PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed April 14, 2023

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-21-O-30734
	)	
GILBERT LYNN PURCELL,	)	OPINION
	)	
State Bar No. 113603.	)	
	)	

This is Gilbert Lynn Purcell's first discipline case after more than 30 years of practice. The Office of Chief Trial Counsel of the State Bar (OCTC) filed a Notice of Disciplinary Charges (NDC) alleging that, in one client matter, Purcell (1) failed to obey a court order and (2) failed to maintain respect due to the courts. The hearing judge found Purcell culpable of both counts and her recommended discipline included a one-year stayed suspension.

Purcell appeals. He argues he is not culpable and requests an admonition or at most a private reproval. OCTC did not appeal and requests we affirm the hearing judge's recommendations. 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 case law, we agree with the judge's disciplinary recommendation.

I. PROCEDURAL BACKGROUND

OCTC filed an NDC on September 29, 2021, alleging one count of violating section 6103 of the Business and Professions Code[1] (failure to obey a court order) and one count of violating

[1] Further references to sections are to this source unless otherwise noted.

section 6068, subdivision (b) (failure to maintain respect due to courts and judicial officers). On January 4, 2022, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation), and a three-day trial took place on January 19, 20, and 21. Posttrial briefing followed and the hearing judge issued her decision on May 6, 2022. Thereafter, Purcell filed a request for review. Following submission of briefs from the parties, oral argument was held on January 26, 2023, and the matter was taken under submission.

II. FACTUAL BACKGROUND[2]

This case is about whether Purcell violated a district court judge's evidentiary order while examining three witnesses at trial in a tobacco case brought on behalf of his client, Nikki Pooshs, and, whether in doing so, he failed to show respect due to the court.

Purcell was admitted to practice law in California on June 13, 1984. On March 26, 2004, Purcell and his law firm filed a personal injury lawsuit, *Pooshs v. Philip Morris USA, Inc., et al*, case number 4:04-cv-01221, in the Northern District of California (district court case), against defendants Philip Morris USA, Inc. (PMI) and R.J. Reynolds (RJR). Pooshs's complaint sought damages for having suffered lung cancer alleged to have been caused by tobacco use, the risks of which were known and concealed by the defendants. The Honorable Phyllis J. Hamilton presided over the matter.

A. Pretrial Orders in the District Court Case

On November 1, 2012, defendant RJR filed motions in limine to, among other things, exclude evidence of any of Pooshs's physical injuries except for lung cancer. Pooshs had been diagnosed with chronic obstructive pulmonary disorder (COPD) and periodontal disease prior to being diagnosed with lung cancer. In the Third Final Pretrial Order, Judge Hamilton granted

[2] The facts included in this opinion are based on the Stipulation, 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).)

RJR's motion in limine over Pooshs's objection, thus excluding evidence of Pooshs's injuries other than lung cancer. Specifically, Judge Hamilton rejected Pooshs's argument that, despite lung cancer being the sole injury at issue, her other diseases could suggest the implication or negation of smoking "as a causal contributor to plaintiff's lung cancer," and concluded that evidence of other smoking-related diseases must be excluded because its prejudicial effect outweighed any probative value.[3]

Judge Hamilton reiterated her ruling on the motion in limine in a December 2, 2014 Order Re Defendants' Categorical Objections to Plaintiff's Evidence and in a March 4, 2015 Sixth Final Pretrial Order.[4] Additionally, both orders specifically stated that Barry Horn, M.D., a pulmonologist who was Pooshs's witness, would be prohibited from testifying about Pooshs's non-lung cancer diseases and injuries.

On January 4, 2016, the district court issued the Eighth Final Pretrial Order, which included a compendium of all pretrial evidentiary rulings previously issued. Ruling number 33 stated that Judge Hamilton had excluded evidence of Pooshs's injuries other than lung cancer in the Third Final Pretrial Order, the Order Re Defendants' Categorical Objections to Plaintiff's Evidence, and in the Sixth Final Pretrial Order.

B. Purcell's Conduct During Trial

Pooshs's trial was held from January 19 through February 8, 2016. The parties were advised that all pretrial orders would control during the trial unless modified by subsequent order.

[3] Judge Hamilton had also considered another argument from Purcell: Pooshs's non-lung cancer diseases were separate and distinct from her lung cancer and this evidence was necessary to defeat any statute of limitations defense. During a November 29, 2012 pretrial conference, RJR represented that they were not pursuing a statute of limitations defense.

[4] The Sixth Final Pretrial Order mentioned at least 10 times that Pooshs was prohibited from introducing evidence of any injury caused by smoking other than lung cancer.

1. Dr. Horn

On day four of trial, during Pooshs's case-in-chief, Purcell asked Dr. Horn whether features of Pooshs's medical presentation would eliminate smoking as the cause for her cancer. Dr. Horn responded, "No." Dr. Horn described Pooshs's initial tumor as having a "solid component," which would indicate that smoking was the cause of her cancer. When Purcell asked Dr. Horn if he was familiar with COPD and emphysema, the defense objected. The district court remarked that Purcell's initial question did not violate the pretrial ruling, "but the next one might." Purcell responded that the question was designed to address a statute of limitations issue, and the district court allowed the question and answer to stand and permitted Purcell to continue. Purcell then asked whether COPD and emphysema are an "entirely separate disease response associated with cigarettes than lung cancer?" Judge Hamilton sustained a defense objection that the question violated her pretrial ruling. Finally, Purcell asked whether "COPD or emphysema become[s] cancer?" Again, Judge Hamilton sustained a defense objection.

