

FILED JUNE 26, 2012

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	Case Nos. 05-O-02869; 08-O-13194
)	
KEVIN MICHAEL HEALY,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 173479.)	
_____)	

BY THE COURT:*

I. SUMMARY

In this case, we examine Kevin Michael Healy’s conduct leading up to and following a 2008 superior court order declaring him to be a vexatious litigant. In 2004, Healy’s former client won a fee arbitration award against him. Healy then sued the client on a meritless claim that the client gave false testimony at the arbitration hearing. Healy delayed resolution of the case for more than four years by repeatedly filing frivolous pleadings, including 10 unsuccessful motions to disqualify judges assigned to his case. One superior court judge found that for four years Healy did not file “any substantive opposition that addressed the merits of a pending matter,” and ruled that he was a vexatious pro per litigant. Even after this ruling, Healy twice disregarded an order requiring him to obtain pre-authorization from the court for future filings.

As a result of Healy’s conduct, the Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC). The hearing judge found that Healy: (1) maintained an unjust action; (2) encouraged an unjust action; (3) failed to obey a court order; and (4) committed

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

acts of moral turpitude. With five factors in aggravation (including a prior record of discipline) and one factor in mitigation, the hearing judge recommended that Healy be disbarred.

Healy seeks review. He disputes his culpability and claims that the hearing judge denied him a fair trial primarily because she imposed a discovery sanction against him and refused to disqualify herself. The State Bar supports Healy's disbarment.

After independent review of the record (Cal. Rules of Court, rule 9.12), we find that Healy maintained an unjust action and committed acts of moral turpitude. In sum, Healy has engaged in a lengthy pattern of vexatious litigation in superior court that has caused significant harm to his former client and to the administration of justice. Moreover, he lacks any insight into his wrongdoing. Finding no merit to his procedural or substantive challenges, we adopt the hearing judge's disbarment recommendation.

II. HEALY'S PROCEDURAL CHALLENGES ON REVIEW LACK MERIT

A. The Evidence Preclusion Sanction Against Healy Was Proper

1. Factual Background

Healy failed to fully participate in pretrial activities in the hearing department. He did not file a pretrial statement or an exhibit list as ordered by the hearing judge nor did he attend two voluntary settlement conferences. Most significantly, Healy failed to appear at his court-ordered deposition and, consequently, the hearing judge ordered that he could not present certain evidence at trial as a sanction. Healy asserts that the hearing judge's order is an abuse of discretion. We conclude it is not, as the following summary of pretrial events reveals.

Beginning in early September 2010, the State Bar attempted to take Healy's deposition in preparation for trial on December 13, 2010. It requested that Healy provide his available dates but he did not respond. The State Bar then noticed his deposition for October 20, 2010, which the hearing judge ordered to proceed at 10:30 a.m. The day before the deposition, Healy

informed the State Bar that he was ill and needed to “reschedule” but proposed no alternative dates. The State Bar told Healy that it would file a motion to compel his attendance if he did not offer substitute dates by October 25, 2010. Healy failed to respond and the State Bar filed its motion.

The hearing judge re-set Healy’s deposition for November 16, 2010, at 10:00 a.m. At 2:27 a.m. on the day of the deposition, Healy sent an email to the State Bar claiming he was ill and could not attend. Again, he provided no new dates.

The next day, the State Bar filed a motion for sanctions because Healy did not appear at his deposition. Healy filed no response to the motion. On December 6, 2010, the hearing judge issued an order imposing the following sanction: Healy could not introduce any testimony, documents, or other evidence during the culpability phase of his trial, and could not testify or present his own declaration during the mitigation phase.

On December 10, 2010, the hearing judge vacated her sanctions order in response to Healy’s December 3, 2010 *sealed ex parte* request under the Americans with Disabilities Act (ADA). When the State Bar received the December 10th order, it filed a motion requesting reconsideration of the ruling arguing, among other things, that Healy’s request was untimely and should not have been presented *ex parte*. On February 3, 2011, the hearing judge reinstated her December 6th sanctions order.

