

**State Bar Court  
Review Department**

In the Matter of

**JOSEPH PATRICK COLLINS**

A Member of the State Bar

No. 16-O-10339

Filed March 28, 2018

**SUMMARY**

The Office of the Chief Trial Counsel (OCTC) charged Collins with failing to obey five sanctions orders issued by a trial court in a civil case. Collins stipulated to the facts and to his culpability, but went to trial on aggravation, mitigation, and discipline. After the trial, the hearing judge dismissed the charges sua sponte on the ground that Collins had no obligation to comply with the sanctions orders because he was not personally named in the orders or the underlying motions. OCTC appealed.

The Review Department reversed, holding that Collins was bound by his factual admission in the parties' stipulation that he was aware of the sanctions orders issued against his law firm, and was personally subject to them. The orders could not be collaterally attacked for the first time in the disciplinary proceedings. Based on the trial record regarding degree of discipline, the Review Department found no basis upon which to deviate from the applicable disciplinary standard, and recommended a 30-day actual suspension.

**COUNSEL FOR PARTIES**

For State Bar of California:      Brandon Keith Tady, Esq.

For Respondent:                      Joseph P. Collins, Esq.

## HEADNOTES

**[1a-d] 162.19 Standards of Proof/Standards of Review — State Bar’s burden —  
Other/general****191 Miscellaneous General Issues — Effect of/Relationship to Other Proceedings****220.00 Culpability — State Bar Act Violations — Section 6103, clause 1  
(disobedience of court order)**

To prove a violation of Business and Professions Code section 6103 based on an attorney’s failure to obey court orders, OCTC must establish the attorney knew the orders were final and binding, and intended his acts or omissions. Where respondent was aware of and joined in client’s tactical decision not to participate in discovery; was timely served with motions for discovery sanctions but chose not to respond or appear; was served with orders granting monetary sanctions against his client and his firm jointly and severally; and stipulated he was individually responsible for resulting obligation, respondent was obligated either to comply with orders or make formal motion or appeal explaining why he could not do so, and could not simply disregard orders, even under client’s instructions. Respondent was therefore culpable of violating section 6103.

**[2a, b] 117 Generally Applicable Procedural Issues — Dismissal (rules 5.122-5.124)****151 Evidentiary Issues — Evidentiary effect of Stipulations****204.90 Substantive Issues — Culpability — Other general substantive issues re culpability****220.00 Culpability — State Bar Act Violations — Section 6103, clause 1 (disobedience of  
court order)**

Stipulated facts in disciplinary proceedings are binding on parties under State Bar rule 5.58(G). Where respondent stipulated that he was obligated to pay monetary sanctions awarded against his law firm; law firm name did not indicate it was a corporation or limited liability partnership, as would be required by State Bar Rules 3.152(B) and 3.174(B); and even if it were, respondent could not thereby escape personal liability for his own professional malfeasance and still would have been required to report sanctions award against him, record and law supported respondent’s stipulation, and hearing judge erred in exonerating respondent and dismissing disciplinary proceeding based on conclusion that respondent was not individually responsible for paying sanctions.

**[3a-c] 191 Miscellaneous General Issues — Effect of/Relationship to Other Proceedings****151 Evidentiary Issues — Evidentiary effect of Stipulations****220.00 Culpability — State Bar Act Violations — Section 6103, clause 1  
(disobedience of court order)**

When attorney has actual notice of court order, and does not object, move for reconsideration, or seek appellate review, attorney forfeits right to challenge order based on inadequate notice, and is obligated to comply with order. For due process and notice purposes, discovery sanctions orders are not distinguishable from other types of sanctions orders. Where respondent stipulated he had actual notice of orders imposing monetary discovery sanctions, and did not comply with orders, hearing judge erred in finding respondent not culpable of violating orders because he was not personally named in underlying motions.