2. Dr. Lucian Chirieac

On day 11 of trial, RJR called its expert, Dr. Lucian Chirieac, a pathologist with a subspecialty in lung cancer, who opined that Pooshs's lung cancer was most likely a nonsmoking-induced lung cancer. On cross-examination, and after Dr. Chirieac spontaneously stated on direct examination that it was common for heavy smokers to develop COPD and emphysema, Purcell asked, "[I]t's very common for heavy smokers to develop COPD and emphysema, correct?" and "[I]n fact, Ms. Pooshs has it, correct?" The defense objected on the grounds that the last question violated the pretrial orders. Outside the presence of the jury, Judge Hamilton informed Purcell that, because of his repeated violations of the pretrial orders, he would be sanctioned monetarily and reported to the State Bar after the trial concluded.

3. Dr. Eric Schroeder

Dr. Eric Schroeder, a pulmonologist, was called by the defense following Dr. Chirieac's testimony. Dr. Schroeder opined during direct examination that cigarette smoking did not cause or contribute to Pooshs's lung cancer. Prior to cross-examination and outside the presence of the jury, Purcell asked to be heard about the pretrial rulings regarding evidence of other diseases. He argued he should be allowed to question Dr. Schroeder on cross-examination as to whether: (1) emphysema is a risk factor for lung cancer, which Pooshs presents with; and (2) cigarette smoke affects lung tissue to make it jelly-like, thus explaining the non-solid presentation—such that in extreme circumstances, on chest x-rays, you may see irregularities referred to as "blebs," or the appearance of holes in the lung imaging as occurred with Pooshs's lungs. The district court denied Purcell's request to reconsider the pretrial rulings or to create a "carve-out."

However, the next day—day 12 of the trial—Purcell asked Dr. Schroeder, "[H]ow do you describe emphysematous changes?" After a sustained defense objection, Purcell asked, "How do you define what blebs are?" This again drew a sustained objection.

C. Judge Hamilton Imposes Sanctions

On March 7, 2016, the district court issued an 18-page Order Imposing Sanctions on Plaintiff's Counsel for Misconduct During Trial (Sanctions Order) and sanctioned Purcell in the amount of $1,500 for violating the pretrial orders by seeking to elicit testimony from Dr. Horn, Dr. Chirieac, and Dr. Schroeder about non-lung cancer diseases that had been ordered excluded from evidence. Purcell timely paid the sanctions and appealed the Sanctions Order to the United States Court of Appeals for the Ninth Circuit. On November 16, 2018, the Ninth Circuit affirmed the Sanctions Order. On January 16, 2019, Purcell's petition for rehearing and rehearing en banc was denied, and the Ninth Circuit issued its mandate on January 24, 2019.

III. CULPABILITY[5]

OCTC alleged the same factual allegations in counts one and two, stating that Purcell violated the district court's Eighth Final Pretrial Order on three separate occasions by: (1) asking Dr. Horn questions regarding COPD and periodontal disease[6] during direct examination on January 22, 2016; (2) questioning Dr. Chirieac during cross-examination on February 4 about whether Pooshs suffered from any smoking-related injuries other than lung cancer; and (3) questioning Dr. Schroeder during cross-examination on February 5 about smoking-related injuries other than lung cancer that could co-present with lung cancer.

The hearing judge found Purcell culpable of failing to obey a court order (count one) and failing to maintain respect due to the court (count two) based on the allegations OCTC charged in the NDC. Because the same facts were used to establish culpability under both counts, the judge did not assign additional weight in determining discipline based on count two.

Judge Hamilton found in her Sanctions Order that Purcell was "intentionally flouting" her orders, which was not disturbed by the Ninth Circuit. We recognize the importance given to appellate court decisions where the disciplined attorney is a party. (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, citing *Lee v. State Bar* (1968) 2 Cal.3d 927, 940-941 [appellate court opinion on the merits is conclusive legal determination of an issue in disciplinary case].) In this case, however, the Ninth Circuit did not issue findings on the merits, because Purcell challenged the Sanctions Order solely on the grounds of a procedural due

[5] All culpability findings in this opinion are supported by clear and convincing evidence which leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) Having independently reviewed all arguments set forth by the parties, any arguments not specifically addressed have been considered and are rejected as without merit.

[6] The questions at issue concerned COPD and emphysema, not periodontal disease, but this discrepancy is immaterial.

process violation, which the Ninth Circuit rejected.[7] Accordingly, here, we give a strong presumption of validity to the district court's findings if supported by substantial evidence. (See *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) In disciplinary proceedings, an attorney also has the right to introduce evidence to controvert, temper, or explain prior civil findings. (*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 206.)

On review, Purcell makes several arguments as to why he is not culpable of the charged misconduct, but each is unavailing. Upon our independent review of the record, we find it is established by clear and convincing evidence that Purcell is culpable of both section 6103 and section 6068, subdivision (b), as charged under counts one and two, and we affirm the hearing judge's culpability findings.

