

Filed August 8, 2023

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	SBC-22-R-30503
)	
SANJAY BHARDWAJ,)	OPINION
)	
Petitioner for Reinstatement.)	
_____)	

This case presents an opportunity to address various reinstatement procedural matters. After being disbarred from the practice of law, petitioner Sanjay Bhardwaj filed a petition for reinstatement (petition) on May 27, 2022. The Office of Chief Trial Counsel of the State Bar (OCTC) moved to dismiss the petition, and a hearing judge exercised her discretion and dismissed Bhardwaj’s petition with prejudice. The judge found that Bhardwaj: (1) failed to comply with the discipline costs payment requirement of rule 5.441(B)(2) of the Rules of Procedure of the State Bar;¹ and (2) failed to show proof of passage of the Multistate Professional Responsibility Examination (MPRE) within one year prior to filing his petition as required under rule 5.445(A)(1).

Bhardwaj appeals and argues the hearing judge erred by prematurely dismissing his petition. He claims he did not have notice of OCTC’s motion to dismiss, was not afforded an opportunity to be heard, and he raises several procedural challenges. He seeks multiple remedies, including remand, or alternatively requests that he be permitted to immediately file a

¹ All further references to rules are to Rules of Procedure of the State Bar unless otherwise noted.

new petition with the filing fee waived.² OCTC does not appeal and requests that we affirm the judge's decision.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find the hearing judge did not abuse her discretion in dismissing Bhardwaj's petition pursuant to rule 5.441(E). Except as modified, we affirm the dismissal, and do so without prejudice.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. Bhardwaj's Disbarment

Bhardwaj was admitted to practice law in California on December 1, 2008. He has one prior record of discipline. On June 6, 2016, OCTC filed disciplinary charges against him in State Bar Court case number 14-O-00848 (disciplinary case). Bhardwaj was ordered inactive, pursuant to Business and Professions Code section 6007, subdivision (c)(4),³ effective May 11, 2017, when the hearing judge recommended disbarment. This court filed its opinion and also recommended that Bhardwaj be disbarred on May 1, 2019. On January 2, 2020, the Supreme Court ordered Bhardwaj disbarred from the practice of law and awarded costs to the State Bar in accordance with section 6086.10.⁴ (S256601.) Bhardwaj filed a motion for a new trial and petition for rehearing, which were both denied. Thus, Bhardwaj's disbarment became effective on April 29, 2020.

² Under rule 5.442(C), if a petitioner receives an adverse decision on a prior petition for reinstatement following disbarment, a subsequent petition cannot be filed for two years after the effective date of an adverse decision, unless the court orders a shorter period for good cause shown.

³ All further references to sections are to the Business and Professions Code unless otherwise noted.

⁴ The total amount of discipline costs assessed according to the certificate of costs was \$25,404.82.

B. Reinstatement Proceeding

On May 27, 2022, Bhardwaj filed his petition seeking reinstatement to the practice of law.⁵ He stated in his petition that he had “filed a motion concurrent with the petition for reinstatement to be able to pay any and all disciplinary costs through an installment plan of \$200 monthly.” He attached to his petition an exhibit entitled, “Notice of and Motion for Approving Payment Plan for Disciplinary Costs” (payment plan motion).⁶

On July 11, 2022, the hearing judge held a status conference and discussed the timeline for the proceedings in the reinstatement case; she also ordered OCTC to file its response to Bhardwaj’s petition by October 4, 2022. During the conference, the judge stated that she noticed in his petition that Bhardwaj had not taken the MPRE. Bhardwaj informed the judge he would be taking the August 2022 exam; consequently, the judge requested that he “file any update after the MPRE.” In fact, Bhardwaj had stated in his petition that he took the March 2022 MPRE but was “not fully satisfied with his performance” and planned to retake the exam in August 2022. He also attached a copy of his March 2022 MPRE score to the petition, which showed that he received a score of 83.⁷

On July 20, 2022, OCTC filed a motion to dismiss the petition on the grounds that Bhardwaj did not comply with the filing requirements of rules 5.441(B) and 5.445(A)(1), respectively, because he failed to pay discipline costs or file a motion for an extension of time to

⁵ In accordance with rule 5.442(B), Bhardwaj waited five years from the date he was transferred to involuntary inactive status before filing his petition.

