

PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed May 1, 2019

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of) Case No. 14-O-00848
)
SANJAY BHARDWAJ,) OPINION AND ORDER
)
A Member of the State Bar, No. 257780)
)

This matter concerns Sanjay Bhardwaj's egregious misconduct stemming from his divorce from Anupama Pathak (Pathak). With his conduct being described by a superior court judge as "absolutely outrageous," Bhardwaj was declared a vexatious litigant by the Alameda County Superior Court in 2013. Nevertheless, he continued to use the courts to relentlessly bully his ex-wife. In 2014, a court stated, "[Bhardwaj] continues to recycle the same unmeritorious, and repeatedly rejected arguments." As a result of his misconduct, Bhardwaj has been sanctioned more than \$140,000.

In 2017, the Office of Chief Trial Counsel of the State Bar (OCTC) charged Bhardwaj with 13 counts of misconduct. After five days of trial, the hearing judge found him culpable of 10 counts: (1) failing to report judicial sanctions [three counts]; (2) maintaining unjust actions; (3) failing to support the laws; (4) moral turpitude [two counts]; (5) failing to maintain respect due to courts and judicial officers [two counts]; and (6) encouraging the commencement and continuance of an action from a corrupt motive. The judge found significant harm, a pattern of misconduct, and indifference in aggravation, with no factors in mitigation. The hearing judge described Bhardwaj as "unapologetic" and "relentless," and recommended disbarment.

Bhardwaj seeks review. He requests dismissal, arguing, among other things, that OCTC presented insufficient evidence to establish culpability for any charge, that the State Bar lacks jurisdiction over his conduct, and that he was merely trying to protect his property rights. This is Bhardwaj's first discipline since he was admitted to practice in 2008; however, he began his misconduct only a year after he became a member of the bar.

Based on our independent review (Cal. Rules of Court, rule 9.12), we agree with most of the hearing judge's culpability and aggravation findings. We also find that Bhardwaj presented no evidence to mitigate his disruptive and harmful misconduct, and appears likely to continue such behavior in the future. We recommend disbarment as the only discipline adequate to protect the public, the courts, and the legal profession.

I. BACKGROUND

The underlying lawsuits arose from Bhardwaj's divorce. The hearing judge's 43-page decision provides a detailed summary of the case's procedural history as well as the legal and factual issues involved.¹ We adopt those findings, except where noted, and summarize those relevant to our analysis below. For the most part, however, the specific facts of the divorce are not material to whether Bhardwaj is culpable as charged in the amended Notice of Disciplinary Charges (NDC), whether any misconduct is aggravated or mitigated, and whether we should affirm the discipline recommendation. Instead, the pertinent facts are those demonstrating Bhardwaj's unreasonable and unethical pursuit of his grievances, the significant harm he caused to his ex-wife, the public, the profession, and the administration of justice, and his lack of insight into his misconduct.

¹ Bhardwaj argues in his rebuttal brief that he did not get a "chance to defend" against OCTC's allegations during the disciplinary hearing due to "failed service on trial brief and simultaneous submission on closing brief." However, the record reveals that the hearing judge provided Bhardwaj with ample opportunity to defend the charges. We give great weight to the judge's findings based upon the parties' written arguments and testimony at the disciplinary hearings. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 932.)

II. JUDICIAL SANCTIONS (COUNTS ONE THROUGH THREE) AND EMPLOYMENT STATUS (COUNT EIGHT)²

A. FACTUAL BACKGROUND

As part of the marital dissolution proceedings, on July 7, 2009, Bhardwaj filed an Income and Expense Declaration in which he reported his monthly income as \$11,600 (First Income and Expense Declaration). But on July 16, 2009, Bhardwaj's employer notified him by letter that he would be laid off in two months.

In October 2009, the Alameda County Superior Court entered a status-only judgment dissolving the marriage of Pathak and Bhardwaj. Reserved financial issues were then tried in two separate proceedings before Judge Dan Grimmer (child support and permanent spousal support) and before Judge Stephen Pulido (division of the parties' assets).

On October 5, 2009, Bhardwaj lost his job. This was also the first day of the spousal support hearing before Judge Grimmer. The hearing continued for three consecutive days. Despite having already lost his job, Bhardwaj stipulated during trial that his income was \$12,263 per month and testified that he *receives* \$4,600 in net income and *grosses* \$12,263 per month (answering the questions in the present tense).

During the hearing, still unaware that Bhardwaj had lost his job, Pathak argued that Bhardwaj *understated* his earnings by failing to include in his income a 2008 bonus he had earned. Judge Grimmer ordered Bhardwaj to produce his 2008 tax return, which revealed the bonus.³

² Because count eight relies on the same facts as counts one through three, it is taken out of order and discussed at this point in this opinion.

³ In his opening and rebuttal briefs, Bhardwaj argues that the documents relied upon by this court were not properly authenticated. Under rule 5.104(H) of the Rules of Procedure of the State Bar, the State Bar Court may take judicial notice of court records that have been certified by the clerk of court or tribunal and of non-certified court records that have been copied from a public access website operated by a court or government agency for the purpose of posting official public records or court records (e.g., PACER). Upon review, this court finds that all documents relied upon in this opinion satisfy rule 5.104(H) of the Rules of Procedure of the State Bar and are therefore properly authenticated.