A. Count One: Failure to Obey Court Order (§ 6103)

Section 6103 prohibits an attorney from willful disobedience or violation of a court order requiring him to do or forbear an act. To prove a violation of section 6103, OCTC must establish that Purcell: (1) willfully disobeyed a court's order, and (2) the court order required him to do or forbear an act in connection with or in the course of his profession which he ought in good faith to have done or not done. (*In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681.) An attorney willfully violates section 6103 when he is aware of a final, binding court order and intends his acts or omissions in violating the order. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) An attorney may face discipline even if he did not intentionally act in bad faith in violating section 6103. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47.)

[7] The Ninth Circuit found that Purcell had been advised throughout the trial that his behavior would result in monetary sanctions and that despite having had a month to contest the verbal notice that sanctions would be imposed prior to the district court filing the Sanctions Order, he did not brief the matter or otherwise challenge it.

1. Judge Hamilton Issued a Binding Order of Which Purcell Was Aware

At trial, Purcell admitted he was aware of each of the district court's pretrial rulings, which were summarized in the Eighth Final Pretrial Order. The Eighth Final Pretrial Order specifically referenced the following orders issued by Judge Hamilton that are relevant to Purcell's charged misconduct: the Third Final Pretrial Order, the Order Re Defendants' Categorical Objections to Plaintiff's Evidence, and the Sixth Final Pretrial Order. Purcell testified that he received each of the orders, studied them, and was familiar with the judge's rulings. Purcell attended the district court's pretrial conferences and hearings, and he consulted with his colleagues who appeared and argued at a July 2013 pretrial hearing in his absence. As it pertains to the July 2013 pretrial hearing, Purcell testified that he reviewed the court's transcripts and subsequent order from the hearing. Accordingly, OCTC has established by clear and convincing evidence that Purcell was knowledgeable of the court's rulings and the Eighth Final Pretrial Order.

On review, Purcell argues that the district court case was complex, and the rulings were "ambiguous," "not straightforward," and contained "numerous exceptions." Judge Hamilton found in her Sanctions Order that her pretrial rulings were "straightforward," and we agree. Purcell never sought clarification of her orders or moved to stay or vacate the court's orders; thus, the rulings remained in effect. (See *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9 [regardless of respondent's belief that the order was issued in error, he was obligated to obey the order unless he took steps to have it modified or vacated, which he did not do]; *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403 [attorney must abide by court's order or proffer formal explanation by motion or appeal as to why order cannot be obeyed].)

Purcell claims Judge Hamilton's Sixth Pretrial Order "made clear that evidence that referenced other diseases could be admissible, so long as that evidence concerned 'the connection' between lung cancer and smoking, or if it also mentioned lung cancer." We are not persuaded by this argument. Judge Hamilton reiterated her ruling throughout the pretrial proceedings, and she mentioned no less than 10 times in the Sixth Final Pretrial Order that evidence of Pooshs's non-lung cancer diseases was excluded.

With respect to Purcell's argument that Judge Hamilton created subsequent exceptions, we find the evidence does not support it. Purcell is referring first to a ruling Judge Hamilton made in the Order Re Defendants' Categorical Objections to Plaintiff's Evidence when considering whether to admit certain types of evidence, such as various studies and Surgeon General reports, and found that "evidence relating to diseases other than lung cancer may be admissible if the document or testimony also refers to lung cancer caused by smoking cigarettes." She also made another ruling in the Sixth Final Pretrial Order limiting the exclusion of evidence of aggregate harm (the subject of a separate motion in limine made by PMI), in which she found that "evidence relating to the connection between lung cancer and smoking is admissible." Neither of these rulings permitted Purcell to initiate a line of inquiry with witnesses about non-lung cancer diseases, and with respect to the last ruling, Judge Hamilton reiterated multiple times in the order that evidence of non-lung cancer injuries was excluded. A judge's rulings must be interpreted reasonably, and we find Purcell has justified his conduct by an unreasonable augmentation of Judge Hamilton's rulings that were made in response to specific types of evidence. (See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 176 [rejecting attorney's interpretation of court order as not reasonable].) Finally, we note that Purcell had ample opportunity to contest the validity of Judge Hamilton's orders on the

merits, including any argument that she had created exceptions to them,[8] to the Ninth Circuit when he appealed the Sanctions Order but did not do so.

2. Purcell Willfully Violated Judge Hamilton's Order by Posing Questions to Three Witnesses About Evidence of Non-Lung Cancer Diseases

a. Questioning of Dr. Horn

Purcell contends that he believed his questioning of Dr. Horn was necessary to protect his client from an unsettled statute of limitations issue. We find no merit to his argument. During the disciplinary proceeding, Judge Hamilton testified that when the Pooshs's matter was tried, there was no statute of limitations defense being raised in the case.[9] Even if Purcell genuinely believed there was an outstanding statute of limitations defense, it was still not permissible for him to inquire about non-lung cancer injuries. In light of the district court's repeated pretrial rulings excluding such evidence, which were made after considering Purcell's argument that he had to prove Pooshs's non-lung cancer diseases were separate and distinct, Purcell had no right to disregard the court's binding rulings even if his objective was to protect his client's interest. As this court stated in *In the Matter of Boyne*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 403, "Obedience to court orders is intrinsic to the respect attorneys and their clients must accord the

[8] Judge Hamilton was asked about one of the purported exceptions contained in the Sixth Final Pretrial Order during the disciplinary trial, but she did not have an independent recollection of the details of her ruling. Upon considering Judge Hamilton's testimony, the hearing judge concluded that the Sixth Final Pretrial Order was consistent with the district court's prior orders and found Purcell's argument of ambiguity unpersuasive considering the repeated and explicit rulings of the district court excluding evidence of injuries caused by smoking other than lung cancer. We affirm the hearing judge's conclusion on this point. (See Rules Proc. of State Bar, rule 5.155(A).)