⁶ Bhardwaj included his email address in the caption of his payment plan motion, and the Hearing Department utilized this email address for the purpose of electronic service of its orders.

⁷ Like the hearing judge, we note that Bhardwaj did not receive a passing score on his March 2022 MPRE. Rule 4.59 of title 4, division 1, chapter 5 of the Rules of the State Bar states that the passing score of the MPRE is determined by the Committee of Bar Examiners (the Committee). The judge properly took judicial notice that the Committee had determined the passing score to be 86. (See rule 5.104(H)(4).)

pay costs prior to filing the petition, and he failed to pass the MPRE within one year prior to filing the petition. On August 18, the hearing judge granted OCTC's motion and dismissed Bhardwaj's reinstatement proceeding with prejudice (Dismissal Order). On August 26, Bhardwaj filed a motion for reconsideration and to set aside the dismissal (motion for reconsideration). He contended that OCTC's electronic service was improper because he never received its motion to dismiss and argued that dismissal was premature because his failure to file the payment plan motion should not be a basis to dismiss his petition. On September 8, OCTC filed an opposition to Bhardwaj's motion for reconsideration.

On September 8, 2022, Bhardwaj filed an update to his petition which included a copy of his August 11, 2022 MPRE results, showing he received a passing score of 113. On September 30, the hearing judge issued an order denying Bhardwaj's motion for reconsideration (Order Denying Reconsideration) and affirmed the dismissal of the petition for reinstatement.

On October 4, 2022, Bhardwaj filed a request for review of the hearing judge's dismissal of his petition. After the parties satisfied the briefing schedule, oral arguments were heard on May 18, 2023, and the matter was submitted the same day.

II. DISCUSSION⁸

A. Requirements for Reinstatement

Reinstatement proceedings are governed under rule 5.440 et seq. Rule 5.441 provides a list of "filing requirements" that a petitioner must comply with when seeking reinstatement; failure to comply with any of the requirements is "grounds to dismiss the petition."

⁸ In his briefs, Bhardwaj requests that we take judicial notice of the court dockets in this proceeding and in his disciplinary case. OCTC does not oppose the request. We grant Bhardwaj's request, in part, and take judicial notice of the court docket in State Bar Court case number 14-O-00848 and note that the docket in the instant proceeding (SBC-22-R-30503) is already part of the record on review. (Rule 5.156(B) [Review Department may take judicial notice of Supreme Court or State Bar Court decisions and orders arising out of any State Bar Court proceeding involving party who is subject of proceeding under review].)

(Rule 5.441(E).) Some of these requirements are designated as “prefiling” requirements set forth in rule 5.441(B). Specifically, rule 5.441(B)(2) requires a petitioner to submit proof of payment of discipline costs under section 6086.10, subdivision (a), unless the petitioner falls within one of two exceptions. Additionally, under rule 5.445(A), a petitioner for reinstatement who previously had been disbarred must: (1) pass a professional responsibility exam (PRE) within one year prior to filing the petition; (2) establish rehabilitation; (3) establish present moral qualifications for reinstatement; and (4) establish present ability and learning in the general law by providing proof of taking and passing the Attorneys’ Examination within three years prior to the filing of the petition.

B. Dismissal of the Petition Was Appropriate

After a petition is filed, the hearing judge may dismiss it pursuant to rule 5.441(E) if a petitioner fails to comply with the filing and prefiling requirements under rule 5.441. The hearing judge dismissed Bhardwaj’s petition with prejudice, concluding that the petition contained incurable prefiling deficiencies under rule 5.441(B)(2), because Bhardwaj had not satisfied the discipline costs payment requirement, and under rule 5.445(A)(1), as Bhardwaj had failed to timely pass the MPRE.

We agree but clarify that, pursuant to rule 5.441(B)(2), paying discipline costs is a condition of applying for reinstatement while, pursuant to rule 5.445(A)(1), passing the MPRE may be proven during the reinstatement process. In any event, dismissal was appropriate under rule 5.441(E).