2. Legal Conclusions

We review the hearing judge’s order under an abuse of discretion standard. (*In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192, 198 [Supreme Court applies abuse of discretion standard for procedural motions in State Bar proceedings].) A judge has broad discretion to impose discovery sanctions, and will be reversed only for “arbitrary, capricious or whimsical action. [Citation.]” (*Sauer v. Superior Court* (1987) 195 Cal.App.3d

213, 228.) Further, a trial judge is permitted to choose among the possible sanctions, including an evidence preclusion sanction for failing to appear at a court-ordered deposition. (Code Civ. Proc., § 2023.010, subd. (d) and § 2025.450, subd. (d);¹ *Liberty Mut. Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1105-1106 [question not whether court should have imposed lesser sanction but whether it abused discretion by imposing sanction chosen].) The “management of discovery lies within the sound discretion of the trial court. [Citations.]” (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1123.)

Applying these principles, the hearing judge did not err. Rather, she exercised her broad authority to manage discovery after concluding that Healy willfully failed to appear at his November 16, 2010 court-ordered deposition and did not show good cause for his absence. The hearing judge’s evidence preclusion order “reflected the court’s attempt to ‘tailor’ the sanction to the harm caused by the withheld discovery. [Citation.]” (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1546.) Since Healy cancelled his deposition and failed to reschedule it, we find that the hearing judge’s order was not arbitrary or capricious.

B. The Hearing Judge Was Not Disqualified

1. Factual Background

Healy asserts that his two motions to disqualify the hearing judge were wrongfully denied. His claim is without merit.

¹ Rule 5.69(c) of the Rules of Procedure of the State Bar provides that: “The Civil Discovery Act’s provisions about misuse of the discovery process and permissible sanctions . . . apply in State Bar Court proceedings.”

Code of Civil Procedure section 2023.010 provides in relevant part that: “Misuses of the discovery process include, but are not limited to, the following: [¶] . . . [¶] (d) Failing to respond or to submit to an authorized method of discovery.”

Code of Civil Procedure section 2025.450, subdivision (d), provides in relevant part that: “If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction”

On February 18, 2011, Healy filed his first disqualification motion alleging that the hearing judge made incorrect legal rulings (including the discovery sanction), used “critical tones” with him indicating bias, and should have appointed counsel to assist him, claiming that the State Bar proceeding is “a quasi criminal matter.” The court rejected the motion because he did not attach a proper proof of service. On March 10, 2011, Healy filed a proof of mail service for his original motion. Although service by mail is not valid for a disqualification motion,² the hearing judge accepted it on March 15, 2011. The following day, the hearing judge filed her Verified Answer and referred the matter to her supervising judge, who denied the motion.³ Healy petitioned for interlocutory review of this ruling, which we denied on April 7, 2011.

Healy filed his second disqualification motion on April 12, 2011, the first day of his trial. This motion raised the same claims as the first one with an additional allegation that the hearing judge had engaged in ex parte communication with the State Bar prosecutor. The following day, the hearing judge struck the motion as untimely because all grounds asserted were known before trial, and because it failed to disclose legal grounds for disqualification. (Rules Proc. of State Bar, rule 5.46(I); Code Civ. Proc., § 170.4, subd. (b).)

2. Legal Conclusions

Healy’s complaints about the hearing judge fall into three categories, none of which warrants her disqualification: (1) disagreement with her legal rulings; (2) allegations about her conduct outside the courtroom; and (3) criticism of her courtroom conduct toward him. First, dissatisfaction with legal rulings is not grounds for disqualification. (*Dietrich v. Litton*

² A motion to disqualify a judge must be personally served upon the judge or on his or her case administrator if the judge is present in the State Bar’s office or in chambers. (Rules Proc. of State Bar, rule 5.46(H).)

³ Rule 5.46(K) of the Rules of Procedure of the State Bar provides: “A judge who refuses to recuse himself or herself may not rule on his or her own disqualification. The presiding or supervising judge must assign another judge [not challenged judge] to decide the motion.”

