PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed July 10, 2019

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	No. 14-O-06057
	)	
ARCHIBALD ROBERT CUNNINGHAM,	)	OPINION AND ORDER
	)	
State Bar No. 210625.	)	
	)	

Archibald Robert Cunningham was charged with six counts of misconduct for his pursuit of unjust and frivolous actions related to two matters in San Francisco County Superior Court. The hearing judge found Cunningham culpable of two counts of maintaining unjust actions and two counts of moral turpitude, and dismissed, as duplicative, two counts of pursuing actions for a corrupt motive. The judge found four factors in aggravation, none in mitigation, and recommended that Cunningham be disbarred. Cunningham broadly challenges the hearing judge's decision, as well as the disciplinary process in general.[1] The Office of Chief Trial Counsel (OCTC) asks that we affirm the hearing judge's findings and disciplinary recommendation.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, but we do not dismiss the two counts as the judge did. Rather, we assign no additional weight for Cunningham's culpability for maintaining unjust

[1] On February 19, 2019, Cunningham filed a 50-page opening brief. We accepted this brief because, at the time he filed it, rule 5.152 of the Rules of Procedure of the State Bar (all further references to rules are to this source unless otherwise noted) did not contain a page limit for appellants' briefs. Prior to January 1, 2019, the rule provided that an appellant's brief must not exceed 30 pages, unless otherwise ordered by the Presiding Judge. Effective March 15, 2019, rule 5.152 was amended to again include this page limit.

actions or pursuing actions for a corrupt motive as this misconduct is addressed by the moral turpitude charges. We affirm the findings in aggravation and mitigation and recommend that Cunningham be disbarred.

I. PROCEDURAL BACKGROUND

On December 11, 2017, OCTC filed a six-count Notice of Disciplinary Charges (NDC) against Cunningham charging him with (1) two counts of maintaining unjust actions, in violation of Business and Professions Code section 6068, subdivision (c),[2] (2) two counts of engaging in acts of moral turpitude by pursuing frivolous and harassing actions, in violation of section 6106,[3] and (3) two counts of commencing or continuing an action or proceeding for a corrupt motive, in violation of section 6068, subdivision (g).[4] The hearing judge held trial on April 3, 5, 6, and 9, June 29, and July 3, 2018, and filed her decision on August 17, 2018.

II. FACTS

Cunningham was admitted to the practice of law in California on December 5, 2000. Beginning in 2009, he was declared a vexatious litigant three times in two matters. The underlying matters involved real estate in San Francisco that Cunningham co-owned with others (San Francisco Property Matter) and the dissolution of his marriage and related custody dispute regarding his daughter (Dissolution and Custody Matter). In these matters, Cunningham filed dozens of frivolous actions, motions, writ petitions, and appeals, including actions against a total of 21 judges and appellate and supreme court justices, naming several in multiple lawsuits. In

[2] All further references to sections are to this source. Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense.

[3] Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

[4] Section 6068, subdivision (g), 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.

addition, Cunningham sued staff of the San Francisco County Superior Court and other professionals appointed to work on his matters, including a custody evaluator and a receiver. Cunningham does not deny that he made all these filings. Rather, he asserts that they were not frivolous and should not form the basis for depicting him as a vexatious litigant. We disagree. In reaching this conclusion, we have carefully conducted our own de novo review of the evidence and examined all the arguments Cunningham made in the courts of record and in this court.

A. San Francisco Property Matter

This matter relates to real property in San Francisco that Cunningham owned with Michael Coombs. The property was owned as a tenancy-in-common, with one mortgage encumbering the entire property. When Cunningham stopped paying his share of the mortgage, Coombs first obtained an order sending the matter to arbitration and then obtained a judgment for monetary damages and an order requiring the sale of Cunningham's property, in an action entitled *Michael Coombs and Tamara Woods v. Archibald Cunningham*, San Francisco County Superior Court, No. CPF-10-510760. Cunningham refused to participate in the arbitration. After the judgment was entered, he appealed both the trial court's denial of his petition to vacate the arbitration award and the judgment confirming the award.

