

STATE BAR COURT  
REVIEW DEPARTMENT

In the Matter of

**CHARLES GADSDEN KINNEY**

A Member of the State Bar

[Nos. 09-O-18100 (09-O-18760)]

Filed December 12, 2014

**SUMMARY**

Respondent, an attorney with 31 years of discipline-free practice, was charged with eight counts of misconduct in connection with his pursuit of unjust and frivolous actions as a plaintiff and attorney in multiple lawsuits. The hearing judge found culpability for two counts of maintaining unjust actions and one count of moral turpitude, found respondent not culpable on one count of moral turpitude, and dismissed the remaining counts as duplicative. The hearing judge also found three factors in aggravation, including “enormous harm to the administration of justice and to the public,” but nonetheless concluded disbarment was inappropriate, given Kinney’s 31 years of discipline-free practice. Instead, the hearing judge recommended Kinney be actually suspended for three years and until he provides his rehabilitation and fitness to practice. (Hon. Pat. E. McElroy, Hearing Judge.)

Respondent and the State Bar both sought review. On appeal, respondent requested dismissal, arguing the evidence was insufficient to establish culpability on any charge and that he was merely trying to protect his and his client’s property rights in an ethical manner. The State Bar sought disbarment. The review department agreed with the hearing judge’s culpability findings except as to moral turpitude—the review department reversed the hearing judge’s finding of no culpability on one count of moral turpitude but found culpability for a second moral turpitude count that the hearing judge had rejected. The review department also disagreed with the hearing judge’s assignment of significant mitigation based on 31 years of discipline-free practice. Rather, since Kinney’s misconduct was serious, part of a pattern, and highly likely to recur, the review department assigned no mitigation for the lack of prior discipline and ultimately concluded disbarment was the only discipline adequate to protect the public, the courts, and the legal profession.

**COUNSEL FOR PARTIES**

For State Bar: Allen Blumenthal

For Respondent: Charles Gadsden Kinney, in pro. per.

HEADNOTES

- [1 a-d] **106.30 Generally Applicable Procedural Issues—Issues re Pleadings**  
**—Duplicative charges**  
**213.30 Culpability—State Bar Act Violations—Section 6068(c) (counsel only legal actions/defenses)**  
**271.00 Culpability—Malicious/frivolous litigation (RPC 3-200)**  
Respondent was culpable of maintaining unjust actions where he unreasonably persisted in pursuing numerous lawsuits after unqualified losses at trial and on appeal, repeatedly filed unmeritorious motions, pleadings, and other papers, engaged in tactics that were frivolous or intended to cause unnecessary delay, and acted with disregard for two vexatious litigant rulings. However, charges of violations of rule 3-200(A) based on same facts were properly dismissed as duplicative.
- [2] **191 Miscellaneous Issues in State Bar Court Proceedings**  
**—Effect of/Relationship to Other Proceedings**  
**213.30 Culpability—State Bar Act Violations—Section 6068(c)**  
**(counsel only legal actions/defenses)**  
State Bar Court gives strong presumption of validity to superior court’s findings if supported by substantial evidence, and may rely on court of appeal opinion in case where attorney was party as conclusive determination of civil matters strongly similar or identical to charged disciplinary conduct. Where respondent had been ruled a vexatious litigant by both trial and appellate courts, and rulings were supported by clear and convincing evidence, respondent was culpable of maintaining unjust actions in violation of section 6068(c).
- [3] **221.19 Culpability—State Bar Act Violations—Section 6106 (moral turpitude, corruption, dishonesty)—Found—Other factual basis**  
Respondent was culpable of moral turpitude for noncompliance with court orders and serious and habitual abuse of the judicial system where he acted with “unclean hands” in suing his neighbors without attempting informal resolution, sought to use the judicial system as a weapon to inflict onerous litigation costs on neighbors for his own benefit, abused the judicial system in bringing at least 16 meritless appeals, and acted in bad faith for years by disregarding a vexatious litigant pre-filing order and pursuing his property interests in the guise of being plaintiff’s counsel rather than the plaintiff.
- [4] **213.30 Culpability—State Bar Act Violations—Section 6068(c) (counsel only legal actions/defenses)**  
Respondent was culpable of maintaining an unjust action by filing frivolous appeals, recycling previously rejected arguments, and resubmitting essentially the same complaint as “amended,” resulting in wasteful, expensive relitigation of resolved matters.
- [5] **221.50 Culpability—State Bar Act Violations—Section 6106 (moral turpitude, corruption, dishonesty)—Not Found**  
Respondent was not culpable of moral turpitude based on a “serious, habitual abuse of the judicial system,” even though he filed frivolous appeals, recycled previously rejected arguments, and resubmitted essentially the same complaint as “amended,” because he did not have a personal interest in the actions and acted at the direction of his clients.

