PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed December 28, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	15-O-15655
	)	
TROY ALVORD STEWART,	)	OPINION
	)	[As Modified on January 29, 2021]
State Bar No. 135764.	)	
	)	

Troy Alvord Stewart is charged with seven counts of misconduct relating to his representation of two brothers against a third brother who was the trustee of a family trust, in which Stewart filed several actions and appeals in probate, civil, and bankruptcy courts. A hearing judge found Stewart culpable on five of the seven counts of misconduct, including failing to obey a court order and maintaining unjust actions, and recommended that Stewart be actually suspended for three years and until he provides proof of his rehabilitation, fitness to practice, and present learning and ability in the general law.

Both Stewart and the Office of Chief Trial Counsel of the State Bar (OCTC) appeal. Stewart argues that all the charges should be dismissed. OCTC requests additional aggravating circumstances not found by the judge and seeks disbarment.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we find Stewart is culpable of three counts of misconduct. Given that we find far less misconduct and less aggravation than the hearing judge did, we recommend discipline that includes 90 days of actual suspension. We also recommend that Stewart's actual suspension continue until he shows proof of payment to the State Bar's Office of Probation in Los Angeles regarding the $18,520 in sanctions previously ordered against his client and him.

I. PROCEDURAL BACKGROUND

OCTC filed a Notice of Disciplinary Charges (NDC) on April 14, 2017. Stewart filed an answer on May 3. On July 25, OCTC filed a First Amended Notice of Disciplinary Charges (ANDC), charging Stewart with (1) communication with a represented party, in violation of rule 2-100(A) of the Rules of Professional Conduct;[1] (2) failure to report judicial sanctions, in violation of Business and Professions Code section 6068, subdivision (o)(3);[2] (3) failure to obey a court order, in violation of section 6103; (4) three counts of maintaining an unjust action, in violation of section 6068, subdivision (c); and (5) failure to cooperate in a State Bar investigation, in violation of section 6068, subdivision (i). Stewart filed an answer to the ANDC on August 7 and the matter was abated on August 31. On May 1, 2019, the abatement was terminated and Stewart filed an amended answer on September 17. An eight-day trial was held on September 17-20 and 24-27, and closing briefs were filed on October 11. The hearing judge issued his decision on December 19.

II. BACKGROUND FACTS[3]

Stewart represents two brothers, Peter and Richard Kvassay, in their litigation involving the Kvassay Family Trust (Trust) in which they are beneficiaries. Robert Kvassay, a third brother, serves as trustee for the Trust, and its principal asset is a large residential estate located on Hill Drive in Los Angeles (Hill Drive).

On May 7, 2010, Robert filed a probate petition for the Trust (*In re: The Kvassay Family Trust Dated February 26, 1993*, Los Angeles Superior Court, Case No. BP122477 (probate

[1] All further references to rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

[2] All further references to sections are to this source, unless otherwise noted.

[3] The facts included in this opinion are based on trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

case).) On August 18, an evidentiary hearing was held in the probate case to determine if Robert could (1) evict Peter and Richard from Hill Drive and (2) sell Trust property. On September 20, the court ordered Peter and Richard to vacate Hill Drive on or before October 5, and ruled Robert had authority as trustee to make repairs and sell Hill Drive. Stewart appealed the eviction order on September 22. On October 7, Peter and Richard deposited a $216,000 cash undertaking to stay the pending eviction during the appeal.

While the probate case and eviction matter were progressing, Stewart filed a bankruptcy petition on behalf of Richard on January 13, 2011. (*In re Richard Stephen Kvassay*, United States Bankruptcy Court, Central District of California, Case No. 2:11-bk-11698 (Richard's Bankruptcy).) On October 19, the bankruptcy court granted Robert's motion for relief from the automatic stay issued in Richard's Bankruptcy. Subsequently, Stewart filed a lawsuit in November 2011 alleging claims related to the repair and maintenance of Hill Drive. (*Richard S. Kvassay and Peter E. Kvassay v. Robert V. Kvassay*, Los Angeles Superior Court, Case No. BC473480 (first lawsuit).)

On February 3, 2012, the Court of Appeal affirmed the eviction order from the probate case and the California Supreme Court later denied review. On June 26, Robert filed a motion in the probate case to release the $216,000 cash undertaking, and the probate court scheduled an evidentiary hearing for September 5. On that morning, just prior to the hearing, Stewart filed a bankruptcy petition on behalf of Peter. (*In re Peter Emanuel Kvassay*, United States Bankruptcy Court, Central District of California, Case No. 2:12-bk-40267 (Peter's Bankruptcy).)

The September 5, 2012 hearing in probate court proceeded as scheduled. Even though Stewart represented both men, only Richard participated in the hearing; Peter did not take part based on the automatic stay issued in his bankruptcy case. The probate court delayed making a ruling until Robert obtained relief from the automatic stay in Peter's Bankruptcy, which Robert

obtained on November 16, and it was made retroactive to September 5. On December 12, after hearing from counsel, including Stewart representing both Peter and Richard, the probate court entered an order for judgment against Peter and Richard for loss of use and occupancy of Hill Drive during the eviction appeal in the amount of $192,660 (probate case judgment). On January 16, 2013, an order to enforce the judgment was issued and was amended on January 24.[4]

III. CHARGES, INCLUDING RELATED FACTS[5] AND CULPABILITY[6]

A. Count Four: Maintaining an Unjust Action (§ 6068, subd. (c))

Section 6068, subdivision (c), provides that it is an attorney's duty "[t]o counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense." In count four, the ANDC alleges Stewart

[4] The January 24 amended order indicates Stewart represented both Peter and Richard at the December 12 hearing and that the court heard argument from counsel at that hearing.

[5] In Stewart's opening brief, he "disputes 45 different findings of fact made by the hearing [judge], several of which are discussed in the Statement of Facts . . . ." Pursuant to rule 5.152(C) of the Rules of Procedure of the State Bar, Stewart is required not only to identify the findings of fact that he disputes, but also "must include references to the record to establish all facts in support of the points raised by [him]." Consequently, Stewart's list of citations to the judge's findings at footnote 9 will be disregarded and only those findings of the judge raised by Stewart and discussed with relevant facts from the record will be considered.

[6] The hearing judge dismissed two counts with prejudice. In count one, the ANDC alleges Stewart, representing Peter and Richard, communicated with Robert, who was represented by counsel, about the subject of the representation, in violation of rule 2-100(A). The judge found Stewart made statements to Robert in a July 2012 encounter at the Hill Drive property, but they did not concern the substance of the litigation. In count six, the ANDC alleges Stewart failed to provide substantive responses to two letters from the State Bar regarding certain misconduct allegations, in violation of section 6068, subdivision (i). The judge found Stewart communicated with OCTC regarding its investigation and OCTC did not prove its allegations by clear and convincing evidence. OCTC does not oppose either dismissal on review. Accordingly, the dismissals of count one and six with prejudice are affirmed. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].) All culpability findings in this opinion are established by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind].)

sought to attack the December 12, 2012 probate case judgment by taking various actions that were unjust and filed for an improper purpose, in violation of section 6068, subdivision (c).[7]

Disciplinary case law pertaining to section 6068, subdivision (c), is limited. In *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1042–1043, an attorney was found to violate, inter alia, section 6068, subdivision (c), when he acted in an extreme manner by filing a fraud suit for $14,000 in exemplary damages to resolve a $45 billing dispute when there was "clearly" no argument that a fraud claim existed. The court found Sorensen "was motivated in large measure by spite and vindictiveness" and acted unreasonably in filing the claim. One common circumstance in State Bar Court disciplinary proceedings under section 6068, subdivision (c), is the presence of prior court rulings that support culpability. (See, e.g., *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360.) However, the language of section 6068, subdivision (c), does not require such rulings as a requisite to establishing culpability.

