

Filed August 18, 2020

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	16-O-16374
	)	OPINION
KULVINDER SINGH,	)	
	)	
State Bar No. 182109.	)	
_____	)	

A hearing judge found that Kulvinder Singh engaged in the unauthorized practice of law (UPL), filed a frivolous appeal, and failed to pay \$26,973.88 in court-ordered attorney fees. The judge dismissed a charge that Singh did not maintain respect for the courts as duplicative. Singh’s misconduct relates to his unsuccessful pursuit of a civil harassment restraining order against his ex-wife’s former attorney. He has one prior record of discipline that included a 30-day actual suspension for misconduct involving the same attorney. In the present case, the judge recommended discipline including a six-month actual suspension, probation, and restitution.

Singh appeals, disputing the misconduct determinations and the evidence in aggravation. He also argues the hearing judge erred because she made improper adverse credibility findings and denied him the opportunity to present character witnesses. As a “reasonable resolution,” he requests an admonition, reproof, or probation with no suspension. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), and agree with most, but not all, of the hearing judge’s findings. We affirm the discipline recommendation but do not order restitution because Singh recently paid the court-ordered attorney fees.

## I. PROCEDURAL HISTORY

Singh was admitted to practice law on June 3, 1996. On November 8, 2018, OCTC filed a Notice of Disciplinary Charges (NDC) alleging that Singh: (1) held himself out as entitled to practice law when he was not an active member of the State Bar by filing or sending four documents related to court cases, in violation of Business and Professions Code sections 6126,<sup>1</sup> and 6068, subdivision (a); (2) maintained an unjust action by filing a frivolous appeal solely for the purposes of delay, in violation of section 6068, subdivision (c); (3) failed to pay \$26,973.88 in court-ordered attorney fees, in violation of section 6068, subdivision (a); and (4) failed to maintain respect due courts of justice and judicial officers by filing a frivolous appeal and failing to pay court-ordered attorney fees, in violation of section 6068, subdivision (b). On November 16, 2018, Singh filed a response. On February 15, 2019, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). On March 5, 2019, the hearing judge held a one-day trial and she issued her decision on June 7, 2019.

Singh filed a request for review on August 23, 2019. On February 3, 2020, he filed his opening brief. OCTC filed its responsive brief on February 25, 2020. Singh did not file a rebuttal brief. On June 5, 2020, we granted Singh's motion to augment the record with evidence that, in May 2020, he paid \$26,973.88 as a full settlement of the attorney fees owed.

## II. FACTS<sup>2</sup>

Beginning in 2008, attorney Sandra Myers represented Singh's ex-wife in a highly contentious divorce proceeding. In 2009, during the family law case, Singh filed a lawsuit

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<sup>1</sup> Further reference to section(s) are to this source.

<sup>2</sup> The facts are based on the parties' Stipulation, a Court of Appeal opinion, documentary evidence, and trial testimony. The hearing judge's credibility and factual findings are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A) [factual findings]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility having observed and assessed witnesses' demeanor and veracity firsthand].)

against Myers and others. Singh ultimately settled the case with an agreement to pay attorney fees and dismiss the complaint with prejudice.<sup>3</sup>

After Myers stopped representing Singh's ex-wife, Singh made derogatory remarks about Myers in a September 12, 2011 court document he filed in the family law case. Myers became aware of this and on September 15, 2011, emailed a letter to Singh informing him that she would file a civil harassment restraining order if he made further disparaging remarks about her. A few days later, on September 19, Singh filed, as a self-represented litigant, a petition for a civil harassment restraining order against Myers.<sup>4</sup> Among other things, Singh alleged that Myers threatened to have him barred from practicing law in Placer County and improperly interfered with his cases and litigation.