[9] We recognize that Judge Hamilton gave Purcell permission to ask a question knowing that it was intended to address a statute of limitations issue. However, the exact nature of the question was not known at the time Judge Hamilton allowed it, and as soon as defendants objected as violative of her evidentiary order, Judge Hamilton sustained the objection. Therefore, when Purcell asked the next question as to whether COPD or emphysema becomes lung cancer, he was unequivocally on notice that the question was impermissible and in violation of Judge Hamilton's order.

judicial system. As officers of the court, attorneys have duties to the judicial system which may override those owed to their clients."

Purcell also notes in his brief that his questions of Dr. Horn did not explicitly reference the medical conditions of Pooshs. Functionally, however, the questions were precisely aimed at Pooshs's non-lung cancer conditions, because Purcell justified the inquiry by asserting he was required to prove Pooshs's non-lung cancer conditions were separate and distinct from her lung cancer.

b. Questioning of Dr. Chirieac

On review, Purcell claims his questions fell within an exception, specifically, that his questions pertained to the connection between lung cancer and smoking. We found *ante*, that there was no such exception permitting him to inquire about non-lung cancer diseases. Purcell previously made a similar argument to Judge Hamilton when trying to justify his line of questioning, arguing that she had permitted the introduction of evidence of non-lung cancer diseases for the purpose of causation. Judge Hamilton rejected that assertion and reminded him that she had made three pretrial rulings excluding evidence of Pooshs's injuries other than lung cancer for all purposes unless he could point her to a specific ruling stating otherwise. Purcell could not do so at the time and did not do so when he appealed the Sanctions Order.

With respect to Purcell's claim that the defendants elicited the testimony on direct examination and Judge Hamilton permitted it, implying that it was therefore permissible on cross-examination, we have reviewed the record and find no merit to the contention. The defendants did not directly elicit testimony about other diseases; rather, Dr. Chirieac, in response to defense questioning, spontaneously identified the absence of emphysema. On the other hand, Purcell's line of inquiry was directly focused on non-lung cancer diseases and whether Pooshs suffered from them, which is in direct violation of Judge Hamilton's pretrial orders.

c. Questioning of Dr. Schroeder

In asking Judge Hamilton for an exception to her order excluding evidence of non-lung cancer diseases, Purcell argued, "The fact that Ms. Pooshs has COPD and emphysema is a risk factor for her having a smoking-related lung cancer . . . . And it is an important risk factor that Ms. Pooshs presents with . . . . That's what my intent has been consistently in referencing this." Purcell explained that he did not view Judge Hamilton's order as "a limitation on cross-examination and impeachment categorically." Judge Hamilton denied Purcell's request, noting she had ruled multiple times that evidence of non-lung cancer diseases or injuries was excluded, and specifically stated there was no exception to her ruling. Despite having received this clear directive, Purcell proceeded to question Dr. Schroeder on matters that the district court had explicitly deemed impermissible.

Purcell argues on review that his questions addressed features of the tumor without reference to diseases, which was not encompassed in Judge Hamilton's ruling on the motion in limine, and which Judge Hamilton allowed Dr. Schroeder to testify about on direct examination. We have reviewed the record, and although defense counsel was clearly laying the groundwork for the argument that something other than smoking caused Pooshs's cancer, the line of questioning did not ask about non-lung cancer diseases or directly implicate them. Nor did it change the ruling on the motion in limine and open the door for Purcell to ask about non-lung cancer conditions under the guise of lung tissue traits or characteristics. (See *In the Matter of Field, supra*, 5 Cal. State Bar Ct. Rptr. at p. 184 [permitting testimony about housing sexually violent predator (SVP) does not change in limine order excluding evidence of consequences of SVP finding].)

Purcell further argues that his questions pertain to traits or characteristics of lung tissue without reference to diseases; thus, it was not part of the pretrial ruling. We disagree. In

addition to Judge Hamilton's Sanctions Order that found he had violated her ruling, we note that "emphysematous changes" directly refers to emphysema, which is a non-lung cancer condition and was excluded. "Blebs" are holes or the appearance of holes in the lung imaging, which is similarly another reference to emphysema.[10] Purcell's next question to the witness—"Well, will you agree with me that there are things that can happen to the structure of the lung *having nothing to do with cancer that can co-present* where the structure of the lung is being made less solid uniformly?"—further demonstrates that this line of questioning was an attempt to address non-lung cancer diseases and violated Judge Hamilton's order. (Italics added.)