We have also found unmeritorious or frivolous filings are evidence of maintaining an unjust action under section 6068, subdivision (c). (*In the Matter of Kinney*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 365; see also *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 118 [frivolous appeal violated § 6068, subd. (c), as attorney pursued relitigation of law decided in prior case]; *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 187 [filing baseless and vexatious litigation violates § 6068, subd. (c)].) In *Lais*, we cited to *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650, which provided two standards to determine when an appeal is frivolous:[8] "[A]n appeal should be held to be frivolous only when it

[7] Count four alleges specific misconduct in paragraphs (a) through (i); each paragraph is discussed separately below.

[8] While *Flaherty* is a discussion in the context of determining if an appeal of a trial court judgment was frivolous and warranted sanctions under Code of Civil Procedure section 907 and California Rules of Court, rule 26(a), we see no reason to limit the application of its approach to civil appeals of trial court judgments.

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. [Citation.]" Indefensible conduct includes prosecuting meritless claims that are "manifestly erroneous" where "no prudent attorney would have done so. [Citation.]" (*Id*. at p. 648.)

1. Paragraph (a): The Second Lawsuit

a. Facts

Stewart undertook two avenues to undo the $192,600 probate court judgment. First, on January 8, 2013, Stewart initiated a lawsuit in superior court on behalf of Peter and Richard to set aside the probate case judgment. (*Peter E. Kvassay and Richard S. Kvassay v. Robert V. Kvassay*, Los Angeles County Superior Court, Case No. BC498669 (second lawsuit).) This lawsuit alleged the probate court made an extrinsic mistake because Peter did not have the opportunity to participate in the September 5, 2012 evidentiary hearing. After additional filings by both parties, including a demurrer and a motion to strike by Robert's attorney, Stewart dismissed the second lawsuit on October 1, 2013.

Stewart's second avenue was his direct appeal of the probate court's actions. Based on the probate court ordering the release of $192,660 from the $216,000 cash undertaking to Robert as trustee on January 24, 2013, Stewart filed an appeal contesting the probate case judgment and the order on February 19.[9] On May 14, 2014, the Court of Appeal rejected Stewart's contentions and affirmed the probate court's order for the clerk to pay Robert $192,660.

[9] A notice of appeal was filed by Stewart on February 6, 2013. Prior to filing it, Stewart filed a Petition for Peremptory Writ of Prohibition and/or Writ of Mandate on January 29 to vacate the order, which the Court of Appeal denied on February 8.

b. Culpability

Paragraph (a) of count four alleges the second lawsuit was unjust and filed for an improper purpose because its gravamen was to seek reconsideration of the probate case judgment, which Stewart failed to do in the probate case.[10] The hearing judge found the second lawsuit was unjust and filed for an improper purpose because Stewart challenged in superior court without a proper legal basis the probate court's decision to proceed with the September 5, 2012 evidentiary hearing and the December 12, 2012 judgment of $192,660. The judge reasoned these challenges should have been made in probate court and the second lawsuit was an attempt to relitigate the September 5 hearing. The judge also rejected Stewart's argument that he could file the second lawsuit due to extrinsic mistake, finding the elements of an extrinsic mistake claim could not be established. The judge concluded the lawsuit was essentially a motion to reconsider, unsupported by existing law, and filed to harass Robert. OCTC agrees with the judge's reasoning and conclusions.

On review, Stewart primarily argues the second lawsuit was filed to set aside the probate case judgment on the basis of extrinsic mistake because Peter was precluded from participating in the September 5, 2012 hearing due to the automatic stay in Peter's Bankruptcy, yet the probate court nonetheless entered a judgment against him. Stewart argues the purpose of the second lawsuit was to give Peter "his day in court," and not an attempt at reconsideration. He also argues his allegation of extrinsic mistake was based on well-established California law, the

[10] Paragraph (a) also alleges the second lawsuit was unjust and filed for an improper purpose because the equitable relief it sought was untimely in relation to the probate case appeal. In addition, paragraph (a) alleges the probate case appeal was unjust and filed for an improper purpose because Stewart had forfeited certain arguments by failing to assert them prior to appeal. The hearing judge did not make a finding based on these allegations. On review, OCTC offers no authority as to why these allegations would violate section 6068, subdivision (c). We therefore find OCTC did not prove these allegations by clear and convincing evidence.

second lawsuit had no unjust or improper purpose, and no evidence exists of bad faith or an intent to harass.

Stewart represented both Richard's and Peter's interests. After the September 5, 2012 hearing and after Robert obtained relief from the automatic stay, Stewart appeared on behalf of both Richard and Peter in probate court on December 12. Stewart had the opportunity to advocate on behalf of Peter at the December 12 hearing. Further, nothing in the record suggests that there was additional argument or evidence to present on behalf of Peter as his interest in the matter was the same as Richard's. After the December 12 hearing, with no stay applying to Robert, the probate court issued its order that Peter and Richard owed the Trust $192,660, jointly and severally.

We agree with the hearing judge that the second lawsuit in superior court had no proper legal basis. Robert had properly obtained relief from the stay before the probate court judgment issued and any challenge of the probate court's decision should have been made on appeal, which, in fact, Stewart did. The second lawsuit essentially blames the probate court for the failure to consider Peter's absence at the September 5, 2012 hearing, when it was actually Stewart's mistake in failing to raise the issue. Further, the probate court acted prudently in delaying a ruling on the September 5 hearing until Robert had obtained relief from the stay in Peter's Bankruptcy, after which the December 12 hearing and order occurred. Under these circumstances, no reasonable attorney could find such a lawsuit had any merit. Accordingly, we find Stewart violated section 6068, subdivision (c), by filing the second lawsuit.[11]

[11] While we do not dispute Stewart's contention that the concept of extrinsic mistake is based on well-established case law, the point remains he applied the law to circumstances for which he had no legal basis. The second lawsuit was in essence a collateral attack on the probate court judgment. We also reject Stewart's argument that *Flaherty* precludes culpability here; however, we agree with Stewart that OCTC failed to prove by clear and convincing evidence the second lawsuit involved bad faith or an intent to harass. Nonetheless, *Flaherty* does not preclude us from finding a section 6068, subdivision (c), violation here, even though sufficient evidence

2. Paragraph (b): Richard's First Adversary Proceeding

a. Facts

On May 22, 2013, Stewart filed an adversary proceeding (Richard's First AP) against Robert in Richard's Bankruptcy. Richard's First AP alleged Robert violated the relief from stay order by attempting to pursue the December 12, 2012 probate court judgment because it did not exist when the relief order was issued in Richard's Bankruptcy on October 21, 2011. It sought, inter alia, to void the probate court judgment, and a return of the $192,660 "misappropriated from the clerk of the Los Angeles County Superior Court."[12]

b. Culpability

Paragraph (b) of count four alleges Stewart filed Richard's First AP against Robert for prosecuting the probate case and judgment, which was unjust and filed for an improper purpose because the bankruptcy court had granted Robert relief from the automatic stay on October 21, 2011. The hearing judge found Richard's First AP was unjust because it was filed based on a violation of the automatic stay in Richard's Bankruptcy even though Robert had obtained relief from the automatic stay.[13] OCTC asserts the judge properly found culpability.