In response to Judge Grimmer's tentative decision holding that Bhardwaj was not entitled to spousal support and that he understated his income, Bhardwaj filed for modification of child custody and support based upon his unemployment, attaching two letters from his employer. Given Bhardwaj's delayed notice of his job loss, Judge Grimmer found Bhardwaj's actions to be strategic and did not grant him a modification of support because, "in not bringing [the unemployment issue] to both the court's and [Pathak's] 'direct' attention, [Pathak] was not permitted to inquire into and the trier of fact was deprived of knowledge of the circumstances surrounding [Bhardwaj's] loss of employment." Judge Grimmer indicated that "in a sense, [Bhardwaj] 'laid in wait' for the last possible opportunity to bring up and argue this issue." Judge Grimmer sanctioned Bhardwaj \$1,500 under Family Code section 2107, subdivision (c), for understating his earnings in his spousal support trial by not including his bonus in his Second Income and Expense Declaration. Bhardwaj appealed.

At the beginning of the second trial for division of assets, the parties agreed that Judge Pulido would also hear Bhardwaj's request to modify Judge Grimmer's permanent spousal support ruling. During the hearings before Judge Pulido, Pathak requested sanctions under Family Code section 271, this time based upon the amount of time and money spent litigating against Bhardwaj's request to modify Judge Grimmer's ruling, which was only necessary because Bhardwaj did not affirmatively apprise Judge Grimmer of his unemployment status until after the matter was submitted for decision. At the hearings, Bhardwaj admitted that his motive in failing to disclose his employment status was strategic, stating, "Your Honor, if you look at Judge Grimmer's statement, I did not disclose the employment situation. He took it as part of my strategy, which is my right. I want to impute my income at trial."

On July 2, 2010, Judge Pulido issued a statement of decision in which he sanctioned Bhardwaj \$15,000 for the nondisclosure of his unemployed status. In that statement of decision,

Judge Pulido called Bhardwaj's conduct "shocking" and stated that it "frustrated the policy of the law to promote settlement of litigation and increased the costs of litigation in this case." On September 30, 2010, Judge Pulido issued a single judgment that incorporated the rulings from both trials, including his \$15,000 sanction and Judge Grimmer's \$1,500 sanction against Bhardwaj for understating his income. Bhardwaj filed three notices of appeal, two based upon the underlying decisions of both judges and the other upon the denial of a motion for a new trial. Bhardwaj did not report the \$15,000 sanction to the State Bar. It is unclear from the record if he reported the \$1,500 sanction.

On February 28, 2012, the First District Court of Appeal affirmed the trial court's sanctions, found that Bhardwaj filed a frivolous appeal for the purpose of delay, and ordered him to pay \$60,000 in sanctions to Pathak and her attorney. The appellate court also ordered that a copy of its opinion be forwarded to the State Bar for investigation and possible discipline. OCTC received the sanction report from the appellate court on August 28, 2012, and sent a letter to Bhardwaj regarding the sanctions order. On March 15, 2013, Bhardwaj reported the \$60,000 sanction, seven months after it was issued.

On March 10, 2014, Judge Brad Seligman of the Alameda County Superior Court, sanctioned Bhardwaj \$10,500 for his continued recycling of the same unmeritorious and rejected arguments, requiring multiple hearings on the property issues. On September 28, 2015, Bhardwaj reported Judge Seligman's sanction to the State Bar, 18 months after it was issued.

B. CULPABILITY

Counts One, Two, and Three: Failure to Report Judicial Sanctions (Bus. & Prof. Code, § 6068, subd. (o)(3))⁴

Bhardwaj is charged with failing to timely report to the State Bar the judicial sanctions imposed upon him on July 2, 2010, February 28, 2012, and March 10, 2014. The hearing judge correctly found Bhardwaj culpable as charged in the NDC.

Under section 6068, subdivision (o)(3), an attorney has a duty to report to the State Bar, in writing, judicial sanctions against the attorney of \$1,000 or more that are not imposed for failure to make discovery, within 30 days of knowledge of the sanctions. Bhardwaj asserts that he did not report any sanctions within 30 days of his knowledge of them because he was not acting as an attorney but was working as an engineer, and because he was represented by an attorney on July 2, 2010. However, an attorney must report any judicial sanction regardless of whether it is imposed upon the attorney as a party to an action, or for conduct in representing a party to an action. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 188 [§ 6068, subd. (o)(3), applies to sanctions imposed against attorney as party to action].)

The record provides clear and convincing evidence⁵ that Bhardwaj had knowledge of all three sanctions against him and did not report them within 30 days. By failing to report the July 2, 2010 sanction (\$15,000) and failing to timely report the February 28, 2012 sanction (\$60,000) and the March 10, 2014 sanction (\$10,500), he willfully violated section 6068, subdivision (o)(3). Accordingly, we conclude that Bhardwaj is culpable of failing to report judicial sanctions.

⁴ All further references to sections are to the Business and Professions Code unless otherwise noted.

⁵ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

**Count Eight: Failure to Maintain Respect Due to Courts and Judicial Officers
(§ 6068, subd. (b))**

In count eight, Bhardwaj is charged with failing to maintain respect due to courts and judicial officers, as provided in section 6068, subdivision (b). We affirm the hearing judge's finding that Bhardwaj is culpable as charged.

The record provides clear and convincing evidence that Bhardwaj misled the court and opposing counsel regarding his employment status. Pathak filed for divorce from Bhardwaj in 2008. Bhardwaj filed the First Income and Expense Declaration, reporting that he had a monthly income of \$11,600, on July 7, 2009. On July 16, he became aware that he would be laid off in October 2009. On October 5, he was officially terminated. Instead of correcting the First Income and Expense Declaration to disclose his job loss in July, August, or September, Bhardwaj waited three months to file a new declaration on October 5, which was after the trial commenced. While he asserts that he did so for strategic purposes, he misled the court by claiming an income of \$12,250 during the trial and through submission of the case.

