ninth Circuit sanctioned him for abusing the judicial process. Based on these rulings, the Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) in 2006, alleging in three counts that Stanwyck: (1) maintained an unjust action in state court; (2) maintained an unjust action in federal court; and (3) failed to pay sanctions ordered by the Ninth Circuit. The hearing judge found Stanwyck culpable of Counts One and

¹ Before Remke, P. J., Epstein, J., and Purcell, J.

² Beginning in 1991, Stanwyck began assuming control of UCS and by 1999, he was the sole officer, director and owner of a controlling interest. Hereafter, references to Stanwyck are to him individually and/or as the real party in interest of UCS.

³ Lucent Technologies was a division of AT&T and NCR was a subsidiary.

Two.⁴ After considering three factors in aggravation and two in mitigation, the hearing judge concluded that Stanwyck was unfit to practice law and recommended that he be disbarred.

Stanwyck seeks review. He contends that the State Bar did not present clear and convincing evidence of his misconduct, and that we should reverse the hearing judge's decision or impose no more than a public reproof if we find culpability. The State Bar requests that we affirm the decision below.

After independent review of the record (Cal. Rules of Court, rule 9.12), we find that Stanwyck maintained unjust actions in state and federal courts for over five years. He lacks insight into and remorse for this misconduct and the harm he inflicted on the administration of justice. As the hearing judge aptly noted, Stanwyck "presents an ongoing danger to the public and the legal profession." Finding no merit to Stanwyck's procedural and substantive challenges on review, we adopt the hearing judge's decision as summarized below.⁵

II. PROCEDURAL CHALLENGES

Stanwyck contends that Count One of the NDC is barred by the rule of limitations. He is incorrect. Attorney disciplinary actions are generally governed by a five-year period of limitation. (Rules Proc. of State Bar, former rule 51(a).)⁶ But filings are permitted beyond this period when "the alleged violation is a continuing offense . . . [and] the violation is deemed to have been committed at the termination of the entire course of conduct." (Rules Proc. of State Bar, former rule 51(b).) Stanwyck filed a series of meritless actions from 1997 through 2002.

⁴ The hearing judge dismissed with prejudice Count Three for lack of evidence, which the State Bar does not challenge. We adopt the dismissal.

⁵ Having reviewed de novo all of the arguments set forth by Stanwyck, those not specifically addressed have been considered and are rejected as without merit.

⁶ The Rules of Procedure of the State Bar were amended effective January 1, 2011. However, the former rules apply to this proceeding as the request for review was filed prior to the effective date. (Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 2.)

We conclude that the July 10, 2006 NDC was timely since it was filed four years after Stanwyck's final unmeritorious filing in 2002.

Stanwyck next claims that the hearing judge improperly judicially noticed and/or admitted unreliable state and federal court records concerning his lawsuits. We do not agree. The hearing judge properly admitted the relevant records and based most of his culpability findings on pleadings that *Stanwyck* introduced.⁷

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In 1986, UCS and AT&T entered into a software agreement with an arbitration clause. A dispute arose, and UCS initiated an arbitration against AT&T. The panel of arbitrators awarded UCS over \$16 million, and a federal district court confirmed the award in 1991. In 1992, AT&T attacked the arbitration award by successfully arguing that UCS committed fraud, and the district court vacated the award. By this time, Stanwyck had begun representing UCS, and the problems began. During the proceedings, the district court imposed rule 11 sanctions against Stanwyck and UCS for filing frivolous pleadings and filing pleadings for an improper purpose. In 1993, the Ninth Circuit reversed the district court's decision to vacate the arbitration award, but affirmed the rule 11 sanctions. Stanwyck's misconduct is based on his relentless crusade against AT&T in state and federal court from 1997 to 2002.

A. COUNT I – CASE NO. 02-O-10226 (UNJUST ACTIONS IN STATE COURT)

In 2001, AT&T filed a motion to declare Stanwyck a vexatious litigant after he filed several unsuccessful lawsuits against it. The superior court granted the motion under California

⁷ We deny Stanwyck's April 27, 2011, May 3, 2011, May 13, 2011, June 20, 2011, and July 6, 2011 requests for judicial notice and to augment the record since the documents he seeks to present are not relevant to these proceedings.

Code of Civil Procedure section 391,⁸ finding that in the previous seven years, Stanwyck “commenced, prosecuted or maintained more than five litigations . . . that have been finally determined adversely” against him. Those cases included the following:

- In March 1997, Stanwyck sued the Walt Disney Company for breach of a joint venture agreement and dismissed the action two years later.
- In October 1997, Stanwyck sued the law firm that represented him in an appeal involving AT&T, but dismissed the action in April 1998.
- In February 1999, Stanwyck sued an arbitrator and the American Arbitration Association (AAA) but dismissed the action in November 1999.
- In June 1999, AT&T filed a petition to confirm an arbitration award decided against Stanwyck. The federal district court confirmed the award, Stanwyck appealed and the Ninth Circuit affirmed.