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does not exist to prove an improper motive. As discussed above, *Flaherty* does not require a finding of an improper motive; it provides that improper motive is one way to establish an appeal is frivolous. (*In the Marriage of Flaherty*, *supra*, 31 Cal.3d at pp. 645–651.) There is clear and convincing evidence that the second lawsuit was without merit and fits the alternative definition of frivolous from *Flaherty*.

[12] On August 13, 2013, the bankruptcy court granted a motion by Robert to dismiss Richard's First AP without leave to amend because Stewart failed to timely amend it. Stewart appealed, and the United States Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeal (BAP) affirmed the dismissal on May 30, 2014. Stewart appealed, and the Ninth Circuit affirmed on July 11, 2016.

[13] The hearing judge determined the appeals to the BAP and the Ninth Circuit were also unjust. We do not consider if Stewart's appeals in Richard's First AP violate section 6068, subdivision (c), as the ANDC does not allege the appeals violated that section. (Rules of Proc. of State Bar, rule 5.41(B) [NDC must relate facts to statute that attorney allegedly violated].)

Stewart argues Richard's First AP was not improperly filed because it "sought to *enforce* orders granting Robert conditional relief from the automatic stay provisions . . . because Robert was violating the *conditions* of the orders." Specifically, Stewart argues that "Robert violated the [relief order in Richard's Bankruptcy] by attempting to pursue a claim that did *not* exist on the date the bankruptcy entered the order."

Stewart's contentions as argued have no merit. His contention that the relief order in Richard's Bankruptcy did not allow Robert to pursue the probate court judgment flies in the face of the order's language. The automatic stay in Richard's Bankruptcy was issued when the bankruptcy was filed on January 13, 2011. Robert obtained relief from the stay on October 21. In its order granting relief, the bankruptcy court was specific and clear and stated Robert was not to be hindered by Richard's Bankruptcy. It "terminated" any stay that applied to Robert as a trustee in the probate case so he could "proceed in the non-bankruptcy forum to final judgment (including any appeals) in accordance with applicable non-bankruptcy law."

Stewart filed Richard's First AP on May 22, 2013, and alleged that, since the December 12, 2012 probate case judgment did not exist on the date the relief order was issued, Robert did not obtain relief to pursue that judgment, and thus he violated the October 21, 2011 relief order. In both Richard's First AP and his briefs on review, Stewart offers no authority for how his argument comports with the fact that the probate judgment, which is clearly a part of the probate case referenced in the relief order, is not within the scope of it.[14] For these reasons, we agree with the hearing judge's conclusion that the filing of Richard's First AP had no legal basis and thus violated section 6068, subdivision (c).

[14] The bankruptcy court transcript of the August 8, 2013 proceeding leading to the dismissal of Richard's First AP confirms our analysis when it made clear it did not see that Robert had taken "any separate actions against [Richard] outside the probate [case] to enforce the Probate's Court's order personally as to [Richard]."

3. Paragraph (c): Peter's First Adversary Proceeding

a. Facts

On May 28, 2013, Stewart reopened Peter's Bankruptcy. On June 14, he filed another adversary proceeding, this one on behalf of Peter (Peter's First AP), wherein Stewart alleged Robert violated the relief from stay order in Peter's Bankruptcy by failing to follow conditions attached to the relief order. Peter's First AP sought relief similar to that in Richard's First AP.[15]

b. Culpability

Paragraph (c) alleges Stewart filed Peter's First AP against Robert for prosecuting the probate case and judgment, which was unjust and filed for an improper purpose, because the bankruptcy court had granted Robert relief from the automatic stay in Peter's Bankruptcy on November 16, 2012 (retroactive to September 5, 2012), and therefore, Robert could prosecute the probate case and judgment. The hearing judge found Peter's First AP was unjust because it was filed based on a violation of the automatic stay even though Robert had retained relief from the automatic stay.[16] OCTC asserts the judge properly found culpability.

The November 16, 2012 relief order provided Robert was allowed to pursue the probate case, subject to certain conditions, including that Robert join the bankruptcy trustee as a party to the probate case. On December 4, Robert filed a motion to join the bankruptcy trustee.[17] On December 12, the probate court judgment was issued, but the probate court did not join the bankruptcy trustee, which was a condition for the stay order. Therefore, we do not find Stewart's

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[15] On July 17, 2013, Robert filed a motion to dismiss Peter's First AP. On August 13, the bankruptcy court dismissed Richard's First AP. Six days later, on August 19, Stewart dismissed Peter's First AP.

[16] The hearing judge also found the motion to reopen Peter's Bankruptcy was unjust. We reverse this finding as it was not pleaded as a violation in the NDC. (Rules Proc. of State Bar, rule 5.41.)

[17] Robert also filed a declaration from the bankruptcy trustee who indicated he did not object to being joined, had no intention of seeking any of the bond posted in the appeal of the eviction order, and did not "object to the Superior Court continuing its proceeding in my absence."

filing of Peter's First AP was completely without merit. (See *In the Marriage of Flaherty*, *supra*, 31 Cal.3d at p. 650 [counsel has "a right to present issues that are arguably correct, even if it is extremely unlikely that they will win"].) On review of the record, we do not find OCTC presented clear and convincing evidence that Stewart's filing of Peter's First AP violated section 6068, subdivision (c). Accordingly, we dismiss the allegation in paragraph (c) of count four with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

4. Paragraph (d): Motion for Sanctions in Peter's Bankruptcy

a. Facts

On August 26, 2013, Stewart filed a motion for monetary sanctions in Peter's Bankruptcy. The sanctions motion alleged Robert's filing of a second motion for relief from the automatic stay after the stay was terminated was for an improper purpose. On September 6, Robert filed an opposition to the motion, in which he stated the second relief motion was filed "in an abundance of caution" after Peter re-opened his bankruptcy case, and, at a hearing on August 22, the bankruptcy judge found such relief was not necessary because the matter was closed and the requirement that further relief be obtained was extinguished. The bankruptcy court denied the motion for sanctions on October 15.

b. Culpability

Paragraph (d) of count four alleges Stewart's filing of the motion for sanctions in Peter's Bankruptcy was unjust and filed for an improper purpose because (1) the bankruptcy court had granted Robert relief from the automatic stay effective September 5, 2012, and (2) the bankruptcy court had granted a motion to dismiss in Richard's First AP on August 13, 2013, which sought similar relief. The hearing judge found the motion for sanctions was based on allegations of a violation of the automatic stay, yet Robert had obtained relief from the automatic

stay. Therefore, he found the motion for sanctions improper and found Stewart culpable as charged under paragraph (d) of count four. OCTC agrees with the culpability finding.

On review, we find OCTC did not present clear and convincing evidence that the motion for sanctions was filed for an improper purpose. Given Robert was unsure if a second relief motion needed to be filed, it is likewise reasonable to conclude Stewart may have believed the second relief motion was improper. Therefore, we dismiss the allegation of paragraph (d) in count four with prejudice. (*In the Matter of Kroff, supra,* 3 Cal. State Bar Ct. Rptr. at p. 843.)