3. Purcell is Culpable as Charged

Purcell violated his duty to obey the court's order by questioning Dr. Horn about COPD and emphysema when he was fully aware of the district court's rulings that plainly stated such evidence was excluded from trial. During pretrial proceedings, Purcell engaged in progressive efforts to introduce evidence of Pooshs's non-lung cancer injuries, initially claiming he had to rebut a statute of limitations defense, then arguing he had to prove causation, and later asserting the evidence was necessary to prove Pooshs's failure to warn and concealment claims. Judge Hamilton rejected each of these arguments and had to continually reiterate that she was excluding evidence of Pooshs's non-lung cancer conditions. Moreover, Judge Hamilton repeatedly warned Purcell that he was not complying with her order, as well as other evidentiary rulings. Given the numerous times Judge Hamilton had to revisit her ruling throughout pretrial proceedings and the multiple warnings Judge Hamilton issued, we find Purcell received ample notice that he was required to comply with her order during trial and is evidence that his multiple failures to comply with Judge Hamilton's order at trial were intentional.

[10] Emphysema is "a condition characterized by air-filled expansions of body tissues." (Merriam-Webster Dict. Online (2023) <https://www.merriam-webster.com/dictionary/emphysema> [as of Apr. 12, 2023].)

When Judge Hamilton confronted Purcell about his questioning of Dr. Chirieac, Purcell admitted his intent to introduce the prohibited evidence, because he believed it was essential to Pooshs's claim that her non-lung cancer diseases were risk factors for lung cancer. Nevertheless, Judge Hamilton remarked that she had ruled multiple times that evidence of Pooshs's non-lung cancer injuries was excluded and denied his request to broach the topic generically. Regarding Dr. Schroeder, the district court indicated that it had issued three prior rulings which applied to Purcell's arguments and "none of them include[d] a carve-out" for what he sought to elicit through his proposed questioning of Dr. Schroeder. Therefore, Purcell's defiance of the court's ruling, just one day after the court rejected his attempt to create an exception, unequivocally undermines his good faith argument and demonstrates his willful disobedience of the court's final, binding orders. Judge Hamilton advised Purcell during the trial that she viewed his violations of her order to be "intentional" and "deliberate," and we agree.

B. Count Two: Failure to Maintain Respect Due to Court (§ 6068, subd. (b))

Section 6068, subdivision (b), provides that an attorney has a duty "[t]o maintain the respect due to the courts of justice and judicial officers." The respect due to the courts includes compliance with applicable court orders absent a good faith belief in a legal right not to comply. (*Maltaman v. State Bar, supra*, 43 Cal.3d at p.954.) An attorney's violation of a judge's explicit instruction can demonstrate an act of disrespect to the court. (*In the Matter of Boyne, supra*, 2 Cal. State Bar Ct. Rptr. at p. 404 [willful, unexcused failure to comply with court orders constitutes violations of both sections 6068, subd. (b), and 6103].)

As explained above in discussing count one, we find Purcell violated Judge Hamilton's order while examining the three witnesses. We also agree with Judge Hamilton's finding in the Sanctions Order that he was "intentionally flouting" her order and find Purcell's unexcused failure to comply with the order evidenced a failure to maintain respect due to the court.

Accordingly, we find Purcell's conduct constitutes violations of both section 6103 and section 6068, subdivision (b), as charged under counts one and two, respectively. Like the hearing judge, we assign no additional weight in discipline to Purcell's section 6068, subdivision (b) violation because the same facts support culpability under count one. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no dismissal of charge where same misconduct proves culpability for another charge, but no additional weight assigned for discipline purposes].)

IV. AGGRAVATION AND MITIGATION

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

A. Aggravation

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

The hearing judge found this standard satisfied by Purcell's impermissible questioning of expert witnesses on three separate occasions and assigned moderate weight in aggravation. Purcell argues that aggravation under this circumstance is not warranted because his misconduct occurred over a matter of days in a single trial proceeding and concerned the court's orders on a single motion in limine. OCTC support's the hearing judge's aggravation finding.

Purcell's misconduct occurred on three separate days with three different witnesses. Each time he violated Judge Hamilton's order, he proffered a different justification for doing so. This underscores the independent nature of each violation and warrants a finding of aggravation. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 631, 646-647 [three instances of

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

misconduct considered multiple acts].) Although we found Purcell culpable of two counts, we have held that aggravation for multiple acts is not limited to the counts pleaded. (See *In the Matter of Song* (Review Dept.2013) 5 Cal. State Bar Ct. Rptr. 273, 279.) We also recognize Purcell's misconduct occurred within one trial and involved the violation of the same in limine ruling. For this reason, we assign limited weight in aggravation. (Compare *In the Matter of Riordan*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 48 [little weight assigned to multiple acts for three counts involving similar misconduct] with *In the Matter of Martin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 753, 761 [moderate weight in aggravation for two counts of misconduct involving multiple acts occurring over 10 months].)

2. No Intentional Misconduct, Bad Faith, or Dishonesty (Std. 1.5(d))

Standard 1.5(d) provides for aggravation when an attorney's actions involve intentional misconduct, bad faith, or dishonesty. The hearing judge declined to assign weight in aggravation for this circumstance because Purcell's intentional and willful misconduct was considered in establishing culpability under section 6103 and section 6068, subdivision (b). Neither party challenges this finding on review. We agree and affirm. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used for culpability, improper to consider them in aggravation].)

3. No 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 did not find indifference to be an aggravating circumstance. She concluded that Purcell testified genuinely and admitted that looking back, he would have handled himself differently. Neither

party challenges this finding. Although we found that Purcell repeatedly violated his ethical obligations and showed disrespect to the court, his actions do not rise to the level of demonstrating a lack of insight. Thus, we also decline to assign aggravation for indifference.