Industries (1970) 12 Cal.App.3d 704, 719.) Second, Healy's allegations about the hearing judge's ex parte communication are speculative. (Code Civ. Proc. § 170.4, subd. (b) [judge may strike motion that fails to allege legal grounds].)⁴ And third, the record does not establish that the hearing judge was biased against Healy, as discussed below.

C. Healy Received a Fair Trial

Healy alleges that the hearing judge treated him unfairly. Neither the record nor case law supports his claims.

First, he asserts that the hearing judge improperly limited his closing argument to 10 minutes. A judge may exercise reasonable control over the proceedings. (See *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279, 295.) After six days of trial, the hearing judge limited *each* party's closing argument to 10 minutes. We find that this restriction was reasonable, particularly since the hearing judge permitted both parties to extensively question the trial witnesses.

Second, Healy argues that the hearing judge "cut off" his cross-examination of witnesses. We disagree. The hearing judge permitted Healy a full opportunity to cross-examine witnesses as she announced she would do on the first day of trial: "And just so you know, we're going to go slow. Mr. Healy is going to have full cross-examination, so however long that takes. . . . We will take lots of breaks."

Third, Healy criticizes the hearing judge for receiving evidence of his prior conviction before the State Bar established his culpability. Although premature testimony about Healy's prior discipline case was presented, the hearing judge struck it, and Healy has failed to show any

⁴ A party may assert only one challenge for cause against a judge unless new grounds are discovered or arise after the statement is filed. Except for Healy's speculation about the hearing judge's ex parte contact, his second motion reiterated the first one. A challenged judge may strike a subsequent motion that does not allege new grounds for disqualification. (Code Civ. Proc. § 170.4, subd. (c)(3).)

specific prejudice. (See *Stuart v. State Bar* (1985) 40 Cal.3d 838, 844-845 [disclosure of prior record no basis for dismissal unless “specific prejudice” shown].)

Finally, Healy claims that the hearing judge interfered with his appeal by directing court personnel not to give him personal assistance to prepare his appeal. Healy has already raised this claim unsuccessfully in a writ of mandate that we denied on March 1, 2012.

We find that Healy received a fair trial. The hearing judge gave him considerable leeway to question witnesses in light of the sanction order: “Let the record reflect that Mr. Healy has been making a lot of testimony questions. He is sanctioned that he can’t testify, so I’m letting him. It’s a roundabout way of him trying to put some evidence in. I’m letting him do that.”⁵

III. FINDINGS OF FACT

The hearing judge’s findings of fact are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A)). We adopt and summarize them below, adding relevant facts from the record.

A. Healy Filed a Patently Unmeritorious Lawsuit Against His Former Client

On April 27, 2004, Healy filed a lawsuit against his former client, M. Cynthia Rose, after she prevailed against him in a fee arbitration dispute. Healy alleged that Rose perjured herself during the fee arbitration hearings. In June 2004, Rose filed a demurrer and Special Motion to Strike Healy’s Strategic Lawsuit Against Public Participation (anti-SLAPP motion). The superior court granted Rose’s demurrer and anti-SLAPP motion finding that Healy’s motion was

⁵ This flawed ruling led the hearing judge to make an additional error in her written decision. She stated that Healy’s “testimony” lacked credibility and sincerity having carefully observed and considered his “demeanor while testifying; the manner in which he testified; the character of his testimony; his interest in the outcome in this proceeding; his capacity to perceive, recollect, and communicate the matters on which he testified.” But Healy was never sworn as a witness and he never testified. Therefore, the hearing judge improperly evaluated his credibility based on his *questions* of witnesses at trial, which are not his *testimony*. We therefore disregard the hearing judge’s credibility determination of Healy’s “testimony.”

“patently unmeritorious” since the litigation privilege clearly protected Rose’s testimony during the fee arbitration proceedings.