5. Paragraph (e): Peter's Second Adversary Proceeding

a. Facts

On the day after Stewart dismissed Peter's First AP, August 20, 2013, Stewart filed a second adversary proceeding in Peter's Bankruptcy (Peter's Second AP).[18] Stewart again alleged Robert had violated the automatic stay by proceeding in the probate case because Robert had not joined the bankruptcy trustee. On October 25, 2013, the bankruptcy court granted Robert's motion to dismiss Peter's Second AP with prejudice, holding that Robert abided by the conditions of the order and had not violated the automatic stay.[19]

b. Culpability

Paragraph (e) alleges Stewart filed Peter's Second AP on August 20, 2013,[20] which was unjust and filed for an improper purpose because (1) the bankruptcy court had granted Robert relief from the automatic stay effective September 5, 2012 and (2) the BAP affirmed the dismissal of Richard's First AP on May 30, 2014, holding that Robert's prosecution of the

[18] Stewart testified he dismissed Peter's First AP because it contained a contempt claim, which he believed he could not pursue in an adversary proceeding. Therefore, he dismissed Peter's First AP and refiled it as Peter's Second AP without the contempt claim.

[19] On July 31, 2014, the district court affirmed the dismissal. Stewart appealed to the Ninth Circuit, which affirmed on June 15, 2016.

[20] Paragraph (e) in the ANDC mistakenly alleged 2014 instead of 2013 as the date Stewart filed Peter's Second AP.

probate case and judgment did not exceed the authorization granted by the bankruptcy court. The hearing judge found Peter's Second AP was unjust because it was based on the charge that Robert had violated the automatic stay, when he had actually obtained relief from the automatic stay. OCTC agrees with the culpability finding and argues there was no basis to file Peter's Second AP.

We do not find culpability here. As discussed above regarding Peter's First AP, Stewart was not completely without merit to argue Robert had not obtained relief from the stay as it pertained to Peter because the bankruptcy trustee was not joined in the probate case before the probate judgment was issued. Also, the dismissal of Richard's First AP was irrelevant to Peter's adversary proceedings because the joinder issue only pertained to Peter and was not discussed in Richard's First AP. Although the court ultimately dismissed Peter's Second AP, we find insufficient evidence that Stewart filed it for an improper purpose as the joinder issue was not an unreasonable basis for the proceeding. Therefore, the allegation in paragraph (e) of count four is dismissed with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

6. Paragraph (f): Motion for an Order to Show Cause in Peter's Bankruptcy

a. Facts

On November 18, 2015, Stewart filed a motion for an order to show cause (OSC) in Peter's Bankruptcy, alleging Robert violated the discharge order by disputing that the $192,660 probate case judgment was a discharged debt and violated the discharge injunction by attempting to collect various judgments. On December 2, 2015, the bankruptcy court denied the motion and determined there were "no grounds for the issuance of an order to show cause."[21]

[21] On October 6, 2016, the BAP affirmed the order denying Stewart's motion for an OSC, and Stewart appealed to the Ninth Circuit on November 2, 2016.

b. Culpability

Paragraph (f) alleges Stewart's motion for an OSC in Peter's Bankruptcy was unjust and filed for an improper purpose because (1) the bankruptcy court had granted Robert relief from the automatic stay effective September 5, 2012; (2) the bankruptcy court had denied the motion for sanctions on October 15, 2013, which sought similar relief; and (3) the BAP affirmed the dismissal of Richard's First AP on May 30, 2014, holding that Robert's prosecution of the probate case and judgment did not exceed the authorization granted by the bankruptcy court.[22] The hearing judge found Peter's motion for an OSC was unjust because it was based on a violation of the automatic stay, yet Robert had obtained relief from the automatic stay.

The hearing judge did not address how the denial of the motion for sanctions would have put Stewart on notice that filing the motion for an OSC would be improper. The record before us does not reveal the reasons the bankruptcy court denied the motion for sanctions, and we agree with Stewart's argument that the motion for sanctions and the motion for an OSC made different allegations. Accordingly, we cannot use the denial of the motion for sanctions as a reason that Stewart should have known his arguments in the motion for OSC had no legal basis.

In addition, the BAP's dismissal of Richard's First AP did not address Peter's claims, which were different, as discussed above. Therefore, this dismissal did not put Stewart on notice that the motion for an OSC would be improper.

What remains from the ANDC is the fact that Robert received relief from the automatic stay on September 5, 2012. We conclude no clear and convincing evidence exists that the relief order made the filing of the motion for an OSC unjust, improper, or completely without merit. When Stewart filed the motion for an OSC, the relief order had been terminated. OCTC's

[22] Paragraph (f) in the ANDC contains a typographical error regarding the motion for sanctions, but it is clear that the object of paragraph (f) is the motion for an OSC filed in Peter's Bankruptcy.

arguments on review are conclusory—they state Stewart "essentially sought the same relief over and over, but did not prevail," and the basis for the motion for an OSC was a violation of the stay. OCTC offers no other authority or evidence to support its argument. Therefore, we dismiss the allegation of paragraph (f) in count four with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

7. Paragraph (g): Motion to Reopen Richard's Bankruptcy

a. Facts

On November 24, 2015, Stewart filed a motion to reopen Richard's Bankruptcy, which had been discharged on September 11, 2013. The motion requested reopening to commence contempt proceedings against Robert for alleged violations of the discharge injunction. On December 2, 2015, the bankruptcy court denied the motion for lack of grounds to reopen. Stewart appealed. The BAP affirmed on October 6, 2016, concluding Richard's Bankruptcy was not required to be reopened before Richard could commence contempt proceedings for violations of the discharge injunction.

b. Culpability

Paragraph (g) of count four alleges Stewart filed a motion to reopen Richard's Bankruptcy in November 2015, which was unjust and filed for an improper purpose because (1) the bankruptcy court had granted Robert relief from the automatic stay on October 21, 2011 and (2) the BAP affirmed the dismissal of Richard's First AP on May 30, 2014, holding that Robert's prosecution of the probate case and judgment did not exceed the authorization granted by the bankruptcy court. The hearing judge found Peter's motion for reopening the bankruptcy case was unjust because it was based on the charge that Robert had violated the automatic stay, when he had actually obtained relief from the automatic stay.

OCTC argues Stewart was continuing to "seek the same relief over and over" by filing the motion to reopen. However, the motion itself did not seek relief; it only requested the case be reopened. Further, the BAP concluded it was unnecessary and Robert could commence contempt proceedings without reopening the bankruptcy. The BAP did not comment on whether such proceedings were frivolous or state Richard was precluded from making the allegations based on the relief order or the dismissal of Richard's First AP. OCTC did not prove by clear and convincing evidence that the motion to reopen was unjust and filed for an improper purpose. Therefore, the allegation in paragraph (g) of count four is dismissed with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

8. Paragraph (h): Richard's Second Adversary Proceeding

a. Facts

On November 16, 2016, [23] Stewart filed a second adversary proceeding in Richard's Bankruptcy (Richard's Second AP), alleging three causes of action: (1) a determination of whether certain debts were dischargeable; (2) an injunction prohibiting Robert from pursuing discharged debts; and (3) a declaration that the debts were discharged. On May 30, 2017, Stewart filed a motion for partial summary adjudication (PSA) in Richard's Second AP, which the bankruptcy court granted on August 23, 2017. The court found that certain debts were dischargeable and void against Richard. On March 13, 2018, Robert filed a motion for summary judgment (MSJ) requesting, among other things, a holding that Richard's discharge did not prohibit Robert from recouping any obligations of Richard against any right Richard may have had to receive distributions from the Trust. On May 31, 2018, the bankruptcy court granted Robert's MSJ.