In a detailed opinion, the Court of Appeal determined that Cunningham's arguments were "often conclusory and unsupported by citations to the record or relevant legal authority" and that Cunningham engaged in inappropriate and unsupported ad hominem attacks against the plaintiffs' counsel. The court found that "[t]his approach makes it more difficult to consider the merits of [Cunningham's] legal claims and, in many instances, his conclusory, unsupported method of argument and disregard for procedural issues are fatal to his claims." The appellate court ultimately held that all of Cunningham's arguments were without merit and affirmed the judgment. (*Coombs v. Cunningham* (Oct. 24, 2013, A131914) [nonpub. opn].)

Before and after this appellate ruling, Cunningham filed at least seven lawsuits about the San Francisco Property Matter, as well as numerous appeals. He sued the co-owners of the property, judges who had adjudicated his claims, staff of the San Francisco County Superior Court, and the court-appointed receiver who was directed to enforce the judgment obtained by Coombs. In a case Cunningham filed in San Francisco County Superior Court against his former co-owners, their attorney, and two judges (*Cunningham v. Woolard et al.* (June 24, 2011, CGC-11-511994)), Judge Andrew Cheng granted the defendants' motion against Cunningham for a pre-filing order for vexatious litigant and motion to require security. The order notes that Cunningham's opposition to the motion was untimely, but that the judge still considered his arguments. The judge found that Cunningham had not adequately rebutted the showing that he was a vexatious litigant, and ordered him to furnish security before his action could proceed.

Cunningham's lawsuits included multiple actions filed in the Northern District of California. On January 8, 2015, Judge William Alsup granted a motion to dismiss one of these cases and a motion to declare Cunningham a vexatious litigant. The judge entered a pre-filing review order to apply to any future lawsuits filed by Cunningham. Judge Alsup noted that Cunningham had filed at least 21 actions in the underlying dispute, including "two state court actions, two district court actions, a bankruptcy proceeding, ten proceedings in the state court of appeal, five proceedings in the California Supreme Court, plus one proceeding in the federal court of appeals." The judge found this record sufficient to support his ruling that Cunningham was a vexatious litigant. Judge Alsup further found that Cunningham had tried to litigate the same issues over the course of 21 actions and appeals, and that he intended to harass the defendants by filing multiple suits on the same subject matter. He ordered his clerk to refer Cunningham to the State Bar and to the Northern District of California's Standing Committee on Professional Conduct. (*Cunningham v. Singer*, United States District Court for the Northern

District of California (N.D.Cal., Jan. 8, 2015, C 14-03250) 2015 WL 124572, aff'd. (9th Cir. 2016) 667 F.Appx. 961.)

Following this vexatious litigant ruling, Cunningham filed two additional complaints regarding the San Francisco Property Matter, one in 2017 in Los Angeles County Superior Court, *Cunningham v. Singer*, No. BC675963, and one in 2018 in the United States District Court for the Northern District of California, *Cunningham v. Singer, Coombs et al.*, No. CV-18-80085.

B. Dissolution and Custody Matter

This matter relates to the dissolution of Cunningham's marriage and the resulting custody dispute over his daughter. Cunningham's former wife initiated a marital dissolution on May 20, 2003, in *Wang v. Cunningham*, San Francisco County Superior Court, No. FDI-03-753770. In May 2007, following trial, Judge Donald Sullivan made factual findings and issued custody and visitation orders. Cunningham appealed the rulings. On August 20, 2008, the Court of Appeal issued a detailed opinion rejecting Cunningham's multiple arguments on appeal and affirmed the judgment. (*Wang v. Cunningham* (Court of Appeal, First Appellate District, Aug. 20, 2008, A118629) [nonpub. opn].)

Before and after this appellate ruling, Cunningham filed at least nine lawsuits in the Dissolution and Custody Matter. He also filed multiple writs and appeals with the First District Court of Appeal and petitions with the California Supreme Court. He repeatedly relitigated issues that had been raised and rejected.