- [4a-c] **101 Generally Applicable Procedural Issues — Jurisdiction**  
**191 Miscellaneous General Issues — Effect of/Relationship to Other Proceedings**  
**220.00 Culpability — State Bar Act Violations — Section 6103, clause 1 (disobedience of court order)**  
For disciplinary purposes, superior court orders are final and binding once review in courts of record is waived or exhausted. Attorneys cannot wait until State Bar disciplinary proceedings commence to collaterally challenge legitimacy of superior court orders. State Bar Court does not have jurisdiction to determine validity of civil court orders.
- [5] **117 Generally Applicable Procedural Issues — Dismissal (rules 5.122-5.124)**  
**130 Procedure on Review (rules 5.150-5.160)**  
**166 Standards of Proof/Standards of Review — Independent Review of Record**  
Where hearing judge held full and fair trial on aggravation and mitigation but dismissed case without making any findings, and Review Department reversed dismissal, Review Department reviewed record and made its own findings and discipline recommendation.
- [6a-d] **801.45 Application of Standards — General Issues — Deviation from standards — Found not to be justified**  
**802.64 Application of Standards — Standard 1.7 (Determination of Appropriate Sanctions) — Limits on effect of mitigating circumstances**  
**921.21 Application of Standards — Standard 2.12(a) — Applied–actual suspension — Violation of court order**  
**1093 Miscellaneous Substantive Issues re Discipline — Inadequacy of Discipline**  
Where respondent established substantial mitigation, and Office of Chief Trial Counsel sought only stayed suspension, Review Department nonetheless imposed 30-day actual suspension, because applicable Standard provided for actual suspension or disbarment; mitigation was not sufficient to justify deviation from Standard; respondent’s misconduct in violating five separate court orders was serious, not minor; and respondent had not yet provided proof of payment of court-ordered monetary sanctions.
- [7] **191 Miscellaneous General Issues — Effect of/Relationship to Other Proceedings**  
**171 Issues re Conditions Imposed as Part of Discipline — Restitution Requirements (rule 5.136; Standard 1.4(a))**  
**220.00 Culpability — State Bar Act Violations — Section 6103, clause 1 (disobedience of court order)**  
**802.50 Application of Standards — General Issues — Standard 1.4 (Conditions Attached to Sanctions)**  
Where respondent was culpable of disobeying court orders by failing to pay monetary sanctions, payment of the sanctions was imposed as condition of respondent’s disciplinary probation.

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

220.01 Section 6103, clause 1 (disobedience of court order)

**Aggravation****Found**

521 Multiple acts of misconduct (1.5(b))

**Mitigation****Found**

710.10 No prior discipline (1.6(a))

730.10 Cooperation (1.6(e))

**Discipline Imposed**

1013.08 Stayed Suspension — Two years

1015.01 Actual Suspension — One month or less

1017.08 Probation — Two years

**Probation Conditions**

1021 Restitution

1024 Ethics exam/ethics school

## OPINION

HONN, J.

This matter is before us on appeal by the Office of Chief Trial Counsel of the State Bar (OCTC). OCTC charged Joseph Patrick Collins with five counts of failing to obey civil court sanctions orders, and Collins stipulated to all of the predicate facts as well as culpability. However, following a one-day trial on aggravation, mitigation, and the level of discipline, a hearing judge *sua sponte* dismissed the case, finding the sanctions orders were void or voidable and Collins had no obligation to comply with them. OCTC asks that we reverse the judge's decision and find culpability. As to discipline, it seeks a one-year stayed suspension. Collins did not appeal, but asks that we affirm the dismissal.

We independently review the record (Cal. Rules of Court, rule 9.12) and reverse the hearing judge.

The parties stipulated that Collins was served with all five sanctions motions and orders, that he was named in the sanctions orders along with his client, and that he was jointly and severally responsible for the debt. The superior court records indicated that the motions named only Collins's client, while the resulting sanctions orders named Collins's client and his counsel, the Law Offices of Joseph P. Collins. The hearing judge disregarded the stipulation and found that the orders were void or voidable as to Collins since he was not named in the motions or personally named in the sanctions orders.

We enforce the factual admissions in the parties' stipulation, which demonstrate that Collins was aware of the sanctions orders, which he was subject to, and failed to comply or challenge them in the courts of record. We disagree with the hearing judge that the sanctions orders can be collaterally attacked for the first time in these proceedings. After considering and weighing aggravation and mitigation, we find no basis to deviate from the applicable disciplinary standard, which minimally calls for a period of actual suspension. We therefore recommend a 30-day actual suspension, which we note is at the lowest end of the standard's range but is sufficient to protect the public, the courts, and the profession.