4. No Significant Harm (Std. 1.5(j))

We agree with the hearing judge's finding that Purcell's conduct did not cause significant harm to a client, the public, or the administration of justice. This finding was not challenged by either party. Although Purcell disobeyed the district court's orders which resulted in the imposition of sanctions, the record does not show that his actions caused the court to expend significant judicial resources. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 133 [where misconduct caused unnecessary sanction motions and hearings, this alone did not establish significant harm to administration of justice].) Therefore, we do not assign aggravation under standard 1.5(j).

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 assigned substantial mitigation credit for Purcell's 30 years of discipline-free practice. We affirm substantial mitigation under standard 1.6(a). Given his three decades of practice without discipline and our belief that his misconduct was aberrational, Purcell has established that he is entitled to substantial weight in aggravation under this circumstance. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant weight in mitigation where attorney practiced over 10 years before first act of misconduct and misconduct not likely to recur].)

2. Candor and Cooperation with State Bar (Std. 1.6(e))

Spontaneous candor and cooperation with the State Bar is a mitigating factor. (Std. 1.6(e).) Mitigating weight may be reduced where an attorney enters a non-extensive stipulation regarding easily provable facts. (*In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 318 [limited mitigating weight for non-extensive stipulation with easy-to-prove facts].) Purcell's Stipulation with OCTC is a mitigating circumstance but consisted of easily provable facts based largely on the district court's well-documented rulings and proceedings. Additionally, Purcell did not admit culpability, and "more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) The hearing judge assigned limited weight in mitigation for this circumstance, and we affirm.

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

Purcell 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 Purcell was entitled to substantial mitigation for his good character evidence. OCTC supports the judge's finding. On review, Purcell requests we find compelling weight in mitigation under standard 1.6(f).

Fourteen witnesses testified at trial to Purcell's exemplary legal career, commitment to excellence and service, and his integrity. Five additional witnesses submitted declarations sharing similar sentiments. Purcell's 19 character witnesses included 12 attorneys, current and former judges, colleagues, and personal acquaintances. Many witnesses have impressive backgrounds and prominent positions in the legal and general communities. Purcell's witnesses have known him for a considerable amount of time, ranging from 4 to 38 years, and they represent a broad spectrum of the community, as required under the standard. The evidence also demonstrates that

the witnesses were generally aware of the extent of Purcell's misconduct and multiple witnesses attested that the charged misconduct did not change their high opinion of him. Several witnesses also attested to Purcell's dedication to community service through his support of charitable efforts, which is detailed *post* in our pro bono and community service discussion.

Retired Superior Court Judge Paul Beeman, who has presided over trials that Purcell litigated, described him as very ethical, respectful, and an excellent attorney. Purcell's attorney witnesses—both from the plaintiff and defense side—stated that they hold high opinions of him and commended his zealous advocacy and excellent trial skills. For instance, attorney witnesses Patricia Henle and Madelyn Chaber noted his expertise as a successful trial attorney as demonstrated by his numerous accolades and awards received from the American Board of Trial Advocates and the San Francisco and Marin Trial Lawyers Associations. We give serious consideration to testimony from members of the bench and bar since judges and attorneys have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.)

Purcell relies on *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835 and *In the Matter of Field*, *supra*, 5 Cal. State Bar Ct. Rptr. 171, to assert that his showing of good character warrants compelling weight. We disagree. The attorneys in *Field* and *Respondent BB* each presented more than 35 character witnesses in which we found the quality of their testimony established compelling mitigation. We found that the totality of the wide-ranging and extensive character evidence proffered in *Respondent BB*—which included testimony and declarations from 44 witnesses ranging from public defenders, current and previous employers, clients, assistant district attorneys, a priest, and 12 personal acquaintances—warranted compelling weight due to the breadth of the evidence. In *Field*, we emphasized the extraordinary nature of the testimony proffered by the attorney's character witnesses which supported our compelling

mitigation finding. For example, a retired judge testified that he never doubted Field's character or honesty and held Field in such high regard that even after becoming aware of the disciplinary charges, he recommended Field to the governor for judicial appointment consideration. On review, we find that Purcell has presented a substantial showing of evidence to support his good character. (See *In the Matter of Lingwood* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 660, 675-676 [substantial mitigation for 13 character witnesses who had long-standing familiarity with attorney and attested to strong moral character]; see also *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [significant weight given to testimony from witnesses who had broad knowledge of attorney's good character, work habits, and professional skills].) We find that while Purcell's witnesses strongly endorsed his good character and professionalism, the evidence does not rise to the level of mitigating evidence established in *Field* and *Respondent BB,* and therefore does not warrant compelling weight in mitigation. Accordingly, we affirm the hearing judge's finding of substantial weight in mitigation under standard 1.6(f).

4. Pro Bono Work and Community Service

Under *Calvert v. State Bar* (1991) 54 Cal.3d 765, 785, community service is a mitigating factor. The hearing judge gave moderate weight to Purcell's pro bono and community service efforts. Purcell argues that his longstanding support of charitable organizations through fundraising, financial support, and pro bono assistance warrants substantial mitigating weight. Based on its brief, OCTC does not oppose substantial mitigating weight for Purcell's community involvement; however, OCTC argues that Purcell's mitigation does not rise to the level of deserving compelling weight.