B. The Superior Court Awarded Rose Attorney Fees and Costs

In July 2004, Rose sought attorney fees and costs against Healy. For eight months, Healy prevented Rose from receiving her judgment by delaying the proceedings. First, he obtained a temporary stay and then he filed a bankruptcy petition, which further stayed the proceedings until Rose obtained relief from the stay in January 2005. Next, Healy filed an ex parte application and motion for relief from judgment, which the court denied. Finally, in March 2005, the court awarded Rose \$15,014.62. Healy appealed this award and the order granting Rose’s anti-SLAPP motion. The Court of Appeal dismissed the appeal related to the anti-SLAPP motion as untimely, affirmed the attorney fees and costs award, and granted further fees and costs on appeal, the amount to be determined by the superior court.

On June 12, 2007, the superior court issued a Judgment after Appeal awarding Rose \$12,739.68 for her appellate fees and costs. Healy filed a motion for reconsideration and to set aside the award. He delayed the ruling on fees and costs for nearly a year by filing several unmeritorious judicial disqualifications. On July 11, 2008, the court awarded Rose additional attorney fees and costs of \$12,182.10 to be added to the June 12, 2007 judgment. At the time of trial, Healy had paid nothing to Rose on these judgments.

C. Healy Avoided a Debtor’s Examination

To collect her judgments, Rose filed an Application and Order for Appearance and Examination (Debtor’s Exam) of Healy, which the court scheduled for December 5, 2007. Before the hearing, Healy wrote a check for \$13,087.46 to the Sheriff to satisfy the judgment. The Debtor’s Exam was taken off calendar. Rose later discovered that Healy’s check had been

returned to the bank for insufficient funds (NSF). The court rescheduled the Debtor's Exam but Healy failed to appear several times. Ultimately, the court issued a bench warrant.

D. Healy Attempted to Disqualify Each Judge Assigned to His Case

For more than four years while the Rose litigation was pending, Healy filed 10 challenges for cause to disqualify the judges assigned to the case. Healy claimed the judges were involved in a conspiracy against him. Although all these challenges were stricken as meritless,⁶ they caused significant delay.

E. The Court Declared Healy a Vexatious Litigant

After striking Healy's sixth disqualification motion against him, Sacramento Superior Court Judge David Abbott issued an Order to Show Cause (OSC) as to why Healy should not be declared a vexatious litigant. Healy did not file a response to the OSC or appear at the hearing. Instead, he filed a bankruptcy petition to stay the proceeding. But Judge Abbott went forward with the OSC because it did not involve the bankruptcy estate. On July 24, 2008, Judge Abbott declared Healy to be a vexatious litigant,⁷ and ordered him not to file "any new litigation in propria persona in the courts of California without approval of the presiding judge of the court in which the action is to be filed" (pre-filing order).

F. Healy Filed Pleadings in Violation of the Pre-Filing Order

Healy violated the pre-filing order twice. Two months after it was issued, in September 2008, he filed an appeal of the vexatious litigant order. The Court of Appeal dismissed it

⁶ Code of Civil Procedure section 170.3, subdivision (c)(1), allows a party to file a disqualifying challenge for cause when, for example, the judge has a financial interest in the case, knowledge of the case or a bias against a party or attorney. At the outset of the case, Healy used his single peremptory challenge under Code of Civil Procedure section 170.6.

⁷ Healy was declared a vexatious litigant under Code of Civil Procedure section 391, subd. (b)(1) [commencing five litigations in propria persona (pro per) other than small claims that have been adversely determined including the Rose and other litigation], and section 391, subd. (b)(3) [repeatedly filing in pro per unmeritorious motions, pleadings, or other papers, conducting unnecessary discovery or engaging in frivolous or delay tactics related to the Rose case].

because Healy had not obtained the required authorization. Then, in December 2008, Healy violated the order again by filing a cross-complaint in *Gilbert v. Healy*, a superior court case where Healy was being sued for negligence, assault, battery, and other causes of action. The superior court struck Healy's cross-complaint because he had not obtained pre-filing authorization.