### I. FACTUAL<sup>1</sup> AND PROCEDURAL BACKGROUND

Collins was admitted to the practice of law in California on January 8, 1993. On September 21, 2016, OCTC filed a Notice of Disciplinary Charges against him alleging five separate violations of Business and Professions Code section 6103 for willfully disobeying civil court sanctions orders in a single client matter.<sup>2</sup>

#### A. The Parties' Joint Stipulation

On January 10, 2017, OCTC and Collins filed a joint stipulation as to facts, admission of documents, and conclusions of law (stipulation). In summary, the parties stipulated that Collins was culpable as charged of five counts of violating court orders, as supported by the following facts.

Collins represented the defendant, Martin Caverly, in a civil case involving breach of contract.<sup>3</sup> On March 25, May 6, June 24, July 1,

1. The factual background is based on the parties' joint 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).) All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

2. All further references to sections are to the Business and Professions Code. Section 6103 provides that an attorney's "wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

3. *O'Connor Peabody Holdings, LLC, et al. v. Martin B. Caverly*, Los Angeles County Superior Court, Case No. SC122588.

and July 15, 2015, the superior court heard and granted five separate discovery motions brought by the plaintiff to compel Caverly's responses to various discovery requests (form interrogatories, special interrogatories, demand for production of documents [set one], demand for production of documents [set two], and his appearance for deposition). With each motion, the plaintiff also sought sanctions. In total, the court ordered monetary sanctions of \$6,300 (\$1,185 for each document-related discovery violation [\$4,740] plus \$1,560 for compelling Caverly's deposition) against Collins and Caverly, jointly and severally, payable to the plaintiff within a specified period of time (ranging from 20 to 30 days).

The plaintiff served notice of each ruling on Collins, which Collins received. The sanctions were not paid, nor were discovery responses provided as ordered. For this reason, on September 17, 2015, the court granted the plaintiff's motion for terminating sanctions and entered Caverly's default. The plaintiff served notice of this ruling on Collins, which he received. Judgment was entered against Caverly on November 4, 2016.<sup>4</sup> The amount of the judgment did not include the sanctions ordered against Collins and Caverly, and, as of the date of trial in this matter, none of the sanctions had been paid to the plaintiff.

#### B. The Trial Proceeding

Since the parties did not agree to the level of discipline for Collins's stipulated misconduct, a one-day trial on that issue was held on January 20, 2017. The parties had a full and fair opportunity to present evidence and testimony, opening and closing arguments, and posttrial briefing.

At the commencement of the trial, the hearing judge received the stipulation into evidence, along with other exhibits and Collins's declaration. Collins also testified on his own behalf and was the sole witness in the proceeding. In both his declaration and his trial testimony, Collins explained that the decision not to comply with the discovery requests was client-driven. He stated that Caverly wanted to keep litigation expenses to a minimum, and made the tactical decision to cease participation and let the case terminate by default. Thus, Caverly did not respond to discovery requests or attend his scheduled deposition, and neither Caverly nor Collins opposed the motions to compel and requests for sanctions, appeared at the hearings on those motions, sought reconsideration, or otherwise challenged or appealed the sanctions awards. Although Collins was served with and received copies of all pleadings and orders, he contends that he was simply following Caverly's instructions.

On January 27, 2017, the hearing judge took Collins's disciplinary matter under submission.<sup>5</sup> However, before issuing her decision, she held a telephonic status conference on March 3, 2017, during which she informed the parties of her concerns about whether the stipulated conclusions of law were adequately supported by the record. In particular, she had reviewed the underlying motions and orders in the civil case and questioned whether the sanctions orders against Collins were valid and enforceable. The judge also noted that the plaintiff's sanctions motions only sought recourse against Caverly, who, according to Collins, directed the litigation strategy. She further expressed doubts about whether Collins had adequate advance notice that

4. The 2016 date appears to be a typographical error, as the superior court records show that judgment was entered on November 4, 2015. For our purpose, this error is insubstantial and does not affect the culpability or disciplinary analysis. (*In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 19, 23, fn. 6 [modifications made by Review Department in referee's decisions did not affect recommended discipline and were deemed insubstantial].)