At least six witnesses proffered evidence to support Purcell's charitable contributions over the decades of his career. Purcell has devoted financial contributions to the North Bay

Children's Center, Marin Humane Society, and the Call of the Sea. He is a longtime board member of the Consumer Attorneys of California and contributes to Pepperdine University Law School through teaching, mentorship, and assisting with student housing. One witness declared that Purcell and his wife have hosted fundraisers for various local community organizations, including the Guide Dogs of the Blind, Marin Boys and Girls Clubs, and Marin Humane Society. Nancy McKenney, President of Marin Humane Society, corroborated this evidence by stating that Purcell and his law firm have been consistent and generous supporters of the organization over the past nine years. McKenney indicated that, in addition to Purcell hosting a gala and fundraisers for the organization at his home, his law firm helped to sponsor a summer camp on short notice. She also indicated that Purcell's firm was awarded the Heart of Marin Corporate Community Service award in January 2022.

We find that Purcell has provided sufficient evidence, consisting of his own testimony and detailed corroborating testimony from witnesses and declarants, to support the extent of his charitable contributions. (Cf. *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited weight in mitigation where community service evidence based solely on respondent's testimony].) We agree with Purcell that his proven dedication to pro bono work and community service—which is diverse, has occurred over more than a 10-year period, and involves substantial financial contributions—deserves substantial mitigation credit. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work]; see also *Schneider v. State Bar* (1987) 43 Cal.3d 784, 799 [attorney demonstrating significant commitment to pro bono work and community service is entitled to considerable weight].) However, we do not find that this increased weight in mitigation also warrants a change to the level of mitigation for extraordinary good character, as Purcell argues, since these are two separate and distinct factors in mitigation.

5. Remoteness in Time of the Misconduct and Subsequent Rehabilitation (Std. 1.6(h))

Purcell is entitled to mitigation if he can show subsequent rehabilitation where the misconduct is remote in time. (Std. 1.6(h).) The hearing judge assigned moderate mitigation to this circumstance as Purcell's misconduct occurred in 2016 and he has demonstrated subsequent efforts regarding self-improvement. Purcell testified that he completed a conflicts resolution course in 2017, and that he continues to independently work on becoming a better listener, communicator, and lawyer. OCTC supports the hearing judge's finding based on what it considers a sparse record of rehabilitation.

Purcell asserts he is entitled to substantial mitigating weight under this circumstance without citing any case law to support his request. He relies on testimony from his character witnesses stating that he is ethical, respectful, and regarded as "one of the best plaintiffs' trial lawyers in California" and his admittance to the American Board of Trial Advocates (ABOTA) at the "highest rank" to support his position. This argument is unpersuasive. Purcell became a member of ABOTA long before the misconduct occurred, and his awards as an attorney similarly were bestowed before the instant wrongdoing. We agree with the hearing judge that the record supports moderate mitigation under this standard based on Purcell's six years of practice without evidence of additional misconduct. (*Amante v. State Bar* (1990) 50 Cal.3d 247, 256 [three years of unblemished post-misconduct practice given mitigative credit].)

6. No Mitigation for Good Faith (Std. 1.6(b))

"In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held and reasonable. [Citation.]" (*In the Matter of Rose*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 653.) The hearing judge correctly rejected Purcell's request for mitigation under standard 1.6(b). She determined that Purcell's belief that the district court should have permitted his questioning of the expert witnesses, even if honestly held, was not

objectively reasonable. In its brief, OCTC emphasizes that no reasonable justification existed for Purcell to violate the district court's order. Purcell argues on review that he had a reasonable and good faith belief that his questioning fell within the bounds of the court's rulings based on the language and complexity of the court's orders, coupled with the burdens of litigating a lengthy and sophisticated trial.

The record shows that Purcell continuously attempted to introduce inadmissible evidence in clear violation of the district court's order. Each new argument Purcell raised in support of introducing evidence of non-lung cancer disease was considered and rejected by Judge Hamilton with her reiterating that her ruling excluding such evidence stood firm. Most importantly, Purcell has failed to plausibly explain how his claimed good faith belief justified his questioning of Dr. Schroeder after being informed he would be sanctioned and after Judge Hamilton explicitly rejected any sort of carve-out to her order. Thus, even if Purcell held a good faith belief up until the cross-examination of Dr. Schroeder, which we do not believe he did, it was objectively unreasonable for him to question Dr. Schroeder on inadmissible issues in defiance of the court's previous rulings and the rejection of any exception. This behavior undercuts his good faith argument and supports our findings that he did not hold a reasonably objective good faith belief that his questioning was permissible. (*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331 [attorney's honest belief not mitigating because belief was unreasonable].) Therefore, we assign no weight in mitigation for Purcell's assertion of a good faith belief.

V. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them

great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

For both counts, the hearing judge properly relied on standard 2.12(a), which calls for disbarment or actual suspension for violation of a court order related to the practice of law. Additionally, standard 1.7(c) provides, "If mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given Standard." In coming to her discipline recommendation, the hearing judge noted that Purcell's five mitigating circumstances outweighed his one aggravating circumstances. Therefore, she determined there was sufficient evidence to support a downward departure from the presumed sanction as outlined in standard 2.12(a).