A hearing was held before Superior Court Judge James Dawson. On October 13, 2011, Judge Dawson denied Singh's petition and awarded Myers \$12,000 in attorney fees. In a December 2, 2011 post-judgment order, Judge Dawson denied Singh's motion for a new trial and awarded Myers an additional \$9,533.88 in attorney fees. On December 12, 2011, Singh filed a Notice of Appeal in the Court of Appeal, Third Appellate District (Court of Appeal), and on December 15, 2011, he filed a Notice of Appeal of the post-judgment order.

On June 29, 2016, the Court of Appeal issued a 16-page unpublished opinion dismissing Singh's appeal as frivolous.<sup>5</sup> The court stated that Singh's brief was deficient, misstated the record, and the two exhibits referenced in his appellate brief "do not come anywhere close to constituting harassment." The court also found that "the only rational conclusion is that Singh knew he had no basis for appeal but filed it anyway in order to delay having to pay the attorney fee

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<sup>3</sup> Singh's prior disciplinary case is based on his misconduct in this litigation.

<sup>4</sup> The action was filed in Placer County Superior Court (case No. S-CV-0029911).

<sup>5</sup> The appellate court noted that Singh did not seek a harassment order but instead appealed from the judgment and post-judgment order, hoping to avoid the attorney fee awards.

award.” The court denied Myers’s request to declare Singh a vexatious litigant, but ordered \$7,500 in appellate sanctions against him, which he timely paid. The court further ordered that a copy of its opinion be forwarded to the State Bar upon return of the remittitur and remanded the case to superior court to calculate reasonable fees for the appeal. On July 22, 2016, the appellate court denied Singh’s petition for rehearing.

On December 19, 2016, Judge Dawson ordered Singh to pay Myers an additional \$5,440 for attorney fees on appeal. In total, Singh owed Myers \$26,973.88 (\$12,000 + \$9,533.88 + \$5,440) in attorney fees (plus interest). Singh testified that he unsuccessfully attempted to settle the court-ordered fees with Myers from 2015 to 2018. In May 2020, shortly before the June oral argument in this proceeding, Singh paid Myers \$26,973.88, which she accepted as a full settlement of all outstanding fees, waiving any interest.

During the pendency of the appeal, Singh was suspended from the practice of law from December 17, 2012 to January 16, 2013, due to his prior discipline case. He stipulated that while he was suspended, he filed three court documents and sent one letter to the Court of Appeal:

1. December 27, 2012: Application for Extension of Time to File Brief, filed in Court of Appeal; Singh is listed in caption as Kulvinder Singh, Esq. SBN 182109, ATTORNEY FOR appellant;
2. December 27, 2012: Letter to Clerk of the Third District Court of Appeal regarding relief from default. The letter is on Singh’s letterhead with him listed as Kulvinder Singh, Attorney at Law;
3. January 8, 2013: Motion to Remand to Trial Court for Augmentation of Record; Memorandum of Points & Authorities; Procedural Facts; Declaration, filed in Court of Appeal. Singh is listed in the caption as Kulvinder Singh, Esq. SBN 182109, with the address of Singh Law Office; and
4. January 14, 2013: Notice to Court of Omission; Motion Under CRC, Rules 8.155(b) Requesting Trial Court Certify Appellant’s Settled Statement, filed in trial court. Singh is listed in caption as Kulvinder Singh, Esq., Attorney/Petitioner.

### III. CULPABILITY

#### A. Count One: Failure to Comply with Laws—UPL (§ 6068, subd.(a))

The NDC charged Singh with UPL for holding himself out as entitled to practice law while suspended from December 17, 2012 to January 16, 2013, in willful violation of sections 6126 and 6068, subdivision (a).<sup>6</sup> The NDC alleged Singh filed four documents, noted above. The hearing judge found him culpable, and we agree.

UPL includes the holding out by an attorney that he or she is entitled to practice law during a suspension period. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [citing § 6126].) “Both express and implied representations of ability to practice are prohibited.” (*In re Naney* (1990) 51 Cal.3d 186, 195.) In each of the four documents Singh filed with or sent to the courts during his suspension, he referred to himself as “Attorney” or “Attorney at Law,” or he recited his State Bar number, listed his law office address, and/or included the honorific “Esq.” next to his name. These actions constituted UPL because they improperly created the false impression that Singh was entitled to practice law when he was suspended. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [suspended attorney created false impression of present ability to practice by using terms “Member, State Bar of CA” and “Esq.” next to his signature on job application].)