- [6] **530 Aggravation—Pattern of misconduct (1.5(c); 1986 Standard 1.2(b)(ii))**  
Respondent demonstrated a pattern of misconduct by repeatedly engaging in vexatious litigation for more than six years in one set of related cases and committing an ethical violation in another set of litigations during the same period, because he committed serious instances of repeated misconduct over a prolonged period of time.
- [7] **584 Aggravation—Harm—To public—(interim Standard 1.5(f); 1986 Standard 1.2(b)(iv))**  
**586 Aggravation—Harm—To administration of justice—(interim Standard 1.5(f); 1986 Standard 1.2(b)(iv))**  
Respondent caused significant harm to the public and to the administration of justice where his relentless litigation campaigns inflicted serious financial and emotional harm on the opposing parties, causing them to spend considerable time and money defending against baseless claims, and clogging the court system for manifestly improper purposes.
- [8] **191 Miscellaneous Issues in State Bar Court Proceedings—Effect of/ Relationship to Other Proceedings**  
**591 Aggravation—Indifference to rectification/atonement (interim Standard 1.5(g); 1986 Standard 1.2(b)(v))—Found**  
Where respondent unsuccessfully sought restraining order seeking to halt disciplinary proceedings three days before trial, this was additional evidence of aggravating factor that respondent failed to accept responsibility for his actions.
- [9] **710.56 Mitigation—Long practice with no prior discipline record (1.6(a))—Declined to find—Present misconduct likely to recur**  
**710.59 Mitigation—Long practice with no prior discipline record (1.6(a))—Declined to find—Other reason**  
Respondent was not entitled to mitigation for lack of prior discipline, despite his 31 years of discipline-free practice, where the misconduct was serious, part of a pattern, and highly likely to recur.
- [10] **831.10 Application of Standards—Interim Standard 2.7 (Moral Turpitude, etc.)— Applied—Disbarment—Extent of harm to victim great**  
**831.20 Application of Standards—Interim Standard 2.7 (Moral Turpitude, etc.)— Applied—Disbarment—Magnitude of misconduct great**  
**831.50 Application of Standards—Interim Standard 2.7 (Moral Turpitude, etc.)— Applied—Disbarment—Presence of other aggravation**  
Disbarment was the only discipline adequate to protect the public, the courts, and the legal profession, where respondent used his legal knowledge to repeatedly abuse the court system through relentless lawsuits, his conduct was significantly aggravated by a lengthy pattern of wrongdoing, significant harm to others, disregard for the court process, and a total lack of insight into his harmful behavior, and he failed to establish any mitigation.

**ADDITIONAL ANALYSIS****Culpability****Found**

213.31 Section 6068(c)

**Not Found**

271.05 Malicious/frivolous litigation (RPC 3-200; 1975 RPC 2-110)

**Aggravation****Found**

521 Multiple acts of misconduct (1.5(b); 1986 Standard (1.2(b)(ii))

**Mitigation****Declined to find**

715.50 Good faith (1.6(b); 1986 Standard (1.2(e)(ii))

740.50 Good character references (1.6(f); 1986 Standard (1.2(e)(vi))

**Discipline**

1010 Disbarment

2311 Inactive Enrollment After Disbarment Recommendation—Imposed

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## OPINION

HONN, J.

