

Filed July 16, 2024

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	SBC-22-O-30551
)	
PAMELA GAYLE LACHER,)	OPINION AND ORDER
)	
State Bar No. 174895.)	
_____)	

This disciplinary proceeding originated with Pamela Gayle Lacher’s refusal to pay a judgment stemming from an action in small claims court. After multiple motions, appeals, and imposed sanctions, what began as a judgment for a few thousand dollars has now climbed to over \$160,000, and culminated in a judgment of contempt against her. Throughout this entire process, occurring over an 18-year period, she has remained intransigent and determined to use her knowledge of the legal system to delay and to avoid payment of any amount of the sanctions and costs ordered by the court. She has progressed from the small claims court through the superior courts, and into the court of appeal, often making frivolous claims.

This is now her third disciplinary proceeding. She is charged with failing to obey court orders, failing to maintain respect due to the courts, maintaining unjust actions, encouraging actions from a corrupt motive, failing to report judicial sanctions, and commingling funds from a client trust account (CTA). The hearing judge found culpability under all nine alleged counts

and recommended Lacher be actually suspended for nine months and until the superior court judgment is paid.

On review, the Office of Chief Trial Counsel of the State Bar (OCTC) argues Lacher should be disbarred. Lacher asserts she is not culpable of any of the nine counts, but argues that if culpability is affirmed, then the 90-day actual suspension imposed in a prior discipline is “more than sufficient.” After an independent review of the record, (Cal. Rules of Court, rule 9.12), we find it appropriate to dismiss subpart (a) of counts one and two, and counts three, four, and five. We find culpability as charged for the remaining allegations. Even though we find fewer counts of misconduct than the hearing judge, Lacher’s pattern of misconduct merits a more serious discipline. Considering the standards, relevant case law, and the aggravating and mitigating circumstances, we recommend Lacher’s disbarment.

I. PROCEDURAL BACKGROUND

A. Instant Matter

On June 3, 2022, OCTC filed a Notice of Disciplinary Charges (NDC) in this matter, alleging nine counts of misconduct, including violations of Business and Professions Code section 6068,¹ subdivisions (b), (c), (g), and (o)(3); section 6103; and rule 1.15(c) of the Rules of Professional Conduct.² The parties filed a Stipulation as to Facts and Admission of Documents on October 21, 2022. Trial was held on October 21 and November 18, 2022. The matter was abated from January 13 to March 16, 2023. The hearing judge filed the decision on June 14. Both parties filed requests for review. After briefing, oral argument was held on April 23, 2024.

¹ All further references to sections are to the Business and Professions Code unless otherwise noted.

² Because the alleged misconduct in count nine spanned from 2017 to 2019, the NDC included a violation of rule 4-100(A) of the former Rules of Professional Conduct, which was in effect until November 1, 2018. Former rule 4-100(A) is the predecessor of current rule 1.15(c).

B. Prior Disciplinary Matters

1. *Lacher I* (State Bar Court Nos. 03-O-03824; 07-O-11020)

In January 2009, Lacher stipulated to misconduct in *Lacher I*, including two violations of section 6068, subdivision (o)(3) (failure to report imposition of judicial sanctions). Both violations concern an action Lacher filed in the Superior Court of San Diego County, *Lacher v. East County Investigations, et al.*, case number GIC79012. This action and the appeals related to it are central to the instant disciplinary matter.

For the first stipulated violation, Lacher admitted that on December 15, 2004, the Court of Appeal, Fourth Appellate District, imposed sanctions against her of \$7,166 for filing a frivolous appeal, and she did not report the sanctions to the State Bar. For the second stipulated violation, Lacher admitted that on December 22, 2006, the superior court imposed sanctions of \$1,792.50, and she did not report the sanctions to the State Bar.³ On October, 27, 2009, the Supreme Court imposed the discipline recommended by the Hearing Department's Order Approving Stipulation, which was a one-year stayed suspension and two years of probation. (S175824.)

As part of the stipulation, OCTC and Lacher requested dismissal of counts one, two, and four in State Bar Court number 03-O-03824, and count two in State Bar Court number 07-O-11020. As discussed later, Lacher argues that counts one through six in the instant NDC relate to the charges in *Lacher I*.

³ Count three of the instant NDC charges that Lacher failed to comply with the December 15, 2004 appellate opinion. Counts one and two allege in part that Lacher did not obey the December 22, 2006 superior court order.

2. *Lacher II* (State Bar Court No. SBC-21-O-30199)

In February 2023, we recommended a 90-day actual suspension for misconduct Lacher committed in 2019 and 2020, consisting of failure to pay client funds promptly, failure to maintain client funds in a trust account, failure to render accounts of client funds, and failure to promptly release a client file after termination. On May 10, 2023, the Supreme Court filed an order imposing the recommended discipline. (S278924.)

II. FACTUAL BACKGROUND OF THE INSTANT MATTER

The facts are based on the stipulation, trial testimony, documentary evidence, and the hearing judge's factual and credibility findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) The hearing judge's factual findings provide a detailed summary of the litigation at issue here. We adopt those findings and provide a summary of the pertinent facts in this section.

A. ECI Litigation

Much of the alleged misconduct in this matter stems from a dispute between East County Investigations (ECI) and Lacher, beginning in 2001, and lasting for over 18 years.⁴ (*East County Investigations v. Lacher* (Super. Ct. San Diego County, No. SE007689.) ECI⁵ sued Lacher in small claims court for services it had rendered to Lacher, and the court awarded judgment to ECI. Lacher appealed.⁶ On January 11, 2002, the superior court awarded ECI a judgment of \$2,793.85, costs of \$85, attorney's fees of \$150, and interest. In retaliation, Lacher filed an action in superior court in June 2002 (Super. Ct. San Diego County, No. GIC791012).⁷ The

⁴ The ECI litigation involves counts one through eight.

⁵ Sue Lane filed the action on behalf of ECI.

⁶ The appeal case number was SEA007689.

⁷ This is the action at issue in *Lacher I*, mentioned above. Lacher sued ECI and its owners, Jon and Sue Lane. She later added her mother, Roslyn Lacher, as a plaintiff.

superior court granted ECI's demurrer and anti-SLAPP motion. The court awarded judgment against Lacher and her mother for \$7,687.90. Numerous appeals followed.

On April 22, 2003, Lacher filed an appeal of the superior court action in the Court of Appeal, Fourth Appellate District, Division One (No. D042004). She filed an amended appeal in August. On December 15, 2004, the appellate court found that Lacher's claims were precluded and should have been presented as defenses in the small claims action. The court found that the appeal was "taken solely for the purpose of harassment and delay." Because the appeal was without merit and "filed merely to delay payment of [ECI's] claim," the court found the case frivolous and awarded sanctions of \$7,166. Lacher was also directed to pay ECI's costs. She received notice of this order but failed to pay the sanctions or costs, and she failed to report the sanctions, which resulted in the discipline in *Lacher I*.