Singh argues that he was merely negligent and did not *willfully* engage in UPL. He concedes he failed to use due care and testified that he “messed up” in preparing his court documents. But he claims, among other things, that circumstances related to electronic filing or

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<sup>6</sup> Section 6068, subdivision (a), requires an attorney “[t]o support the Constitution and laws of the United States and of this state.” A violation of this section is established when an attorney violates section 6126. (*In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236–237.) Section 6126 prohibits holding oneself out as entitled to practice law while on suspension. An appropriate method of charging a section 6126 violation is by charging a violation of section 6068, subdivision (a). (*In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

the court clerk's instructions required him to provide his State Bar number and firm name. He argues his negligence "does not rise to the level of willful conduct." We reject his argument. Willful misconduct in attorney discipline matters does not require bad faith, but calls for a general purpose or intent to commit an act or make an omission.<sup>7</sup> Singh testified that he could have, but did not, clarify his situation by stating on the documents that he was suspended. Instead, shortly after he began his disciplinary probation and 30-day suspension period, he held himself out on four occasions in a three-week period as an attorney representing himself who was entitled to practice law. His repeated UPL demonstrates he acted with general purpose or intent to present himself as a currently licensed attorney.

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

Singh is charged with maintaining an unjust action, in willful violation of section 6068, subdivision (c), by filing a frivolous appeal in the Court of Appeal. The hearing judge found him culpable, and we agree.

Under section 6068, subdivision (c), an attorney must maintain only those actions or proceedings that appear "legal or just." In general, we give a strong presumption of validity to the superior court's findings if supported by substantial evidence. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) We may also rely on a court of appeal opinion to which an attorney was a party as a conclusive legal determination of civil matters "which bear a strong similarity, if not identity, to the charged disciplinary conduct." (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117.) Such is the case here—Singh is charged with maintaining an

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<sup>7</sup> (See *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309 [general intent for willful probation revocation and other disciplinary proceedings].)

unjust action by filing a frivolous appeal. The record, including the appellate court opinion, provides clear and convincing evidence<sup>8</sup> of Singh's culpability.

Singh argues on review that he had a reasonable and legitimate challenge in the appellate court, alleging various procedural problems in the trial court. Singh made these arguments on appeal and the court rejected them. For example, Singh urges his dissatisfaction with the settled statement from the trial court. On this issue, the appellate court found Singh misrepresented what happened in the trial court and failed to cite legal authority supporting reversal based on a flawed settled statement. Singh cannot raise arguments that were rejected by the Court of Appeal in this disciplinary proceeding to collaterally attack the final and binding appellate court decision. (See *In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, 559; *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403-404; *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9.)

We find that the evidence overwhelmingly supports Singh's culpability for filing an unjust action in the form of a frivolous appeal. The appellate court found that Singh filed his appeal solely to delay paying the attorney fees award to Myers, and also found that he delayed even further by requesting extensions of time to submit a reply brief that he never filed. Notably, the court awarded \$7,500 in appellate sanctions because Singh had abused the legal system to avoid paying the attorney fees. (See *Nat'l Secretarial Serv. v. Froehlich* (1989) 210 Cal.App.3d 510, 526 [substantial sanctions proper where an abuse of the legal system is present for no other purpose than to avoid paying a legitimate claim].)

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<sup>8</sup> Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

**C. Count Three: Failure to Pay Court-Ordered Fees (§ 6068, subd. (a))**

Singh is charged with failing to pay court-ordered attorney fees totaling \$26,973.88, in violation of section 6068, subdivision (a). The hearing judge found him culpable, and we agree.