On April 13, 2009, Superior Court Judge Mahoney declared Cunningham a vexatious litigant for losing in four legal matters within the prior four years, and filing eight unsuccessful writs of mandamus. Judge Mahoney further found that Cunningham had violated the court's local rule by disclosing portions of a confidential custody evaluation in a publicly filed document. Cunningham appealed this order. The Court of Appeal upheld the ruling, finding that

Cunningham's three lawsuits, two writ petitions on his disqualification motions, and at least five motions to disqualify judicial officers that were denied by the court provided a basis for finding him to be a vexatious litigant. The court noted that summary denial of writ petitions was not necessarily final and on the merits for the purposes of the vexatious litigant statute. However, the court found that Cunningham's filing of these writs still provided an additional basis for the trial court's vexatious litigant finding because the statute defined a vexatious litigant as one who repeatedly files unmeritorious motions, pleadings, and other papers, and engages in other tactics that are frivolous or intended to cause delay. (*Wang v. Cunningham* (Court of Appeal, First Appellate District, Mar. 30, 2011, A124717 [nonpub. opn.]).)

In a decision that became final on April 12, 2010, Judge Mahoney ruled that Cunningham no longer had visitation rights to see his daughter due to his harassing behavior. The judge entered a restraining and stay away order preventing Cunningham from harassing, threatening, or assaulting his former wife, including seeing or contacting her directly or indirectly. The judge also found that Cunningham was a vexatious litigant based on his filing of five cases in the San Francisco County Superior Court, 13 writs and an appeal with the First District Court of Appeal, and five writs and/or requests for stay with the California Supreme Court. Judge Mahoney found that Cunningham repeatedly relitigated issues that had been rejected by the Court of Appeal, filed unmeritorious motions, and engaged in litigation tactics designed to delay the resolution of the case. The judge also awarded Cunningham's ex-wife $32,193 in attorney fees and $5,375 related to the request for a restraining order.

After Cunningham filed a lawsuit in San Francisco County Superior Court against the City and County of San Francisco, the Family Law Division of the San Francisco County Superior Court and its manager, a clerk of the court, four judges, and his ex-wife and her counsel (*Cunningham v. City and County of San Francisco, et al.* (Dec. 19, 2012, CGC 12-527273)),

Judge Leslie Nichols granted a motion requiring Cunningham to post security. While the record does not reflect her order, it does include detailed notes regarding the hearing, including that Cunningham had "interrogated" the court, and exclaimed "ridiculous" and "outrageous" at the close of the hearing. The notes indicate that the judge recommended that the security posted be "substantial" considering the matters alleged, the numerous named parties, the probable time that would have to be expended in litigating the matter given that Cunningham had already indicated that he was planning to appeal her order, and the $100 million in damages he sought.

III. CUNNINGHAM'S GLOBAL CHALLENGES TO HEARING DEPARTMENT PROCEEDINGS ARE WITHOUT MERIT

At trial and on review, Cunningham continues his pattern of relitigating issues already raised in the underlying proceedings. On review, Cunningham makes wholesale attacks on the hearing judge's opinion that fall into the following categories: (1) the underlying court orders were void; (2) he had the right to collaterally attack the underlying court orders in his disciplinary trial and the judge ignored his evidence; (3) he should not be subject to discipline for conduct he engaged in as a self-represented defendant, or as a represented plaintiff; and (4) he is justified in attacking the hearing judge, the senior trial counsel, and the witnesses.[5]

Cunningham alleges that the hearing judge ignored the evidence he produced at trial and instead "parrot[ed] the characterizations and charges in the [NDC]." This is incorrect. The hearing judge allowed extensive testimony from eight witnesses, including Cunningham, and admitted over 100 exhibits during the six-day discipline trial. This evidence contained Cunningham's numerous filings, trial and appellate court rulings, three vexatious litigant rulings, and testimony of (1) attorneys who opposed him in the proceedings below, (2) a Clerk of the San Francisco County Superior Court, (3) the Chief Legal Counsel of the San Francisco Sheriff's

[5] We have independently reviewed all arguments set forth by Cunningham. Those not specifically addressed have been considered and are rejected as having no merit.