We review the hearing judge’s dismissal of Bhardwaj’s petition for an abuse of discretion. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690 [hearing judge’s procedural ruling reviewed under abuse of discretion standard].) The test for an abuse of discretion is whether the court “exceeded the bounds of reason, all of the circumstances before it

being considered.” (*H. D. Arnaz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368.) To prevail on a claim of error, abuse of discretion and actual prejudice resulting from the ruling must be established. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241.)

1. The payment of discipline costs is a condition of applying for reinstatement.

It is undisputed that Bhardwaj did not pay the assessed discipline costs at or prior to the time he filed his petition. He argues that the payment of discipline costs is a condition of reinstatement, not a condition of applying for reinstatement, and he was entitled to a hearing on the matter.

Rule 5.441(B) states that “[p]rior to filing the petition, the petitioner must satisfy the following requirements and must attach proof of compliance to the petition” One of these requirements concerns the payment of discipline costs and monetary sanctions. Specifically, rule 5.441(B)(2) provides that “[u]nless the petitioner files a motion for extension of time for payment under these rules, or has already been granted an extension which has not expired at the time of the filing of the petition,” the petitioner must submit proof of payment of the aforementioned costs and sanctions. This part of the rule derives from section 6140.7, which states in relevant part that “unless time for payment of discipline costs is extended pursuant to subdivision (c) of [s]ection 6086.10,⁹ costs assessed against a licensee . . . who is actually suspended or disbarred shall be paid as a condition of applying for reinstatement of his or her license to practice law” Thus, the plain language of the statute requires discipline costs to be paid as a condition of applying for reinstatement.

⁹ Section 6086.10, subdivision (c), states that a petitioner may be granted relief from costs or an extension of time to pay costs “in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.”

Bhardwaj correctly asserts that our unpublished Opinion and Order (modified June 5, 2019) in the underlying disciplinary case informed him that the imposed discipline costs must be paid “as a condition of reinstatement or return to active status.”¹⁰ Section 6140.7, which previously required the payment of discipline costs as a condition of reinstatement, was amended by the Legislature, effective January 1, 2019, to expressly require the payment of such costs “as a condition of *applying* for reinstatement.” (Italics added.) Although our modified Opinion and Order did not capture the amended language, we informed Bhardwaj in the same paragraph that discipline costs were “enforceable as provided in section 6140.7,” as did the Supreme Court when it issued its disbarment order and assessed costs, which is the effective order. Furthermore, a petitioner is bound by the statutes that are in effect when applying for reinstatement. Because the amendment to section 6140.7 clarifies that payment of discipline costs is required as a condition of applying for reinstatement, it was not error for the hearing judge to dismiss the petition without a hearing if such proof did not accompany the petition and if one of the exceptions, discussed below, did not apply. (Rule 5.441(E).)

2. Bhardwaj did not properly file his payment plan motion.

Bhardwaj contends that an exception to the rule requiring the payment of disciplinary costs applies because he filed a motion for extension of time to pay. (See Rule 5.441(B)(2).) He argues that his payment plan motion was attached to his petition and was, therefore, filed, and the hearing judge should have inquired with the clerk regarding the status of his motion. An extension of time to pay discipline costs may be granted in the discretion of the State Bar Court for good cause shown. (§ 6086.10, subd. (c); see *In the Matter of Respondent J* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 273.) OCTC asserts that the filing of the payment plan motion

¹⁰ Bhardwaj also relies on rule 5.137, but that rule concerns the imposition and payment of monetary sanctions, which is not at issue in this case.

was a prefiling requirement with which Bhardwaj failed to comply, as it was not filed in his underlying disciplinary case.

Rule 5.441(B) states that a petitioner is required to satisfy certain requirements prior to filing the petition and must attach proof of compliance to the petition. The prefiling requirement pertaining to discipline costs contains an exception to the requirement that proof of their payment must be attached—if the petitioner “*files* a motion for extension of time for payment under these rules”—which is the essence of Bhardwaj’s payment plan motion that was attached to his petition. (Rule 5.441(B)(2), italics added.) The fact that the pertinent exception is written in the present tense indicates that filing a motion for extension of time for payment is something that can be accomplished simultaneous to the filing of the petition. Meanwhile, all other prefiling requirements contained in rule 5.441(B)(1), (3), and (4) are written in the past perfect tense, indicating that they are to have been completed—or perfected—before the filing of the petition. Rule 5.441(B)(2) does not specifically require Bhardwaj to submit proof with his petition that he filed the motion; rather, the proof of compliance refers only to proof that he paid disciplinary costs, which would not occur if he was seeking an extension of time to pay those costs.