This matter concerns Charles Gadsden Kinney's actions as a plaintiff and attorney in a series of lawsuits in Los Angeles and as an attorney in several lawsuits in El Dorado County. Described as a "relentless bully" by one superior court judge, Kinney was declared a vexatious litigant in 2008 by the Los Angeles County Superior Court. In a scathing, published opinion in 2011, the Court of Appeal, Second Appellate District, also declared him a vexatious litigant, warning "Kinney's conduct must be stopped, immediately." (*In re Kinney* (2011) 201 Cal. App. 4th 951, 960.) The Court of Appeal, Third Appellate District, described the El Dorado County lawsuits as baseless, deemed Kinney's appeals frivolous, and awarded sanctions jointly and severally against Kinney and his client.

In 2012, the Office of the Chief Trial Counsel of the State Bar of California (OCTC) charged Kinney with eight counts of misconduct. The hearing judge found him culpable of two counts of maintaining unjust actions and one count of moral turpitude. The judge also found three factors in aggravation, including "enormous harm to the administration of justice and to the public." The judge further found Kinney to be "unrepentant and relentless." Yet the judge concluded disbarment was not appropriate, given Kinney's 31 years of discipline-free practice. The judge recommended that he be actually suspended for three years and until he proves his rehabilitation and fitness to practice law.

Both parties seek review. Kinney requests dismissal, arguing that OCTC presented insufficient evidence to establish culpability for any charge and that he was merely trying to protect his and his client's property rights in an ethical manner. OCTC urges disbarment. Based on our independent review (Cal. Rules of Court, rule 9.12), we find that Kinney's

previously unblemished career simply does not mitigate his egregious, harmful misconduct, particularly since, by every indication, he appears likely to continue such misconduct in the future. We recommend Kinney's disbarment as the only discipline adequate to protect the public, the courts, and the legal profession.

### I. BACKGROUND<sup>1</sup>

The underlying lawsuits stem from residential property disputes between neighbors. The hearing judge's 34-page decision provides a detailed summary of the cases' procedural histories as well as the legal and factual issues involved. We adopt those findings, except where noted, and summarize those relevant to our analysis below. For the most part, however, the specific facts of the disputes are not material to whether Kinney is culpable as charged, if any misconduct is aggravated or mitigated, and whether we should affirm the discipline recommendation. Instead, the pertinent facts are those demonstrating Kinney's unreasonable, unethical pursuit of his and his client's grievances, the significant harm he caused, and his lack of insight into his misconduct.

### II. THE FERNWOOD CASES (LOS ANGELES COUNTY)

#### A. Factual Background

In the fall of 2005, Kinney and Kimberly Jean Kempton<sup>2</sup> purchased a home, as tenants in common, on Fernwood Avenue in the Silver Lake neighborhood of Los Angeles. From June 2006 through May 2009, the pair brought six lawsuits "over basically two things – the fence and the driveway," suing their neighbors (including an 18-year old boy), the previous owner of his house and her real estate broker, and the City of Los Angeles (the Fernwood cases).

1. This is Kinney's first discipline since he was admitted to practice in 1975.

2. OCTC initiated this proceeding against both Kinney and Kempton in 2012. After a four-day trial in April 2013, the court took the matter under submission. In June 2013, prior to rendering her decision, the hearing judge severed Kinney's and Kempton's matters and terminated the proceeding against Kempton due to her death in a June 7, 2013 traffic accident.

As declared in Superior Court Judge Elizabeth Grimes's August 7, 2007 statement of decision in one suit, Kinney acted with "unclean hands" in initiating and pursuing the Fernwood cases. According to Judge Grimes, Kinney admitted he knew *before* he bought the house that he was "buying litigation" yet "made no effort to talk to his neighbors and try to resolve his differences before filing a series of lawsuits." And the neighbors' trial testimony was marked by "deep emotion" well beyond witnesses' typical nervousness. In summary, Judge Grimes concluded that "Kinney is a relentless bully. He has not committed fraud or theft, which is ordinarily the case when courts find unclean hands. Yet he has robbed his neighbors of the peace and sanctuary of their homes, and 'mocked the system' with his baseless litigation against the City and its citizens."<sup>3</sup>

Though Kinney and Kempton "continually – and resoundingly – lost their cases in the trial courts" (*In re Kinney, supra*, 201 Cal.App.4th at p. 953), they repeatedly and unsuccessfully appealed each case. They persisted despite thousands of dollars in sanctions and harsh reprimands. The reasons the appeals failed are telling. One appeal was deemed as nothing more than a "grudge suit." Others were dismissed as duplicative or frivolous, for incoherent briefing, or for failure to present a discernible theory of recovery.

