PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed February 21, 2023

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-20-O-30496
	)	
BENJAMIN LAURENCE PAVONE,	)	OPINION
	)	
State Bar No. 181826.	)	
	)	

This is Benjamin Laurence Pavone's first disciplinary proceeding. This matter concerns Pavone's actions during the litigation of a civil appeal in Orange County, *Martinez v. O'Hara*, *et al*.[1] The Office of Chief Trial Counsel of the State Bar (OCTC) charged him with four counts of failing to maintain respect due to courts and judicial officers, under Business and Professions Code section 6068, subdivision (b),[2] based on statements Pavone made in the notice of appeal and subsequent opening and reply briefs he filed in the underlying civil matter.

A hearing judge found Pavone culpable on two counts but dismissed the remaining counts by determining that Pavone's statements constituted protected speech under the First Amendment to the United States Constitution. The judge's recommended discipline included a 30-day actual suspension. Pavone appeals. He argues he should be exonerated of all charges and raises procedural challenges. OCTC accepts the judge's culpability findings and discipline recommendation.

[1] *Martinez v. O'Hara*, *et al.* (Super. Ct. Orange County, No. 30-2012-614932) (*Martinez* matter).

[2] All further references to sections are to the Business and Professions Code unless otherwise noted.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, along with most of the aggravation and mitigation findings. After reviewing the record, the relevant standards, and comparable law, we agree with the judge's 30-day actual disciplinary recommendation.

I. RELEVANT PROCEDURAL BACKGROUND[3]

OCTC filed a Notice of Disciplinary Charges (NDC) on August 11, 2020, alleging four counts of misconduct in violation of section 6068, subdivision (b) (failure to maintain respect due to courts and judicial officers). On September 18, Pavone filed a motion to dismiss, which the hearing judge denied on November 25. Pavone filed an answer to the NDC on December 4, 2020.

Pavone filed multiple motions to dismiss the charges between July and August 2021. The hearing judge denied the motions on August 27, 2021. On September 27, Pavone filed an amended answer to the NDC, along with another motion to dismiss all charges. The hearing judge denied his motion to dismiss on October 13. On October 18, the parties stipulated to the foundation, authenticity, and admissibility of certain exhibits. After a two-day trial, which commenced on October 26, 2021, posttrial briefing followed,[4] and the hearing judge issued her decision on February 10, 2022.

II. FACTUAL BACKGROUND[5]

Pavone was admitted to practice law in California on March 8, 1996. Over the course of his career, he has focused his practice on both criminal and civil litigation. The allegations of

[3] Considering the contested nature of this proceeding, only the most relevant procedural history is included in this opinion.

[4] Pavone included a request for judicial notice in his closing brief which the hearing judge denied.

[5] The facts included in this opinion are based on the 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).)

Pavone's misconduct in this case arise from statements he made about the Honorable Carmen Luege while he litigated a civil appeal.[6]

A. Pavone Initiates a Civil Lawsuit

In November 2012, Pavone filed a complaint on behalf of his client, Martinez, in the *Martinez* matter, an employment-related action in the Superior Court of Orange County. The complaint alleged five claims: one claim for Labor Code violations which was resolved before trial; one claim for sexual harassment, under California's Fair Employment and Housing Act (FEHA); one claim for fraud which was dismissed; and two claims seeking an injunction for unfair advertising and unfair business practices. A jury awarded Pavone's client $8,080 in damages on the sexual harassment claim. The remaining two claims seeking injunctive relief proceeded to a bench trial before Judge Luege, who ultimately ruled in favor of the defendants.

Pavone filed a motion for $146,634 in attorney fees and $15,966 in costs. On November 4, 2016, Judge Luege held a hearing on the motion. Pavone was allowed to argue his position during the hearing. At one point during the hearing, he made disparaging comments about a retired judicial officer, Judge Munoz. Judge Luege found Pavone's comments to be inappropriate and advised him that he needed to behave respectfully in court. After taking the matter under submission and considering the parties' briefs and arguments, Judge Luege issued a minute order on November 30, 2016. The judge denied Pavone's request for attorney fees and granted a portion of the requested costs.

In Judge Luege's order, she compared Pavone's case to *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970—a case also involving FEHA claims. She determined that Pavone had "over litigated" the case and that his calculation of fees for the sexual harassment claim was

[6] While presiding over the appeal in the underlying matter, Judge Luege was a court commissioner. She currently serves as a superior court judge.

"very unreliable." The judge found that because Pavone had failed to maintain contemporaneous records of billable hours, certain time entries "raise[d] serious questions about the accuracy of [his] alleged reconstruction of the time." In light of *Chavez*, Judge Luege concluded that Pavone's request for more than $160,000 in fees and costs was excessive considering the unreliability of Pavone's time estimates along with "nominal damages the jury awarded" for the sexual harassment claim. The judge noted that Pavone and his client were "spectacularly unsuccessful" and had "engaged in fruitless litigation, with many adverse rulings." She also determined that most of the time entries Pavone requested were unrelated to the single successful sexual harassment claim and pertained to his unsuccessful litigation efforts. Based on the record, the judge concluded that Pavone "should have determined long before trial that realistically the case was worth no more than $25,000 and should have pursued [it] as a limited civil matter."