Rule 5.441(B)(2) does not expressly state whether a motion to extend time for payment of discipline costs based on financial hardship must be filed in the reinstatement case or in the underlying disciplinary case. Instead, the rule requires that the filing of such a motion be made “under these rules.” Motions for relief or an extension of time to comply with costs orders are decided by the Hearing Department and governed by rule 5.130(B), which provides that motions based on financial hardship be filed “as soon as practicable under the circumstances” or “within 30 days after the effective date of . . . the filing of a Supreme Court order assessing costs.”

Because a motion for extension of time to pay discipline costs is seeking to modify an order issued in the underlying disciplinary case, we find that it must be filed in that disciplinary case.¹¹

We are not persuaded by Bhardwaj's claim that he was repeatedly told by the State Bar Court that it lacked jurisdiction to hear motions he filed in the underlying disciplinary case; thus, he could not file his payment plan motion in his disciplinary case. Bhardwaj is referring to a Motion for a New Trial and/or Alternative Relief (motion for new trial) that he filed in the Review Department on January 13, 2020, and shortly thereafter in the Hearing Department on January 21, even though he had been informed by the Review Department in a July 5, 2019 order that his case had been transmitted to the Supreme Court on June 26, 2019. After judges in the Hearing Department and Review Department dismissed his motions for lack of jurisdiction due to his case having been transmitted to the Supreme Court (see *In the Matter of Applicant B* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 731, 733), Bhardwaj pressed on, filing motions for reconsideration in both departments, which were again dismissed for lack of jurisdiction. On April 29, 2020, the Supreme Court not only denied Bhardwaj's motion for new trial and petition for rehearing that he filed on January 16, but it also imposed costs and closed the case. Rule 5.130(B) specifically contemplates that motions for extension of time to pay discipline costs will occur *after* the Supreme Court issues an order imposing costs, indicating that jurisdiction returns to the State Bar Court to address any such motion.

Even if the payment plan motion had been considered to have been properly filed, it still did not satisfy a threshold requirement. As OCTC correctly points out, rule 5.130(B) requires that motions for relief for complying or extending the time to comply with discipline costs based on financial hardship must be accompanied by a completed financial statement in the form

¹¹ Hence, rule 5.130(B) requires that the case number be placed on the motion, which was lacking in Bhardwaj's payment plan motion.

prescribed by the State Bar Court, and Bhardwaj's payment plan motion lacked the requisite financial statement.¹² Thus, even with us resolving all reasonable doubts in Bhardwaj's favor¹³ and assuming the payment plan motion attached to his petition should have been deemed filed with the State Bar Court, we conclude dismissal would still be appropriate under rule 5.441(E), because Bhardwaj's payment plan motion claiming financial hardship did not conform with rule 5.130(B).

We equally reject Bhardwaj's argument that because the clerk filed his petition, it "means that the petition met the requirements [of the rules governing reinstatement] on its face." While there is no published case law that discusses rule 5.441(B), we discussed the prefiling discipline costs requirement in *In the Matter of MacKenzie* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 56, which interpreted former rule 662(c), the predecessor to rule 5.441(B).¹⁴ It was undisputed that the petitioner in *MacKenzie* had not filed proof of payment of discipline costs when filing his petition for reinstatement. This court concluded it would be unreasonable for the clerk, when filing the petition, to determine whether a petitioner's pleadings satisfied the discipline cost requirement because a clerk is not a judicial officer, and the clerk's role is "limited to ministerial duties." (*In the Matter of MacKenzie, supra*, 5 Cal. State Bar Ct. Rptr. at p. 63, fn. 9.) We further concluded that only the court can determine whether a petitioner has been relieved of costs payment obligations. (*Ibid.*) We apply the same reasoning in this case to find that when a

¹² In its responsive brief, OCTC requests that we take judicial notice of the fact that the required form entitled "Financial Declaration in Support of Motion for Relief" is available on the State Bar Court's website. We grant OCTC's request. (Rule 5.156(B).)