5. The judge gave the parties until January 27, 2017, to submit closing briefs. OCTC timely filed its brief, but Collins failed to file a conforming brief. He attached a copy of his brief to an email to the Hearing Department, but the clerk rejected it because it was not signed or accompanied by a proof of service. (State Bar Ct. Rules of Prac., rule 1112(a).)

he would be subject to sanctions along with his client because he was not named in the sanctions motions. The judge then asked the parties to file supplemental briefs addressing whether: (1) the sanctions orders were final and binding on Collins individually; and (2) payment of the sanctions was an act that Collins “ought in good faith to have done.” Her verbal directives were also reflected in a March 6, 2017 order, and both parties filed the requested briefs on March 20, 2017.

### C. The Hearing Judge’s Decision

On April 27, 2017, the hearing judge issued her decision. She rejected the parties’ five stipulated conclusions of law<sup>6</sup> and dismissed Collins’s disciplinary case, finding that the sanctions orders against him were either void or voidable. While she stated that the parties remained bound by the stipulated facts under rule 5.58(G) (parties bound by stipulated facts even if conclusions of law are rejected), she nevertheless found that the superior court sanctions orders themselves did not name Collins individually, but instead named the Law Offices of Joseph P. Collins, and that, in any event, neither Collins nor his law firm was given prior notice of any sanctionable conduct on their part.

## II. COLLINS IS CULPABLE OF FAILING TO OBEY COURT ORDERS (§ 6103)

[1a] To prove the section 6103 violations, OCTC must establish that Collins knew the sanctions orders against him were final and binding and that he intended his acts or omissions. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.)

[1b] We find that the parties’ stipulated facts, the superior court records in evidence, and Collins’s trial testimony and declaration clearly

and convincingly<sup>7</sup> establish his culpability. Collins stipulated that he represented Caverly in the civil court action and testified that he was aware of and joined in Caverly’s tactical decision not to participate in discovery. The court records show that Collins was timely served with copies of all five sanctions motions against Caverly, yet Collins chose not to file responsive pleadings or appear at the hearings so that the case could conclude by default. The court records also indicate that the sanctions orders were issued against Caverly and *his counsel*, the Law Offices of Joseph P. Collins, jointly and severally. Additionally, Collins stipulated that he was individually responsible for this obligation, that he was served with and received each of the sanctions orders, and that the sanctions had not been paid.

[1c] Under these circumstances, we find that Collins was aware of the orders and had ample time and opportunity to contest their validity in the courts of record. He failed to do so. Thus, he was obligated to comply with the orders, and “not simply disregard them” (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47), even if he was following his client’s instructions. As we stated in *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403: “Obedience to court orders is intrinsic to the respect attorneys and their clients must accord the judicial system. As officers of the court, attorneys have duties to the judicial system which may override those owed to their clients. [Citations.] In the case of court-ordered sanctions, the attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the order cannot be obeyed.”

[1d] Given Collins’s knowing and intentional disobedience of the five unchallenged sanctions orders, we find him culpable of five violations of section 6103.

6. In his posttrial brief, Collins asked to withdraw his stipulated conclusions of law. The hearing judge denied the request as moot in her April 27, 2017 decision since she dismissed the case.

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.)

III. THE HEARING JUDGE SHOULD HAVE  
ABIDED BY THE PARTIES’  
STIPULATED FACTS AND THE  
UNCHALLENGED SANCTIONS ORDERS

We disagree with the hearing judge’s attack in this disciplinary proceeding on the validity of the civil court sanctions orders. As discussed below: (1) the hearing judge failed to adhere to the parties’ stipulated facts, which expressly resolved that Collins was individually obligated to pay the sanctions; (2) Collins forfeited his ability to contest the sanctions orders by not seeking relief in the courts of record; and (3) the unchallenged orders are now final and binding for attorney disciplinary purposes.