On February 10, 2017, the parties submitted a joint proposed judgment to the court, disposing of the civil case. Judge Luege's clerk, Castillo, performed his standard duties and provided the judgment to Judge Luege for signature. Judge Luege signed the judgment and returned it to Castillo for processing. Castillo then routed it to the court staff responsible for entering judgments. The judgment was entered into the court's automated system on February 21.

Pavone testified that he did not receive service of the entered judgment. After not receiving service of the judgment, he sent a "runner" to the court to review the case file and ascertain whether judgment had been entered. At that point, Pavone confirmed that the court had entered judgment and that he received actual notice of the judgment sufficient to file a timely notice of appeal.

Judge Luege and Castillo were not involved in the process of filing or serving the judgment. During the disciplinary trial, both Judge Luege and Castillo testified they do not

know whether Pavone was served, as it is not within the scope of their duties to execute the proof of service. Judge Luege did not direct Castillo or anyone else to suppress notice of the judgment, and neither of the two had any intent to do so. In handling the judgment, they adhered to standard court procedure.

At his disciplinary trial, Pavone testified he believed the superior court failed to properly serve the judgment, resulting in his failure to receive served notice of its entry. Since Pavone believed Judge Luege's denial of attorney fees was flawed, and because Judge Luege's expressed concerns regarding his calculation of time spent on the case, he believed the judge intentionally suppressed service of the judgment to thwart his ability to appeal.

B. Pavone Files an Appeal

1. The Notice of Appeal

On April 14, 2017, Pavone filed a notice of appeal of the denial of attorney fees in the *Martinez* matter in the Court of Appeal, Fourth Appellate District (Case No. G054840). In the notice of appeal, Pavone stated:

> Pursuant to Code of Civil Procedure section 904.1 *et seq.*, Plaintiff Fernando Martinez hereby appeals from the lower court's disgraceful order dated November 30, 2016, as incorporated into a reported judgment dated February 21, 2017, and as such, technically appeals from that judgment. The ruling's succubustic adoption of the defense position, and resulting validation of the defendant's pseudohermaphroditic misconduct, prompt one to entertain reverse peristalsis unto its four corners. [¶] . . . [¶]
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> Plaintiff never actually received a copy of a signed judgment, though a stipulated judgment was prepared for the commission court's signature, as it apparently cynically attempted to suppress notice of the judgment in order to thwart review.

2. The Opening Brief on Appeal

On December 11, 2017, Pavone filed the opening brief on appeal of the attorney fees denial. In his brief, he made the following statements:

> Judge Luege generally ruled during trial like a disinterested broker. [¶] However, her tenor changed during oral argument on [plaintiff's] post-trial motion

> requesting attorney's fees. She apparently perceived that [plaintiff] insulted former Judge Munoz, and then as a response, translated her anger into an attack on [plaintiff's] fee motion. She issued a mindlessly one-sided ruling—a ruling founded in advocacy rather than analysis if ever there was one—and littered with legal errors, as they always are. . . . [¶] . . . [¶] Regardless of the many errors in the ruling at issue, reversal is warranted because the ruling is not a product of good judicial decision making. It's an exercise in advocacy directed at one party founded on a desire to champion a colleague, rather than strictly and accurately following established legal analysis governing the recovery of attorney's fees in these types of situations.
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> Consequently, the ruling is wrong not just because it is wrong, but because the underlying motivation for issuing this wrongful ruling was also wrong. Commissioner Luege acted as if [plaintiff] disrespected Judge Munoz, but the truth is the opposite—Judge Munoz disrespected [plaintiff], and a whole bunch of other litigants, by abdicating rulings to his research clerk.
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> Consequently, the criticism [plaintiff] levied about him in front of Judge Luege—upon being provoked by defense counsel with a false accusation of contempt of his rulings—was not cause for her to overreact by circling the wagons around Munoz and abandoning her duty to fairly and accurately analyze the legal issues before her. [¶] . . . [¶] For the trial court to characterize this litigation as spectacularly unsuccessful is not only unsupported in light of the record of outcomes, reflecting relief obtained on a number of fronts, but another indication that the ruling was a product of judicial advocacy rather than detached analysis. [¶] . . . [¶] Actually, the ruling is easily comprehensible. The lower court abandoned any interest in utilizing detached legal analysis. Rather, she had decided that the penalty for insulting one of the Orange County Superior Court's historically well-regarded judges was death and that her death sentence would be carried out by a wholesale, advocacy-based denial of all compensation. [¶] . . . [¶] Decisions like this announce advocacy over analysis as openly as wearing a bandana on one's arm. [¶] . . . [¶] As detailed above, the trial court's ruling contained numerous factual and legal errors and can be detected to be the product of advocacy rather than analysis.