[23] Paragraph (h) in the ANDC mistakenly alleged 2015 instead of 2016 as the date Stewart filed Richard's Second AP.

b. Culpability

Paragraph (h) alleges Stewart filed Richard's Second AP and the PSA to attack amounts determined by the court in the probate case. Paragraph (h) also alleges Richard's Second AP was unjust and filed for an improper purpose because (1) the bankruptcy court had granted Robert relief from the automatic stay on October 21, 2011, and (2) by May 30, 2017, the BAP or the Ninth Circuit had affirmed the dismissal or denial of Richard's First AP, Peter's Second AP, and Peter's OSC motion. The hearing judge found Richard's Second AP was unjust because it was based on the allegation that Robert had violated the automatic stay when Robert had obtained relief from the automatic stay. We disagree because Richard's Second AP did not allege a violation of the relief order, but instead was based on the dischargeability of certain debts and an allegation that Robert violated the discharge injunction. We reject OCTC's argument that Richard's Second AP "still lacked merit whether the stay was applicable or not." This conclusory statement is not supported by the record or any authority offered by OCTC.

In addition, the issues decided in Richard's First AP, Peter's Second AP, and Peter's motion for an OSC are unrelated to the issues raised in Richard's Second AP. Stewart sought to determine in Richard's Second AP whether certain debts were discharged—an issue that had not been decided previously. While OCTC argues the bankruptcy court eventually found Richard's and Peter's beneficial interests in the Trust were not dischargeable in bankruptcy, they did not present clear and convincing evidence that Stewart was aware of this before filing Richard's Second AP. For these reasons, we find no clear and convincing evidence that Stewart's filing of Richard's Second AP violated section 6068, subdivision (c).

9. Paragraph (i): Peter's Third Adversary Proceeding

On November 16, 2016, Stewart filed a third adversary proceeding in Peter's Bankruptcy (Peter's Third AP). Paragraph (i) alleges that Peter's Third AP was unjust and filed for an

improper purpose. The hearing judge did not make a finding as to culpability regarding Peter's Third AP. OCTC did not appeal the hearing judge's failure to make a culpability determination under paragraph (i) and, therefore, has waived the issue on review. (Rules Proc. of State Bar, rule 5.152(C) [factual error not raised on review is waived].) Nevertheless, in our independent review of the record, we find the record does not establish by clear and convincing evidence that the filing of Peter's Third AP violated section 6068, subdivision (c). Like Richard's Second AP, Peter's Third AP was based on whether certain debts were dischargeable, and Stewart was not on notice before filing Peter's Third AP that Peter's beneficial interest in the Trust was not dischargeable.

B. Count Five: Maintaining an Unjust Action (§ 6068, subd. (c))

1. Facts

On January 25, 2016, Stewart filed *Richard S. Kvassay, Assignee of Mary Biason's cash deposit in lieu of bond v. Robert V. Kvassay*, Los Angeles Superior Court, Case No. BC608172 (fourth lawsuit), which alleged that Robert converted the $192,660 and requested declaratory relief concerning whether the judgment was discharged or void and whether Robert had a right to any of the money. Stewart argued in the fourth lawsuit that Robert acted improperly by failing to serve Mary Biason[24] when Robert filed motions to release the cash undertaking and by failing to give notice to Biason of the September 5, 2012 evidentiary hearing. Biason did not appear at the evidentiary hearing. When the probate court entered the $192,660 judgment against Richard and Peter, it did not name Biason. On January 29, 2013, Robert took possession of the $192,660 from the $216,000 bond.

[24] In the fourth lawsuit's complaint, Stewart alleged, on October 6, 2010, Biason transferred $216,000 to Richard so he could deposit it with the superior court and stay enforcement of the eviction order. He also alleged Richard deposited the $216,000 on October 7 with the superior court as "Biason's cash deposit in lieu of bond to stay enforcement of the eviction order pending the appeal."

Robert filed an anti-SLAPP motion, which was granted on July 26, 2016.[25] The court held Stewart's argument, that Biason was not bound by the probate court judgment, was not supported by any evidence. Because no evidence existed in the record that Biason qualified as a surety under California law, the court concluded Stewart failed to show that Biason was entitled to notice or that she had standing to pursue claims based on her status as a surety.

2. Culpability

Count five charges that the fourth lawsuit was unjust and filed for an improper purpose because the probate case judgment had already been appealed and the court had held that Robert's actions in obtaining the $192,660 judgment were protected. The hearing judge rejected Stewart's argument that the fourth lawsuit was properly filed because Biason had assigned her claims to Richard. The judge found that the probate case judgment was already resolved and the assignment of claims to Richard did not allow him to again challenge the judgment in a new lawsuit. Therefore, the judge found Stewart violated section 6068, subdivision (c), by pursuing the fourth lawsuit. OCTC supports the judge's finding. We disagree.

The fourth lawsuit was based on the allegation that Robert failed to name Biason as a necessary party to the probate proceeding and did not obtain a judgment against Biason. Therefore, Stewart argued Robert could not possess any of Biason's cash deposit. We disagree with OCTC that Stewart had no legal basis to pursue Biason's possible claims. In granting the anti-SLAPP motion, the court did not hold that Stewart failed to present a legal basis for the suit. Rather, the court found Stewart could not establish a probability of prevailing based on the facts presented. The fourth lawsuit was not a relitigation of the issues decided in the probate case as the claim regarding Biason had never previously been made. Accordingly, we find that OCTC failed to establish that the fourth lawsuit violated section 6068, subdivision (c), as charged in

[25] On that same date, Stewart dismissed the fourth lawsuit.

count five. Therefore, we dismiss count five with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

C. Count Seven: Maintaining an Unjust Action (§ 6068, subd. (c))

1. Facts

On October 11, 2013, Stewart filed *Richard S. Kvassay and Peter E. Kvassay v. Robert V. Kvassay, Vicky Kvassay, OneWest Bank as successor in interest to La Jolla Bank, and Los Angeles Department of Building and Safety*, Los Angeles Superior Court, Case No. BC524151 (third lawsuit). The first lawsuit, filed on November 16, 2011, was still pending when the third was filed[26] and differed from the first because it (1) included new allegations; (2) added Robert's wife, OneWest Bank, and the Los Angeles Department of Building and Safety as additional defendants; (3) deleted the cause of action for injunctive relief; and (4) added causes of action for breach of fiduciary duty and declaratory relief. Both the first lawsuit and the third lawsuit dealt with issues covered in the probate court's January–May 2013 trial.