The courts tried twice to curb Kinney's litigation behavior. In November 2008, the Los Angeles County Superior Court granted defendants' motion and declared Kinney a vexatious litigant subject to a pre-filing order. (Code Civ. Proc., § 391.7.) The judge found Kinney had "[i]n the immediately preceding seven year period commenced, prosecuted, or maintained at least five litigations that have been finally determined against him or have been pending at least two years without going to trial or hearing." (See Code Civ. Proc., § 391, subd. (b)(1).) Separately, the judge determined that Kinney had repeatedly filed unmeritorious motions, pleadings, and other papers citing to four state and federal appellate court opinions from earlier, unrelated litigations.<sup>4</sup> (Code Civ. Proc., § 391, subd. (b)(3).)

Yet even after Kinney was declared a vexatious litigant, he did not stop. Instead, Kempton simply became the sole plaintiff with Kinney as the attorney in all the cases. This tactic ultimately provoked the Second District Court of Appeal to act. In 2011, the appellate court issued an order to show cause (OSC) why Kinney should not be declared a vexatious litigant.

In ruling on the OSC, the appellate court declared Kinney to be a vexatious litigant in the strongest possible terms. (Code Civ. Proc., § 391, subd. (b)(1), (3) & (4).) It pointed to Kinney's abominable history in the Fernwood cases, both at trial and on appeal, and to similar conduct in other litigations. (*In re Kinney, supra*, 201 Cal.App.4th at p. 954.) The court also found that Kinney used Kempton as a puppet or conduit for his abusive litigation practices while he purportedly acted as her attorney. Kinney acknowledged this behavior, telling the trial court that "the only reason he was not the named plaintiff is because 'I'm a vexatious litigant and it takes too long to get approval' to sue." (*Id.* at p. 959.)

Also, the appellate court found that Kinney stood to benefit personally from the outcome of the litigation as a co-owner of the property. Echoing prior characterizations, the court concluded "he pursues obsessive, meritless litigation against the hapless residents of this state who have the misfortune to be his neighbors. Kinney has demonstrated a pattern of using the judicial system as a weapon in an unrelenting quest to get advantages that he does not deserve, imposing onerous litigation costs on his opponents that he does not incur himself because he is a lawyer." (*In re Kinney, supra*, 201 Cal.App.4th at p. 959.) The court prohibited Kinney from filing any new litigation (or pursuing appeals and writ petitions), in either his or Kempton's name, without first obtaining leave of court. The court sent a copy of its opinion to the State Bar.

At Kinney's disciplinary hearing, OCTC presented the neighbors' testimony to describe the harm caused by the Fernwood cases.

3. As discussed below, the defendant neighbors testified in Kinney's discipline trial hearing. We find their testimony to be entirely consistent with Judge Grimes' findings, including the specific harm they suffered as well as the overall negative impact on the neighborhood.

4. *Kinney v. Overton* (Jul. 18, 2007, G037708) (nonpub. opn.); *Payne v. Schmidt* (Feb. 22, 2006, A109971, A110630) (nonpub. opn.); *Luc v. Chiu* (Oct. 2, 2001, A093519) (nonpub. opn.); *Van Scoy v. Shell Oil Company* (9th Cir. 2001) 11 Fed. Appx. 847 (9th Cir. 2001) (nonpub. opn.).