3. The Reply Brief on Appeal

On April 6, 2018, Pavone filed a reply brief in support of the appeal. In the reply brief he made the following statements:

> The question of why this trial judge was motivated to light [plaintiff] up is the subject of relevant appellate inquiry, and as [plaintiff] sees it, there is an explanation in the case file. Understanding that motivation and contrasting it to Rule-of-Law principles and methods is a worthy exercise in [plaintiff's] humble opinion.

> It is also true as [defendant] points out that this case, narrowly viewed, requires the Court to merely pass on the merits of a fee ruling. The merits will of course be discussed in detail, the many factual errors confirmed and understood, and so forth. On a straight legal analysis, the trial court's ruling represents an abuse of discretion because she barely got any of the facts straight. But this wasn't incompetence; it was intention. An exercise in judicial advocacy, which is blatantly obvious here, by definition means that the trial judge has elected to subordinate legal accuracy. [¶] . . . [¶] Inasmuch as there were correctable deviations from the law, including principally as [plaintiff] contends a decision in the ultimate ruling to feed the lower court's appetite to engage in judicial advocacy, there is hardly any feature of judicial decision-making that needs more to be understood and disincentivized. Judicial advocacy throws the whole Rule-of-Law method back into a primitive state of personality, tribalism[,] and power, and those are ingredients that cause societies to fail. [¶] . . . [¶] In the Opening Brief, [plaintiff] documented concerns about the functionality of a retired trial judge, Hon. Gregory Munoz. This would have been irrelevant to the fee motion except that it was counsel's perception during oral argument that discussion of this issue triggered Judge Luege to generate the advocacy opinion she issued. [¶] . . . [¶] [F]rom [plaintiff's] viewpoint, the entire structure of the fee ruling by Judge Luege is built around an improper motivation—a product of judicial advocacy in electing to defend Munoz's honor by shooting the messenger—which utterly defeats the governing principles of a Rule-of-Law legal system. [¶] . . . [¶] And of course, to the extent that a sitting jurist is triggered to champion a colleague, although the motivation may be laudable, when it results in a ruling that is intentionally imbalanced, it doesn't adhere to the greater purpose of Judge Luege's existence as an important servant in our Rule-of-Law paradigm. [¶] . . . [¶] [Plaintiff's] concerns about judicial advocacy by Judge Luege were noted in the Opening Brief and mentioned above. As will be established more fully below, judicial advocacy is at work here. . . . [¶] . . . [¶] The first difficult fact is that it is effectively undisputed—or at least not addressed with any thoughtfulness—that Judge Luege was triggered to hostility by the Judge Munoz flap and this resulted in an opinion that is structurally composed as an exercise in judicial advocacy. [¶] . . . [¶]

In section four of the reply brief, he wrote in boldface and all capital letters, "The trial court abused its discretion by intentionally making mistakes in the legal analysis in service to a judicial advocacy agenda." He also stated:

> It is also hard to understand how either [defendant] or the trial judge could, in any sort of honest reading of *Ling* [*v. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal.App.4th 1242] see it as authority in support of a view that penalties based on failure to pay wages are not included in [Labor Code] section 218.5's enforcement purview. *Ling* basically says that when the underlying action was for non-payment of wages, the continuing wages accruing as a [Labor Code] section 203 penalty *can* be the subject of a fee award. [Citations.] Again, the trial court appears to have made intentional mistakes at the knowing expense of legal

> accuracy in service to a higher agenda of ruling against [plaintiff] for his perceived political offenses. [¶] . . . [¶] Here, the trial judge was motivated to rule against [plaintiff] in what must be the intoxicating effects of wielding the power to break the law, in order to reach a desired result. The lower court relied on the *Chavez* comparison certainly knowing it was a totally—numerically—imbalanced comparison. Yet it forged forward with this comparison riding some sort of superseding objective that subordinated her obligations as a jurist to rule analytically and dispassionately.
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> For the trial court to not even *acknowledge* the mathematical difference between Chavez's $870,000 fee request and [plaintiff's] $144,000 request reveals that she ruled without being able to responsibly wield the extraordinary power to make legal findings. Basically, the trial court engineered the result she wanted, *regardless of the law*, by intentionally analogizing to a case that even a first-year law student would understand to be distinguishable. [¶] . . . [¶] The lower court made numerous factual errors. Its ruling cannot be considered a responsible exercise in discretionary adjudication with so much foundational error. Moreover, these mistakes were not the product of it being incapable of understanding the law or applying the facts to them. It was because she intentionally decided to let her master for this motion be not the law, but an adversarial agenda to rule against one party regardless of it. This is why there are so many mistakes in the opinion: because accuracy was not the goal: outcome was.
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> Submission to such an appetite reveals that the lower court did not wield power responsibly. Such an opinion is structurally reversible because, *a fortiori*, it abandons analytical discipline in favor of political or interpersonal objective. We have a political system: the legislature. The judicial system is supposed to run on facts, evidence and rules, not personality, popularity or majority. Commissioner Luege's decision to not respect this distinction constitutes a failure of restraint.