Singh stipulated he did not timely pay the attorney fees. He testified that he always intended to pay, but certain setbacks—a broken arm and lack of full-time employment—delayed his payment. Though Singh ultimately paid Myers, it was three years late. This lengthy delay is unreasonable and does not constitute timely payment. (See *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867 [where attorney is aware of sanctions order, payment is required within reasonable time].) Singh’s argument that he could not afford to pay earlier, even if true, does not excuse his culpability. (*In the Matter of Boyne, supra*, 2 Cal. State Bar Ct. Rptr at p. 404 [financial inability to pay court-ordered attorney fees to opposing party no defense to charged misconduct], citing *Papadakis v. Zelis* (1991) 230 Cal.App.3d 1385, 1389 [attorney who filed bankruptcy obligated to pay court-ordered sanctions for frivolous appeal].)

**D. Count Four: Failure to Maintain Respect to Courts (§ 6068, subd. (b))**

Singh is charged with failing to maintain respect due to the courts by filing and pursuing a frivolous appeal from December 2011 to June 2016, and by not timely paying the court-ordered attorney fees. The hearing judge found he violated section 6068, subdivision (b), but dismissed the charge as duplicative of counts two and three. We disagree with the dismissal. An attorney should be culpable for all misconduct committed to maintain both the highest professional standards and the public’s confidence in the legal profession. Singh is culpable because, by filing the frivolous appeal and ignoring the court orders to pay Myers, he was disrespectful to the courts. Since we relied on those facts to establish culpability in counts two and three, however, we do not consider Singh’s culpability in count four in our discipline determination. (*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<sup>9</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Singh to meet the same burden to prove mitigation.

##### **A. Aggravation**

###### **1. Prior Record of Discipline (Std. 1.5(a))**

Singh has one prior record of discipline that resulted from a stipulation, as detailed below. Singh engaged in misconduct in August 2009, during the pendency of a lawsuit he filed in Placer County Superior Court against Myers and others (including Myers's attorney and husband Patrick Keegan). Singh filed the lawsuit while Myers represented his ex-wife in the family law case. The superior court granted defendants' anti-SLAPP motion, dismissing all causes of action, and awarded attorney fees. As part of a settlement, Singh agreed to pay defendants \$21,650, withdraw his motion to tax costs, and dismiss his complaint with prejudice. But he did not withdraw his motion and misled opposing counsel into thinking he had. He also misled the court by claiming he had not seen some pages of the settlement agreement.

Singh violated section 6106 (moral turpitude) and section 6068, subdivision (b) (misleading the court). In aggravation, he caused significant harm to a client, the public, or the administration of justice. In mitigation, he had no prior record of discipline, experienced emotional difficulties and severe financial stress due to his divorce, and presented good character references. On October 17, 2012, the Supreme Court ordered the stipulated discipline, including a two-year probation and a 30-day actual suspension, subject to a one-year stayed suspension,

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<sup>9</sup> Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All references to standard(s) are to this source.

and attendance at State Bar Ethics School. The Supreme Court also ordered that Singh pass the Multistate Professional Responsibility Examination. (Supreme Court case No. S204614; State Bar Court case No. 11-O-12353.) In the present case, the parties stipulated that Singh completed his disciplinary probation.

The hearing judge found that Singh's prior record of misconduct was an aggravating factor, but did not assign weight. (Std. 1.5(a) [prior discipline record is aggravating].) Singh argues that the aggravating force of his prior discipline should be diminished under *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, and other case law, because it involved misconduct that occurred at the same time as the present misconduct. He argues that, as a result, he did not have notice and an opportunity to heed the import of that discipline. (*In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263, 269.) We reject his argument because most of his misconduct occurred after he was disciplined in his prior case.