One of the defendants in the third lawsuit filed a notice of related case, listing the third lawsuit as related to the probate case and the first lawsuit. The court declined to relate them. Even though the court acknowledged a compelling argument for relating the cases, it stated "the interests of justice would not be preserved if all these cases were related." Subsequently, Robert filed a motion for sanctions pursuant to Code of Civil Procedure section 128.7 against Peter, Richard, and Stewart, jointly and severally. In August 2014, the court denied the motion, finding "that the respective complaints are not entirely duplicative, and that bad faith, and the lack of likely evidentiary support, are not sufficiently evidenced." Robert also filed a demurrer in the

[26] The first lawsuit had also been related to the probate case in 2012. Trial occurred in the related probate case and first lawsuit from January–May 2013 in superior court.

third lawsuit, which the court overruled in October 2014, finding the complaint alleged "facts sufficient to constitute a cause of action."[27]

2. Culpability

Count seven alleges Stewart filed the third lawsuit, which was unjust and filed for an improper purpose, because it was duplicative of the first lawsuit, which was still pending, in violation of section 6068, subdivision (c). Despite the differences between the first and third lawsuits, the hearing judge found the third lawsuit's purpose was the same as the first because it sought to relitigate the probate court's January–May 2013 trial. The judge found the third lawsuit's new causes of action should have been litigated in the probate case and the new defendants were "to disguise the true purpose of the lawsuit." The judge found Stewart was culpable under count seven for filing and maintaining the third lawsuit in an effort to relitigate previously decided issues. OCTC supports the judge's finding.

We cannot affirm the hearing judge's finding as it stands in opposition to the superior court decision not to relate the cases, and its subsequent findings that the complaints were not duplicative, there was not a showing of bad faith or lack of evidentiary support, and the third lawsuit alleged facts sufficient to constitute a cause of action. We give a "strong presumption of validity" to the superior court's findings. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947 [in disciplinary proceedings, civil findings presumed valid if supported by substantial evidence].) Because OCTC has the burden of proving culpability by clear and convincing evidence (Rules Proc. of State Bar, rule 5.103), we find it has not met that burden here as it did not prove the third lawsuit was duplicative of the first or filed for an improper purpose. Accordingly, we do not find Stewart violated section 6068, subdivision (c), by filing the third lawsuit, and we dismiss count seven with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

[27] After months of litigation, all defendants except Robert were dismissed from the third lawsuit. Stewart dismissed the third lawsuit on December 18, 2015.

D. Count Two: Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))[28] Count Three: Failure to Obey a Court Order (§ 6103)[29]

1. Facts

On September 12, 2013, Robert filed a motion for sanctions against Richard in the second lawsuit. On October 1, Stewart dismissed the second lawsuit. On October 25, the court imposed sanctions against Stewart and his clients in the amount of $18,520, jointly and severally. Stewart did not report the sanctions order to the State Bar within 30 days. The Court of Appeal dismissed Stewart's appeal of the sanction order and the Supreme Court did not grant review. The sanctions were never paid.

In May 2014, OCTC contacted Stewart about his failure to report the October 25, 2013 sanctions order. In July, OCTC notified him that it was not taking disciplinary action against him at that time. The July 2014 letter warned Stewart that the matter could be reopened and, if it was, he would be given notice and opportunity to participate in any further disciplinary proceedings. OCTC subsequently brought the charge in the instant matter, to which Stewart responded.

2. Culpability under Count Two

Count two of the ANDC alleges Stewart failed to report in writing to the State Bar that the court imposed $18,520 in sanctions against him on October 25, 2013, in the second lawsuit, in violation of section 6068, subdivision (o)(3). The hearing judge found Stewart culpable as charged. We agree; Stewart admitted at trial he did not report the sanctions order to the state Bar within 30 days.

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[28] Section 6068, subdivision (o)(3), provides that it is the duty of an attorney to report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of the imposition of judicial sanctions against the attorney.

[29] Section 6103 provides for disbarment or suspension when an attorney willfully disobeys or violates a court order "requiring him to do or forbear an act connected with or in the course of his profession, which he ought to in good faith to do or forbear."

On review, Stewart argues count two should be dismissed under rule 2603 of the Rules of Procedure of the State Bar, which provides that OCTC may reopen an investigation (1) if there is new material evidence or (2) if the Chief Trial Counsel, or its designee, determines that there is good cause. He asserts OCTC improperly took a "second bite at a closed matter" and did not prove at trial the requirements of rule 2603 of the Rules of Procedure of the State Bar. We reject these arguments. The 2014 investigation did not constitute discipline and, therefore, Stewart is not facing discipline twice for the same offense. He was warned the matter could be reopened, and no authority suggests that any further proceedings related to the investigation would be barred. When this misconduct was charged, he was provided notice, was given an opportunity to respond, and did respond to both the NDC and ANDC. OCTC has exclusive jurisdiction to conduct investigations and determine whether to file a notice of disciplinary charges. (Rules Proc. of State Bar, rule 2101.) As part of that exclusive jurisdiction, it can decide whether to reopen an investigation, and may do so if there is new material evidence or other good cause. (Rules Proc. of State Bar, rule 2603.) In reviewing the record, it is evident good cause existed to reopen the case due to the additional allegations of misconduct alleged against Stewart related to his failure to report the sanctions. We find no procedural error by the hearing judge and agree the facts support Stewart's culpability under count two.

3. Culpability under Count Three

Count three of the ANDC alleges Stewart failed to comply with the October 25, 2013[30] order to pay sanctions of $18,520 in the second lawsuit, in violation of section 6103. The hearing judge found Stewart culpable as charged.

On review, Stewart argues he is not culpable under section 6103 because he believed his clients would pay the sanctions as they were imposed against Stewart and his clients, jointly and

[30] The ANDC contained a typographical error, incorrectly listing 2015 as the year of the order. The hearing judge found that Stewart had notice of the charge despite the error. We agree.

severally. He argues he did not act willfully in failing to pay the sanctions because (1) he attempted to resolve the sanctions order as part of a global settlement of the trust litigation and (2) he subsequently believed the sanctions order had been satisfied because his clients had "approved" the $18,520 in attorney fees to be paid as an expense of the Trust under the accounting. The hearing judge rejected these arguments and found the accounting did not include payment of the sanctions order by the Trust. We agree with the judge—any attorney fees approved by the Trust was for work done for it, not for payment of sanctions ordered against Stewart and his clients. The Trust bore no responsibility for paying the $18,520 in sanctions. The sanctions were never paid and, therefore, Stewart is culpable of violating section 6103.

IV. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[31] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Stewart to meet the same burden to prove mitigation.

A. Aggravation[32]

1. Uncharged Violations (Std. 1.5(h))

The hearing judge found Stewart's filing of a fifth lawsuit was unjust and constituted additional misconduct.[33] We decline to find additional aggravation based on uncharged

[31] All further references to standards are to this source.

[32] Stewart argues that the hearing judge made aggravation findings when OCTC did not attempt to prove aggravation. He also contends OCTC did not make any arguments regarding aggravation at trial and, therefore, he did not have an opportunity to defend against aggravation. He also maintains OCTC did not prove any aggravation. We agree with OCTC that Stewart's arguments are without merit. We also disagree with Stewart's assertion that OCTC conceded it did not present evidence of aggravation.