Carolyn Cooper, a single mother, had owned her home for more than 20 years when Kinney bought the house next door. When he named her in three lawsuits between 2006 and 2009, Cooper spent \$180,000 defending those suits and related appeals. She was forced to take a second job, almost depleted the equity in her home, borrowed money from relatives, and sought additional financial aid for her son's tuition. She testified that Kinney's behavior was "very intimidating and threatening." Beyond the "totally devastating" legal expenses, she felt that she was "under attack, not just me, but my neighborhood, my child." Her son, Michael Olivares, flew in from New York to testify about the all-consuming stress his mother suffered from the lawsuits.

Judy and Jeffrey Harris, also long-time residents sued by Kinney, testified about the "six years of hell" they endured. Mr. Harris stated: "It felt very much like we were being attacked, at war. It basically dominated our life for the period of the trials." He stated that "our privacy was being invaded constantly, our property was trespassed on a daily or a weekly basis, and that they were using our property in a way that would be provoking us, so that they could use that against us."

The Harris' son, Benjamin, was 18 years old when he was also sued by Kinney. He testified that he continually feared being served during school hours. He described the experience as a real hardship for his family and neighborhood. Further, he wondered: "how many hours am I never going to get back because of this? How many family dinners? How many birthday parties? How many missed opportunities with my friends, I guess, how much anxiety because of this?"

Michelle Clark, the previous owner of Kinney's property, testified she owed her attorneys over \$200,000 and continues to suffer the negative emotional fallout from the suits, including the ongoing fear of being sued again by Kinney.

Each neighbor stated Kinney never made any effort to apologize for the harm caused by the lawsuits.

#### B. Conclusions of Law<sup>5</sup>

##### *Count Two: Failure to Maintain a Just Action (Bus. & Prof. Code, § 6068, subd. (c))*<sup>6</sup>

Kinney is charged with maintaining an unjust action by filing meritless lawsuits and actions regarding his Fernwood property, by failing to address the merits of the litigation, and for all the reasons set forth in *In re Kinney, supra*, 201 Cal.App.4th 951. The hearing judge correctly found Kinney culpable.

[1b] Under section 6068, subdivision (c), an attorney must maintain only those actions or proceedings that appear "legal or just." [2] Generally, 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.) And we may 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.) [1c] The record provides clear and convincing evidence<sup>7</sup> supporting the 2008 and 2011 vexatious litigant rulings. Kinney unreasonably persisted in pursuing numerous lawsuits after unqualified losses at trial and on appeal; repeatedly filed unmeritorious motions, pleadings, and other papers; and engaged in tactics that were frivolous or intended to cause unnecessary delay. Accordingly, we conclude that Kinney maintained unjust actions.

[1d] Count Three is based primarily on the same misconduct as alleged in Count Two (failure to maintain a just action). We therefore adopt the hearing judge's dismissal of this count with prejudice as duplicative.

5. [1a] We adopt the hearing judge's dismissal of Count One (malicious prosecution in violation of Rules Prof. Conduct, rule 3-200(A)) as duplicative of Count Two. In *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060, the Supreme Court instructed that little, if any, purpose is served by duplicate allegations of misconduct in State Bar proceedings.

6. All further references to sections are to the Business and Professions Code.

7. 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.)

*Court Four: Moral Turpitude (§ 6106)*<sup>8</sup>

OCTC alleges that Kinney committed acts of moral turpitude by: (1) pursuing a “‘persistent and obsessive campaign of litigation terror,’ “ and (2) using Kempton as his puppet in the Fernwood cases. The hearing judge found that Kinney was persistent and obsessive, but “not corrupt or dishonest,” and his “relentless litigation did not constitute serious, habitual abuse of the judicial system that involved moral turpitude.” The judge also found no clear and convincing evidence that Kempton was Kinney’s strawman or puppet. We disagree. The record clearly establishes the allegations as true, and the decisional law supports a finding of moral turpitude.