On December 22, 2006, the superior court granted ECI's motion for sanctions of \$1,792.50, as Lacher caused ECI to incur expenses in defending against an improper sanctions motion. Lacher stipulated she received notice of this order and failed to pay the sanctions. She failed to report the sanctions, which also resulted in discipline in *Lacher I*.

Lacher did not pay ECI as ordered by the courts, and, on December 12, 2014, the superior court filed an assignment order, assigning to ECI 50 percent of all payments made to Lacher from her clients and 50 percent of all payments made from Lacher to her mother. Lacher stipulated she received notice of this order, but did not make any payments pursuant to the order.

On March 25, 2016, the superior court filed a minute order requiring Lacher to pay \$1,320 in sanctions. The court found that Lacher did not provide adequate answers to interrogatories and did not produce documents as required. The court ordered Lacher to file supplemental responses and produce certain documents and a privilege log by April 8. Lacher

stipulated she received notice of the order, but did not pay the sanctions or produce the documents or privilege log as required.

On October 21, 2016, the superior court found that Lacher “willfully failed to fully comply with this court’s discovery order of March 25, 2016.” The court also found that Lacher (1) “deliberately misconstru[ed]” an interrogatory as one requesting documents, and thus supplied an evasive answer; (2) did not state the truth and disclose all information as required; and (3) did not adequately respond to discovery. The court compelled Lacher to provide complete responses and imposed sanctions of \$3,880, to be paid by November 10. The court noted that the amount owed to ECI was now approximately \$94,145.38. Lacher stipulated she received notice of this order.

The superior court filed a minute order on December 2, 2016, and issued a tentative ruling granting ECI’s motion to enforce the December 12, 2014 assignment order. The court found that Lacher provided an interrogatory response that was “evasive and/or nonresponsive.” The court stated that Lacher’s objections to the interrogatories lacked merit. The court ordered Lacher to provide additional responses by December 14, 2016. Lacher stipulated she received notice of this order. She did not provide the responses, but timely filed an appeal on December 14 in the California Court of Appeal, Fourth Appellate District, Division One. (No. D071624.) On January 31, 2017, the superior court adopted the December 2, 2016 tentative ruling granting ECI’s motion to enforce the assignment order. The superior court ordered Lacher to prepare accountings pursuant to the assignment order. Lacher stipulated she received notice of this order and did not prepare any accountings or pay any funds pursuant to the assignment order.

In June 2017, OCTC notified Lacher of an investigation it had opened based on a complaint from Sue Lane that Lacher had not complied with the October 21, 2016 superior court

order, which ordered Lacher to pay monetary sanctions and found she failed to comply with a March 25, 2016 discovery order and the assignment order. (OCTC No. 17-O-01084.) OCTC closed the investigation without prejudice in October 2017, and notified Lacher by letter.

On May 18, 2018, the appellate court issued its opinion in case number D071624 regarding Lacher's December 2016 appeal. The court stated:

The current record indicates that the Lachers have continued to engage in sanctionable conduct, but it does not appear that they have been held in contempt of court. While we recognize our discretion to dismiss under this theory does not require a prior contempt order [citation], we nonetheless decline to exercise our discretion to dismiss this appeal under the disentitlement doctrine. . . . [H]owever, we note our strong disapproval of what we perceive to be Pamela Lacher's unprofessional conduct and abuse of the judicial process.

The appellate court concluded that the superior court did not abuse its discretion in amending the assignment order or in compelling discovery.⁸ Regarding the assignment order, the appellate court stated that Lacher had made no payments under the assignment order and "continued to evade [ECI's] legitimate collection efforts." Accordingly, Lacher's actions "justif[ied] amendment of the assignment order to impose a constructive trust and accounting requirements." The appellate court also rejected Lacher's arguments that an attorney's right to payment from her client cannot be assigned. The appellate court found that Lacher did not raise an argument in the superior court regarding her ability to pay, and therefore it had been waived. The appellate court also found that Lacher's discovery arguments lacked merit and affirmed the superior court's discovery order. The appellate court stated that Lacher's "substantive points raised on appeal are devoid of merit." Further, "[t]he Lachers sought and obtained multiple requests for extensions of time to file papers that were never filed. This appeal appears to have been taken as yet another tactic to delay paying the substantial debt the Lachers have incurred." However, the court did

⁸ The appellate court noted that Lacher was her mother's attorney of record in the appeal.

not award additional sanctions as (1) monetary sanctions had not suppressed Lacher's abuse of the judicial process and would be unlikely to remedy the situation and (2) imposing sanctions would require procedural steps that would further delay the proceedings and could actually benefit Lacher as it appeared her primary motive was to delay collection efforts. The appellate court stated:

While we stop short of imposing sanctions, however, we express our strong disapproval of what we perceive to be Pamela Lacher's unprofessional conduct and abuse of the judicial process. Even though she is acting, at least in part, as a private litigant in this action, as a licensed member of the California State Bar, Ms. Lacher is not absolved of her duties as an officer of the court, including her duty of candor. (Cal. Rules of Prof. Conduct, rule 5-200 (a member of the State Bar shall not seek to mislead a judicial officer); Bus. & Prof. Code, § 6068, subd. (d) (an attorney shall employ means "only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law").) Ms. Lacher's repeated requests for additional time to file briefs and papers never filed evidences dishonesty, delay, and an abuse of process that wastes judicial resources and undermines judicial efficiencies.

Lacher reported the opinion to OCTC and OCTC opened an investigation. (OCTC No. 18-O-16108.) OCTC notified Lacher by letter in October 2018 that the investigation was being closed without prejudice.

On July 17, 2019, the superior court held a hearing on ECI's request for a restraining order and order to show cause why Lacher had not made payments to ECI for at least three client matters in which she received payment. The court found that Lacher had not complied with the December 12, 2014 assignment order or the January 31, 2017 order amending the assignment order. The court ordered Lacher to provide documents regarding the funds and to deposit the funds with the court by noon on July 18. Lacher received notice of the order,⁹ but did not deposit any funds with the court or produce the documents as ordered.

⁹ The order was not served until July 19, 2019. Lacher stipulated to receiving notice.

On January 15, 2020, the superior court found that Lacher had not complied with previous orders for her to turn over information regarding her bank accounts. The court ordered Lacher to pay \$3,210 in sanctions by February 14. ECI filed notice of the judgment on January 21. Respondent did not pay the sanctions by February 14.

On January 31, 2020, the superior court set an order to show cause hearing as to why respondent should not be held in contempt. The court stated that evidence had been presented showing that Lacher had violated the December 12, 2014 assignment order; the October 21, 2016 order; the December 2, 2016 minute order; the January 31, 2017 order amending the assignment order; the May 18, 2018 court of appeal ruling affirming the orders; and the July 17, 2019 minute order and restraining order. The court ordered Lacher to pay sanctions of \$1,260 by February 14, 2020. Lacher stipulated she did not pay the sanctions.