IV. CONCLUSIONS OF LAW⁸

Count Two: Failure to Maintain a Just Action (Bus. & Prof. Code, § 6068, subd. (c))⁹

Healy is charged with maintaining an unjust action based on his vexatious litigation conduct in the Rose case. The State Bar has alleged, among other things, that he filed a patently unmeritorious action against Rose, failed to address the merits of the litigation, and made repeated meritless challenges to judges hearing the case. The hearing judge correctly found Healy culpable.

Under section 6068, subdivision (c), an attorney must maintain only those actions or proceedings that appear "legal or just." 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.) The record provides clear and convincing evidence¹⁰ supporting Judge Abbott's vexatious litigant ruling - Healy repeatedly filed unmeritorious motions, pleadings and other papers and engaged in tactics that were frivolous or intended to cause unnecessary delay for more than four years in the Rose litigation.

⁸ We adopt the hearing judge's dismissal of Count One (malicious prosecution in violation of Rules Prof. Conduct, rule 3-200(A), hereafter "rule(s)") as duplicative of Count Two.

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

¹⁰ 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 Three: Encouraging an Unjust Action (§ 6068, subd. (g))

Count Three is based in large part on the same misconduct as alleged in Count Two (maintaining an unjust action). In *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060, the Supreme Court instructed that little, if any, purpose is served by duplicate allegations of misconduct in State Bar proceedings. We therefore dismiss this count with prejudice as duplicative.

Count Four: Failure to Obey a Court Order (§ 6103)

The hearing judge found Healy culpable of violating the pre-filing order. We disagree with this finding. Section 6103 prohibits an attorney from willfully disobeying a court order “requiring him to do or forbear an act *connected with or in the course of his profession.*” (Italics added.) Although Healy twice violated the pre-filing order, he acted in pro per in both matters. His “noncompliance . . . did not occur ‘[in connection with] or in the course of his profession’ simply because he is a lawyer.” (*Maltaman v. State Bar, supra*, 43 Cal.3d 924, 950 [attorney who disobeyed court order did not violate § 6103 because he was acting as private litigant].) Although Healy is not culpable of violating section 6103, we address his failure to obey the pre-filing order in Count Five below.

Count Five: Moral Turpitude (§ 6106)¹¹

The State Bar alleges that Healy committed acts of moral turpitude by: (1) writing an NSF check and failing to honor it; (2) failing to comply with the superior court order to appear; (3) causing the court to issue a bench warrant; and (3) filing additional litigation in violation of the pre-filing order. The record establishes that these allegations are true, and we agree they constitute moral turpitude.

First, Healy wrote an NSF check to cause his Debtor’s Exam to be taken off calendar – and he never honored the check. Next, Healy failed to appear for the rescheduled Debtor’s

¹¹ Section 6106 makes it a cause for disbarment or suspension for an attorney to commit any act involving moral turpitude, dishonesty, or corruption.

Exam, and the court had to issue a bench warrant. Finally, after being declared a vexatious litigant, Healy intentionally violated the pre-filing order. We find that Healy's persistent abuse of the legal system, violation of court orders and his overall misconduct constitute 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, even in private capacity]; *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”].)

V. MITIGATION AND AGGRAVATION

The offering party bears the burden of proof for aggravating and mitigating circumstances. The State Bar must establish aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b), hereafter “standard(s).”) Healy has the same burden to prove mitigation. (Std. 1.2(e).)

A. Mitigation

At trial, Healy offered three mitigation witnesses, making detailed offers of proof as to each. The hearing judge correctly ruled that only one witness, Francine Thompson, qualified as a mitigation witness. (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 499 [hearing judge has broad discretion to admit or exclude evidence].) The other two witnesses' proposed testimony concerned Healy's complaints that superior court judges had treated him unfairly and this testimony was not relevant to mitigation. Ultimately, the hearing judge found one factor in mitigation – emotional and physical difficulties. We agree and reject Healy's claim that the hearing judge “inappropriately denied the opportunity for mitigation evidence.”