C. The Fourth District Court of Appeal's Opinion

The Fourth District Court of Appeal (Court of Appeal) issued its opinion on February 28, 2019, which affirmed Judge Luege's order denying Pavone's request for attorney fees. It determined that the trial court properly exercised its discretion and followed appropriate legal principles. The court concluded that, through Pavone's statements in the notice of appeal and appellate briefs, he "committed misconduct on appeal, including manifest gender bias." The court stated: "[M]any of the words and phrases in the notice of appeal have no place in a court filing. We cannot understand why plaintiff's counsel thought it wise, much less persuasive, to

include the words 'disgraceful,' 'pseudohermaphroditic misconduct,' or 'reverse peristalsis' in the notice of appeal."

Further, the Court of Appeal concluded that Pavone's "statement in the notice of appeal, suggesting the trial court attempted to thwart service of the signed judgment on plaintiff in an effort to evade appellate review and statements in the appellate briefs he signed on behalf of the plaintiff accusing [Judge Luege] of *intentionally* refusing to follow the law" were improper. Specifically, the court found:

> Plaintiff's appellate briefs, signed by Pavone, contain many statements . . . that cannot be fairly characterized as acts of zealous advocacy in an effort to challenge the ruling on plaintiff's motion for attorney fees. Instead, plaintiff's appellate briefs repeatedly accuse the judicial officer who ruled on that motion of *intentionally* refusing to follow and apply the law. There is no support for such a serious charge. Examples of such statements include that the judicial officer: (1) "made *intentional* mistakes at the knowing expense of legal accuracy in service to a higher agenda of ruling against [plaintiff] for his perceived political offenses"; (2) displayed "mindless antipathy toward [plaintiff]" having "intentionally analyzed a quantitative issue . . . by resorting to citation to qualitative features"; (3) "should have resisted the desire (but did not) to champion [another judicial officer] because it came at the expense of the integrity of her ruling"; and (4) "*intentionally* decided to let her master for this motion be not the law, but an adversarial agenda to rule against one party regardless of it."

The Court of Appeal reported Pavone to the State Bar, emphasizing that none of his "serious charges [against Judge Luege was] supported by any evidence." On March 14, 2019, Pavone filed a petition for rehearing which was denied. On April 4, he petitioned the Supreme Court, challenging the Court of Appeal's rulings, which was also denied.

III. PAVONE'S PROCEDURAL CHALLENGES HAVE NO MERIT[7]

Pavone challenges the fairness of various aspects of his disciplinary proceeding. The standard of review we generally apply to procedural rulings is abuse of discretion. (*In the Matter*

[7] Having independently reviewed all arguments set forth by the parties, we note that several are not outcome determinative as to culpability. Any arguments not specifically addressed have been considered and are rejected as without merit.

of Aulakh (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695; *H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368 ["appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered"].) Having considered each of his arguments, we find them meritless.

Pavone argues that he did not have reasonable notice of the charges against him because OCTC "lodged 73 sentences within 36 paragraphs quoted from the *Martinez* appellate briefing" in counts three and four. He claims he was entitled to specific notice, which would have required OCTC to charge each sentence separately as "73 counts" rather than accusing him of "violating everything under the sun." Contrary to his contention, the NDC provided him with notice of all charges and a reasonable opportunity to prepare his defense, as required under section 6085. The NDC articulated the conduct alleged to have violated section 6068, subdivision (b), by including specific references to pleadings Pavone filed in the *Martinez* matter. "[A]dequate notice requires only that the attorney be fairly apprised of the precise nature of the charges before the proceedings commence." (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929.)

The hearing judge did not err in denying his pretrial motion to conduct written discovery, and we emphasize that a judge is afforded broad discretion in ruling on discovery matters. (*Jones v. State Bar* (1989) 49 Cal.3d 273, 287 [hearing judge "has discretion to exercise reasonable control over the proceedings"].) We find that the judge's ruling did not exceed the bounds of reason by properly limiting Pavone's oppressive and burdensome written discovery demand. (See *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74, 78.) Pavone has also failed to specifically show any *actual prejudice* he suffered in preparing his defense. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 469, italics added [attorney must show specific prejudicial effect].)

Pavone's argument that counts three and four should be reversed because OCTC targeted him on selective prosecution grounds because he is a small firm practitioner is unavailing. There is no evidence in the record to show that he was deliberately singled out on the basis of some unwarranted criterion to support his selective prosecution claim.[8] (*Baluyut v. Superior Court* (1996) 12 Cal.4th 826, 833 [invidious purpose for prosecution is one that is arbitrary and unjustified because it bears no rational relationship to legitimate legal interests].) The Court of Appeal properly referred Pavone's misconduct to the State Bar based on his violations of an attorney's ethical standards, thus appropriately subjecting him to discipline. We find that Pavone had failed to make the required showing of selective prosecution to establish that he was denied equal protection of the law. Lastly, he argues that the hearing judge improperly denied his motion to dismiss the NDC because his statements were constitutionally protected. We find Pavone's argument unavailing as it lacks legal authority, and he has not shown an error of law or abuse of discretion in the judge's ruling.