On February 25, 2020, the court ordered Lacher to provide supplemental responses and to pay \$1,260 in sanctions by March 14. Lacher stipulated she did not pay the sanctions or provide the responses by March 14.

The contempt hearing occurred on March 13, 2020, and the superior court entered a judgment of contempt against Lacher on July 28, 2020. The court found that she violated the December 12, 2014 assignment order; the October 21, 2016 order; the December 2, 2016 minute order; the January 31, 2017 order amending the assignment order; the May 18, 2018 appellate court order; and the July 17, 2019 restraining order. The court ordered her to pay attorney's fees and costs of \$11,145, at the rate of \$100 per month beginning April 13, 2020, until paid in full. Lacher has not paid any amount. The court also ordered a fine of \$5,000, to be paid to the court in \$1,000 installments also beginning on April 13. Lacher stipulated she received actual notice of the judgment of contempt. Lacher did not pay the fine or report the fine or judgment of contempt to the State Bar.

The superior court did not notify the State Bar of the June 28, 2020 judgment of contempt until February 2021, and OCTC opened an investigation that resulted in the instant proceedings (State Bar Court No. SBC-22-O-30551). In a February 18, 2021 minute order, the court stated that, as of January 8, 2021, the balance due on the judgment of contempt was \$161,243.33, the result of interest and Lacher's continued failure to pay and her efforts to thwart ECI's collection of the original judgment. After the investigation was opened based on the superior court referral, in July 2021, Jon Lane filed a complaint that was also based on the June 28, 2020 judgment of contempt. (OCTC No. 21-O-09394.) OCTC closed the investigation without prejudice in April 2022.

B. Lacher's CTA

Lacher issued the following checks from her CTA: (1) check 1081, dated December 6, 2017, for \$4,383.70; (2) check 1082, dated May 10, 2018, for \$456; (3) check 1005, dated October 15, 2018, for \$610; and (4) check 1083, dated January 25, 2019, for \$6,125. The checks were all made out to her mother. Lacher testified the checks were written to her mother for client-related fees. This testimony was rejected by the hearing judge, and we affirm that finding.

III. PROCEDURAL ARGUMENTS

A. Effect of *Lacher I* on Charges in Instant NDC

Lacher asserts that counts one through six in the instant NDC relate to her prior discipline in *Lacher I* (State Bar Court Nos. 03-O-03824; 07-O-11020), and, therefore, it was error to allow the instant proceedings to go forward.

First, Lacher argues that OCTC did not follow rule 5.123 of the Rules of Procedure of the State Bar, which provides limitations on reopening a proceeding or beginning a new proceeding after dismissal. Rule 5.123(D) provides, "If more than two years have elapsed since the dismissal's effective date . . . the State Bar must ask the Court's leave, based on good cause, to

reopen a proceeding or begin a new proceeding opened based on the same transaction or occurrence.” The NDC in State Bar Court case number 03-O-03824 was filed on May 24, 2007, and charged four counts of misconduct. Counts one, two, and four were dismissed as a result of the *Lacher I* stipulation, which was filed on February 3, 2009, and approved by the Supreme Court on October 27, 2009. The NDC in State Bar Court case number 07-O-11020 was filed on October 4, 2007, and charged two counts of misconduct. Count two of that NDC was also dismissed as part of the *Lacher I* stipulation.

1. Subpart (a) of Counts One and Two Are Dismissed

Count two in State Bar Court case number 07-O-11020 alleged Lacher did not pay the sanctions imposed in the December 22, 2006 order, in violation of section 6103 (failure to obey court order). In subpart (a) of count one in the instant NDC, OCTC again alleges Lacher violated section 6103 by failing to comply with the December 22, 2006 sanctions order. OCTC admits this is substantively the same as “a charge” that was dismissed in *Lacher I* and that it did not ask leave of the court to reopen a proceeding or begin a new proceeding based on a violation of the December 22, 2006 sanctions order, even though over two years had elapsed since the effective date of the dismissal in 2009. Instead, OCTC included this allegation in the instant NDC filed in 2022.

OCTC argues that even if the technical requirements of rule 5.123 of the Rules of Procedure of the State Bar were not met, Lacher was not prejudiced as these issues were addressed before trial. OCTC cites *Emslie v. State Bar* (1974) 11 Cal.3d 210, 229, for the proposition that due process has been met here, and we need not dismiss subpart (a) of count one. However, in *Emslie*, the court stated, “The right to practice one’s profession is sufficiently precious to surround it with a panoply of legal protection. [Citation.]” (*Id.* at p. 226.) Included in that protection are the procedural safeguards provided by the Rules of Procedure of the State

Bar. (*Ibid.*) Procedural due process must be afforded a licensee in an administrative proceeding where the deprivation of a license to practice one's profession is contemplated. (*Id.* at p. 229, citing *In re Ruffalo* (1968) 390 U.S. 544, 550-551.)

Rule 5.123(D) of the Rules of Procedure of the State Bar is one such example of the procedural due process accorded attorneys. It requires leave of court based on good cause to reassert a dismissed count if two years have lapsed since the dismissal and the new proceeding is based on the same transaction or occurrence. OCTC did not comply with this requirement. Therefore, we dismiss subpart (a) of count one with prejudice because it is based on the same "transaction or occurrence" charged and dismissed in *Lacher I.*¹⁰ We also dismiss subpart (a) of count two with prejudice as it involves the same factual allegation that Lacher did not comply with the December 22, 2006 sanctions order.¹¹

2. Count Three is Dismissed

Count three of the instant NDC alleges Lacher failed to comply with the December 15, 2004 appellate decision ordering her to pay sanctions, in violation of section 6068, subdivision (b) (failure to maintain respect due to court of justice). In count four of the NDC in State Bar Court case number 03-O-03824, OCTC alleged Lacher violated section 6103 (failure to obey a court order) by failing to pay the sanctions ordered in the December 15, 2004 appellate

¹⁰ The remaining subparts of counts one and two are not dismissed as they involve orders Lacher violated from 2014 through 2020. These subsequent orders do not qualify as the "same transaction or occurrence" under rule 5.123(D).

¹¹ The docket from the 2004 appellate decision states that the court referred the decision to the State Bar. The hearing judge stated this resulted in the allegations charged in *Lacher I.* Therefore, the hearing judge found that the allegations in the instant NDC that Lacher violated orders from 2004 and 2006 were not barred by the five-year limitations period under rule 5.21 of the Rules of Procedure of the State Bar because the proceedings were initiated based on information received from the appellate court, an independent source. We need not address the five-year limitations period for the charges relating to the 2004 and 2006 orders as they are dismissed pursuant to rule 5.123(D).

decision. That count was dismissed by stipulation. The charges in the instant NDC allege the same activity, yet under different code sections. Like subpart (a) of counts one and two, OCTC did not ask for leave of court to bring another proceeding including a charge based on the same transaction or occurrence that was earlier dismissed. Therefore, we also dismiss count three of the instant NDC with prejudice for failure to comply with rule 5.123(D) of the Rules of Procedure of the State Bar.