A. Collins Is Individually Liable For The  
Sanctions

[2a] Contrary to the parties’ mutual understanding and agreement that Collins was obligated to pay the sanctions, the hearing judge concluded that Collins was not individually responsible for the debt because the sanctions orders named the Law Offices of Joseph P. Collins. We find the judge erred, and should have abided by the parties’ stipulated facts, which, we note, are binding on the parties and amply supported by the record and the law. (Rule 5.58(G); *Inniss v. State Bar* (1978) 20 Cal.3d 552, 555 [“Ordinarily, . . . the stipulated facts may not be contradicted; otherwise, the stipulation procedure would serve little or no purpose, requiring a remand for further evidentiary hearings whenever the attorney deems it advisable to challenge the factual recitals”].)

[2b] There is no question that Collins represented Caverly in the civil action, and that as Caverly’s counsel, Collins was, in part, the subject of the sanctions orders. Thus, the sanctions against the Law Offices of Joseph P. Collins constituted sanctions against Collins. The title, “Law Offices of Joseph P. Collins,” includes no

corporate or limited liability partnership indicia,<sup>8</sup> and there is no evidence in the record that establishes that the Law Offices of Joseph P. Collins is anything but Collins operating under that name as a solo practitioner. Nevertheless, even if Collins enjoyed corporate or limited liability status, he cannot escape personal liability for his own professional malfeasance. (See *T & R Foods, Inc. v. Rose* (1996) 47 Cal.App.4th Supp. 1, 8–9; see also § 6068, subd. (o)(8) [attorney’s duty to notify State Bar of reportable sanctions includes sanctions against law firm or law corporation in which attorney was partner or shareholder at time of conduct complained of].)

B. Collins Had Notice Of The Sanctions Orders  
And Chose Not To Challenge Them

[3a] Relying on *In re Marriage of Fuller* (1985) 163 Cal.App.3d 1070 and *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, the hearing judge sua sponte determined that even if Collins were individually obligated to pay the sanctions, the orders are void or voidable because he was not named in the sanctions motions and was therefore not aware that his conduct could be the subject of possible sanctions. The judge, however, failed to recognize that Collins stipulated that he had actual notice that he had been sanctioned, and at that point, “he was obligated to obey the order[s] unless he took steps to have [them] modified or vacated, which he did not do. [Citations.]” (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 1, 9; accord, *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 951–952 [technical arguments regarding validity of civil court orders waived if orders became final without appropriate challenge; “[t]here can be no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid”]; see also *Jansen Associates, Inc. v. Codercard, Inc.* (1990) 218 Cal.App.3d 1166 (*Jansen*).) Under facts similar to

8. See State Bar Rules 3.152(B) (corporate naming requirements) and 3.174(B) (limited liability partnership naming requirements).

Collins's case, the plaintiff in *Jansen* sought sanctions against Codercard, after the company and its attorney failed to attend mandatory arbitration proceedings. (*Jansen*, at p. 1168.)<sup>9</sup> When the trial court imposed monetary sanctions against the attorney only, the attorney did not object or seek reconsideration. (*Id.* at pp. 1168–1169.) The attorney later sought to invalidate the orders based on lack of notice, but the appellate court found he had forfeited that right: “In failing to raise the issue of inadequate notice during the hearing, failing to request a further hearing on the matter, and failing to file a motion to reconsider the issue, [the attorney] waived any objection he may have had upon that ground [Citations].” (*Id.* at p. 1170.)

[3c] Likewise, Collins failed to object at the superior court level or seek appellate recourse. He has thus waived his right to challenge the orders.

#### C. The Sanctions Orders Are Now Final And Binding For Purposes Of Attorney Discipline

[4a] The sanctions orders against Collins are now final and binding for purposes of this disciplinary matter. The hearing judge's collateral attack on the orders and her finding that they are void or voidable during this proceeding were beyond her authority. Specifically, we disagree with the judge that *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, establishes that the State Bar Court has the limited jurisdiction to determine the validity of civil court orders.