Bhardwaj argues that the State Bar Court does not have jurisdiction over count eight because the statute of limitations has expired. Rule 5.21(G) provides, "The five-year limit does not apply to disciplinary proceedings that were investigated and initiated by the State Bar based on information received from an independent source other than a complainant." Here, on August 22, 2012, the appellate court sent the State Bar a referral of sanctions regarding Bhardwaj, as is required by section 6086.7, subdivision (a)(3).⁶ An OCTC investigator testified that upon receiving that referral, OCTC initiated an investigation of Bhardwaj. Referrals by a court are considered information received from an independent source and not from a third party complainant. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 9 [matter

⁶ Section 6086.7, subdivision (a)(3), requires a court to notify the State Bar of the imposition of any judicial sanction against an attorney, except those for discovery or monetary sanctions less than \$1,000.

not barred by limitations period because it was initiated by State Bar, not third-party complainant, after superior court entered sanctions order].) Accordingly, we reject Bhardwaj's statute of limitations defense.

III. COURT OF APPEAL (COUNTS FOUR THROUGH SEVEN)⁷

A. FACTUAL BACKGROUND

When the appellate court consolidated Bhardwaj's three appeals, it ordered that his brief address only issues arising from the December 30, 2010 judgment and the January 7, 2011 order. The court also ordered that he fully comply with the California Rules of Court; and that his brief contain no more than 9,000 words.

After reviewing his briefs, the appellate court found that Bhardwaj purposely violated its briefing orders. In his supplemental opening brief and reply brief, Bhardwaj used an extensive system of abbreviations he created to circumvent the word limitation.⁸ The true word count exceeded the designated limit.

The appellate court affirmed the trial court's judgment and order, concluding that the trial court did not commit any prejudicial errors. The appellate court also determined that Bhardwaj's appeal was frivolous because "virtually every argument appellant makes indisputably lacks merit" and was pursued solely for delay.⁹ For example, Bhardwaj claimed ruling errors that were induced by his own conduct, he cited to statutes that did not exist, and he misapplied

⁷ We adopt the hearing judge's dismissal with prejudice of count seven as the same facts support the moral turpitude finding in count six. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.)

⁸ For example, he created abbreviations by combining two words into one: "Tcourt" for "trial court," "Octtrial" for "October trial," "MCOJ" for "miscarriage of justice," and "FRV" for "fair rental value." He also incorrectly hyphenated multiple words to reduce his word count, e.g., "opportunity-to-be-heard" and "change-of-circumstance."

⁹ "[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive – to harass the [opposing party] or delay the effect of an adverse judgment – or when it indisputably has no merit – when any reasonable attorney would agree that the appeal is totally and completely without merit." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.)

statutes by ignoring their language and plain meaning. Further, he failed to properly cite to the record, to summarize his opponent's position, and to explain the reason the ruling was in error.

B. CULPABILITY

Count Four: Failure to Maintain a Just Action (§ 6068, subd. (c))

Bhardwaj is charged with maintaining an unjust action by pursuing frivolous appeals and actions and failing to address the merits of the litigation. We affirm the hearing judge's determination that Bhardwaj violated section 6068, subdivision (c).

Section 6068, subdivision (c) provides that an attorney has a duty to counsel or maintain only those proceedings, actions, or defenses that appear to the attorney as legal or just, excluding the defense of a person charged with a public offense. The record provides clear and convincing evidence that Bhardwaj willfully violated this section by filing three meritless appeals of court orders in the marital dissolution matter. In addition to the numerous errors and shortcomings in those appeals, Bhardwaj repeated the same arguments that he lost at the trial court level. (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 118, citing *Sorensen v. State Bar* (1991) 52 Cal.3d 1036 [attorney's wasteful, expensive re-litigation of matters previously finally resolved as violation of § 6068, subd. (c)].) Further, Bhardwaj threatened Pathak that he would continue to appeal unless she sold him their family home. Accordingly, we find that Bhardwaj failed to maintain a just action, as charged in count four.

Count Five: Failure to Comply with Laws (§ 6068, subd. (a))

Bhardwaj is charged in count five with a violation of section 6068, subdivision (a), for using his abbreviation system when filing his briefs, in violation of rule 8.204(c)(1) of the California Rules of Court,¹⁰ and for failing to abide by the appellate court's March 11, 2011 order. The hearing judge found Bhardwaj culpable as charged in count five. We disagree.

¹⁰ Further references to rules are to this source.

Under section 6068, subdivision (a), it is the duty of an attorney to “support the Constitution and laws of the United States and of this state.” This section is “a conduit by which attorneys may be charged and disciplined for violations of other specific laws which are not otherwise made disciplinable under the State Bar Act.” (*In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487.) *Lilley* recites examples of circumstances that support a finding of a violation of section 6068, subdivision (a): “where there is a violation of a statute not specifically relating to the duties of attorneys”; “where there is a violation of a section of the State Bar Act which is not, by its terms, a disciplinable offense”; and “where there is a violation of an established common law doctrine which governs the conduct of attorneys, which is not governed by any other statute.” (*Id.*) None of these examples applies here.