3. Counts Four and Five Are Dismissed

The December 15, 2004 appellate decision found that the appeals Lacher filed on April 22 and August 8, 2003 were filed to delay payment of ECI's claim and had "no more merit than the underlying case." Therefore, the court ordered Lacher to pay sanctions "for a frivolous appeal." Counts four and five of the instant NDC allege that these appeals violated section 6068, subdivisions (c) (maintaining an unjust action) and (g) (encouraging action from corrupt motive). The NDCs in *Lacher I* did not contain any allegations of violations of section 6068, subdivisions (c) and (g), for the appeals. However, count three of the NDC in *Lacher I* (case number 03-O-03824) included the allegation that Lacher filed an appeal that the appellate decision found to be frivolous. The *Lacher I* proceedings were based on the December 15, 2004 appellate decision—the same transaction or occurrence involved in the charges in counts four and five of the instant NDC. OCTC failed to comply with the requirements of rule 5.123(D) of the Rules of Procedure of the State Bar and ask for leave of court to bring charges based on the same occurrence. Accordingly, counts four and five are also dismissed with prejudice.

4. Res Judicata

Lacher asserts that *Lacher I* should be given "res judicata effect as to the current charges" under *In the Matter of Hoffman* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 698. "[R]es judicata is designed to prevent relitigation of the same cause of action in a later suit between the

same parties” (*In the Matter of Curtis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 601, 607.) We examine the counts that have not been dismissed pursuant to rule 5.123(D) of the Rules of Procedure of the State Bar, and find they are not a relitigation of the issues in *Lacher I* as they could not have been litigated at the time of the stipulation. The remaining counts involve Lacher’s misconduct that occurred after the *Lacher I* stipulation. There is no reason to dismiss based on res judicata grounds. Further, under *Hoffman*, Lacher is bound to the facts in her prior stipulation. (*In the Matter of Hoffman, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 707-708.)

B. Limitations Period

Rule 5.21(A) of the Rules of Procedure of the State Bar provides that if a disciplinary proceeding is based solely on a complainant’s allegations, the NDC “must be filed within the later of (1) five years from the date the violation occurred or (2) two years from the date the first complaint regarding the violation is submitted to the State Bar, so long as that complaint is submitted to the State Bar within five years from the date the violation occurred.” However, rule 5.21(G) provides: “The five-year limit does not apply to disciplinary proceedings that were investigated and initiated by the State Bar based on information received from an independent source other than a complainant.”

Lacher argues the charges in the instant NDC involving orders issued in 2016 are time-barred because the NDC was not filed until June 3, 2022 (i.e., more than five years after the misconduct). OCTC asserts that none of the allegations in the NDC are time-barred because this proceeding arose from an independent source, the February 24, 2021 referral from the superior court of the July 28, 2020 judgment of contempt. As a result, the five-year time limit under rule 5.21 does not apply. (Rules Proc. of State Bar, rule 5.21(G); see also *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1 [five-year limitations period did not apply where superior court’s sanction order was basis of investigation].) Additionally, OCTC argues

the five-year limit has been tolled under rule 5.21(C)(3) since 2006 while the ECI litigation was ongoing as ECI attempted to collect on the judgment. (See *In the Matter of Saxon* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 728 [application of rule 5.21(C)(3) tolling].) Rule 5.21(C)(3) provides, in pertinent part, that the five-year time limit for the filing of an “initial pleading” is tolled while:

[C]ivil, criminal, or administrative investigations or proceedings based on the same acts or circumstances as the violation, including but not limited to proceedings seeking to determine whether a violation has occurred, the scope of the violation, the harm resulting from the violation, or any actions to be taken to remediate the violation, including efforts to collect funds owed as the result of the violation, are pending with any governmental agency, court, or tribunal.

OCTC argues that *all* the orders at issue in count one are tolled under *Saxon* and rule 5.21(C)(3). However, rule 5.21(C)(3) only applies to *initial* pleadings, and OCTC filed those in 2007 in the *Lacher I* NDCs. OCTC then failed to follow rule 5.123(D) to reopen or begin a new proceeding based on the same transaction or occurrence. Accordingly, rule 5.21(C)(3) tolling would not apply to the 2004 and 2006 court orders. Regardless, we have dismissed those charges pursuant to rule 5.123(D), as discussed above.

Chronologically, the next charges in the NDC concern the following orders: the December 12, 2014 assignment order; the March 25, 2016 minute order; and the October 21, 2016 minute order. The October 21, 2016 minute order found that Lacher had violated the December 12, 2014 assignment order and the March 25, 2016 minute order. Sue Lane’s 2017 complaint to the State Bar was based on the October 21, 2016 minute order, and resulted in OCTC opening investigation number 17-O-01084. OCTC notified Lacher of the investigation in June 2017. At this time, OCTC could have filed an initial pleading based on the 2017 Sue Lane complaint and the violations of the 2014 and 2016 orders, but did not do so. OCTC issued Lacher a closing letter in October 2017. OCTC did not file an initial pleading regarding these

2014 and 2016 orders until the instant NDC, which was filed on June 3, 2022. We find that these allegations were tolled while civil proceedings based on these orders continued. For these reasons, the allegations in the 2022 NDC regarding these orders were not time-barred.

In August 2018, as ordered by the appellate court, Lacher reported the May 18, 2018 appellate opinion to the State Bar. OCTC then opened investigation number 18-O-16108. The appellate opinion dealt with the December 2, 2016 order and the January 31, 2017 amended assignment order. Both orders are part of the ongoing civil proceedings stemming from the 2014 superior court assignment order and Lacher's appeal. Therefore, the allegations in the NDC regarding the December 2, 2016 order and the January 31, 2017 amended assignment order are similarly tolled under rule 5.21(C)(3) and were not untimely filed or barred by the limitations period.

The next time OCTC was contacted about this litigation was in February 2021 when the superior court notified the State Bar of the July 28, 2020 judgment of contempt.¹² Based on the superior court's notification, OCTC opened investigation number 21-O-02967 that resulted in the instant disciplinary proceedings.

After the investigation was opened, Jon Lane complained to the State Bar in July 2021 about the 2020 judgment of contempt, which resulted in OCTC investigation number 21-O-09394. OCTC closed this investigation by letter in April 2022. OCTC stated in the letter that OCTC investigation number 21-O-02967 remained open and involved "many of the same or similar allegations" as raised in the investigation (OCTC No. 21-O-09394) that was being closed. Less than two months later, OCTC filed the instant NDC. The remaining allegations in the NDC

¹² The July 28, 2020 judgment of contempt discussed, inter alia, Lacher's violation of the July 17, 2019 restraining order, which ordered her to deposit certain funds with the clerk by July 18, 2019. The superior court found that Lacher continued to fail to comply with previous orders through January 31, 2020, the date the court set the order to show cause hearing.