IV. CULPABILITY FINDINGS[9]

On review, Pavone asserts that the statements at issue contained in his appellate briefing from the *Martinez* matter are protected by the First Amendment. To begin our culpability discussion, we identify the legal principles that guide our analysis for violations of section 6068, subdivision (b), regarding an attorney's failure to maintain respect due to courts and judicial

[8] At oral argument Pavone stated the essence of selective prosecution is not about the prosecutor's mindset but about him being targeted for prosecution regardless of the reasoning; he claims proving a motive would be an impossible burden. Under his theory, Pavone referenced a study he conducted by using the email addresses of attorneys charged with misconduct to determine their firm size, which he believes supports his contentions that big firm lawyers are not prosecuted by OCTC.

[9] 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 unhesitating assent of every reasonable mind].)

officers. "[A]ttorneys are entitled to the protection of the First Amendment, even as participants in the administration of justice." (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 781.) However, the First Amendment does not offer blanket protection to every statement made by an attorney that impugns the integrity of a judge. Criticism by an attorney amounting to an attack on the honesty, motivation, integrity, or competence of a judge may be disciplinable under certain circumstances. (*Id*. at p. 782.)

The Supreme Court in *Ramirez v. State Bar* (1980) 28 Cal.3d 402, 411 (*Ramirez*) held that intentionally false statements and false statements made with reckless disregard for the truth are not protected speech and may be the basis of attorney discipline. Truth is an absolute defense to any statement made by an attorney that impugns the honesty or integrity of a judge. (*Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1438 (*Yagman*).) And statements of "rhetorical hyperbole" or those statements incapable of being proven true or false are subject to sanction only if such statements could reasonably be understood as declaring or implying actual facts capable of being proven true or false. (*Id*. at pp. 1438-1439.) With these principles in mind, we examine the statements at-issue in counts three and four to determine whether they violate section 6068, subdivision (b).

A. Counts One and Two: Failure to Maintain Respect Due to Courts and Judicial Officers (§ 6068, subd. (b))

In count one OCTC alleged that Pavone violated section 6068, subdivision (b), by manifesting gender bias through his statements in the *Martinez* notice of appeal when he characterized the judge's ruling as "disgraceful" and a "succubustic adoption of the defense position and resulting validation of the defendant's pseudohermaphroditic misconduct, prompt[ing] one to entertain reverse peristalsis unto its four corners." In count two OCTC alleged that Pavone's statement in the *Martinez* notice of appeal that, "Plaintiff never actually received a copy of a signed judgment, though a stipulated judgment was prepared for the commission court's

signature, as it apparently cynically attempted to suppress notice of the judgment in order to thwart review," violated section 6068, subdivision (b).

The hearing judge dismissed both counts with prejudice upon finding that the statements are protected by the First Amendment.[10] Neither party challenges these dismissals on review. Our review of the record and applicable case law supports the judge's findings. Therefore, we affirm the dismissal of counts one and two with prejudice. (*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].)

B. Counts Three and Four: Failure to Maintain Respect Due to Courts and Judicial Officers (§ 6068, subd. (b))

Pavone was also charged with violating section 6068, subdivision (b), based on numerous statements he made—that are specifically quoted in the factual background *ante*—in his opening and reply briefs filed in the *Martinez* matter. His statements accused Judge Luege of engaging in judicial advocacy and intentionally refusing to follow the law due to bias against Pavone and/or his client. The hearing judge determined that Pavone's statements—which were a combination of statements of fact and opinion—referred to his *specific* and factual accusations regarding Judge Luege, with reckless disregard for the truth, and were ultimately proven to be false. Therefore, the judge did not find his statements to be constitutionally protected and found Pavone culpable under both counts. We agree.

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[10] Under count one, the judge found that Pavone's "disgraceful" statement amounted to an opinion, which did not "imply a false assertion of fact." (*Yagman*, *supra*, 55 F.3d at p. 1438.) And since the term "succubustic" used to describe the court's ruling—while distasteful—was made figuratively and amounted to "rhetorical hyperbole" (*id*. at p. 1440), the judge found that both statements in count one constituted protected speech. Since Pavone's statement in count two that he did not receive notice of the court's judgment is factual and had not been proven false by OCTC, the judge concluded the statement was protected. She determined that the remaining statement under count two, that the court "apparently cynically attempted to suppress notice of the judgment" was an opinion based on fully disclosed facts and thus constitutionally protected.

At the crux of Pavone's argument is his theory that *Yagman* obliterates any culpability under counts three and four because of "the governing principle that intellectual dishonesty allegations cannot be proven." He claims that Judge Luege's minute order in the *Martinez* matter was a product of intellectual dishonesty and his statements regarding the order were "unquestionably an inquiry into Judge Luege's thinking," which Pavone states is not governed by *Ramirez* or objectively provable under *Yagman*. We disagree with his application of these cases to his conduct, as is set forth below.