[33] On May 16, 2019, Stewart filed *Richard S. Kvassay, et al. v. Chicago Title Insurance Company, et al.*, Los Angeles Superior Court, Case No. 19STCV17120 (fifth lawsuit). The fifth

misconduct because OCTC failed to amend the ANDC to include the additional charge for the fifth lawsuit. (Rules Proc. of State Bar, rule 5.44(C) [amendment to conform to proof of issues raised during trial is permissible, but attorney must have reasonable time to respond and to prepare defense if he objects]; *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35 [attorney may not be disciplined for violation not alleged in NDC].) While *Edwards* provides that evidence of uncharged misconduct may be used in aggravation, it requires that the proof of the allegations be based on Stewart's own testimony "elicited for the relevant purpose of inquiring into the cause of the charged misconduct." (*Edwards v. State Bar*, *supra*, 52 Cal.3d at p. 36.) OCTC knew of the fifth lawsuit before trial—it lodged exhibits with the court relating to the fifth lawsuit before trial began. The evidence did not originate from Stewart's testimony elicited for the relevant purposes of inquiring into the charged misconduct. OCTC had notice of the fifth lawsuit and failed to charge it as misconduct in the ANDC or at trial as conforming to proof. This denies Stewart a fair opportunity to defend against the charge. (See *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235, fn. 16.) Therefore, we do not assign aggravation for uncharged misconduct related to the fifth lawsuit.[34]

2. Multiple Acts of Wrongdoing (Std. 1.5(b)) and Pattern of Wrongdoing (Std. 1.5(c))

The hearing judge found significant aggravation for Stewart's multiple acts of wrongdoing. We find fewer acts of culpability than the hearing judge did, but agree that aggravation is appropriate under standard 1.5(b). Stewart's four ethical violations sufficiently establish multiple acts of misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State

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lawsuit is related to the sale of Hill Drive. The litigation was ongoing at the time of Stewart's disciplinary trial.

[34] We reject OCTC's argument on review supporting the hearing judge's finding of uncharged misconduct because its argument focuses on the fact that the fifth lawsuit shows Stewart's "ongoing and extreme indifference," and OCTC does not address its failure to bring this charge or conform the charges to proof.

Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].) Based on their limited nature, we assign minimal weight in aggravation.

On review, OCTC argues the hearing judge should have found that Stewart's misconduct involved a pattern of wrongdoing under standard 1.5(c). OCTC cites to *In the Matter of Kinney*, *supra*, 5 Cal. State Bar Ct. Rptr. 360 in support of its argument that Stewart's misconduct constitutes a pattern. We found Kinney culpable of violating section 6068, subdivision (c), and his misconduct demonstrated a pattern of wrongdoing because (1) he committed misconduct in two different matters; (2) the misconduct was ongoing for over six years; and (3) Kinney was told by the court on numerous occasions his filings were frivolous, duplicative, contained incoherent briefing, or failed to state a discernible theory of recovery. Kinney's misconduct was egregious; he defied a vexatious litigant order, was described as a "relentless bully" who mocked the system with baseless litigation, used the judicial system "as a weapon to inflict onerous litigation costs" on his neighbors for his own benefit, brought 16 meritless appeals, and acted in bad faith.

In contrast, Stewart's violations of section 6068, subdivision (c), relate to the filing of two actions in 2013. We do not find ongoing misconduct as OCTC argues,[35] and we have rejected most of OCTC's contentions that Stewart improperly filed five civil lawsuits, five bankruptcy adversary proceedings, and countless motions, petitions, and appeals. Stewart's misconduct as found under count four, paragraphs (a) and (b) is serious; however, it is not severe enough to establish a pattern of wrongdoing. (See *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [pattern must involve serious misconduct spanning extended time period]; *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 317

[35] We reiterate that the fifth lawsuit is not part of the misconduct in this proceeding as it was not charged here.

[no pattern where attorney committed 24 counts of misconduct during a four-year period].) Therefore, we do not assign additional aggravation under standard 1.5(c).

3. Significant Harm to the Client, the Public, or the Administration of Justice (Std. 1.5(j))

We decline to find aggravation for significant harm under standard 1.5(j) as the hearing judge did. The judge found the Trust had been harmed by incurring over $1 million in attorney fees and costs to defend against the lawsuits and adversary proceedings filed by Stewart. However, the evidence only establishes one lawsuit and one adversary proceeding were filed improperly.[36] Therefore, the Trust's attorney fees and costs cannot all be attributed to Stewart's misconduct, and OCTC did not establish by clear and convincing evidence the amount that the Trust incurred defending these two actions. Consequently, we cannot find Stewart's actions caused significant harm to the beneficiaries of the Trust for any diminishment in Trust funds or future distributions.[37]

In addition, we do not find significant harm as the hearing judge did for (1) Robert's personal sacrifices, including returning to work and using retirement funds, to maintain the Trust; (2) the decision for Robert's wife to postpone her retirement; and (3) the fact that Robert's children might have already been paid their gifts under the Trust. There is no clear and convincing evidence Stewart's misconduct caused these occurrences. We also do not agree clear and convincing evidence established Robert was significantly harmed due to his interactions with Stewart, which included a courtroom confrontation and an argument at Hill Drive. Therefore, we do not assign aggravation under standard 1.5(j).

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[36] As such, there is no clear and convincing evidence that Stewart's misconduct was aggravated by significant harm to the administration of justice.

[37] This is not to say that Stewart's actions did not cause any harm by diminishing Trust assets. On the contrary, his misconduct did cause the Trust to defend against two improper actions. The evidence is just not clear and convincing that *significant* harm resulted for aggravation purposes. Therefore, we reject Stewart's argument that he should receive mitigation credit for lack of harm under standard 1.6(c).

4. Indifference (Std. 1.5(k))

Standard 1.5(k) provides that an aggravating circumstance may include "indifference toward rectification or atonement for the consequences of the misconduct." The hearing judge found significant aggravation under standard 1.5(k) because Stewart has not expressed insight into or remorse for the consequences of filing considerable litigation on behalf of Peter and Richard. However, we do not find clear and convincing evidence that Stewart's improper filings were as extensive as the judge found. Therefore, we decline to assign aggravation for indifference based on the totality of the litigation filed by Stewart.

Nonetheless, Stewart insists on review he should not be disciplined for any of his misconduct. This demonstrates his unwillingness to reflect on the appropriateness of his actions, including filing the second lawsuit and Richard's First AP, and particularly in light of his failure to ensure that the $18,520 sanctions are paid as ordered in the second lawsuit. (*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 attorney accept responsibility for his acts and come to grips with his culpability]; *In re Morse* (1995) 11 Cal.4th 184, 209 [unwillingness to consider appropriateness of legal challenge or acknowledge its lack of merit is aggravating factor].) We affirm the hearing judge's finding of aggravation for indifference, but assess only limited weight.

B. Mitigation

1. No Prior Record of Discipline (Std. 1.6(a))

Mitigation is available where no prior record of discipline exists over many years of practice, coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) The hearing judge gave "some credit" for Stewart's approximately 25 years of discipline-free practice. The judge did not assign full credit due to the fifth lawsuit, which he found to be evidence of recurring misconduct. As discussed above, we do not consider the fifth lawsuit as part of this disciplinary

proceeding. However, Stewart's indifference suggests that his misconduct may recur. (See *Cooper v. State Bar* (1987) 43 Cal. 3d 1016, 1029 [when misconduct is serious, long record without discipline is most relevant when misconduct is aberrational].) Nonetheless, given his many years of discipline-free practice, we assign moderate weight for his lack of prior discipline.

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

An attorney may be entitled to mitigation credit if he can establish a "good faith belief that is honestly held and objectively reasonable." (Std. 1.6(b).) The hearing judge rejected Stewart's argument that he had a good faith belief because he was merely acting in the best interests of his client. Any such belief was not objectively reasonable and, therefore, he declined to assign any mitigation under standard 1.6(b).