The operative dates to mark Singh's notice of wrongdoing in his prior case are November 22, 2011 (when the NDC was filed), March 27, 2012 (when his stipulation was filed), and October 17, 2012 (when the Supreme Court filed its discipline order). In the present case, the first order to pay Myers attorney fees was issued in October 2011 (\$12,000), after his unsuccessful civil harassment lawsuit. This was just one month before the NDC in his prior case was filed. The rest of Singh's misconduct occurred for several years thereafter. He failed to pay additional fees awarded to Myers in December 2011 (\$9,533.88) and in 2016 (\$5,440). He maintained his frivolous appeal from November 2011 through 2016. And he engaged in four acts of UPL in December 2012 and January 2013, immediately after his disciplinary probation began in November 2012. (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438 [aggravation magnified when present misconduct committed during disciplinary probation period].)

Considering this chronology, Singh's present misconduct is not isolated or aberrational. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. at p. 619 [prior discipline is aggravating because it is indicative of recidivist attorney's inability to conform conduct to ethical norms].) Accordingly, we assign substantial weight to his prior discipline record.

### **2. Multiple Acts of Wrongdoing (Std. 1.5(b))**

Singh's misconduct is aggravated by multiple acts of wrongdoing. (Std. 1.5(b) [multiple acts of wrongdoing are aggravating circumstance].) Singh failed to pay Myers, engaged in four acts of UPL, filed a frivolous appeal, and disrespected the courts. We assign moderate aggravating weight. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].)

### **3. No Aggravation for Dishonesty (Std. 1.5(d))**

The hearing judge found that Singh gave dishonest testimony about the stipulation in his prior discipline case. (Std. 1.5(d) [intentional misconduct, bad faith, or dishonesty are aggravating].) At trial, Singh was asked about several facts in that stipulation. He could not recall some. When pressed, he stated that he did stipulate to certain facts, but his stipulation did not make those facts true. The hearing judge indicated she was troubled by his cavalier attitude and found he was dishonest by discounting his prior stipulation. The judge assigned significant aggravation for Singh's dishonesty.

We do not find dishonesty in Singh's testimony that merits aggravation under standard 1.5(d). His testimony that he stipulated to certain facts in his prior case is true. And his testimony that stipulating to facts does not necessarily make those facts true could also be correct; OCTC did not prove otherwise or that Singh stipulated to facts in his prior case for dishonest reasons. Accordingly, we do not assign aggravation for dishonesty.

#### **4. Significant Harm (Std. 1.5(j))**

The hearing judge assigned aggravation for significant harm to Myers and to the administration of justice. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) We agree and find the overall harm Singh caused merits substantial aggravation.

Myers, a 25-year practitioner, and Keegan, her husband and a 32-year practitioner, testified as to Myers's significant harm. Myers stated that the litigation with Singh "went on for many, many years at great expense to me personally and to my office." It distracted her from pursuing her regular practice and she incurred fees that were not compensated. Keegan added that the lawsuits were a financial drain because they took considerable, otherwise billable, time away from clients. Myers testified that she experienced stress from worrying about the nature of the derogatory comments Singh made in court papers—that she was a "pig" and a "hog that should be slaughtered."

Singh argues that Myers and Keegan were not credible witnesses because they did not recall details of a particular lawsuit. Even so, the hearing judge found their testimony to be "credible and persuasive" in detailing the harm Singh caused. We give great weight to the judge's credibility determinations (*McKnight v. State Bar, supra*, 53 Cal.3d at p. 1032). Singh has not identified a persuasive reason to disregard these findings. Indeed, the record details extensive and frivolous litigation that Singh pursued against Myers, which support the witnesses' testimony and the hearing judge's finding of significant harm to Myers.

Singh further argues that any harm to Myers was already considered in his prior disciplinary proceeding and should not be counted again. We reject his argument. Myers was a victim of Singh's misconduct in both proceedings, and his present misconduct stems from a new round of litigation against Myers—the civil harassment action. Therefore, the harm is new and

different as demonstrated by Myers’s testimony that this time felt worse than the first. She testified she was angry and frustrated to have to go through another civil action with Singh, stating, “I felt like he was never going to go away and never going to leave me alone, never.”