Pavone stated that Judge Luege's order was an exercise in judicial advocacy to champion a colleague and that the judge "intentionally decided" to not follow the law but instead uphold "an adversarial agenda to rule against one party" since she had "elected to subordinate legal accuracy." As the Supreme Court held in *Ramirez*, allegations contained in an attorney's pleadings regarding the integrity of a judge that are not supported by any credible factual basis are not afforded constitutional protection. (*Ramirez*, *supra*, 28 Cal.3d at pp. 411-412.) The attorney in *Ramirez* alleged in his brief that three California appellate judges had acted "illegally" and "unlawfully" in reversing judgment against his client. (*Id*. at pp. 404-405.) In a subsequent pleading, the attorney claimed that the judges had falsified the record and suggested that their "unblemished records" were "undeserved." (*Id*. at pp. 405.) To the extent Pavone believes the First Amendment protects his statements, which were based on nothing more than mere conjecture, he is wrong.

Pavone relies on the analysis in *Yagman* to support his First Amendment argument. The *Yagman* court construed an attorney's statement alleging that a judge was "dishonest" to mean "intellectually dishonest" because the accusation was based on that attorney "expressing a subjective view . . . rather than claiming to be in possession of objectively verifiable facts. [Citations.]" (*Yagman*, *supra*, 55 F.3d at p. 1441.) The court made clear that if Yagman's allegation of dishonesty implied facts capable of objective verification, the statement would not

be constitutionally immune from sanctions. (*Ibid*.) Here, Pavone's statements were not merely based on an expression of his subjective view as he claims. Considering the nature and context in which the statements were made, it is reasonable for one to understand his statements as "declaring or implying *actual facts* capable of being proven true or false." (*Yagman*, *supra*, 55 F.3d at p. 1439, italics added.) The record does not show that he took any investigative steps to determine a credible factual basis for his allegations. We find that Pavone made baseless accusations against Judge Luege with a reckless disregard for the truth without any reasonable basis.

The hearing judge determined that Judge Luege testified credibly as to her handling of the underlying civil proceedings when evaluating Pavone's fee motion and her overall approach to judicial decision-making when deciding cases. The judge testified that she had handled many attorney fee motions prior to Pavone's request, and her ruling was strictly based on the pleadings and parties' arguments. She stated that if she had any reason to believe that she could not have been impartial, as her oath requires, she would have recused herself. She also stated she did not hold any anger towards Pavone regarding his criticism of Judge Munoz during the oral argument and that her order was in no way an exercise in judicial advocacy or an attempt to champion a colleague. The judge stands by the legal analysis in her ruling, which was affirmed by the Court of Appeal.

Pavone argues that Judge Luege's testimony should be rejected. He argues that Judge Luege attempted to avoid his inquires during cross-examination at the disciplinary trial about specific details of her deliberation process, which he claims proves that she "possesses zero credibility." We find this argument has no merit.

Further, we see no reason to disturb the hearing judge's credibility findings pertaining to Judge Luege's testimony. A judge's credibility findings are accorded great weight because the

judge presided over the trial and heard the testimony. (Rules Proc. of State Bar, rule 5.155(A) [great weight given to hearing judge's factual findings]; see *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions "because [she] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].) Based on this record, we find that no reasonable attorney would conclude that Judge Luege acted with bias or disregard for the law when issuing her minute order denying Pavone's request for attorney fees. There is no factual basis to support Pavone's accusations against Judge Luege. We affirm the hearing judge's credibility findings.

Pavone's unsupported statements impugning the integrity of Judge Luege under counts three and four are not immune from discipline. An attorney's demeaning statements that contain unsupported factual allegations made in reckless disregard for the truth are not constitutionally protected. (*Ramirez*, *supra*, 28 Cal.3d at p. 411.) Accordingly, we find that Pavone willfully violated section 6068, subdivision (b), as charged and affirm culpability under counts three and four.

V. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[11] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Pavone to meet the same burden to prove mitigation.

A. Aggravation

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

The hearing judge assigned aggravation under standard 1.5(b) because Pavone repeatedly made disrespectful and unsupported accusations impugning the integrity of Judge Luege in two

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

separate court filings. Because the statements were only made on two occasions, the judge assigned limited aggravating weight. Neither party challenges this finding on review. We agree the standard applies and affirm limited aggravating weight. (*In the Matter of Kueker* (Review Dept.1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [multiple acts in aggravation for one count of moral turpitude where attorney made 11 misrepresentations over two years].)

2. Significant Harm to the Administration of Justice (Std. 1.5(j))

The hearing judge found that Pavone's misconduct caused significant harm to the administration of justice through his repeated unsupported public statements disparaging Judge Luege and the superior court, which the judge determined were reasonably calculated to undermine public confidence in the justice system. The judge assigned moderate weight because, although Pavone's conduct was irresponsible, she considered it to be limited in scope and time. Neither party challenges this finding on review and we agree. Pavone's misconduct undermines the ability of a tribunal to rely on an attorney's word. (Cf. *In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 45 [attorney making unsupported and outrageous accusations against judges and others seriously harmed administration of justice]; see also *In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 782 [unsubstantiated accusations by attorneys against courts and judges impair judiciary function].) Accordingly, we affirm moderate aggravating weight under this circumstance.