Department, and (4) the receiver appointed to enforce the judgment in the San Francisco Property Matter.

Cunningham also improperly attempts to collaterally attack the underlying court orders, alleging they involve intrinsic fraud. Generally, we give a strong presumption of validity to the superior court's findings if supported by substantial evidence. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) And we may rely on a court of appeal opinion to which an attorney was a party as a conclusive legal determination of civil matters "which bear a strong similarity, if not identity, to the charged disciplinary conduct." (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117; see also *Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634.) The record provides clear and convincing evidence[6] supporting the 2009, 2010, and 2015 vexatious litigant orders, as well as the 2011 appellate ruling upholding Judge Mahoney's 2009 vexatious litigant order. We have no reason to now go behind the final and binding superior and appellate court orders. (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 605.) Further, Cunningham may not disregard these orders simply because he believes they are void. (See *Maltaman, supra*, 43 Cal.3d at p. 952 ["no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid"]; *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 1, 9, fn. 3 [attorney's "belief as to the validity of the order is irrelevant to the section 6103 charge"].)

Cunningham argues that writ petitions he filed that were summarily denied are not litigation subject to the vexatious litigant statutes. We reject his argument. As the Court of Appeal found, those statutes clearly apply to persons acting in propria persona who abuse the judicial system with repeated filings. (Code Civ. Proc., § 391, subd. (b)(3) [vexatious litigant is

[6] 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.)

a person who "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"].)

Cunningham incorrectly argues, and emphasized at oral argument, that he cannot be subject to discipline because he was representing himself in most of the underlying matters. However, he is clearly subject to discipline for abuse of the judicial system under section 6106, even when acting in a personal capacity or representing himself. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179.)

Finally, Cunningham wrongly asserts that the hearing judge's review of his federal court filings to support his culpability is improper because the State Bar lacks jurisdiction to review federal lawsuits. Cunningham's reliance on *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119 to establish that he cannot be disciplined for misconduct in federal court is misplaced. In *Birbrower,* the Supreme Court analyzed the enforceability of a fee agreement when the attorneys involved were not licensed to practice in California, as required by section 6125. The case does not hold that attorneys cannot be subject to discipline for misconduct they commit in federal court. Rather, the law is clear that attorneys licensed to practice in California are subject to discipline for misconduct in the federal courts. "In this regard, the California Supreme Court clearly held more than 60 years ago that, '[i]f an attorney admitted to practice in the courts of this state commits acts in reference to federal court litigation which reflect on his integrity and fitness to enjoy the rights and privileges of an attorney in the state courts, proceedings may be taken against him in the state court.'" (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 420, quoting *Geibel v. State Bar* (1938) 11 Cal.2d 412, 415.) The hearing judge's review of these lawsuits for the purpose of determining culpability for misconduct did not exceed her jurisdiction.

Overall, Cunningham's briefs on review demonstrate his disrespect for the discipline process. He completely disregards the hearing judge's opinion, accusing her of bias, falsifying facts, and committing judicial misconduct evidencing moral turpitude and dishonesty. Similarly, he attacks the OCTC attorney, accusing him of lying, falsifying facts and law, deliberately omitting relevant facts and law, and obstructing justice. Finally, he declares that the Supreme Court should order "an investigation into the State Bar's colossal failure to uphold the State Bar Act." Since no evidence supports his accusations, we consider them in connection with aggravation for indifference.