In *Respondent X*, *supra*, 3 Cal. State Bar Ct. Rptr. 592, an attorney deliberately violated the confidentiality provision of a court order enforcing a settlement agreement and he was subsequently convicted of civil and criminal contempt. The

attorney sincerely believed he was acting in support of sound public policy in violating the order, but lost his appeals of both the underlying order and the contempt findings. In assessing culpability under section 6103, we held: “As to the validity of the court's confidentiality order, . . . we properly defer to the collective judgment of the courts of record which heard the contempt proceeding and which found respondent guilty and to the courts which considered respondent's subsequent appeal and requests for reconsideration and certiorari.” (*Id.* at p. 605.) We emphasized that the attorney “had his opportunities to litigate *in the courts of record* his claims that the order he violated was void” and that there was “no valid reason to go behind the now-final order.” (*Ibid.*, italics added.)

We read *Respondent X* in harmony with *In the Matter of Boyne*, *supra*, 2 Cal. State Bar Ct. Rptr. 389 and *In the Matter of Klein*, *supra*, 3 Cal. State Bar Ct. Rptr. 1—cases that also address an attorney's ethical duty to comply with civil court orders. [4b] Contrary to the hearing judge's position, the above-cited cases all stand for the same principle salient to the current matter—that superior court orders are final and binding for disciplinary purposes once review is waived or exhausted in the courts of record.

Where the cases differ is at what point *during a civil case* an attorney can challenge an order. In *Boyne* and *Klein*, we held that an attorney cannot sit back and await contempt proceedings before complying with, or explaining why he or she cannot obey, a court order. (*In the Matter of Boyne*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 404; *In the Matter of Klein*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 9.) However, we held in *Respondent X*, interpreting the then-recent Supreme Court case of *People v. Gonzalez* (1996) 12 Cal.4th 804, 818-819 (criminal case that

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9. [3b] The plaintiff made this request pursuant to Code of Civil Procedure section 128.5, which authorizes a trial court to issue sanctions against “a party, the party's attorney, or both,” for “[f]rivolous actions or delaying tactics.” Collins attempts to distinguish these sanctions from the discovery sanctions imposed in his case. However, for purposes of due process and notice requirements, we see no tangible difference.

rejected collateral bar rule in California), that an attorney facing an injunctive order has one of two options: either obey the order while simultaneously challenging its validity or disobey the order, await contempt proceedings, and raise any jurisdictional contentions when punishment for such disobedience is sought to be imposed. (*In the Matter of Respondent X*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 604.) [4c] But with either of these two options, the remedy lies in the “courts of record,” where the order originated. (*Id.* at p. 605.) We find no support for the hearing judge’s finding that the concept of punishment extends beyond contempt proceedings in the superior court to attorney disciplinary proceedings. To the contrary, *Respondent X* and the related body of case precedent on this topic make clear that an attorney cannot wait until State Bar proceedings commence in order to collaterally challenge the legitimacy of a superior court order.

#### IV. AGGRAVATION AND MITIGATION

Standard 1.5<sup>10</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence; standard 1.6 requires Collins to do the same to prove mitigation. In their stipulation, OCTC and Collins stipulated to two factors in mitigation (no prior discipline and cooperation), and expressly “reserve[d] the right to argue to the court the weight that should be given to these factors.” [5] In fact, the hearing judge gave both sides a full and fair trial and opportunity to present additional evidence of aggravation and mitigation, and to advocate orally and in writing their positions on the import of all of the factors. Collins did not present any additional evidence in mitigation. Since the hearing judge dismissed the case, she did not make any findings as to aggravation and mitigation in her decision. Nonetheless, we review the record and find the following.

#### A. Aggravation Multiple Acts Of Wrongdoing

Collins violated five distinct superior court sanctions orders. We assign moderate aggravating weight to these multiple acts of wrongdoing. (Std. 1.5(b); *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts]; *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 526 [eight acts of misconduct, including violation of four court orders, assigned moderate aggravating weight].)

#### B. Mitigation 1. No Prior Discipline

Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).) Collins has a 22-year legal career without discipline, which warrants significant weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than 10 years of misconduct-free practice given significant weight in mitigation].) Moreover, his misconduct involved a single client matter where the sanctioned discovery abuses occurred over a relatively short period of time (March to July 2015). In light of these factors, we do not find that the misconduct is likely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [long history of no discipline most relevant when misconduct is aberrational].)