3. Indifference (Std. 1.5(k))

Indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. An attorney who fails to accept responsibility for his actions and instead seeks to shift responsibility to others demonstrates indifference and lack of remorse. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.) The hearing judge assigned substantial weight in aggravation for Pavone's failure to appreciate the wrongfulness of

his misconduct. Rather than acknowledging any wrongdoing, Pavone insists on being exonerated and maintains that his unsupported and false statements made to the court were reasonable. Pavone has shown no repentance; instead, he makes disparaging remarks about everyone involved in his disciplinary proceedings. He minimized the seriousness of his actions by blaming OCTC of selective prosecution and asserting that Judge Luege was biased against him. Even during oral argument, he stated that the hearing judge engaged in a "micro installment of intellectual dishonesty" when citing the Supreme Court's *Ramirez* opinion in her decision rather than solely relying upon *Yagman*.

While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Pavone has failed to do this and still considers himself a victim, which further demonstrates his lack of insight. His testimony and arguments on review show he lacks remorse for, or any insight into, his misconduct and therefore we assign substantial weight to his indifference.

B. Mitigation

1. No Prior 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. The hearing judge afforded moderate mitigation credit for Pavone's more than 21 years of discipline-free practice. Given his indifference, the judge could not conclude that his misconduct was aberrational or unlikely to 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, Pavone's discipline-free practice is lengthy and deserving of mitigating weight. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [diminished mitigating weight for

12-year record of discipline-free practice where attorney showed lack of insight by offering ill-founded explanations for misconduct].) We affirm moderate weight under this circumstance.

2. Extraordinary Good Character (Std. 1.6(f))

Pavone may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge determined that Pavone was entitled to substantial mitigation for his good character although the judge determined it was unclear whether some witnesses were aware of the full extent of the alleged misconduct. OCTC challenges this finding and argues that substantial mitigating weight in not warranted because none of the character references provided live testimony, several character declarations were not signed, and Pavone failed to establish that the witnesses were aware of the full extent of his misconduct. Upon our review of the record, we assign moderate weight to his good character.

Pavone proffered character reference letters from 40 witnesses, including numerous current and former clients, his legal assistant, an acquaintance, an attorney, and a former Ninth Circuit judge. We give serious consideration to the attorney and judge declarations submitted in support of Pavone's character, which affirmed his exemplary moral character, competence in law, and strong commitment to the legal profession. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys and judges have "strong interest in maintaining the honest administration of justice"].) In sum, Pavone's references—representing a broad spectrum of the community—described him as compassionate, dedicated, an excellent attorney, and praised his diligence. Further, several of the witnesses have known him for lengthy periods of 10 years or more.

However, the character references do not demonstrate awareness of the extent of Pavone's misconduct, as the standard requires. The NDC in this proceeding was filed on August 11, 2020,

yet several letters are dated July 2020, which precedes the filing of formal charges against Pavone. Also, as OCTC correctly points out, nine of the letters make no indication that the authors were aware of Pavone's disciplinary proceedings. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [testimony of witnesses unfamiliar with details of misconduct not given significant weight in mitigation].) The mitigating weight afforded to Pavone's good character evidence is diminished by the witnesses' lack of full knowledge of the charged misconduct. Thus, we assign moderate mitigating weight.

3. Pro Bono Work and Community Service

Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge gave moderate weight to Pavone's pro bono efforts finding that he credibly testified regarding the extent of his pro bono work in a civil rights case for hundreds of prisoners infected with Valley Fever. OCTC argues that Pavone is only entitled to limited weight in mitigation for pro bono work and community service because the evidence of his service is solely based on his testimony. We reject OCTC's argument because several of Pavone's character references, who are current pro bono clients, corroborated his testimony by detailing his ongoing commitment to their cases. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].) Pavone's proven dedication to pro bono work is laudable and deserves mitigation, yet we only assign moderate weight because he did not fully establish the scope and extent of his involvement. (*In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little weight given to pro bono activities where attorney testified but evidence fails to demonstrate level of involvement].)

VI. A 30-DAY ACTUAL SUSPENSION IS THE APPROPRIATE 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* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 2.12(a) applies to the at-issue misconduct.[12] The hearing judge recommended a 30-day actual suspension, which is at the low end of the range provided in standard 2.12(a). In reaching this recommendation, the judge relied on two cases: *Ramirez*, *supra*, 28 Cal.3d 402 and *In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 (*Elkins*). OCTC urges us to affirm the judge's recommendation. Pavone argues that he is not culpable of the charges and requests dismissal. We disagree due to our finding of culpability under counts three and four. Based on the record, we do not find that a sanction less than the imposition of a period of actual suspension is appropriate. (See Std. 1.7(c).) "[A] lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the lawyer is willing and has the ability to conform to ethical responsibilities in the future." (*Ibid*.)

[12] Standard 2.12(a) provides, "Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court or tribunal order related to the lawyer's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a)(b)(d)(e)(f), or (h), and rule 3.4(f) of the Rules of Professional Conduct."