Singh also caused significant harm to the administration of justice by burdening the superior and appellate courts. His actions, particularly filing the frivolous appeal, disrupted the efficient administration of justice and improperly taxed the judicial system. (See *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 217 [wasted judicial time and resources considered aggravating].)

#### **5. Indifference (Std. 1.5(k))**

Singh’s misconduct is aggravated by his failure to fully accept responsibility for his actions. (Std. 1.5(k) [indifference toward rectification or atonement for consequences of misconduct is aggravating factor].) Singh has not expressed insight into or remorse for the serious consequences of his misconduct, particularly his relentless pursuit of unjustified litigation against Myers. At times, he blames others. For example, he contends on review that the superior court mismanaged his settled statement on appeal—an argument the appellate court rejected. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 444 [blaming others demonstrates indifference and aggravates misconduct].) On the other hand, Singh admitted he was negligent and failed to use due care in preparing the documents that led to his UPL violations. He also timely paid the \$7,500 appellate sanctions and ultimately paid Myers, albeit three years late. On balance, we assign limited aggravating weight.

### **B. Mitigation**

#### **1. Cooperation with State Bar (Std. 1.6(e))**

The hearing judge assigned some mitigating weight to Singh’s Stipulation but did not provide reasons for her conclusion. (Std. 1.6(e) [spontaneous candor and cooperation displayed

to victims of misconduct or to State Bar is mitigating].) The Stipulation was comprehensive and included facts and admission of documents. It saved OCTC and the State Bar Court valuable time and resources. Though Singh did not stipulate to culpability, we assign moderate mitigating weight. (See *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [“more extensive weight in mitigation is accorded those who, where appropriate, willingly admit their culpability as well as the facts”].)

## **2. No Mitigation for Extraordinary Good Character (Std. 1.6(f))**

Mitigation is available 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 did not assign mitigating credit because she reasoned that Singh had “ample opportunity” to present character witnesses and failed to do so. Singh argues he was not given sufficient opportunity to present his character evidence. We afford no mitigating credit, but for different reasons than the hearing judge found.

In disciplinary proceedings, an accused attorney is obligated to appear and present all favorable evidence. (*Palomo v. State Bar* (1984) 36 Cal.3d 785, 792.) Singh has the burden to prove his good character in mitigation and was thus required to have his character witnesses ready to testify at trial. He was aware of this since the pretrial conference. Despite months to prepare and secure his witnesses, Singh did not produce them on the day of trial.

But Singh advised the hearing judge at the outset of trial that he had witness problems. He stated he just received news that one character witness’s mother had passed away and another would likely be available the following day. The judge offered Singh breaks that day to attempt to obtain declarations from witnesses or to update character letters from his prior discipline, but she did not continue the trial to a second day to accommodate Singh’s witnesses.

It is well established that a hearing judge has discretion to exercise reasonable control over the court proceedings in order to avoid unnecessary delay. (*Jones v. State Bar* (1989) 49 Cal.3d 273, 287.) But it is equally well established that respondents are entitled to a fair hearing overall in disciplinary proceedings. (*Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634.) Thus, it is incumbent on judges to allow parties, where possible, to fully litigate their cases and provide sufficient time to do so. We find no explanation in the record for why the hearing judge did not permit Singh to present his character witnesses the next morning, considering the judge initially stated that the trial might go for a “few hours” the following day and both parties estimated a two-day trial in their pretrial statements.

Nonetheless, for Singh to prevail on an alleged procedural error, such as the hearing judge’s refusal to continue the trial, he must show an abuse of discretion by the judge and identify resulting prejudice. (*Morales v. State Bar* (1988) 44 Cal.3d 1037, 1047.) Even if we were to find that the judge abused her discretion, Singh did not demonstrate, or argue, any specific prejudice. If both of Singh’s character witnesses testified, case law does not recognize two witnesses as comprising a wide range of witnesses in the legal and general communities that could establish extraordinary good character, as standard 1.6 requires. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [two character witnesses not mitigating]; *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 590, 594–595 [character evidence from attorney, district sales manager, and department store owner not wide range of references for mitigation].) Singh did not present good character evidence meriting mitigation under this standard.