(regarding the July 17, 2019 restraining order and order to show cause; the January 15, 2020 minute order; the January 31, 2020 minute order; the February 25, 2020 minute order; and the July 28, 2020 judgment of contempt) were also related to ongoing civil litigation that would be tolled. And even if not, these allegations were filed after the superior court notification of the judgment of contempt and well within any time limit under rule 5.21(A) of the Rules of Procedure of the State Bar. Therefore, none of the remaining allegations are barred by the limitations period.

C. Closed OCTC Investigations

Lacher asserts that allegations in the instant NDC overlap with previous closed OCTC investigations. She argues the instant proceedings cannot have commenced by court referral, i.e., an independent source, because OCTC already knew about most of the court orders. In addition, she argues OCTC failed to follow rule 2603 of the Rules of Procedure of the State Bar because there was no new material information, and therefore, no good cause.¹³

The investigations were closed *without* prejudice. Therefore, OCTC was not barred from reopening them under rule 2603. Lacher stipulated that the start of the investigation of the instant disciplinary proceeding occurred on February 24, 2021, when the superior court notified the State Bar of the judgment of contempt. As discussed above, the investigations closed in 2017, 2018, and 2022 were not barred by the limitations period. In addition, OCTC has prosecutorial discretion to decide whether to reopen an investigation. (Rules Proc. of State Bar, rule 2603; see *In the Matter of Jones* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 873, 885-886.) We find no procedural error regarding OCTC's decision to prosecute allegations in this

¹³ Rule 2603 provides that OCTC may reopen an investigation if (1) there is new material evidence or (2) the Chief Trial Counsel or designee, in his or her discretion, determines there is good cause.

proceeding relating to the investigations it had closed, without prejudice, in 2017, 2018, and 2022.¹⁴

D. Client Security Fund

Lacher argues the hearing judge failed to consider a September 2020 Client Security Fund (CSF) decision.¹⁵ She asserts the CSF decision should be “given collateral estoppel effect as to the factual findings and conclusions of law.” The CSF decision found that the applicants (Sue and Jon Lane) were excluded from reimbursement under the CSF rules.

“[C]ollateral estoppel exists to prevent relitigation of the same issues when decided in prior actions” (*In the Matter of Curtis, supra*, 4 Cal. State Bar Ct. Rptr. at p. 607.) The CSF Commission is not a court that decides an action filed by one party against another. In addition, the issue before the CSF, whether Sue and Jon Lane were entitled to CSF reimbursement, is not the same as the issue before us, whether Lacher is culpable of ethical misconduct. Accordingly, we reject Lacher’s argument that the hearing judge erred by not considering the CSF decision in determining culpability.

¹⁴ These allegations could not have been brought at the time of *Lacher I*.

¹⁵ Rule 5.105 of the Rules of Procedure of the State Bar discusses the admissibility of evidence from CSF proceedings, setting forth specific exceptions allowing admissibility, none of which are applicable here.

IV. CULPABILITY¹⁶

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

Count one alleges Lacher disobeyed or violated 11 court orders in violation of Business and Professions Code section 6103.¹⁷ We dismissed subpart (a), and the 10 remaining orders include the December 12, 2014 assignment order; the March 25, 2016 minute order; the October 21, 2016 order; the December 2, 2016 minute order; the January 31, 2017 order amending the assignment order; the July 19, 2019 restraining order and order to show cause; the January 15, 2020 minute order; the January 31, 2020 minute order; the February 25, 2020 minute order; and the July 28, 2020 judgment of contempt. “Section 6103 . . . provides a mechanism to enforce the standards governing attorneys’ conduct before tribunals.” (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 523.) The hearing judge found Lacher culpable for disobeying eight of the orders. The judge found that OCTC did not prove culpability by clear and convincing evidence for the January 15, January 31, and February 25, 2020 minute orders. OCTC argues we should find culpability for all 11 orders. Lacher argues she has not violated or admitted to violating any orders.

1. Notice Arguments

a. January 15, January 31, and February 25, 2020 Minute Orders

The hearing judge found there was not clear and convincing evidence Lacher had notice of the January 15, January 31, and February 25, 2020 minute orders. OCTC disputes this finding

¹⁶ OCTC has the burden of proving culpability by clear and convincing evidence. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].)

¹⁷ Section 6103 provides, “A willful 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 forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.”

on review. The January 15, 2020 minute order states that Lacher was in court when the judge made the order; therefore, she had actual notice of it. For the January 31 and February 25, 2020 minute orders, OCTC argues that Lacher knew of the orders because the docket stated the orders were finalized and served by mail. We agree with OCTC that Lacher had knowledge of these orders.¹⁸ By law, Lacher is presumed to have been served with the order, and the docket states this occurred. (*In the Matter of Chavez* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 783, 789-790 [attorney failed to rebut presumption under Evid. Code, § 664 that an official duty, service of an order, was regularly performed].) Therefore, we reverse the hearing judge's decision to not find culpability for these three orders based on lack of notice or knowledge of them.

b. December 2, 2016 Minute Order; July 17, 2019 Restraining Order and Order to Show Cause; July 28, 2020 Judgment of Contempt

Lacher claims she did not have notice of (1) the December 2, 2016 minute order; (2) the July 19, 2019 restraining order and order to show cause; and (3) the July 28, 2020 judgment of contempt. She argues, respectively, (1) the December 2, 2016 tentative ruling was not served on her until February 2017; (2) service came too late to comply with the July 17, 2019 restraining order and order to show cause because it required her to provide documents by July 18, 2019;¹⁹ and (3) there is no evidence she was served with the July 28, 2020 judgment of contempt, and the order was signed on July 28, 2020, but required compliance by April 13, 2020.

¹⁸ Lacher filed a motion to disqualify on February 27, 2020. We cannot assume Lacher had notice of the minute orders based on the subsequently filed motion to disqualify. Therefore, we reject OCTC's argument that Lacher's knowledge of the minute orders can be based on the motion to disqualify.

¹⁹ The order was filed on July 17, 2019, and required her to comply by July 18. However, the order was not served until July 19.

Lacher stipulated she received actual notice of all three of these orders and she cannot now dispute this. (See Rules Proc. of State Bar, rule 5.54.) Evidence to prove or disprove a stipulated fact is inadmissible. (*Ibid.*) Respondent's objections to the judgment of contempt are in the record, and were filed on July 30, 2020, which is before the service by mail date of July 31 as seen on the docket. This supports the stipulated fact.

The December 2, 2016 minute order required Lacher to provide supplemental discovery responses, which she did not do, but she nevertheless appealed. In 2018, the appellate court found that her appeal was frivolous and filed to delay. The appellate court affirmed the minute order, and on remand, the superior court found that Lacher failed to comply with the order. In the judgment of contempt, the superior court also found that Lacher had the ability to comply with the July 17, 2019 restraining order and failed to comply.