Lilley also provides that section 6068, subdivision (a), “clearly does not apply” to a violation of the Rules of Professional Conduct. (*Id.*) Similarly, there is no indication that section 6068, subdivision (a), was intended to refer to the California Rules of Court or a court’s order, or to make disbarment available for violations of either. (*Lilley*, 1 Cal. State Bar Ct. Rptr. at p. 484 [“The rules are clearly also not the equivalent of statutes, but “merely supplement the statutory provisions” citing 1 Witkin, Cal. Procedure (3d ed. 1985) Attorneys § 309, p. 343].) Although Bhardwaj may have failed to abide by rule 8.204(c)(1) and the appellate court’s March 11, 2011 order, he cannot be culpable of violating section 6068, subdivision (a), because neither the rule nor the order is a provision of the Constitution or a law of the United States or California. Therefore, because count five cannot be modified to correct this error of law, it is dismissed with prejudice.

Count Six: Moral Turpitude (§ 6106)

OCTC alleges, and the hearing judge found that, in addition to a failure to comply with the law under section 6068, subdivision (a), Bhardwaj’s use of his unique abbreviation system also represented an act of moral turpitude. We disagree.

The Supreme Court has described moral turpitude in a criminal context as conduct that “shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession.” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.)

In a civil context, moral turpitude “means, in general, shameful wickedness—so extreme a departure from ordinary standards of honest [sic], good morals, justice, or ethics as to be shocking to the moral sense of the community. It has been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.” (Black’s Law Dict., 7th ed. 1999) p. 1026, col. 1, quoting 50 Am. Jur. 2d *Libel and Slander* sec. 165, at p. 454 (1995).)

While use of abbreviations is common and often appropriate in legal writing in this court (e.g., NDC [Notice of Disciplinary Charges], OCTC [Office of Chief Trial Counsel], CTA [Client Trust Account]) and in courts of record (e.g., JNOV [Judgment Notwithstanding the Verdict], MSJ [Motion for Summary Judgment], LASC [Los Angeles County Superior Court]), it is clear that Bhardwaj exceeded all bounds of normal abbreviating to accomplish his improper goal of falling below the word count imposed by the Court of Appeal. In doing so, the Court of Appeal noted that he “trifl[ed] with the court.” But his actions did not rise to the level of moral

depravity that accompanies a finding of moral turpitude. Rather, he was too clever by half, and our finding of bad faith in aggravation for violating the spirit of the Court of Appeal's order appropriately resolves the issue. Because no set of facts can be produced that could properly plead moral turpitude for the misconduct alleged, count six is dismissed with prejudice.

IV. COURT ORDERS (COUNTS NINE THROUGH THIRTEEN)

A. FACTUAL BACKGROUND

In the marital dissolution judgment, Judge Pulido ordered that the marital real property be sold. The appellate court affirmed this judgment, and the case was transferred to the trial court for enforcement. Thereafter, Bhardwaj attempted to re-litigate issues already resolved by the judgment by filing numerous pleadings and engaging in multiple legal actions, and pursuing appeals to the California Supreme Court and the United States Supreme Court that were repeatedly denied.

As a result of Bhardwaj's actions, on July 2, 2013, Judge Brad Seligman declared Bhardwaj a vexatious litigant and stated that he "repeatedly filed unmeritorious motions, pleadings, or other papers and engaged in frivolous litigation tactics." Judge Seligman stated that since Judge Pulido's order to sell the marital real property, Bhardwaj "(1) has filed at least twelve pleadings and/or objections that attempted to re-litigate the order . . . and, particularly, to delay the sale of the [property]; (2) has initiated seven appellate actions, as well as three petitions in the California Supreme Court, which have been unsuccessful; and (3) has filed numerous unsuccessful challenges to Judge Stephen Pulido."

1. Paul Thorndal Provided Persuasive Testimony

At the disciplinary hearing, Pathak’s counsel Paul Thorndal, an experienced family law practitioner, addressed Bhardwaj’s arguments.¹¹ The hearing judge found Thorndal’s testimony to be credible, a finding to which we afford great weight. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241 [great weight given to hearing judge’s credibility findings]. We rely on the hearing judge because she is in the best position to assess the credibility of witnesses. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions, having observed and assessed witnesses’ demeanor and veracity firsthand].)

Thorndal discussed the reasons Bhardwaj’s claims lacked merit and instead were intended to delay rulings against him to force Pathak to settle.¹² For example, Thorndal explained that Bhardwaj attempted to appeal the non-appealable enforcement orders requiring the sale of the family home and distribution of the proceeds. Further, Bhardwaj repeated the baseless claim that the family court lacked jurisdiction over the family home because it was no longer community property due to refinancing. After the dissolution judgment was affirmed, final, and enforceable on October 9, 2012, Bhardwaj then raised the meritless and untimely argument that the court lost jurisdiction over the family property because Bhardwaj conveyed his share of the joint tenancy to himself as the trustor of the Bhardwaj Family Trust.

¹¹ In his opening brief, Bhardwaj argues that the transcript of the disciplinary hearing is inaccurate and testimonies of Thorndal and another witness who testified at the disciplinary hearing cannot be relied upon because the witnesses were not sworn in. On June 8, 2018, the Hearing Department provided the Review Department with a stipulated transcript which was relied upon in this decision. Further, we have listened to the audio recording of the proceedings, and have determined that the witnesses were in fact sworn in at the hearing.

¹² The appellate court stated “virtually every argument [Bhardwaj] makes indisputably lacks merit.” Bhardwaj filed numerous pleadings and appeals based upon meritless arguments. In the interest of brevity, we have only included the most egregious examples.