[3] From the outset, Kinney acted with “unclean hands” and sued his neighbors without attempting any informal resolution. He sought to use the judicial system as a weapon to inflict onerous litigation costs on the neighborhood’s long-term residents for his own benefit. Being a lawyer, he himself did not suffer those expenses, and thus was able to continue his abuse of the judicial system by bringing at least 16 meritless appeals. Finally, and most importantly, Kinney acted in bad faith for years by disregarding the vexatious litigant pre-filing order, and pursuing his property interests in the guise of being plaintiff’s counsel rather than the plaintiff. That Kempton also stood to benefit has no bearing on the fact that she was a puppet for Kinney’s machinations. This course of misconduct clearly constitutes moral turpitude. (See *Maltaman v. State Bar*, *supra*, 43 Cal.3d at pp. 950-951 [noncompliance with court order supports § 6106 violation if attorney acted in bad faith,]; *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186 [“serious, habitual abuse of the judicial system constitutes moral turpitude”].)

### III. THE SMEDBERG LITIGATIONS (EL DORADO COUNTY)

#### A. Factual Background

The Smedberg litigations involve three separate

lawsuits and six appeals, based on an easement on land owned by Kinney’s clients, Gerald and Robin Toste, benefitting their neighbors, the Smedbergs.

In 1977, the Smedbergs bought 11 acres in El Dorado County, which were divided into five parcels, with the hope that one or more would become a place for their children to build homes. The east portion of the property was difficult to access because of a creek. The property, however, had the benefit of an easement that would allow the Smedbergs to build a driveway across the adjacent property for easier access.

In 1999, the Tostes bought the adjacent property, unaware that the Smedbergs held the easement. In 2006, the Smedbergs began construction. Upon inquiry from the Tostes, the title company acknowledged its failure to report the easement and offered to reimburse them for actual loss to their property, including fees and costs. When the Tostes responded by blocking construction, the title company stated it would not provide legal representation should the Smedbergs sue.

The Smedbergs initially sued, seeking to quiet title and for an injunction. At this point, the Tostes hired Kinney. The court issued a preliminary injunction prohibiting the Tostes from interfering with the Smedbergs’ use of the easement, and Kinney filed an answer and cross-complaint seeking to extinguish the easement. In 2007, Gerald Toste was found guilty of contempt for violating the injunction and ordered to serve a 60-day jail sentence. Kinney’s successive attempts to have the contempt order set aside were denied by the Third District Court of Appeal. The Smedbergs prevailed at a jury trial, and were awarded compensatory and punitive damages and a permanent injunction. The Tostes twice sought appellate review. The appellate court affirmed the trial court’s judgment, assessed sanctions jointly and severally against Kinney and his clients, and deemed the second appeal “frivolous,” stating “no reasonable attorney could have thought that the Tostes’ recycled versions of previously rejected appellate arguments

8. Section 6106 makes it a cause for disbarment or suspension for an attorney to commit any act involving moral turpitude, dishonesty, or corruption.

could possibly succeed.” Undeterred, Kinney filed petitions for review in the California Supreme Court on the two appeals. Both petitions were denied.

In a second lawsuit, the Tostes, through Kinney, sued El Dorado County and the Superior Court of El Dorado County alleging a dangerous easement condition and inverse condemnation. After the first and second amended complaints were dismissed without prejudice, Kinney essentially restated the same facts and claims in a third amended complaint. It was dismissed with prejudice. Kinney then twice unsuccessfully sought review in the Court of Appeal, and then filed a petition for review in the California Supreme Court, which was denied.

In a third suit, the Tostes, again through Kinney, filed against the title company, seeking his attorney fees and damages caused by the company’s refusal to defend the Smedbergs’ lawsuit. The court granted summary judgment in favor of the title company, and Kinney unsuccessfully appealed.

As with the Fernwood cases, the unlucky neighbors suffered harm from these suits. Bonnie Smedberg testified her family has spent upwards of \$115,000 on the litigation, and that her children want nothing to do with the property because of the lawsuits. She and her husband Kenneth have undergone counseling for the frustration, stress, and depression inflicted by the lawsuits.