There is no doubt that Lacher had actual notice of all three of these orders—she stipulated to as much. Her arguments regarding notice are without merit.

2. Substantive Arguments

Lacher argues she did not ignore the court orders but sought relief from paying the judgment. However, the record does not support this. She testified that a hearing on relief from payment was vacated due to the pandemic, and the superior court refused to later hear the issue. She provided no documentation supporting this testimony. The appellate court stated in 2018:

[T]he Lachers did not raise any argument regarding their ability to pay or present any evidence to support this claim in their opposition to modification of the assignment order at the trial court level. Having failed to assert it in the trial court, the argument has been waived. [Citation.] Moreover, to the extent this argument addresses the merits of the original 2014 assignment order . . . we will not permit the Lachers to use the instant appeal from the modification order to press arguments against the underlying order, which is now final. [Citation.]

The record shows Lacher has consistently argued she does not have to pay the orders, not that she sought relief from the orders or did not have an ability to pay them. (See *In the Matter of*

Boyne (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403-404 [§ 6103 violation when attorney failed to pay court-ordered fees yet knew of order and failed to seek relief— “impecunious financial status” no excuse]; see also *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868 [lack of ability to pay no defense to § 6103 charge where respondent did not seek relief from order].)

Lacher asserts the December 2, 2016 order was only a tentative ruling. It was issued as a tentative order, but was finalized by order on January 31, 2017. When the order became final, Lacher chose to continue her noncompliance.

Lacher also argues the “non-sanction” assignment orders could not be violated because “there was no ‘court’ order to comply with” and they did not comply with Code of Civil Procedure section 708.510. These orders include the December 12, 2014 assignment order; the December 2, 2016 minute order; and the January 31, 2017 amended assignment order. The superior court found that Lacher violated all of these orders. She cannot now collaterally attack these orders in this court. (*In the Matter of Thomas* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 944, 955 [respondent must prove a jurisdictional defect to collaterally attack a final judgment].)

Finally, Lacher claims that she cannot have violated section 6103 because she was acting in a personal capacity. The record shows that she represented her mother throughout.

We reject her arguments and find culpability under count one for Lacher’s failure to obey 10 of the 11 charged court orders.

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

Count two alleges Lacher failed to maintain respect due to the courts by failing to comply with the 11 orders charged under count one in violation of section 6068, subdivision (b). Again,

only 10 are at issue as subpart (a) of count two was also dismissed. Section 6068, subdivision (b), provides that it is the duty of an attorney to maintain the respect due to the courts of justice and judicial officers. The hearing judge found culpability under count two for the eight orders that established culpability in count one,²⁰ but assigned no additional weight in discipline as the same facts support culpability under count one. On review, Lacher argues she is not culpable because the orders concerned her in a personal capacity, not as an attorney, she did not act in bad faith, and her actions did not harm the judicial system.

A violation for disobeying court orders under section 6103 specifically requires an attorney to be acting “connected with or in the course of” the profession. No such requirement is found in section 6068, subdivision (b). (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 958 [§ 6068, subd. (a) violation even though committed as private litigant].) Further, a violation of section 6068, subdivision (b), does not require a finding of bad faith. (Cf., *Maltaman v. State Bar, supra*, 43 Cal.3d at p. 951 [disobedience of court order may constitute moral turpitude violation under § 6106 if attorney acted in bad faith].) Repeatedly failing to comply with court orders may constitute a violation of section 6068, subdivision (b). (*In the Matter of Tenner* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 688, 691.)

“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 Matter of Boyne, supra*, 2 Cal. State Bar Ct. Rptr. at p. 403.) Lacher has repeatedly failed to abide by court orders and pay sanctions. Under these circumstances, we find Lacher also violated section 6068,

²⁰ The same facts that make up a section 6103 violation can also result in culpability under section 6068, subdivision (b). (*In the Matter of Boyne, supra*, 2 Cal. State Bar Ct. Rptr. at pp. 403-404 [violation of § 6068, subd. (b), for failure to pay sanctions as ordered].)

subdivision (b), by failing to comply with 10 court orders. We do not assign additional weight in discipline. (*In the Matter of Moriarty, supra*, 5 Cal. State Bar Ct. Rptr. at p. 520 [no additional weight in discipline where same misconduct proves culpability for another charge].)

**C. Count Six: Maintaining an Unjust Action (§ 6068, subd. (c))
Count Seven: Encouraging Action from Corrupt Motive (§ 6068, subd. (g))**

Count six alleges Lacher violated section 6068, subdivision (c), by filing the December 14, 2016 appeal in case number D071624. Count seven alleges Lacher violated section 6068, subdivision (g), with the same filing. The hearing judge found culpability as charged based on the appellate court’s conclusion that Lacher filed the appeal for an improper motive.

For counts six and seven, Lacher argues the appellate court “fell short of imposing sanctions or making a finding of frivolousness.” This description belies the court’s findings. The court had a “strong disapproval” of what it perceived to be Lacher’s “unprofessional conduct and abuse of the judicial system.” The court rejected Lacher’s substantive arguments on appeal as “devoid of merit” and stated that it appeared Lacher had filed it “as yet another tactic to delay paying the substantial debt the Lachers have incurred.” As such, the appeal qualifies as frivolous. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 [appeal is frivolous when “prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment—or when it indisputably has no merit—when any reasonable attorney would agree that the appeal is totally and completely without merit”].) Further, the court characterized Lacher’s conduct as unprofessional and an “abuse of the judicial process.” The court found her repeated requests to file briefs and then never filing them evidence of her dishonesty and found her actions to be a waste of judicial resources undermining judicial efficiencies.

We agree with the hearing judge that Lacher's actions constitute violations of section 6068, subdivisions (c) and (g), as her arguments in the appeal were without merit and she filed it as a delay tactic, resulting in abuse of the judicial process. In addition, the appeal contained impermissible attacks on final and binding orders, evidencing Lacher's continued objective to avoid obeying court orders. Accordingly, we find culpability under counts six and seven as Lacher pursued a frivolous appeal for the unethical reason of delaying the finality of the court-ordered debt. (See *Sorensen v. State Bar* (1991) 52 Cal.3d 1036 [violation of Bus. & Prof. Code, § 6068, subds. (c), (g)]; *In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360 [frivolous appeal].)

D. Count Eight: Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))

Count eight alleges Lacher failed to report the \$5,000 fine ordered by the superior court in the July 28, 2020 judgment of contempt. Section 6068, subdivision (o)(3), provides that an attorney has a duty to report judicial sanctions issued against the attorney in writing to the State Bar within 30 days of knowledge of the sanctions. Discovery or monetary sanctions less than \$1,000 are excluded under the statute. The hearing judge found culpability as charged.