2. Bhardwaj Attempted to Circumvent Orders of the Superior Court

The court ordered the sale of the family home and appointed a real estate agent to conduct it. Bhardwaj wrote letters to that agent threatening litigation if she attempted to sell the home. After she disclosed the threatening letters, Bhardwaj again attempted to delay the sale by filing pleadings against the real estate agent, claiming that she violated attorney-client privilege by her disclosure, even though Bhardwaj sent opposing counsel and Pathak those same letters.

Bhardwaj raised peremptory challenges to Judge Pulido five times, even though the judge had already issued a ruling on the merits of the matter. Therefore, such challenges were improper. Bhardwaj also recorded a lis pendens against the marital real property without notifying Pathak, Thorndal, or the court, creating a cloud on the title that prevented the sale. This resulted in further delay until the lis pendens was expunged. Bhardwaj then filed a meritless claim of possession, which was dismissed by the court.

Despite the court's order to vacate the home, Bhardwaj had to be evicted on December 4, 2012, and he left the home in a deplorable condition. He also threatened to sue First American Title Company if it distributed the funds from the sale of the home. First American Title Company filed suit to obtain a court order to distribute the funds, naming Bhardwaj and Pathak as defendants. Bhardwaj filed for removal of the proceedings to federal court on several grounds, but the district court found no basis for removal and remanded the case to the superior court. This caused additional delay because the superior court declined to issue any orders pending the notice of removal. Bhardwaj appealed to the Ninth Circuit, which dismissed the appeal because the "order challenged in the appeal is not reviewable."

Bhardwaj's August 16, 2013 69-page complaint in the United States District Court against 13 defendants who were involved in the court-ordered sale of the family home (including Pathak, her attorneys, and the superior court judges) was dismissed by the district court on

November 7, 2013, on various grounds, including “[actions] in which a party essentially asks the federal court to review the state court’s decision and afford that party the same remedy he was denied in state court” are barred under the Rooker-Feldman doctrine (*D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482–486; *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415–416).

Bhardwaj appealed to the Ninth Circuit on December 4, 2013. He was denied again on September 2, 2016.

On January 21, 2014, the trial court received the funds from the title company. However, Bhardwaj still filed a request for default judgment against the title company. The court ordered the funds to be distributed. In 2014, the superior court stated “the record in this matter is replete with orders that Bhardwaj has frustrated and refused to obey. Bhardwaj’s recalcitrance is not simply a relic of the past. Orders exist with which Bhardwaj has yet to comply.” Bhardwaj’s actions put enormous strain on Pathak, both emotionally and financially. Thorndal testified that Pathak would be in tears when she would have to pay another \$10,000 for him to respond to motions that they had just argued and won because Bhardwaj continued to argue the same issue, each time requiring a response from Thorndal.

Attorney Paul Sucherman, a disinterested witness, credibly testified at the disciplinary hearing as a family law expert. He opined that Bhardwaj made arguments that were contrary to well-settled legal principles and that he made every effort to frustrate the court and delay the enforcement of the court’s orders.

Bhardwaj’s own emails demonstrate his intent in the underlying divorce proceedings. After just losing an appeal, Bhardwaj emailed Pathak stating that he would continue to appeal if she did not allow him to purchase the family home. In September 2012, Bhardwaj sent emails to the court-appointed real estate agent threatening her and giving her a Notice of Loss of Jurisdiction in an effort to create confusion and block the sale of the home. He also sent an email

to opposing counsel indicating his refusal to accept the September 26, 2012 court order regarding the sale of the home. In January 2013, Bhardwaj sent a letter to opposing counsel threatening suit if she sold the family home. In April 2013, Bhardwaj, again to cause confusion and delay the sale of the home, sent an email to First American Title Company stating that the court lost jurisdiction over the home because he conveyed his share of the joint tenancy to the Bhardwaj Family Trust.

Bhardwaj lost the home when the judgment was issued on September 30, 2012, and lost all appellate avenues on October 9. Despite all of the above, however, he has shown that he is unlikely to stop his frivolous litigation. As recently as September 30, 2016, Bhardwaj filed a petition for rehearing of the Ninth Circuit's memorandum affirming the district court's dismissal of his lawsuit against the 13 defendants. The court denied his petition on October 31, and Bhardwaj filed a motion to stay the mandate on November 4. This motion was denied.

In summary, between July 10, 2012 and December 14, 2014, Bhardwaj filed the following pleadings, motions, or appeals and took the following actions:

1. Motion for Realty Division Under Reserved Jurisdiction, Stay, Move Venue and Continue Hearing, filed July 10, 2012;
2. Objections to Minute Order for September 26, 2012 Hearing, filed October 1, 2013;
3. Notice of Appeal, filed October 3, 2012, which was then lodged October 9, 2012 and dismissed on February 7, 2013;
4. Request for an Order Requesting a Stay, filed October 12, 2012;
5. Objections to the Order After Hearing, filed October 16, 2012;
6. Request for Temporary Emergency Court Order, filed October 17, 2012;
7. Amended Notice of Appeal, filed October 17, 2012 and dismissed February 7, 2013;
8. Petition for Writ of Stay, filed October 19, 2012;
9. Amended Ex Parte Request for Reconsideration of Temporary Orders (Stay) and for Order Alleging Mistake of Law/Fact; Arguments in Support of OSC; and Objections or Order After Hearing re Possession and Writ of Execution, filed October 22, 2012;
10. Petition for Review from Interlocutory Order on Summary Denial of Stay Pending Appeal, filed October 30, 2012 (California Supreme Court No. S206287);
11. Application for Stay from Denial of Stay Pending Appeal from the California Supreme Court, filed November 8, 2012, in *Bhardwaj v. Pathak*, United States Supreme Court No. 12A500;
12. Claim to Right of Possession, filed November 29, 2012;
13. Motion to Quash Writ of Possession, filed December 3, 2012;