The hearing judge also looked to *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 511 for guidance. In *Collins*, this court's recommended discipline included a 30-day actual suspension based on Collins's intentional failure to comply with five separate sanctions orders in a single matter with unpaid court-ordered sanctions at the time of his disciplinary proceedings. Collins established mitigation for his 22 years of discipline-free practice and cooperation with OCTC. Like Purcell, Collins's misconduct was only aggravated by one circumstance, multiple acts of wrongdoing. However, on balance, the hearing judge determined that Collins's misconduct was more serious and involved less mitigation than Purcell's. Thus, the judge concluded that a one-year stayed suspension was the appropriate level of discipline in Purcell's case.

On review, OCTC supports the hearing judge's reasoning and discipline recommendation. Purcell maintains that he is not culpable of the charged misconduct and argues for either an admonition or private reproval. In our view, we find clear reasons to depart from standard 2.12(a) and to recommend discipline less than actual suspension. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons to deviate from standards].) However, we decline to consider an admonition pursuant to rule 5.126(A) of the Rules of Procedure of the State Bar, as Purcell requests. Under rule 5.126(A), we may resolve a matter by admonition if: (1) the subject matter of the disciplinary proceeding does not involve a Client Security Fund matter or a serious offense; (2) the Court concludes that the violations were not intentional or occurred under mitigating circumstances; and (3) no significant harm resulted.

We issued an admonition in *Respondent BB* based on the unique circumstances of that case which involved a relatively inexperienced attorney who demonstrated remorse and established extensive and compelling mitigation, along with no aggravation. The attorney in *Respondent BB* was found culpable under two counts of disrespect to the courts and one count of violating a court order, which involved: (1) a brief exchange with a judge during his client's criminal trial when the attorney displayed disdain for the court's ruling by accusing the court of lacking "backbone," to which the attorney immediately apologized and (2) a second matter, with a different judge, when the attorney delayed—for a matter of seconds—the sheriff's deputies in taking a mentally ill client into custody. Also, this court found that the attorney in *Respondent BB* had demonstrated substantial personal and professional growth and development since his misconduct.

Here, unlike in *Respondent BB*, we do not find that Purcell's misconduct was mitigated in a compelling way. Purcell's *intentional* misconduct—which involved his questioning of three witnesses on three separate occasions in violation of the court's rulings—was also not minor or

brief in nature when compared to *Respondent BB*. Also, as articulated above, that attorney's good character mitigation was more extensive and compelling in quantity and quality than Purcell's mitigation. We additionally take note that Purcell's repeated disregard of the court's pretrial rulings foreshadowed the charged misconduct and further demonstrates his unwillingness to comply with rulings that were not in his favor. An attorney of Purcell's reputation engaging in repeated failures to comply with a court's order is troubling.

To support his request for a private reproval, Purcell relies on *In re Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592 and *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862. Both cases involved matters where the attorneys were privately reproved for a violation of section 6103—the attorney in *Respondent X* violated a confidentiality order and the attorney in *Respondent Y* did not obey a court order to pay sanctions. However, the cases were decided under a different discipline standard at the time (Std. 2.6), which did not have a presumption of actual suspension but instead considered the gravity of the offense or harm. These cases are further distinguished from Purcell's case because neither of those matters involved any aggravating circumstances. A private reproval is not appropriate here because the essence of Purcell's misconduct was his repeated failure to comply with the district court's orders despite Judge Hamilton's warning.

Notwithstanding his misconduct, the record reveals that Purcell is a highly respected and skilled attorney who zealously advocates on behalf of his clients. We are mindful that his practice is complex, stressful, and involves plaintiffs suffering from the most serious injuries. Purcell's character witnesses, including esteemed judges and attorneys, attested to his integrity and advocacy skills. We also recognize that Purcell's misconduct occurred at the end of over a decade of hard-fought litigation, going toe-to-toe with presumably relentless advocacy from the defendants' attorneys. Nevertheless, while it is one thing to cautiously explore the contours of a

judge's ruling, it is quite another to disregard its parameters, even in high-stakes litigation. We do not find that Purcell acted in bad faith when committing the misconduct—instead, we view his disobedience as unreasonable and without careful consideration for the consequences of his actions. Accordingly, we find that a one-year stayed suspension is appropriate given the totality of the circumstances in this case. This discipline recommendation addresses the seriousness of Purcell's misconduct, and it adequately protects the public, the courts, and the legal profession.

VI. RECOMMENDATIONS

We recommend that Gilbert Lynn Purcell, State Bar Number 113603, 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. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Purcell 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 Purcell's first quarterly report.

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

3. **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, Purcell 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. Purcell 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.

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, Purcell must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Purcell must provide a declaration, under penalty of perjury, attesting to Purcell's compliance with this requirement, to the Office of Probation no later than the deadline for Purcell's next quarterly report due immediately after course completion.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Purcell must schedule a meeting with his assigned Probation Case Coordinator 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, Purcell 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.

6. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Purcell'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.

7. **Quarterly and Final Reports**

   a. Deadlines for Reports. Purcell 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, Purcell 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. Purcell 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. Purcell 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.

8. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Purcell 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 the session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Purcell will not receive MCLE credit for attending these sessions. 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, Purcell will nonetheless receive credit for such evidence toward his duty to comply with this condition.

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

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Gilbert Lynn Purcell 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 Purcell provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

VIII. COSTS

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.

IX. MONETARY SANCTIONS

Pursuant to rule 5.137(A) of the Rules of Procedure of the State Bar, monetary sanctions are not applicable in the disposition of this matter as no period of actual suspension is recommended.

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.