### **3. Pro Bono Work and Community Service**

Pro bono work and community service are mitigating factors. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge did not address these factors in her decision.

Singh requests mitigating credit for them.<sup>10</sup> OCTC asserts Singh is entitled to “no or very little weight” for his activities. From the record, we identify and evaluate Singh’s evidence of pro bono work and community service.

Singh testified that he has been involved in community activities since 2005, particularly those that further diversity, education, and the law. He admitted into evidence several corroborating documents proving that he (1) received a recognition plaque from the Solo and Small Firm Section of the State Bar for his service on the Executive Committee from 2005 to 2008; (2) served on the Mandatory Fee Arbitration panel for the State Bar beginning in 2008; and (3) was appointed as a committee member of the American Bar Association General Practice, Solo and Small Firm Division in 2008. He also provided a 2008 publication of Big Meeting Magazine (for solo and small firms) that recognized him as a runner-up nominee for an award honoring leadership and service to the legal community. His article about the United States Supreme Court was featured in this issue as well.

Singh’s activities are impressive. Yet we assign only moderate weight because they are not recent and Singh did not fully establish the scope and extent of his past and/or current 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].)

#### **V. SIX-MONTH ACTUAL SUSPENSION IS PROPER PROGRESSIVE 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 standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards, which are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

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<sup>10</sup> Singh requested mitigation credit at trial and in his closing brief, citing two exhibits that established his volunteer service to the Bar and the legal profession.



Several standards apply here. Standard 2.9(a) (for maintaining a frivolous action), standard 2.10(a) (for engaging in UPL), and standard 2.12(a) (for disobeying a court order related to the practice of law) each provide for a range of discipline from actual suspension to disbarment.<sup>11</sup> We also consider standard 1.8(a), which states that when a member has a single prior record of discipline, the “sanction must be greater than the previously imposed sanction,” subject to certain exceptions not applicable here. As noted, Singh received a 30-day actual suspension in his prior discipline case.

Beyond the standards, we look to comparable case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.) The hearing judge cited two cases to support her discipline recommendation: *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, and *Farnham v. State Bar* (1976) 17 Cal.3d 605.

In *Mason*, the attorney engaged in UPL by making a court appearance, along with signing and serving a trial brief during a 75-day suspension. The attorney was found culpable of engaging in UPL and committing an act of moral turpitude. Multiple acts of wrongdoing and a prior record of discipline were aggravating, and pro bono work was mitigating. The attorney received a 90-day actual suspension. Singh’s case is more serious because he engaged in UPL as well as other misconduct—maintaining a frivolous appeal and violating court orders to pay fees.

In *Farnham*, the attorney engaged in UPL while on actual suspension and abandoned two clients. The attorney had a prior record of discipline for abandonment and lacked insight into the

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<sup>11</sup> In relevant part, the standards provide as follows: standard 2.9(a) states that where an attorney who maintains a frivolous claim for an improper purpose resulting in significant harm to the administration of justice or an individual, actual suspension is the presumed sanction; disbarment is appropriate for a pattern of this misconduct; standard 2.10(a) provides that disbarment or actual suspension is the presumed sanction where an attorney engages in UPL, including by holding himself out as entitled to practice law while suspended; and standard 2.12(a) provides that disbarment or actual suspension is the presumed sanction for a violation of a court order. (See std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].)

wrongfulness of his conduct. He received discipline that included a six-month actual suspension. Like Farnham, Singh committed multiple acts of misconduct including UPL, has a prior record of discipline and, among other aggravating factors, demonstrated indifference. The hearing judge found that discipline on par with *Farnham* was appropriate.

Singh argues his UPL violations are less serious than most because he represented himself and did not advocate, appear, negotiate settlements, or file briefs for clients during his 30-day suspension. We reject this argument because he provides no authority to support it, and he committed UPL by holding himself out as an attorney who was licensed to practice law while suspended.