Lacher argues she did not have to report the sanctions because they were not issued against her as an attorney, she was not served with the order, and the "gravamen" of the order was her failure to "make discovery." Like subdivision (b) of section 6068, subdivision (o)(3), does not contain a requirement that the sanctions be ordered against her in her professional capacity. Regardless, Lacher represented her mother in these proceedings. She also stipulated she received actual notice of the order. Further, the court found in the judgment of contempt that Lacher committed violations other than discovery violations, including failure to make payments, hold unpaid funds, and provide accountings pursuant to the assignment order and order amending the assignment order. The sanctions were based in part on these actions, which

are required to be reported under section 6068, subdivision (o)(3). They were also based on discovery violations beyond “failure to make discovery,” including willfully interfering with discovery and not providing discovery compelled by court orders; therefore, the exception does not apply. (See *In the Matter of Rubin* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797, 808 [attorney required to report sanctions for unsuccessfully opposing protective order].)

Accordingly, we affirm the hearing judge’s finding of culpability under count eight.

E. Count Nine: Commingling (Former Rule 4-100(A) & Rule 1.15(c) of the Rules of Professional Conduct)

Count nine alleges Lacher commingled when she issued four checks made payable to her mother. Rule 1.15(c) of the Rules of Professional Conduct prohibits a lawyer from commingling funds belonging to the lawyer with funds held in a trust account, except for (1) funds reasonably sufficient to pay bank charges and (2) funds belonging in part to a client and in part to the lawyer.²¹ The hearing judge found Lacher’s testimony that the checks were written for the payment of client-related fees implausible.²² The judge found that the checks were not for client expenses and Lacher was culpable under count nine.

Lacher argues these checks were written for fees and/or client business, not personal business, and were not payments to her mother. However, there is nothing in the record beyond Lacher’s testimony to corroborate her claim. Therefore, we rely on the hearing judge’s credibility finding. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [great deference to hearing judge’s evaluation of credibility].) The rule against commingling is absolute and “bars use of the trust account for personal purposes” (*Doyle v. State Bar* (1982) 32 Cal.3d 12,

²¹ Former rule 4-100(A) is substantially similar to rule 1.15(c) and also prohibits commingling.

²² A hearing judge’s factual findings are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

22-23.) We affirm the judge's finding that the four checks written from Lacher's CTA and made payable to her mother constituted commingling in violation of former rule 4-100(A) and rule 1.15(c).

V. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct²³ requires OCTC to establish aggravating circumstances by clear and convincing evidence. Lacher bears the same burden to prove mitigation. (Std. 1.6.)

A. Aggravation

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

The hearing judge assigned substantial weight in aggravation for *Lacher I* because that case put Lacher on notice that she needed to obey court orders and report sanctions to the State Bar. She failed to do so, which resulted in the instant proceeding. While the judge found diminished weight in *Lacher II* as some of the misconduct in the instant matter occurred before *Lacher II* was filed (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [aggravating force of discipline diminished if misconduct underlying it occurred during same time period]), Lacher's misconduct is continuing as she has made no payments nor has she complied with the courts' orders. We consider Lacher's entire discipline record relevant to our discipline recommendation as it reflects Lacher's inability to conform her conduct to ethical norms. (*Ibid.*) Accordingly, we affirm the judge's aggravation finding.

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

Even though we have dismissed several charges, we agree with the hearing judge that substantial weight in aggravation is appropriate for Lacher's numerous violations. The

²³ All further references to standards are to this source.

misconduct in this case began with her failure to comply with the December 12, 2014 assignment order, and continued with nine other orders, the last being the July 28, 2020 judgment of contempt. In addition, in December 2016, she filed an appeal that the appellate court found to be without merit, filed as a tactic to delay paying the judgments and sanctions that were ordered, and wasted judicial resources. She also failed to report sanctions and commingled.

3. Pattern of Misconduct (Std. 1.5(c))

The hearing judge found Lacher “demonstrated a pattern of misconduct by repeatedly engaging in frivolous litigation for more than 18 years” in the ECI litigation. The judge noted that Lacher repeatedly filed frivolous motions and appeals to thwart ECI’s collection efforts, which resulted in sanction orders and a failure to report the fine imposed in the judgment of contempt to the State Bar. The judge assigned substantial weight in aggravation. We agree, as set forth below, that Lacher’s misconduct demonstrates a pattern.

“[O]nly the most serious instances of repeated misconduct over a prolonged period of time could be characterized as demonstrating a pattern of wrongdoing. [Citations.]” (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149, fn. 14.) Lacher’s violations of court orders, even the ones alleged in the dismissed counts in this proceeding,²⁴ may be considered in aggravation. (*Marsh v. State Bar* (1934) 2 Cal.2d 75, 79-80 [repetition of offenses considered in aggravation];

²⁴ “Finding a pattern in aggravation is not limited to consideration of the counts pleaded.” (*In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 714, citing *Grim v. State Bar* (1991) 53 Cal.3d 21, 34.) The court stated in *Grim*: “[A]lthough evidence of uncharged misconduct cannot be used as an independent ground of discipline, it may be considered when it is otherwise relevant to an issue in the proceeding. [Citation.]” (*Grim v. State Bar, supra*, 53 Cal.3d at p. 34.) Uncharged misconduct may be considered in aggravation, but not as an independent source of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 93, fn. 4.) Here, the allegations of misconduct that were dismissed were not merely “uncharged misconduct.” Rather, they were *charged* as misconduct and so found by the hearing judge, but which we dismissed because OCTC failed to follow a procedural rule of complying with rule 5.123 of the Rules of Procedure of the State Bar.

McMorris v. State Bar (1983) 35 Cal.3d 77, 85 [increased discipline for “habitual course of misconduct”].) Evidence of past misconduct is critical in determining discipline as the fact that an attorney continues to engage in misconduct shows intentionality and warrants a greater penalty. (*Ibid.*)

We find that her repeated misconduct of disobeying court orders, failing to report sanctions, and filing frivolous appeals shows a pattern of misconduct. (See *In the Matter of Thomas, supra*, 5 Cal State Bar Ct. Rptr. at p. 959 [pattern of misconduct for continually maintaining frivolous legal positions in various proceedings for over seven years and disregarding numerous court orders]; *In the Matter of Kinney, supra*, 5 Cal. State Bar Ct. Rptr. at p. 368 [pattern of misconduct established by engaging in vexatious litigation for over six years].)

Lacher failed to abide several court orders for over 18 years, and continues to do so, which clearly satisfies the severity and temporal requirements to constitute a pattern. (See, e.g., *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 259-261 [12 acts of unauthorized practice of law over 15 years constituted a pattern and revealed “disturbing repetitive theme”]; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 217 [aggravation for 10-year pattern of deception]; *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, 398 [filing 82 fraudulent bankruptcy petitions over approximately three years demonstrated pattern of misconduct]; cf. *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [close call as to whether two and one-half year span of misconduct qualifies as extended period of time to find pattern of misconduct].)