#### 2. Cooperation

Collins is entitled to significant mitigation for his cooperation with the State Bar. He stipulated to facts and culpability, which assisted

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10. All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

OCTC's prosecution of the case and conserved time and resources. (Std. 1.6(e) [spontaneous candor and cooperation to State Bar is mitigating]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation given to those who willingly stipulated to facts and culpability].)

#### V. A 30-DAY ACTUAL SUSPENSION IS WARRANTED

Our analysis begins with the standards, which promote the uniform and consistent application of disciplinary measures, and are entitled to great weight. (Std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Although we are not strictly bound by the standards, the Supreme Court instructs us to follow them whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) If we deviate, we must articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

[6a] Here, standard 2.12(a) directly applies, providing that disbarment or actual suspension is the presumed sanction for disobedience of a court order. Section 6103 itself also states that violation of a court order is cause for disbarment or suspension, and Supreme Court precedent makes it clear that such misconduct is considered "unbefitting an attorney." (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) OCTC, however, seeks a one-year *stayed* suspension, which represents a downward departure from the prescribed minimum sanction under standard 2.12(a). It argues that Collins's mitigation outweighs his aggravation.

[6b] In weighing aggravation and mitigation, standard 1.7(c) permits us to recommend a more lenient disciplinary sanction than is otherwise specified in a given standard if the net effect of the aggravating and mitigating circumstances demonstrates that a lesser measure fulfills the primary purposes of discipline. However, standard 1.7(c) also indicates that, on balance, this is only appropriate in "cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates

that the member is willing and has the ability to conform to ethical responsibilities in the future."

[6c] While we acknowledge Collins's 22 years of discipline-free law practice and his extensive cooperation in this proceeding, his showing of mitigation is not enough to satisfy standard 1.7(c). His misconduct is serious, not minor, as he violated *five* separate court orders, and he has yet to provide proof of payment or resolution of the outstanding debt. (See *Barnum v. State Bar, supra*, 52 Cal.3d at p. 112 [violation of court order is considered serious misconduct].) Under these circumstances, he does not qualify for a reduction in the discipline under our standards.

[6d] Therefore, we find that a period of actual suspension, in accordance with standard 2.12(a), is appropriate and necessary discipline. [7] We recommend a 30-day actual suspension, with probation and conditions that include payment of the sanctions ordered by the superior court. (See *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 869 [payment of outstanding sanctions is necessary component of discipline and ensures respondent's professional obligations under § 6103]; see also *In re Morse* (1995) 11 Cal.4th 184, 210-211 [payment of civil penalties ordered as explicit condition of probation despite any redundancies in civil enforcement action].)

#### VI. RECOMMENDATION

For the foregoing reasons, we recommend that Joseph Patrick Collins be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for the first 30 days of the period of his probation.

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within one year after the effective date of discipline, he must show proof of payment of the following sanctions as ordered by the Los Angeles County Superior Court on March 25, May 6, June 24, July 1, and July 15, 2015, in Case No. SC122588 (or reimburse the Client Security Fund, to the extent of any payment from the Fund to the payee(s), in accordance with Business and Professions Code section 6140.5), and furnish such proof to the State Bar Office of Probation in Los Angeles:
  - a. \$1,185 plus 10 percent interest per year from March 25, 2015;
  - b. \$1,185 plus 10 percent interest per year from May 6, 2015;
  - c. \$1,185 plus 10 percent interest per year from June 24, 2015;
  - d. \$1,185 plus 10 percent interest per year from July 1, 2015; and
  - e. \$1,560 plus 10 percent interest per year from July 15, 2015.

Alternatively, he may show satisfactory proof of resolution of the five sanctions orders to the State Bar Office of Probation.

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
5. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation case specialist either in person or by telephone. During the period of probation, he must promptly meet with the probation case specialist as directed and upon request.
6. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
7. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
8. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's 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 shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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 period of probation, if he has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

**VII. PROFESSIONAL RESPONSIBILITY  
EXAMINATION**

We further recommend that Joseph Patrick Collins be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

**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 both as provided in section 6140.7 and as a money judgment.

We concur:

PURCELL, P. J.

STOVITZ, J.\*

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\* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.