¹³ Reasonable doubts are ordinarily resolved in favor of the petitioner. (See *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 937.)

¹⁴ Former rule 662(c) stated in pertinent part that "[n]o petition for reinstatement shall be filed unless and until the petitioner has provided satisfactory proof to the State Bar Court that he or she has paid all discipline costs."

clerk accepts a petition that commences a reinstatement proceeding, such acceptance does not equate to a determination that the petitioner has satisfied all requirements under rule 5.441(B).

3. Proof of timely passage of the MPRE is not a prefiling requirement.

Bhardwaj also asserts that the hearing judge erroneously assumed that the MPRE is a prefiling requirement. He argues that because the requirement—that he “pass a professional responsibility examination within one year prior to filing the petition” (rule 5.445(A)(1))—is contained within the rule describing his burden of proof, passage of the MPRE is not a prefiling requirement; rather, it is an element to be proven during the course of the reinstatement process. OCTC argues that passing the MPRE prior to the filing of the petition makes the requirement a de facto prefiling requirement.

We agree with Bhardwaj only to the extent that proof of timely passing a PRE is not a prefiling requirement. The language in rule 5.445(A) is derived from the California Rules of Court. Specifically, California Rules of Court, rule 9.10(f), requires applicants for readmission or reinstatement to pass a PRE, establish their rehabilitation and present moral qualifications, and demonstrate present ability and learning in the general law. But it does not compel applicants to prove they passed a PRE as a prefiling requirement.

We previously found that former rule 665(a), concerning passage of a PRE, was a requirement that could be proven during the reinstatement process as opposed to one that must be established upon filing the petition. (*In the Matter of Sheppard* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 91, 99.) OCTC discounts our holding in *Sheppard*, arguing that we were interpreting ambiguous language in former rule 665(a). However, in holding that the PRE passage could be established during the reinstatement process, we determined that our interpretation was consistent with and would not impose greater burdens on a petitioner than

those established by former rule 951(f) of the California Rules of Court.¹⁵ (*Ibid.*) We reaffirmed this specific position, as well as the general proposition that the Rules of Procedure of the State Bar are subordinate to and must not conflict with the California Rules of Court, in *In the Matter of Mackenzie, supra*, 5 Cal. State Bar Ct. Rptr. at p. 64, stating, “We thus made it clear that the interpretation we were adopting saved rule 665(a) [of the Rules of Procedure] from impermissibly conflicting with rule 951(f) of the California Rules of Court.” Thus, while rule 5.445(A)(1) requires that a petitioner pass a PRE within one year prior to filing a petition for reinstatement, a petitioner is not required to *show* compliance upon the filing of the petition, which is consistent with California Rules of Court, rule 9.10(f).¹⁶ As we noted in *Sheppard*, a petitioner who takes this approach without being able to show proof at the hearing “takes a calculated risk,” as an adverse decision on the petition could follow, and the petitioner would presumably be prohibited from filing another petition for reinstatement for two more years. (*In the Matter of Sheppard, supra*, 4 Cal. State Bar Ct. Rptr. at p. 100.)

However, we disagree with Bhardwaj’s claim that because he passed the Attorneys’ Examination, which contains a professional responsibility component, he timely satisfied the requirement that he pass a PRE. The obligatory passage of a PRE is a requirement of the California Rules of Court separate and apart from the passage of the Attorneys’ Examination, which is demonstrated by the Supreme Court’s consideration of the PRE requirement:

[U]pon request of the State Bar we have recently adopted an amendment to California Rules of Court rule 952(d), effective January 1, 1976, relating to applications for readmission or reinstatement by former members of the bar who have been disbarred or have resigned with prejudice. New rule 952(d) requires all such applicants not only to establish their present moral fitness and knowledge of the law, but also to take and pass the Professional Responsibility Examination. In

¹⁵ The California Rules of Court was subsequently reorganized, and rule 951(f) became rule 9.10(f).