IV. CULPABILITY

A. Counts Two and Five (§ 6106 [Moral Turpitude]) Counts One and Four (§ 6068, subd. (c) [Duty to Maintain Only Legal or Just Actions])

For his pursuit of unjust and frivolous actions in the San Francisco Property Matter and the Dissolution and Custody Matter, the hearing judge found Cunningham culpable of two counts of maintaining an unjust action, in violation of section 6068, subdivision (c) (counts one and four), and two counts of moral turpitude, in violation of section 6106 (counts two and five). Counts one and four, however, are based on the same vexatious litigation conduct as that supporting the moral turpitude charges. While we find Cunningham culpable of violating section 6068, subdivision (c), we assign no additional weight because the same misconduct underlies the section 6106 violation, which supports the same or greater discipline. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 119, 127 [no additional weight given to charge for failure to perform legal services competently where same misconduct underlies moral turpitude charge].)

The record clearly and convincingly establishes that Cunningham has committed "serious, habitual abuse of the judicial system," which constitutes moral turpitude. (*In the*

Matter of Varakin, supra, 3 Cal. State Bar Ct. Rptr. at p. 186.) Cunningham filed dozens of frivolous and repetitive actions, motions, writs, and appeals in two separate underlying matters, resulting in three orders declaring him a vexatious litigant. He continued to file actions even after he was declared vexatious, and repeatedly raised the same issues even after they had been decided by the courts. He sued judges, court employees, and others without justification because he disagreed with their actions. His pattern of harassment provides an additional basis for a finding of moral turpitude. (See *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 147 [numerous harassing phone calls to client constituted moral turpitude]; *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 [numerous harassing voicemails to public administrator of attorney's father's estate constituted moral turpitude].) Cunningham shows no sign that he will stop his campaign of harassing litigation. He continued to argue matters regarding the underlying litigation in his disciplinary trial and filed additional lawsuits after these proceedings commenced.

B. Counts Three and Six (§ 6068, subd. (g) [Duty Not to Encourage Action Based on Corrupt Motive])

OCTC alleged that Cunningham's vexatious litigation in the San Francisco Property Matter and the Dissolution and Custody Matter established his culpability for encouraging actions based on corrupt motives, a violation of section 6068, subdivision (g). Because counts three and six were based on the same pattern of harassing litigation that supported the moral turpitude charges, the hearing judge dismissed these counts as duplicative. We find Cunningham culpable of violating section 6068, subdivision (g), but again we assign no additional weight because the same misconduct underlies the section 6106 violation, which supports the same or greater discipline. (*In the Matter of Sampson, supra*, 3 Cal. State Bar. Ct. Rptr. at p. 127.)

V. AGGRAVATION AND MITIGATION

A. Aggravation

We agree with the hearing judge's findings in aggravation, which Cunningham does not specifically challenge. We find four factors in aggravation and assign substantial weight to each. First, Cunningham committed multiple acts of misconduct. (Std. 1.5(b).)[7] Second, he demonstrated a pattern of misconduct by repeatedly engaging in vexatious litigation for over ten 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].)

Third, Cunningham significantly harmed the public and the administration of justice. (Std. 1.5(j).) His vexatious litigation required the courts to repeatedly consider, reconsider, and rule on meritless lawsuits, writs, and motions, usurping judicial resources from other cases. Cunningham's opposing counsel and others whom he sued testified about the harm they suffered because of his tactics. Scott McKay, opposing counsel in the San Francisco Property Matter, testified that he spent years litigating the same issues against Cunningham "again and again and again," and that his legal fees ultimately exceeded $1,000,000, which he discounted because his client could not afford them. He also testified that Cunningham exhibited malicious conduct by threatening him and his clients. Mary Schopp, opposing counsel in the Dissolution and Custody Matter, testified that dealing with Cunningham was extremely stressful for her and her client. She believed that Cunningham attempted to intimidate her by serving her papers at her home instead of her office. Michael Coombs testified that Cunningham's actions caused him significant emotional and financial harm. He described the stress as "devastating" and "life-altering."

[7] 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.

Fourth, Cunningham's misconduct is aggravated by his utter failure to accept responsibility for his actions and 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 [while law does not require attorney to be falsely penitent, it "does require that [he] accept responsibility for his acts and come to grips with his culpability. [Citation]."].) Cunningham adamantly refuses to acknowledge that he is wrong and that his actions have harmed others. Rather, he continues to raise the same unsuccessful arguments he used in the underlying matters in an attempt to defend himself. He blames others instead of taking responsibility for his own behavior. His failure to accept accountability is a substantial aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100–1101 [blanket refusal to acknowledge wrongful conduct constitutes indifference].)