14. Objections to Striking Claim of Possession, filed December 5, 2012;
15. Complaints for Disqualification of Judge Pulido, filed August 1, 2011, March 1, 2012, October 24, 2012, October 26, 2012, February 7, 2013;
16. Responsive Declaration to Request for Order, filed April 16, 2013;
17. *Bhardwaj v. Pathak, et al.*, filed August 16, 2013, in the United States District Court for the Northern District of California, No. 13-cv-03807;
18. Notice of Filing Notice of Removal, filed August 26, 2013, in *First American Title Co. v. Pathak and Bhardwaj*, in the United States District Court for the Northern District of California, No. 13-cv-03947;
19. Federal appeal filed December 4, 2013, in *Bhardwaj v. Pathak, et al.*, United States Court of Appeals, Ninth Circuit, No. 12-17553 (12-cv-03807);
20. Federal appeal filed December 14, 2013, in *First American Title Co. v. Pathak and Bhardwaj*, United States Court of Appeals, Ninth Circuit, No. 13-17553 (13-cv-03947);
21. Bhardwaj's September 28, 2012 email to opposing counsel, indicating his refusal to accept the September 26, 2012 court order regarding the sale of the marital residence;
22. Bhardwaj's September 29, 2012 email to the real estate agent assigned by the court, threatening suit if she carried out the sale orders of the court;
23. December 26, 2012 lis pendens recorded against the marital property, which was expunged by the court on February 8, 2013; and
24. December 5, 2012 eviction due to Bhardwaj's refusal to leave the family residence.

The marriage between Bhardwaj and Pathak ended in October 2009, more than nine years ago. Yet Bhardwaj testified at the disciplinary hearing that he is currently contemplating further litigation against Pathak.

B. CULPABILITY¹³

Count Nine: Failure to Maintain Duty Not to Encourage Action Based on Corrupt Motive (§ 6068, subd. (g))

OCTC charges, and the hearing judge found, that Bhardwaj violated section 6068, subdivision (g), which provides that an attorney has a duty not to encourage either the commencement or the continuance of an action from any corrupt motive of passion or interest. We affirm the hearing judge's culpability finding that Bhardwaj violated section 6068, subdivision (g), as charged in count nine.

¹³ We adopt the hearing judge's dismissal with prejudice of counts ten and thirteen as duplicative of counts nine and twelve, respectively. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.)

Bhardwaj appealed unappealable orders, claimed that the family court lost jurisdiction of the family property for multiple baseless reasons, and filed pleadings against the court-appointed real estate agent for violating attorney-client privilege even though she clearly did not owe Bhardwaj this duty. He appealed all the way to the United States Supreme Court the denial of a complaint he filed asking the federal court for the same remedies he was denied in state court. Bhardwaj sent emails to Pathak stating that he would continue to appeal if she did not allow him to purchase the family home and sent threatening emails to the court-appointed real estate agent and a letter to Pathak's counsel threatening suit if she sold the family home.

Bhardwaj again argues that the State Bar has no jurisdiction to discipline him because he was not a practicing attorney from July 10, 2012, to December 14, 2013. As noted above, we reject this argument. Bhardwaj has been admitted to the State Bar since December 2008. On November 6, 2009, he began representing himself in this matter and has demonstrated a continuous disrespect for the courts. As Judge Pulido proclaimed, "Mr. Bhardwaj's conduct has been absolutely outrageous . . . even if [Bhardwaj] wasn't a lawyer, any person in his position would know [there] comes a time where you stop."

Thus, by clear and convincing evidence, Bhardwaj commenced or continued actions and proceedings from the corrupt motive of harassing Pathak and delaying the enforcement of court orders, in willful violation of section 6068, subdivision (g).

Count Eleven: Moral Turpitude (§ 6106)

Count eleven charges that Bhardwaj filed multiple pleadings and actions for the improper purpose of preventing or delaying the sale of the family home or retaliating against others for the sale of the residence. The hearing judge found that Bhardwaj committed acts of moral turpitude by doing so and by filing the pleadings and motions discussed in count nine. The court orders included: the minute order dated September 26, 2012; the Findings and Order after Hearing

dated October 10, 2012; and the Court’s Emergency Temporary Order dated October 10, 2012, (to cooperate with the sale of the marital property within two weeks of the date of the Emergency Temporary Order). We affirm.

Bhardwaj used the judicial system to inflict inordinate litigation costs on his ex-wife to force her to accede to his demand that she sell him the family home. As a lawyer, Bhardwaj did not bear litigation expenses, and was able to continue his abuse of the judicial system by bringing meritless pleadings, motions, and appeals against her. Further, he sent emails to opposing counsel and to the court-appointed real estate agent, threatening lawsuits if they carried out the sale orders of the court. He also recorded a lis pendens against the property and filed a claim of right to possession in order to cloud the title and prevent the court-ordered sale. Finally, he had to be forcibly evicted from the family residence. This conduct constitutes acts of moral turpitude. (See *Maltaman v. State Bar*, *supra*, 43 Cal.3d at pp. 950–951 [noncompliance with court order supports § 6106 violation if attorney acted in bad faith]; *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186 [“serious, habitual abuse of the judicial system constitutes moral turpitude”].)