In *Ramirez*, the attorney received a 30-day actual suspension for violating section 6068, subdivision (b), by making false statements in court pleadings and accusing appellate judges of corruption. Ramirez stated that the judges had acted "unlawfully" and "illegally" in rendering a ruling unfavorable to his client. He accused the judges of being partial to the opposing party due to its power and influence. He also accused the judges of falsifying the record on appeal. Like Pavone, Ramirez had practiced law for many years without discipline.

In *Elkins*, the court recommended a 90-day actual suspension for an attorney found culpable of failing to maintain due respect for the courts and judges, acting with moral turpitude by making repeated harassing phone calls, threatening a criminal investigation to gain an advantage in a civil dispute, and failing to timely update his State Bar address of record. In aggravation, the attorney's misconduct included multiple acts of wrongdoing, significant harm due to the burden placed on those responsible for administering his father's estate, and lack of insight. The attorney's conduct was mitigated by 24 years of practice without prior discipline and the court also considered the fact that Elkins ceased his improper accusations and harassment in response to a court order directing him to do so, which evidenced an ability to conform his behavior to ethical standards moving forward.

The hearing judge concluded that Pavone's misconduct was narrower in range than in *Elkins* and she determined *Ramirez* was most comparable. Relying on *Ramirez*, she found that a 30-day actual suspension was necessary given the serious and harmful nature of Pavone's misconduct. Pavone recklessly impugned the integrity of a judge, which is of great concern. We agree that the facts of the instant matter are comparable to *Ramirez*. Both attorneys believed the allegations they made about judges were true and continued to assert the truth of those allegations during the discipline proceedings, though they had no reasonable factual basis for them. Like found

in *Ramirez*, Pavone's misconduct was relatively limited in time and scope; however, we remain concerned about his lack of appreciation for the wrongfulness and consequences of his actions.

Zealous advocacy is a hallmark of our legal system. We are mindful of the fundamental importance of free speech and its constitutional protection. In this case, many of Pavone's actions were not constitutionally protected, he went far beyond zealous advocacy, and fell short of his ultimate duty to be respectful to the courts. His misconduct was aggravated by multiple acts, significant harm, and indifference, but these factors are balanced out by Pavone presenting mitigation evidence of no prior disciplinary record, good character, and pro bono work. Considering the weight of all the circumstances in addition to the standards and guiding case law, we find that Pavone's misconduct warrants a sanction at the lower end of the discipline spectrum specified in standard 2.12(a). We conclude that an actual suspension of 30 days is an appropriate sanction under these circumstances. (See std. 1.2(c)(1) [actual suspension is generally for 30 days, 60 days, 90 days, six months, one year, 18 months, two years, three years, or until specific conditions are met].) We believe this suspension will impress upon Pavone the seriousness of his misconduct and protect the public, the courts, and the legal profession.

VII. RECOMMENDATION

We recommend that Benjamin Laurence Pavone, State Bar Number 181826, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year with the following conditions:

1. **Actual Suspension.** Pavone must be suspended from the practice of law for a minimum of the first 30 days of his probation.

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

3. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Pavone 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 State Bar's Office of Probation in Los Angeles (Office of Probation) with Pavone's first quarterly report.

4. **Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct.** Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Pavone must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Pavone must provide a declaration, under penalty of perjury, attesting to Pavone's compliance with this requirement, to the Office of Probation no later than the deadline for Pavone's first quarterly report.

5. **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, Pavone 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. Pavone 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.

6. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Pavone 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, he may meet with the probation case specialist in person or by telephone. During the probation period, Pavone must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

7. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Pavone's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he 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 membership address, as provided above. Subject to the assertion of applicable privileges, he must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

8. **Quarterly and Final Reports**

    a. Deadlines for Reports. Pavone 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, Pavone 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. Pavone 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. Pavone is directed to maintain proof of his 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 his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

9. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Pavone 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, Pavone will nonetheless receive credit for such evidence toward his duty to comply with this condition.

10. **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 Pavone has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VIII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Pavone 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 Pavone 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.

IX. COSTS[13]

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

X. MONETARY SANCTIONS

We further recommend that Benjamin Laurence Pavone be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. The guidelines suggest monetary sanctions of up to $2,500 for an actual suspension. After considering the facts and circumstances of the case, we determine that a $2,500 sanction is appropriate due to Pavone's unsupported statements disparaging a judge for which he has shown no remorse. Monetary sanctions are enforceable as a money judgment and

[13] In his briefs on review, Pavone argues against the imposition of disciplinary costs in this case. He claims that awarding costs pursuant to section 6086.10 is constitutionally invalid and raises several substantive and procedural due process challenges. He argues that the "cost system should be entirely invalidated." As this court held in *In the Matter of Langfus* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161, 168, "No provision is made for challenging the cost award prior to the Supreme Court's order." However, the statutory scheme allows Pavone to seek relief "*after* authorization for costs is included in a Supreme Court order of suspension or disbarment." (*Ibid*.) Therefore, Pavone may seek relief from an order that imposes costs.

may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

HONN, P. J.

WE CONCUR:

McGILL, J.

RIBAS, J.