⁸ Section 391(b) provides in part: “ ‘Vexatious litigant’ means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.”

- Stanwyck filed a state court action against AT&T that AT&T removed to federal court in August 2000. The case involved claims previously decided against Stanwyck. Stanwyck dismissed the case in December 2000.
- In June 2000, Stanwyck sued AAA and others in state court, reiterating claims raised in prior actions. The court entered judgment in favor of the defendants, Stanwyck appealed and the appellate court dismissed the appeal for failure to prosecute.
- In July 2001, Stanwyck filed an involuntary petition against a family investment partnership. The state court dismissed the action and awarded \$12,000 in attorney fees and costs and \$50,000 in punitive damages against Stanwyck. He appealed and the appellate court dismissed the case for failure to prosecute.

The superior court found Stanwyck to be a vexatious litigant because, in addition to filing and maintaining these actions, he had repeatedly re-litigated issues, filed unmeritorious pleadings and engaged in frivolous tactics solely intended to cause unnecessary delay.

In Count One, Stanwyck is charged with maintaining an unjust action, in violation of Business and Professions Code section 6068, subdivision (c),⁹ based on his misconduct in the state court: filing matters that were determined adversely, re-litigating issues or cases, filing unmeritorious motions, pleadings or papers that were frivolous or intended to cause unnecessary delay. The hearing judge correctly found Stanwyck culpable.

Under section 6068, an attorney must maintain only those actions or proceedings that appear “legal or just.” We give a strong presumption of validity to the superior court’s finding that Stanwyck is a vexatious litigant. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947 [civil findings entitled to strong presumption of validity if supported by substantial evidence].) Our

⁹ Unless otherwise noted, all further references to “section(s)” are to the Business and Professions Code.

record also supports this finding by clear and convincing evidence. Stanwyck filed at least eight matters within a seven-year period that were decided against him or UCS. He also litigated matters that were previously decided, and continually filed pleadings that were frivolous or intended to unnecessarily delay the proceedings. We conclude that Stanwyck maintained an unjust action in state court.

B. COUNT II – CASE NO. 05-O-02193 (UNJUST ACTIONS IN FEDERAL COURT)

In October 1999, Stanwyck sought to arbitrate another matter against AT&T before the AAA. Jan Stredicke, an AAA employee, informed Stanwyck that he must first pay a filing fee. Stanwyck refused to pay the fee and instead sued AT&T and others in state court, but named Stredicke as a defendant to defeat diversity jurisdiction. AT&T removed the case to the federal district court, and all claims against Stredicke and AT&T were dismissed.

Stanwyck appealed and the Ninth Circuit reversed only the judgment dismissing AT&T but ordered Stanwyck to pay the arbitration filing fee before the case could proceed. The court also warned Stanwyck about repeatedly filing actions against AT&T in state and federal court: “[W]e acknowledge that counsel for UCS seems very close to pushing zealous advocacy beyond the breaking point. . . . From our perspective, it appears that UCS’s detour into state and federal court has been a vexatious attempt to forestall the inevitable. . . . [The district court] may certainly impose sanctions whenever a lawyer practicing before it vexatiously manipulates the litigation process. UCS is perilously close to this line, if not well beyond it.”

Despite the court’s directive to pay the filing fee, Stanwyck again refused to do so and instead filed a new demand for arbitration. The federal district court dismissed the action because Stanwyck failed to comply with the Ninth Circuit order to pay the fee, and granted the defendants’ motion to declare Stanwyck a vexatious litigant under Code of Civil Procedure

section 391. The district court explained its vexatious litigant ruling as follows: (1) Stanwyck had maintained over five litigations that were determined adversely against him during the prior seven years; (2) many of Stanwyck's actions involved meritless appeals and attempts to re-litigate prior decisions or to collaterally attack them by alleging misconduct by the lawyers and judges; (3) four different courts sanctioned and declared Stanwyck to be a vexatious litigant for his meritless filings;¹⁰ and (4) Stanwyck abused the judicial process. The district court concluded that Stanwyck has "abused the process of this and other Courts and [is] likely to continue this abuse."

Stanwyck appealed to the Ninth Circuit, filing several additional motions there. The appellate court affirmed the vexatious litigant determination and imposed \$16,000 in attorney fees against Stanwyck for abusing the judicial process. The court described Stanwyck's misconduct in its ruling: "Stanwyck [has] attempted to litigate some or all of [his] claims against AT&T in no fewer than five arbitrations and eight lawsuits, and [has] further attempted to sue attorneys and judges involved in the AT&T arbitrations and lawsuits ten times. Four of these lawsuits have resulted in declarations that . . . Stanwyck [was a] vexatious litigant and four of them have resulted in other sanctions being imposed on . . . Stanwyck. There is no doubt that . . . Stanwyck [has] an abusive and lengthy history of litigation against AT&T, its corporate affiliates, officers, and lawyers."