**Count Twelve: Failure to Maintain Respect Due to Courts and Judicial Officers
(§ 6068, subd. (b))**

In count twelve, Bhardwaj is charged with failing to maintain respect due to courts and judicial officers by filing pleadings and taking actions for the improper purpose of preventing or delaying the sale of the family residence or retaliating against others for that sale, in violation of court orders to cooperate in the sale. We affirm the hearing judge’s finding that Bhardwaj is culpable.

Bhardwaj filed pleadings or took actions for the improper purpose of preventing or delaying the sale of his family home or to retaliate against others for the sale of his family home. The emails Bhardwaj sent to Pathak, her counsel, and the court-appointed real estate agent

demonstrate that his motive in continuing this onerous litigation was to bully Pathak into selling him the family home. Bhardwaj threatened Thorndal and the court-appointed real estate agent with retaliatory lawsuits if they followed the court's orders. Therefore, by filing the papers and taking the actions listed above, Bhardwaj failed to maintain respect due to the courts and judicial officers, as charged in count twelve.

V. AGGRAVATION AND MITIGATION

Standard 1.5¹⁴ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Bhardwaj to meet the same burden to prove mitigation.

A. AGGRAVATION

1. Multiple Acts of Wrongdoing (Std. 1.5(b))

We assign substantial weight in aggravation for Bhardwaj's multiple acts of misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

2. Pattern of Misconduct (Std. 1.5(c))

Bhardwaj demonstrated a pattern of misconduct by repeatedly engaging in vexatious litigation and committing ethical violations for more than six years. (Std. 1.5(c); *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149, fn. 14 [citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 (most serious instances of repeated misconduct over prolonged period of time characterized as pattern of misconduct)].) Even though he was declared a vexatious litigant in 2013, Bhardwaj continued his pattern of misconduct to the time of trial. We assign substantial weight to this aggravating factor.

¹⁴ Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

3. Bad Faith (Std. 1.5(d))

As previously discussed, the record does not provide clear and convincing evidence that Bhardwaj failed to comply with section 6068, subdivision (a), or that Bhardwaj committed an act of moral turpitude when he created and used his own system of abbreviations in his opening and supplemental briefs in order to circumvent the appellate court's word count limitation. However, the record does provide clear and convincing evidence that Bhardwaj's actions were done in bad faith, in violation of standard 1.5(d). Bhardwaj implemented the abbreviation system in order to circumvent the court's briefing limitations so that he could continue presenting the same arguments he lost at the trial court level, instead of limiting his brief to new appellate arguments.¹⁵ Bhardwaj testified as such in response to OCTC's questioning regarding the cause of misconduct charged in counts five and six. Accordingly, his actions of creating an improper abbreviation system are aggravating, for which we assign moderate weight.

4. Significant Harm (Std. 1.5 (j))

Bhardwaj significantly harmed his ex-wife, the public, the legal profession, and the administration of justice. His relentless litigation inflicted serious financial harm on Pathak, forcing her to spend considerable time and money defending herself against baseless claims. She was required to retain an accounting expert at a cost in excess of \$11,000. In sum, Pathak incurred between \$300,000 and \$500,000 in legal fees fighting Bhardwaj. She also suffered emotional harm. Thorndal testified that she would repeatedly break down in tears when she learned of additional frivolous filings.

Bhardwaj's persistent litigation also burdened the court system for manifestly improper purposes. He used the courts as a means of intimidating and oppressing his ex-wife through

¹⁵ The appellate court stated "virtually every argument [Bhardwaj] makes indisputably lacks merit."

interminable meritless litigation against her, her counsel, the real estate agent, the judges, and others. We assign substantial weight to this factor in aggravation.

5. Indifference Toward Rectification/Atonement (Std. 1.5(k))

Bhardwaj's misconduct is aggravated by his utter failure to accept responsibility for his actions and his failure to atone for the resulting harm. (Std. 1.5(k); *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [law does not require false penitence, but does require attorney to accept responsibility for acts and come to grips with culpability].) Bhardwaj has expressed no remorse or even recognition of the serious consequences of his misconduct. He has shown that he is relentless in pursuing unjustified litigation. The most egregious example of his lack of insight is his motion to stay the mandate filed in the Ninth Circuit on November 4, 2016—despite the denial of this motion, he testified that he is planning his next steps in litigation. It is clear that he does not understand his misconduct. We assign substantial weight to this factor in aggravation.

B. MITIGATION

At trial, Bhardwaj attempted to present evidence in mitigation. In his opening brief, he referenced this evidence, including his lack of prior discipline, his cooperation with the State Bar, the excessive delay by the State Bar, community service, good moral character, no client or public harm, good faith belief that was honestly held and reasonable, and restitution made without threat of proceedings. Our review of the record fails to discern sufficient evidence of any such mitigation.

1. Lack of Prior Discipline (Std. 1.6(a))

Lack of prior discipline can be a mitigating factor because it may show that the present misconduct was an anomaly and therefore not likely to recur. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.) However, Bhardwaj's repetitive vexatious behavior as described above

raises serious questions as to whether his pattern of misconduct will cease. As such, we decline to find this factor in mitigation.

2. Cooperation with the State Bar (Std. 1.6(e))

An attorney is required to cooperate with the State Bar. (§ 6068, subd. (i).) However, in certain cases, mitigation credit may be given where an attorney acts to expedite resolution of the charges by, for example, stipulating to facts and/or culpability. Here, Bhardwaj only provided proof that he communicated extensively with the State Bar and filed briefs. This is insufficient to justify mitigation credit, and we find none for this factor.