On review, Stewart asserts he had a good faith belief that he did not engage in professional misconduct in count two because he thought it was resolved by OCTC's letter to him closing the complaint. Regarding count three, he argues he believed the sanctions order had been satisfied. Both arguments fail as these beliefs are not objectively reasonable. Stewart admitted he did not report the sanctions—OCTC's letter notifying Stewart that it decided not to take disciplinary action at that time has nothing to do with Stewart's decision to commit the underlying misconduct. Stewart's arguments regarding the sanctions order are also unreasonable and not supported by the evidence.

Stewart also claims mitigation for a good faith belief related to his culpability for pursuing unjust actions, arguing that those proceedings were supported by law and facts. We reject this argument as we find Stewart's decisions to file the second lawsuit and Richard's First AP were completely unreasonable as the actions were without merit and conflicted with prior court orders. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [attorney must prove beliefs were honestly held and reasonable to qualify for good faith

mitigation].) Therefore, we give no mitigative weight to Stewart's assertion of a good faith belief in pursuing unjust actions. "To conclude otherwise would reward [Stewart] for his unreasonable beliefs and 'for his ignorance of his ethical responsibilities.' [Citation.]" (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 788.)

3. Excessive Delay (Std. 1.6(i))

Excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the attorney is a mitigating circumstance. (Std. 1.6(i).) The hearing judge declined to assign mitigation for excessive delay. Stewart does not challenge this finding on review. We affirm the hearing judge's decision.

V. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar*, *supra*, 49 Cal.3d 1302 at pp. 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction shall be imposed where multiple sanctions apply].) The most severe sanction applicable here is under standard 2.12(a) and provides for actual suspension or disbarment for a violation of a court order

related to the attorney's practice of law.[38] Section 6103 itself states disbarment or suspension is appropriate discipline for disobeying a court order, and the Supreme Court has emphasized that violations of court orders are serious misconduct. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112 ["Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney"].) Accordingly, the lowest appropriate discipline here would be 30 days for Stewart's failure to obey a court order. (Std. 1.2(c)(1) [actual suspension generally for 30 days, 60 days, 90 days, six months, one year, 18 months, two years, or three years].) Because Stewart's misconduct also includes a failure to report judicial sanctions and filing improper actions, a sanction above the minimum is required.[39]

Case law for violations of section 6068, subdivision (c), also provides guidance. *In the Matter of Kinney*, *supra*, 5 Cal. State Bar Ct. Rptr. 360 and *In the Matter of Varakin*, *supra*, 3 Cal. State Bar Ct. Rptr. 179 are examples relied upon by OCTC in its request for disbarment and involved egregious pursuits of unjust litigation involving moral turpitude and a pattern of wrongdoing. Stewart's culpability is far less than in *Kinney* and *Varakin* and therefore disbarment is clearly not warranted.[40]

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[38] Because the hearing judge found misconduct under section 6068, subdivision (c), and the misconduct caused significant harm, the judge applied standard 2.9(a). That standard provides for actual suspension where an attorney counsels or maintains a frivolous claim or action or uses means that have no substantial purpose, resulting in significant harm or, if the misconduct demonstrates a pattern, then disbarment is appropriate. However, because significant harm or pattern has not been proven, standard 2.9(b) applies instead, which provides for suspension or reproval for those same acts of misconduct as described in standard 2.9(a), where harm is caused. Standard 2.12(b) is also applicable and provides for reproval for a failure to report judicial sanctions.

[39] Because we find Stewart culpable of multiple acts of misconduct, we reject his argument that the ANDC be dismissed with prejudice and with no recommendation of discipline.

[40] We also reject OCTC's comparison of Stewart's misconduct to that in *Rosenthal v. State Bar* (1987) 43 Cal.3d 658. Rosenthal did violate section 6068, subdivision (c), by maintaining proceedings he knew to be unjust or illegal abuses of process, but he also committed several other violations for a total of 13 counts of misconduct. Rosenthal made numerous misrepresentations to the court, failed to appear at hearings, and committed other "obstinate and

Stewart's violation of section 6068, subdivision (c), is more comparable to the violation in *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446. We found that Scott's litigation of four related lawsuits constituted a violation of section 6068, subdivision (c), because he filed actions that were frivolous and unjust, based on continued allegations he knew he could not prove. We concluded a 60-day actual suspension was appropriate. Stewart is culpable of additional misconduct for a failure to report sanctions and a failure to obey a court order. Accordingly, an actual suspension longer than 60 days is appropriate for Stewart.

The hearing judge recommended an actual suspension of three years and until Stewart proves his rehabilitation, fitness to practice, and present learning and ability in the general law pursuant to standard 1.2(c)(1). Based on our finding of far less culpability and aggravation, in addition to a review of the case law and the standards, we find less discipline is warranted. However, Stewart's misconduct was serious—he filed actions without a legal basis, failed to report judicial sanctions to the State Bar, and failed to pay any part of the $18,520 sanctions order. For these reasons, we recommend 90 days of actual suspension. In addition, we recommend Stewart remain suspended until the sanctions are paid in full. This requirement is rehabilitative and reinforces the import of obeying court orders. (See *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 869.) We find that a two-year period of probation will emphasize to Stewart the importance of strictly following court orders and maintaining only actions that are legal or just. (See *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403 ["Obedience to court orders is intrinsic to the respect attorneys and their clients must accord the judicial system"].)

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defiant conduct." Rosenthal's misconduct went even further than that of Kinney's or Varakin's, and is unsuitable to compare to Stewart's misconduct.

VI. RECOMMENDATION

We recommend that Troy Alvord Stewart, State Bar Number 135764, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years with the following conditions:

1. **Actual Suspension Continuing Until Satisfaction of Conditional Standard 1.2(c)(1) Requirement.** Stewart must be suspended from the practice of law for a minimum of the first 90 days of his probation, and will remain suspended until the following requirements are satisfied:

    a. Stewart furnishes satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles (Office of Probation) of the $18,520 in sanctions ordered on October 25, 2013 in *Kvassay v. Kvassay*, Los Angeles County Superior Court, Case No. BC498669.

    b. If Stewart remains suspended for two years or longer, he must provide proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Stewart must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the Office of Probation with Stewart's first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Stewart must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Stewart must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Stewart must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Stewart must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Stewart may meet

with the probation case specialist in person or by telephone. During the probation period, Stewart must promptly meet with representatives of the Office of Probation as requested and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries and provide any other information requested.

6. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Stewart's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Stewart must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Stewart must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports.**

   a. **Deadlines for Reports.** Stewart must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Stewart must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

   b. **Contents of Reports.** Stewart must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

   c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

   d. **Proof of Compliance.** Stewart is directed to maintain proof of compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of actual suspension has ended, whichever is longer. Stewart is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Stewart must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Stewart will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. **Commencement of Probation/Compliance with Probation Conditions.** The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Stewart has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

10. **Proof of Compliance with Rule 9.20 Obligation.** Stewart is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include the names and addresses of all individuals and entities to whom Stewart sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Stewart be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Stewart provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Stewart be ordered to comply with the requirements of California Rules of Court, rule 9.20, 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 order imposing discipline in this matter.[41] Failure to do so may result in disbarment or suspension.

IX. MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions as all the misconduct in this matter occurred prior to April 1, 2020, the effective date of rule 5.137 of the Rules of Procedure of the State Bar, which implements Business and Professions Code section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [rules of statutory construction apply when interpreting Rules Proc. of State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent express retroactivity provision in statute or clear extrinsic sources of intended retroactive application, statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of statute is ambiguous, statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

X. COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in

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[41] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Stewart is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.