#### B. Conclusions of Law<sup>9</sup>

##### *Count Six: Failure to Maintain a Just Action (§ 6068, subd. (c)).*

[4] Kinney is charged with maintaining an unjust action by pursuing meritless lawsuits and actions regarding the Tostes’ El Dorado County property and by failing to address the merits of the litigation. We affirm the hearing judge’s culpability finding. However, we focus less than the hearing judge did on

whether any triable issue existed at the outset of the litigation. Instead, we find Kinney’s misconduct to be his filing of frivolous appeals, recycling previously rejected arguments, and resubmitting essentially the same complaint as “amended.” (*In the Matter of Lais, supra*, 4 Cal. State Bar Ct. Rptr. 112, 118 [citing *Sorenson v. State Bar* (1991) 52 Cal.3d 1036 as an example of an attorney’s wasteful, expensive relitigation of matters resolved in prior suit as a violation of § 6068, subd. (c)].)

Count Seven is based in large part on the same misconduct as alleged in Count Six. We therefore adopt the hearing judge’s dismissal of this count with prejudice as duplicative.

##### *Count Eight: Moral Turpitude (§ 6106)*

OCTC alleges that Kinney committed acts of moral turpitude, either intentionally or through gross negligence, by bringing and maintaining meritless lawsuits and actions regarding the Tostes’ property. The hearing judge found moral turpitude because despite “repeated lawsuits, recycled arguments, six appeals, and even a 60-day jail sentence for [his client], Kinney continued to wage his frivolous litigations against the Smedbergs.”<sup>10</sup>

[5] We do not find moral turpitude and accordingly dismiss Count Eight. Unlike the Fernwood cases, Kinney was not a plaintiff here, and the record does not establish he had an interest in the Tostes’ property. The evidence establishes that Kinney was acting at the direction of the Tostes. In fact, the Tostes testified on Kinney’s behalf at the discipline trial, confirming that they believed their claims against the Smedbergs and others were sound and wanted Kinney to proceed with the lawsuits. While Kinney’s conduct supports the allegations in Counts Five and Seven, we do not find that his representation of the Tostes qualifies as a “serious, habitual abuse of the judicial system.” (*In the Matter of Varakin, supra*, 3 Cal. State Bar Ct. Rptr. at p. 186.)

9. We adopt the hearing judge’s dismissal of Count Five (malicious prosecution in violation of Rules of Prof. Conduct, rule 3-200(A)) as duplicative of Count Six.

10. OCTC mistakenly states that the hearing judge dismissed Count Eight.

IV. AGGRAVATION AND MITIGATION<sup>11</sup>

## A. Aggravation

We find four factors in aggravation, each bearing significant weight.<sup>12</sup>

First, Kinney committed multiple acts of misconduct. (Std. 1.5(b).)

[6b] Second, he demonstrated a pattern of misconduct by repeatedly engaging in vexatious litigation for more than six years in the Fernwood cases and committing an ethical violation in the Smedberg litigations during this same period. (Std. 1.5(c); *Levin v. State Bar* (1989) 47 Cal. 3d 1140, 1149, fn. 14, citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 [most serious instances of repeated misconduct over prolonged period of time characterized as pattern of misconduct].) [7] Third, Kinney significantly harmed the public and the administration of justice. (Std. 1.5(f).) As shown by witness testimony, Kinney's relentless litigation campaigns inflicted serious financial and emotional harm on his Fernwood neighbors and on the Smedbergs. Not only did he force them to spend considerable time and money defending themselves against baseless claims, but he clogged the court system for manifestly improper purposes. We emphatically agree with the hearing judge that Kinney's actions constituted an "outrageous waste of judicial resources."

[8] Fourth, Kinney's misconduct is aggravated by his utter failure to accept responsibility for his actions and his failure to atone for the resulting harm. (Std. 1.5(g)); *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [while the law does not require Kinney to be falsely penitent, it

"does require that [he] accept responsibility for his acts and come to grips with his culpability. [Citation].") Indeed, three days prior to his discipline trial, he sought a temporary restraining order against the State Bar to stop the proceedings, arguing that the State Bar is violating his federal rights. The request was denied. We adopt the hearing judge's finding that this is additional aggravating evidence.<sup>13</sup>

## B. Mitigation

[9] We disagree with the hearing judge's finding that Kinney's conduct is significantly mitigated by his 31 years of discipline-free practice. Standard 1.6(a) establishes that mitigation may include the "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious." When the misconduct is serious, however, a discipline-free record is most relevant when the misconduct is aberrational and unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218.) As Kinney's misconduct is serious, part of a pattern, and highly likely to recur, we assign no mitigation under standard 1.6(a).