Singh also argues that his actions are not as serious as in related cases where actual suspensions were imposed, citing: *In the Matter of Mason, supra*, 3 Cal. State Bar Ct. Rptr. 639 (90-day actual suspension for UPL involving moral turpitude; one prior discipline record in aggravation; pro bono work in mitigation) and *In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 239 (30-day actual suspension for appearing in court on one client matter while suspended; three prior discipline records in aggravation and several factors in mitigation where attorney not considered a danger to the public or profession). His argument is not persuasive. These cases are distinguishable because, unlike the attorneys in *Mason* and *Trousil*, Singh engaged in several counts of serious misconduct and his aggravating factors greatly outweigh the mitigation, which is concerning for the public and the legal profession.

Singh's offering of *In the Matter of Wyrick, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 89-90 provides the most guidance. In *Wyrick*, a six-month actual suspension was imposed where the attorney failed to disclose his suspension on two employment applications, aggravation consisted

of one prior record of discipline, and there was little evidence in mitigation. We also find *Farnham*, discussed above, to be on point, noting its six-month actual suspension.<sup>12</sup>

We decline to order an admonition or reproof, or recommend a stayed suspension as Singh requests. Each of these (1) falls far outside the applicable standards, (2) is not progressive discipline in light of the 30-day actual suspension imposed in Singh's prior case, and (3) reflects a downward departure from the standards that is not merited given Singh's repeated misconduct. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown]; std. 1.7 [lesser sanction than specified under standards appropriate in cases of minor misconduct where little or no injury to client, public, legal system, or profession and where lawyer is willing and able to conform to future ethical responsibilities].)

In sum, Singh's aggravated misconduct is at odds with his duties as an officer of the court. His actions harmed the public, interfered with the efficient administration of justice, and undermined public confidence in the legal system. We are concerned, as was the hearing judge, that he "used the courts as a means of intimidating those he had disputes with through his litigation." Though our aggravation and mitigation findings differ somewhat from the hearing judge's, we conclude that a six-month actual suspension is appropriate progressive discipline, and it is in the mid-range for suspensions.<sup>13</sup> This takes into account the aggravating factors, yet

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<sup>12</sup> Singh cites *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, as a 30-day actual suspension case that he argues is more serious than his case. We do not agree. *Sorensen* filed an unjust action over a small billing dispute with a court reporter. The attorney had no record of discipline and a 30-day actual suspension was ordered along with restitution for attorney fees. In contrast, Singh has a prior record of discipline, committed UPL while on disciplinary probation, and committed additional misconduct. Singh's case is more serious than *Sorensen* and merits a greater discipline.

<sup>13</sup> Standard 1.2(c)(1) provides, in pertinent part, "Actual suspension is generally for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met."

recognizes Singh's mitigation for his cooperation, and his pro bono work and community service.

## VI. RECOMMENDATION

We recommend that Kulvinder Singh, State Bar No. 182109, 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.** Singh must be suspended from the practice of law for the first six months of his probation.
- 2. Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Singh 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 Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.
- 3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Singh must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.
- 4. Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Singh 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. Singh must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.
- 5. Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Singh 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, Singh must promptly meet with representatives of the Office of Probation as requested and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries and provide any other information requested.

- 6. State Bar Court Retains Jurisdiction/Singh to Appear Before and Cooperate with State Bar Court.** During his probation period, the State Bar Court retains jurisdiction over Singh 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 State Bar record address, as provided above. Subject to the assertion of applicable privileges, Singh 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.** Singh 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, Singh 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.** Singh 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.** Singh 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, Singh 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, Singh 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 Singh 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 Singh 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 he provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

## **VIII. CALIFORNIA RULES OF COURT, RULE 9.20**

We further recommend that Singh be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.<sup>14</sup> Failure to do so may result in disbarment or suspension.

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<sup>14</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Singh is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

## IX. COSTS

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

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

PURCELL, P. J.

WE CONCUR:

HONN, J.

McGILL, J.