The hearing judge correctly found Stanwyck culpable of maintaining an unjust action in violation of section 6068, subdivision (c), as alleged in Count Two. This charge is based on Stanwyck's misconduct in the federal district and appellate courts: re-litigating issues, filing

¹⁰ These include: (1) January 29, 2002, Los Angeles County Superior Court in *Stanwyck, et al. v. Felder & Simon, Taub, et al.*; (2) January 30, 2002, San Francisco Superior Court in *UCS and Stanwyck v. Sheppard, Mullin, Richter & Hampton, et al.*; (3) February 5, 2002, Los Angeles Superior Court in *UCS and Stanwyck v. Braafe, et al.*; (4) June 14, 2002, Central District Court of California in *Stanwyck et al. v. Beilinson, et al.*

unmeritorious motions and abusing the judicial process. As with the state court findings, we give a strong presumption of validity to the findings by the federal courts that Stanwyck abused the judicial process. Our record also supports these findings by clear and convincing evidence. We conclude that Stanwyck maintained an unjust action in the federal courts by filing fruitless motions on appeal, using frivolous tactics to defeat diversity jurisdiction and disregarding the Ninth Circuit's order to pay the arbitration fee.

IV. AGGRAVATION AND MITIGATION

Guided by the Standards for Attorney Sanctions for Professional Misconduct,¹¹ the hearing judge found three aggravating factors: significant harm to the administration of justice and to the parties (std. 1.2(b)(iv)); lack of insight and remorse (std. 1.2(b)(v)); and multiple acts of wrongdoing. (Std. 1.2(b)(ii).) We adopt these findings. We further find that Stanwyck's abuse of the court system for over five years also qualifies as a pattern of misconduct, which further aggravates this case. (See *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1150, fn. 14 [serious instances of repeated misconduct over prolonged time are characterized as pattern of wrongdoing].) We also adopt the two mitigating factors that the hearing judge found – no prior record of discipline since admission to practice in 1971 (std. 1.2(e)(i)) and limited pro bono activities as a court settlement officer for two years. (*Schneider v. State Bar* (1987) 43 Cal.3d 784, 799 [service to community is mitigating factor].)

V. LEVEL OF DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession. To determine the proper discipline, the Supreme Court has instructed that we follow the standards “whenever possible” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11) because they promote “ “the consistent and uniform application of disciplinary

¹¹ Unless otherwise noted, all further references to “standard(s)” are to this source.

measures.” ’ [Citation.]” (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 2.6(a) is most pertinent here as it calls for actual suspension or disbarment for maintaining an unjust action in violation of section 6068, subdivision (c), depending on the gravity of the offense or the harm.

Under this standard, Stanwyck should be disbarred. The gravity of his offense and the harm he inflicted on parties and the legal system are most significant. He repeatedly filed arbitrations and lawsuits to rehash adjudicated issues and claims. He wasted judicial resources, burdened the courts with frivolous filings, delayed proceedings and harassed parties, including judges who decided cases against him.¹² Stanwyck’s pattern of misconduct further supports a disbarment recommendation. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [disbarment proper where attorney with no prior record and no insight commits pattern of serious misconduct].)

Despite countless opportunities to conform his behavior to the ethical demands of the profession, Stanwyck chose instead to continue his meritless litigation. We are troubled that he fails to realize that his actions go beyond zealous advocacy, and believe he will continue abusing the legal system. After considering the aggravating and mitigating factors and decisional law, we recommend that Stanwyck be disbarred as the discipline necessary to protect the public, the courts and the legal profession. (See *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179 [disbarment for 30-year attorney sanctioned for filing frivolous motions and appeals over 12-year period who lacked insight and refused to change].)

VI. RECOMMENDATION

Steven Jay Stanwyck should be disbarred from the practice of law in California and his name stricken from the roll of attorneys.

¹² In 2001, Stanwyck filed *UCS and Stanwyck v. Vickery, et.al.*, a state court lawsuit against judges who ruled against him, the director of the Administrative Office of the Courts, the Judicial Council of California and other entities.

VII. RULE 9.20

We further recommend that Stanwyck be required to comply with the provisions of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivision (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's order in this case.

VIII. COSTS

We further recommend that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and that such costs are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IX. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, he properly ordered that Stanwyck be involuntarily enrolled as an inactive member of the State Bar as required by section 6007, subdivision (c)(4), and former rule 220(c) of the Rules of Procedure of the State Bar. That order became effective on February 13, 2010. Stanwyck will remain on involuntary inactive enrollment pending the final disposition of this proceeding.