B. Mitigation

The hearing judge found no mitigation for lack of prior discipline, noting that Cunningham's misconduct began only three years after he was admitted to the practice of law. Cunningham claims that the judge's finding is in error because he was admitted to practice in Wisconsin in 1993. We affirm the hearing judge's mitigation finding.

Cunningham must establish mitigating circumstances by clear and convincing evidence. (Std. 1.6.) He has not met his burden; the record does not contain clear and convincing evidence that he was admitted in Wisconsin in 1993, or that he has a discipline-free record there.[8]

VI. DISBARMENT IS APPROPRIATE DISCIPLINE

Standard 2.11 provides that: "Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption . . . or concealment of a material fact.

[8] Even if he had established those facts, mitigation for lack of prior discipline is not warranted because, given Cunningham's history of vexatious litigation, it appears likely that his misconduct will continue. Standard 1.6(a) establishes that mitigation may include the "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur." Cunningham did not establish that his misconduct is unlikely to recur.

The degree of sanction depends on the magnitude of the misconduct . . . and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law."

We are guided by the Supreme Court's reasoning in *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45, and find it applies four-square in this proceeding: "Multiple acts of misconduct involving moral turpitude and dishonesty warrant disbarment. [Citations.] [Cunningham's] pattern of serious, recurrent misconduct is a factor in aggravation . . . . It is evident that [he] has no appreciation that [his] method of practicing law is totally at odds with the professional standards of this state. Disbarment is thus necessary to protect the public, preserve confidence in the profession, and maintain high professional standards. [Citation.]" "[A]s officers of the court, attorneys . . . have a duty to the judicial system to assert only legal claims or defenses that are warranted by the law or are supported by a good faith belief in their correctness." (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591.)

Cunningham's actions seriously harmed the court system as much as the defendants he relentlessly pursued. "The constant suer . . . becomes a serious problem to others than the defendant he dogs. By clogging court calendars, he causes real detriment to those who have legitimate controversies to be determined and to the taxpayers who must provide the courts." (*Taliaferro v. Hoogs* (1965) 237 Cal.App.2d 73, 74.)

Cunningham's repeatedly filing vexatious, harassing litigation demonstrates that he is unfit to practice law. (*Maltaman v. State Bar*, *supra*, 43 Cal.3d at p. 951 ["serious and fundamental obstructions of the judicial system the member has sworn to uphold, committed willfully and in bad faith, suggest a lapse of character and a disrespect for the legal system which bear directly on the attorney's fitness to practice law"].) Disbarment is the only appropriate discipline given Cunningham's pattern of using his legal knowledge to abuse the court system with relentless lawsuits; his disregard of professional standards; his disdain for the judiciary; the

harm caused to Coombs, Cunningham's ex-wife, his opposing counsel, the courts, and the public; his indifference to this harm; and his demonstrated and unrepentant intent to continue his misconduct. (*In the Matter of Varakin*, *supra*, 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]; see also *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 366–369 [disbarment appropriate for vexatious litigant despite lengthy period of discipline-free practice].)

VII. RECOMMENDATION

We therefore recommend that Archibald Robert Cunningham be disbarred and that his name be stricken from the roll of attorneys licensed to practice in this state.

We also recommend that he be ordered to comply with the provisions of rule 9.20 of the California Rules of Court 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's order in this matter.

We further recommend that the State Bar be awarded costs in accordance with section 6086.10, such costs being enforceable both 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.

VIII. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, she properly ordered Cunningham to be involuntarily enrolled as an inactive member of the State Bar, as required by section 6007, subdivision (c)(4). The hearing judge's order became effective on August 20, 2018, and

Cunningham has been on involuntary inactive enrollment since that time. He will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.