¹⁶ In *Sheppard*, we also rejected the State Bar’s assertion that our interpretation would strain or waste the resources of the State Bar. (*In the Matter of Sheppard, supra*, 4 Cal. State Bar Ct. Rptr. at p. 100.)

its letter of transmittal to this court the State Bar explained that the latter requirement, now imposed on all persons seeking admission to the California bar for the first time, becomes “even more essential” in the case of individuals who, once admitted, have demonstrated by their misconduct their failure to live up to the ethical standards of the profession.

(*Segretti v. State Bar* (1976) 15 Cal.3d 878, 890.) To adopt Bhardwaj’s view would render the addition of the PRE passage requirement in the California Rules of Court superfluous, and accordingly, we reject it. (See *In re C.H.* (2011) 53 Cal.4th 94, 103 [“It is a settled principle of statutory construction, that courts should ‘strive to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous.’ [Citations]”].)

Since Bhardwaj’s petition was deficient from the outset by failing to show proof of payment of discipline costs or by correctly filing a motion to extend such payment, the hearing judge appropriately exercised her discretion and dismissed the proceeding without a hearing.¹⁷

(*In the Matter of MacKenzie, supra*, 5 Cal. State Bar Ct. Rptr. at p. 66; rule 5.441(E).)

Considering that dismissal was proper under rule 5.441(E), we need not address whether Bhardwaj established his burden of proof for reinstatement under rule 5.445.

C. Bhardwaj’s Additional Arguments Are Unavailing¹⁸

On review, Bhardwaj claims he did not receive notice of OCTC’s motion to dismiss due to improper service, thereby resulting in his case being dismissed without a hearing. He further asserts errors by the hearing judge in denying his motion for reconsideration.

¹⁷ We disagree with the assertion by OCTC that if the petition is deficient under rule 5.441, then the hearing judge is required to dismiss the petition. Rule 5.441(E) states only that such a deficiency will be grounds for dismissal, but it does not go so far as to *prohibit* a judge from holding a hearing. (See, e.g., *In the Matter of MacKenzie, supra*, 5 Cal. State Bar Ct. Rptr. at p. 66 [judge can consider failure to timely pay costs as adverse factor in petitioner’s rehabilitation].)

¹⁸ We have independently reviewed each argument set forth by Bhardwaj on review and those not specifically addressed in this opinion are rejected as having no merit.

1. There was no error with OCTC’s electronic service of its motion to dismiss.

Bhardwaj asserts that he was not served with OCTC’s motion to dismiss and had no notice of the motion so that he could respond. He states that because he never consented to electronic service, he was not properly served with OCTC’s motion and never actually received it. He also claims that he is entitled to relief under Code of Civil Procedure section 473, subdivision (b), because the reinstatement proceeding was dismissed against him through “surprise,” and the hearing judge failed to schedule a hearing before ruling on OCTC’s motion. We find that his arguments lack merit.

Contrary to Bhardwaj’s claim, rule 5.4(28) states that for the purposes of electronic service, “[p]rior consent of the party . . . to be served electronically is not required.” And pursuant to rule 5.4(29)(c), which governs service to non-attorneys, a party’s electronic service address is the email address provided to the court and parties for service of documents. Rule 5.26.1(D) states that a party’s initial electronic service address is deemed valid, as defined under rule 5.4(29), unless the party has filed a change of electronic service address. The evidence in the record establishes that Bhardwaj provided his email address in an attachment when he filed his petition—it was listed in the contact header of the payment plan motion. Thereafter, he never filed a change of electronic service address. Additionally, on June 3, 2022, the court electronically issued to the parties a Notice of Assignment and Notice of Initial Status Conference. The court subsequently provided to the parties, via email, information for joining the conference by video. Bhardwaj received the email and attended the initial status conference, but he did not inform the hearing judge or OCTC during the conference that his email address should not be used to communicate with him.