3. Excessive Delay by the State Bar of California (Std. 1.6(i))

Our review of the evidence indicates no inappropriate delays by the State Bar. Bhardwaj claims that certain counts in the NDC violated rules of limitation and, therefore, represented excessive delays. We have rejected this claim in our discussion above. Similarly, we find no improper delay by OCTC in investigating and prosecuting this action.

4. Community Service and Pro Bono Work

An attorney's community service and pro bono work can be a mitigating factor. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Bhardwaj testified that he offers reduced-fee services to approximately 10 clients who cannot afford to pay his full fee, but he offered no clear and convincing evidence that this was anything other than an occasional practice. His evidence is insufficient to justify mitigation for this factor. (*Amante v. State Bar* (1990) 50 Cal.3d 247, 256–257 [occasional practice of offering pro bono services insufficient to constitute mitigation].)

5. Good Moral Character (Std. 1.6(f))

Bhardwaj seeks mitigation for the fact that OCTC performed a “thorough police check” and found no criminal record. He further asserts that he has been in the country for 32 years and has maintained good moral character. This proof is insufficient to find good moral character as a

mitigating factor. (Std. 1.6(f) [mitigation available for extraordinary good character attested to by wide range of references in legal and general communities who are aware of misconduct].)

6. No Client or Public Harm (Std. 1.6(c))

We have found significant harm to Bhardwaj's ex-wife, the public, the legal profession, and the administration of justice in aggravation. We decline to find this factor in mitigation.

7. Good Faith Belief (Std. 1.6(b))

We find no evidence of good faith in this matter. In fact, we have found bad faith in aggravation. We decline to find this factor in mitigation.

8. Restitution Made Without Threat of Proceedings (Std. 1.6(j))

Restitution voluntarily paid may be a factor in mitigation. Bhardwaj claims mitigation for immediately reporting his sanctions. We have found that he did not timely report three of the sanctions imposed against him. But "reporting" sanctions is not the same as paying them. Further, sanctions by their nature are court-ordered and not voluntarily paid. We decline to give any mitigating credit for this factor.

We have considered and rejected Bhardwaj's other claims for mitigation, including his claimed mitigation arising out of the motion in limine regarding the alleged violation of rule 2302 (disclosure of confidential information by OCTC).

The hearing judge found that Bhardwaj did not prove any factors in mitigation. We agree and affirm.

VI. DISCIPLINE¹⁶

We have found Bhardwaj culpable of three counts of failing to report judicial sanctions (§ 6068, subd. (o)(3)); two counts of failing to maintain respect due to the courts and judicial officers (§ 6068, subd. (b)); failing to maintain a just action (§ 6068, subd. (c)); failing to

¹⁶ The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts, and the legal profession. (Std. 1.1(a).)

maintain the duty not to encourage action based on corrupt motive (§ 6068, subd. (g)); and moral turpitude (§ 6106.)

Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow them whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We first determine which standard specifies the most severe sanction for the misconduct. (Std. 1.7(a).) Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, and corruption. “The degree of the sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law.” Either disbarment or actual suspension is also appropriate for maintaining a frivolous claim or an action for an improper purpose. (Std. 2.9.) The relevant portions of standard 2.12 provide that disbarment or actual suspension is the presumed sanction for disobedience or violation of a court or tribunal order related to a lawyer’s practice of law, the attorney’s oath, or the duties required of an attorney under section 6068, subdivision (b). Standard 1.7(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. We find standard 2.11 to be most applicable.

Bhardwaj argues that all charges against him should be dismissed. He maintains that he is not subject to the court’s jurisdiction and that he is completely free of any wrongdoing. We reject these arguments. Bhardwaj used his legal knowledge to repeatedly file frivolous actions and harass his ex-wife, opposing counsel, and a real estate agent. He sought to cloud the title to the family home to force Pathak to sell it to him. His misconduct went beyond vexatious

litigation as it involved substantial aggravation, including a lengthy pattern of wrongdoing, significant harm to others, disregard for the court process, and a total lack of insight into his harmful behavior. And he has failed to establish any mitigation.

Given these circumstances, we conclude that Bhardwaj should be disbarred under standard 2.11 even though this is his first disciplinary proceeding. (See *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45 [disbarment for multiple acts of moral turpitude and dishonesty, including pattern of abuse of judicial officers and court system, no prior discipline]; *In the Matter of Varakin*, 3 Cal. State Bar Ct. Rptr. 179 [disbarment for attorney with 30 years of discipline-free practice who was sanctioned for filing frivolous motions and appeals over 12-year period, and who lacked insight and refused to change]; *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360 [disbarment for attorney with 31 years of discipline-free practice who was culpable of three counts of misconduct in pursuit of multiple unjust and frivolous actions].)

We find that Bhardwaj is unfit to practice, and we recommend his disbarment. Requiring him to undergo a full reinstatement proceeding after he is disbarred is the only measure that can adequately protect the public, the courts, and the legal profession.¹⁷

VII. RECOMMENDATION

We recommend that Sanjay Bhardwaj be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Bhardwaj comply with rule 9.20 of the California Rules of Court and 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 matter.

¹⁷ Bhardwaj argues certain factual challenges that are not outcome-determinative. Having independently reviewed all arguments set forth by Bhardwaj, those not specifically addressed have been considered and rejected as without merit.

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Sanjay Bhardwaj be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective May 11, 2017, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.