We adopt and affirm the hearing judge's decision finding no mitigation for Kinney's claims of good faith (std. 1.6(b)), and good character (std. 1.6(f)) ["extraordinary good character" may mitigate misconduct]).

11. The appropriate discipline is determined in light of the relevant circumstances, including aggravating and mitigating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) OCTC must establish aggravation by clear and convincing evidence (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5 [hereafter standards]), while Kinney has the same burden to prove mitigating circumstances (std. 1.6). These standards reflect modifications effective January 1, 2014. Since this case was submitted for ruling in 2014, the new standards apply.

12. [6a] The standards now establish multiple acts and pattern of misconduct as distinct categories of aggravation. The hearing judge concluded Kinney's multiple violations demonstrate only a "borderline pattern of misconduct." We find that his violations constitute a pattern.

13. Kinney testified in his discipline trial that he was "finished with lawsuits" related to the Fernwood property. We observe, however, that he writes in his opening brief that he has pending civil rights claims against the City of Los Angeles in federal district court and a pending appeal in the Ninth Circuit regarding the jurisdiction of the judges who declared him a vexatious litigant.

## V. DISCIPLINE<sup>14</sup>

Standard 2.7 provides: “Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member’s practice of law.” Either disbarment or actual suspension is also appropriate for maintaining an unjust action. (Std. 2.8(a).)

[10] Kinney used his legal knowledge to repeatedly abuse the court system through his relentless lawsuits. His misconduct goes beyond vexatious litigation as it involves significant aggravation, including a lengthy pattern of wrongdoing, significant harm to others, disregard for the court process, and a total lack of insight into his harmful behavior. At the same time, Kinney has failed to establish any mitigation. Given these circumstances, we conclude that he should be disbarred under standard 2.7. (See *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45 [disbarment for multiple acts of moral turpitude and dishonesty, including pattern of abuse of judicial officers and court system]; *In the Matter of Varakin, supra*, 3 Cal. State Bar Ct. Rptr. 179 [disbarment for 30-year attorney sanctioned for filing frivolous motions and appeals over 12-year period who lacked insight and refused to change].)

The hearing judge concluded the attorney misconduct in *Varakin* was more serious than Kinney’s and the misconduct in *Rosenthal v. State Bar* (1987) 43 Cal.3d 612 was more extensive; therefore, the cases do not support disbarment here. We disagree. We consider Kinney’s lengthy periods of extremely harmful misconduct and aggravation more than sufficiently serious and extensive to support a disbarment recommendation.

Seven years after Judge Grimes identified Kinney as a “relentless bully,” six years after he was first declared a vexatious litigant, and almost four years after a Court of Appeal warned in a published opinion that Kinney “must be stopped immediately,” he continues to clog the court system with his meritless claims and motions. We find that Kinney is unfit to practice, and we recommend his disbarment. Requiring Kinney to undergo a full reinstatement proceeding after he is disbarred is the only measure that can adequately protect the public, the courts, and the legal profession.<sup>15</sup>

## VI. RECOMMENDATION

We therefore recommend that Charles Gadsden Kinney be disbarred and that his name be stricken from the roll of attorneys licensed to practice in this state. We further recommend that he be ordered to comply with the provisions of rule 9.20 of the California Rules of Court 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’s order in this matter. Finally, we recommend that the State Bar be awarded costs in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

## VII. ORDER OF INACTIVE ENROLLMENT

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Kinney is ordered enrolled inactive. The order of inactive enrollment is effective three days after service of this opinion. (Rules Proc. of State Bar, rule 5.111(D)(1).)

WE CONCUR:

PURCELL, P. J.  
EPSTEIN, J.

14. The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts, and the legal profession. (Std. 1.1(a).)

15. Having independently reviewed all arguments set forth by Kinney, those not specifically addressed have been considered and rejected as having no merit.