Under these circumstances, we find that Bhardwaj’s email address was deemed valid under rule 5.4(29). Accordingly, since rule 5.26.1(B) permits a party to electronically serve a

document that is not an initial pleading to the other party's email address as defined under rule 5.4(29), we find that OCTC's electronic service to Bhardwaj of its motion to dismiss was proper. And although Bhardwaj asserts that he never received OCTC's email containing its motion to dismiss, electronic service is deemed complete at the time of transmission or at the time the electronic notification of service is sent. (Rule 5.26.1(G).) Even if electronic service to Bhardwaj was done in error, it was harmless and not prejudicial to him, because he was not precluded from presenting his challenges to the dismissal to the hearing judge, and he in fact did so in his motion for reconsideration. (See *In the Matter of Johnson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 241 [absent actual prejudice, party not entitled to relief].)

Finally, Bhardwaj's argument that we should grant a remand based on his claim of alleged surprise under Code of Civil Procedure, section 473, subdivision (b),¹⁹ is not persuasive. Even though Bhardwaj did not file an opposition to OCTC's motion, he presented his due process and evidentiary challenges in his motion for reconsideration after receiving the Dismissal Order, and the hearing judge properly considered his arguments on the merits before issuing the Order Denying Reconsideration. Thus, we find that Bhardwaj has not shown he is entitled to relief under section 473, subdivision (b), of the Code of Civil Procedure.

2. The hearing judge's consideration of evidence to which Bhardwaj objects was not error.

Bhardwaj raises additional arguments claiming that the hearing judge improperly took judicial notice of his disciplinary case and improperly considered the updated petition he filed on September 8, 2022, when she denied his motion for reconsideration. We disagree.

¹⁹ Code of Civil Procedure section 473, subdivision (b), states, in part, that a "court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."

Rule 5.104(H)(2) permitted the hearing judge to take judicial notice of State Bar Court records relevant to the proceedings. On review, Bhardwaj has not claimed that the records in question are incomplete or not authentic, which could have prevented the judge from taking judicial notice of them. (See rule 5.104(H)(3).) And as previously discussed, Bhardwaj requested that we take judicial notice of the same disciplinary case. Bhardwaj asserts, without citing any authority, that the judge did not have jurisdiction over the matter to consider the updated pleading, and he was prejudiced. Bhardwaj is incorrect. The language on the petition instructs that a petitioner must “continue to update the information contained in the petition whenever changes to the information occur and must promptly file the updates with the State Bar Court.” Bhardwaj filed his updated petition prior to the hearing judge denying his motion for reconsideration, and we find it was, therefore, properly considered by the judge. Accordingly, we reject Bhardwaj’s argument as lacking merit.

3. Bhardwaj is not entitled to a waiver of the petition filing fee.

Bhardwaj requests that the \$1,600 filing fee imposed by rule 5.441(C) be waived. Bhardwaj cites no authority in support of his request. The rule governing the commencement of a reinstatement proceeding demonstrates that the filing fee is mandatory. To initiate a reinstatement proceeding, a petitioner must file and serve a petition and “pay[] the *required* fee.” (Rule. 5.440(C), italics added.) The compulsory nature of the fee is reiterated in rule 5.441(C) explaining the consequence of not paying the fee: “The petition must include a filing fee of \$1,600, which will be given to [OCTC] to defray incurred costs. The Clerk will reject the petition for filing if the fee is not included.” The obligation is further underscored in section 6.a of the petition form, which specifically notifies petitioners that the court will not waive the filing fee. Unlike the rules governing discipline costs and monetary sanctions that contain waiver provisions, we discern no similar authority to waive the petition filing fee, and Bhardwaj has not

identified any. (See § 6086.10, subd. (c); rule 5.130(B); rule 5.137(E)(4).) Accordingly, we deny his request.

III. CONCLUSION

We affirm the hearing judge's decision to dismiss Sanjay Bhardwaj's petition for reinstatement to the practice of law but do so without prejudice because the dismissal is made pursuant to rule 5.441(E).²⁰

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.

²⁰ The limitation on the earliest time to file a subsequent petition, as set forth in rule 5.442(C), is not applicable to Bhardwaj's case, because our dismissal without prejudice does not constitute an "adverse decision." Consequently, Bhardwaj is not bound by the two-year filing restriction prescribed under rule 5.442(C) if he chooses to file a second petition.

No. SBC-22-R-30503

In the Matter of
SANJAY BHARDWAJ

Hearing Judge
Hon. Phong Wang

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