1. Extreme Emotional or Physical Difficulties (Std. 1.2)(e)(iv))

Healy's sole mitigation witness, Thompson, testified by telephone. She is a long-time family friend and former client from 15 years ago who works as a mental health professional and college professor. Thompson had not seen Healy in years except at his mother's recent funeral, but maintains telephone contact. Thompson believes that Healy developed emotional and physical problems while caring for his mother, who died in March 2011. She opined that Healy's law practice suffered as a result of this stress.

The hearing judge afforded "modest" mitigation for physical and emotional difficulties related to Healy's mother's illness and death. Standard 1.2(e)(iv) calls for expert testimony to establish that such difficulties were directly responsible for the misconduct. Healy presented no expert and did not fully establish that his personal problems from 2008 to 2011 were proximately related in time to his present misconduct from 2004 to 2008. Like the hearing judge, we assign only modest mitigation. (See *In re Brown* (1995) 12 Cal.4th 205, 222 [mitigation found where, despite lack of expert testimony, State Bar did not dispute respondent's testimony about effects of illness].)

2. Healy Failed to Prove Good Character Worthy of Mitigation Credit

To qualify for mitigation credit, standard 1.2(e)(vi) requires proof of an extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities *who are aware of the full extent of the misconduct*. Although Thompson testified that Healy is caring, honest, and possesses a "keen sense of right and wrong," she knew little about his current misconduct or his prior discipline case. This limited testimony does not establish Healy's good character under standard 1.2(e)(vi). (See *In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615, 624 [two character witnesses who were social friends entitled to "little" weight].)

B. Aggravation

The hearing judge found five factors in aggravation. We agree but reject one factor (bad faith and overreaching) as duplicative of our culpability findings.

1. Prior Discipline – Public Reproval (Std. 1.2(b)(i))

Healy has been licensed to practice law since 1994. On November 6, 2002, he stipulated to a public reproval for misconduct in a case involving Rose, the same client as in the present case. In that case, Healy delayed releasing Rose's \$70,000 share of a \$195,000 personal injury settlement he received on her behalf in 2000. By doing so, he violated rule 4-100(B)(4)), which mandates that an attorney promptly pay requested funds to which a client is entitled. Healy received mitigation credit for a discipline-free record and no aggravating factors were present. We assign substantial weight to this prior discipline since it involves the same client as in the matter before us.

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

Healy committed multiple acts of misconduct for four years by filing several frivolous pleadings and disobeying court orders. These multiple acts aggravate this case. However, the more serious aggravation for multiple acts is found in Healy's pattern of misconduct throughout this case and his prior discipline case. For years, Healy has violated rules of ethics and failed to respect the courts or his client, Rose. His past misconduct and his present vexatious litigation establish a significant pattern of wrongdoing. (*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].)

3. Bad Faith and Overreaching (Std 1.2(b)(iii))

Standard 1.2(b)(iii) provides that misconduct surrounded by bad faith, dishonesty, concealment, or overreaching is aggravating. Healy engaged in bad faith and overreaching by

repeatedly advancing frivolous arguments that his vexatious filings were necessary to battle Sacramento County judges who had conspired against him. Since we considered this misconduct in finding Healy culpable of moral turpitude and of maintaining an unjust action, we do not also consider it an aggravating factor. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used to find culpability, improper to again consider them in aggravation].)

4. Significant Harm to Clients, the Public and the Administration of Justice (Std. 1.2(b)(iv))

Healy significantly harmed his client, the public and the administration of justice. By filing meritless pleadings in the superior and appellate courts, Healy caused Rose, other attorneys, and the courts to waste valuable time, resources, and money. Additionally, Healy has not paid Rose for attorney fees she incurred in responding to his vexatious litigation. The totality of this harm constitutes considerable aggravation.

5. Lack of Insight and Remorse (Std 1.2(b)(v))

Lack of remorse and failure to acknowledge misconduct are “properly considered as . . . aggravating factor[s] in deciding the appropriate discipline for an attorney. [Citations.]” (*Weber v. State Bar* (1988) 47 Cal.3d 492, 506.) The hearing judge correctly found that Healy “expressed no remorse or recognition of the serious consequences of his misbehavior.” And even during his discipline case, Healy failed to appear at settlement conferences, did not file a pretrial statement and violated the hearing judge’s discovery orders. While the law does not require him to be falsely penitent, it “does require that [he] accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Healy has not done this and instead inaccurately views himself as the victim in these proceedings. We assign the most significant weight to this aggravating factor because Healy’s lack of insight makes him an ongoing danger to the public.

VI. 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. (Std. 1.3.) We begin with the standards to determine the appropriate discipline and follow their guidelines whenever possible because they promote uniformity. (*In re Silverton* (2005) 36 Cal.4th 81, 91; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.)

Several standards apply here. Standard 2.3 calls for actual suspension or disbarment for acts of moral turpitude, depending on “the extent to which the victim of the misconduct is harmed or misled and . . . upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.” Likewise, standard 2.6(a) calls for suspension or disbarment for a violation of section 6068 [failing to maintain just action], depending on the gravity of the offense or the harm to the victim.¹² As these standards direct, we focus on the seriousness of Healy’s misconduct, its connection to the practice of law, and its consequential harm.

Healy abused the judicial system for more than four years – conduct the superior court found to be vexatious litigation, and we find to be unethical. As Judge Abbott noted, Healy’s actions are directly related to the practice of law and are “especially egregious because . . . he is a member of the California Bar. He has used his knowledge of the law and legal training to manipulate our system of justice and abuse the process of the court.”

But Healy’s misconduct goes beyond vexatious litigation since it involves significant aggravation and a long pattern of wrongdoing. Perhaps most disturbing is that Healy violated the court’s pre-filing orders even after being declared a vexatious litigant. We believe he will

¹² Two additional standards apply. When multiple acts of misconduct call for different sanctions, standard 1.6(a) directs that we apply the most severe of them, and where a prior discipline record exists, standard 1.7(a) generally requires a greater discipline in the current proceedings.

continue to abuse the legal system if permitted to practice law. Despite countless opportunities to conform his behavior to the ethical demands of the profession, Healy has failed to do so. We therefore affirm the hearing judge's disbarment recommendation, which is supported in comparable cases. (See *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45 [disbarment for multiple acts of moral turpitude and dishonesty, including unrestrained pattern of abuse of judicial officers and court system]; *Weber v. State Bar, supra*, 47 Cal.3d at p. 508 [disbarment where attorney would not "amend his ways" of committing serious acts of misconduct including violation of court orders]; *the Matter of Varakin, supra*, 3 Cal. State Bar Ct. Rptr. 179, 189-191 [disbarment for 30-year attorney sanctioned for filing frivolous motions and appeals over a 12-year period who lacked insight and refused to change].)¹³

VII. RECOMMENDATION

Kevin Michael Healy should be disbarred from the practice of law in California and his name stricken from the roll of attorneys.

VIII. RESTITUTION

Healy should pay restitution to M. Cynthia Rose in the amount of \$29,958.77¹⁴ plus 10% interest per annum from January 26, 2010, or to the Client Security Fund to the extent of any payment from the fund to M. Cynthia Rose, plus interest and costs, in accordance with section 6140.5.

¹³ Having independently reviewed all arguments set forth by Healy, those not specifically addressed have been considered and are rejected as having no merit.

¹⁴ This amount is recited in the January 26, 2010 writ of execution on the judgment for attorney fees and costs.

IX. RULE 9.20

Healy should be required 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 case.

X. COSTS

Costs should be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

XI. ORDER OF INACTIVE ENROLLMENT

Upon recommending that Healy be disbarred, the hearing judge properly ordered that he be involuntarily enrolled as an inactive member of the State Bar as required by section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, which is presently in effect. Healy will remain on involuntary inactive enrollment pending the final disposition of this proceeding.