This is Lacher’s third disciplinary proceeding, and it has a direct connection to *Lacher I* where she stipulated to misconduct for failing to report sanctions ordered by the superior court in 2006 and the appellate court in 2004 in the ECI litigation. Lacher failed to pay the judgment for years. In 2014, the court told Lacher in the assignment order that she still owed on the judgment.

She did not follow this 2014 superior court order and failed to comply with nine other orders in 2016, 2017, 2019, and 2020. Failure to follow court orders is serious misconduct. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112.) In addition, both her 2003 and 2016 appeals were found to be frivolous. Finally, in both *Lacher I* and the instant proceeding, she failed to report sanctions to the State Bar. These multiple acts of recurrent wrongdoing evidence a pattern and show Lacher's indifference to the courts. (See *Garlow v. State Bar* (1988) 44 Cal.3d 689, 711 [recurring wrongdoing evidences serious pattern of misconduct]; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531 [gravity of each successive violation increases when attorney commits same violation multiple times]; cf. *Arm v. State Bar* (1990) 50 Cal.3d 763, 780 [no pattern in respondent's four disciplinary proceedings as violations were "quite different" factually].) Lacher's pattern of similar misconduct greatly aggravates this case.

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

Significant harm to the client, the public, or the administration of justice is an aggravating circumstance. The hearing judge found Lacher caused significant harm to the courts and to ECI as her pursuit of this litigation for over 18 years was an abusive waste of judicial resources. In addition, ECI was required to spend approximately \$80,000 in the litigation and attempts to collect the funds owed to them under court orders. We agree with aggravation for significant harm and assign substantial weight to this circumstance. (*In the Matter of Thomas, supra*, 5 Cal State Bar Ct. Rptr. at p. 959 [substantial weight in aggravation for harm including wasting judicial resources, not paying sanctions, and causing opponents to incur expenses dealing with frivolous litigation].)

5. Indifference (Std. 1.5(k))

OCTC asserts that the hearing judge should have found aggravation for indifference under standard 1.5(k). This standard provides that "indifference toward rectification or

atonement for the consequences of the misconduct” constitutes an aggravating circumstance. OCTC argues that evidence of Lacher’s indifference includes: (1) testimony that she stopped going to court in ECI matters, (2) testimony she was unable to pay the amounts ordered but failed to file any motions regarding financial hardship, (3) financial records showing she had ability to pay, and (4) her continuing refusal to obey the orders despite her unsuccessful appeals and requests for reconsideration. Further, she continues to collaterally attack final court orders in this proceeding. Lacher does not explicitly respond to OCTC’s request for a finding of indifference.

We agree that Lacher’s actions demonstrate indifference. While we do not consider any claims of indifference that overlap facts necessary to find culpability, we agree with OCTC that there remain many examples of her inability or unwillingness to accept responsibility for her acts. She has committed similar misconduct as in *Lacher I*. Both the superior court and appellate court have ruled against her on multiple occasions, yet she continues to defy the courts and insists she is not culpable of misconduct. Further, she has made no effort to comply. She is either unwilling or unable to conform her conduct to the high standards expected of attorneys. And she has shown no regret or remorse for her actions even when courts have told her she has wasted judicial resources and abused the judicial process. Therefore, we assign substantial weight in aggravation under standard 1.5(k). (*In the Matter of Thomas, supra*, 5 Cal. State Bar Ct. Rptr. at p. 960 [substantial weight in aggravation for indifference where respondent refused to acknowledge he was wrong, harmed courts and others, and continued to raise unsuccessful arguments previously struck down by several courts].)

B. Mitigation

1. Cooperation (Std. 1.6(e))

“[S]pontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar” is a mitigating circumstance. The hearing judge assigned substantial mitigation for cooperation as Lacher entered into the stipulation, which was detailed and established some culpability. Neither party challenges this finding on review. We affirm the judge’s finding.

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

Lacher may receive mitigation for “extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct.” The hearing judge afforded limited mitigation for Lacher’s good character evidence, including witness testimony and letters. Neither party challenges this finding on review. We affirm the judge’s finding.

3. Excessive Delay (Std. 1.6(i))

Lacher may receive mitigation for “excessive delay by the State Bar in conducting disciplinary proceedings causing prejudice to the lawyer.” The hearing judge assigned substantial weight in mitigation for the charges in counts one and three charging her with violating court orders from December 2006 and December 2004, respectively.²⁵ On review, we have dismissed these charges with prejudice as OCTC failed to comply with rule 5.123(D) of the Rules of Procedure of the State Bar. Accordingly, we do not assign mitigation for excessive delay.

Even if these allegations had not been dismissed, mitigation would not be warranted as Lacher did not show how she was prejudiced by the delay. (*Amante v. State Bar* (1990))

²⁵ Both orders required Lacher to pay sanctions, which she failed to do. The hearing judge assigned mitigation for only these two orders.

50 Cal.3d 247, 257 [no mitigation for excessive delay as attorney could not show prejudice].) These 2004 and 2006 orders were the subject of her discipline in *Lacher I* for failing to report sanctions. She has been aware that OCTC knew of these orders for quite some time. She made no showing that her preparation of these proceedings or her defense was hampered by the delay. (*In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 361 [no legally cognizable prejudice for delay].)

VI. DISCIPLINE²⁶

The hearing judge recommended a nine-month actual suspension continuing until Lacher pays the judgment in the ECI litigation. OCTC argues that disbarment is warranted due to Lacher's pattern of pursuing frivolous claims for over 18 years, resulting in significant harm to ECI and the courts. Lacher argues that the appropriate discipline is the 90 days already imposed in *Lacher II*, or, at most, a stayed suspension.

We follow the guidance of the standards whenever possible to help ensure consistency in disciplinary sanctions for similar offenses. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Under the standards, both standards 2.9(a) and 2.12(a) are appropriate for Lacher's misconduct.²⁷ While actual suspension is the presumed sanction under standard 2.9(a) for maintaining frivolous claims or actions for an improper purpose or using means with no substantial purpose other than to delay or cause needless expense, resulting in significant harm to an individual or the administration of justice, "[d]isbarment is appropriate if the misconduct demonstrates a

²⁶ 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.)

²⁷ The most severe sanction is imposed when an attorney commits two or more acts of misconduct. (Std. 1.7(a).) Reprimand is the presumed sanction for failing to report sanctions, which Lacher is culpable of under count eight. (Std. 2.12(b).) A three-month suspension is the presumed sanction for Lacher's commingling violations in count nine.

pattern.”²⁸ Either disbarment or actual suspension is the presumed sanction for disobeying court orders or failing to maintain respect due to the courts. (Std. 2.12(a).)²⁹ These standards are the starting point for the imposition of discipline in this matter.³⁰

As discussed above, Lacher’s actions involve a pattern of misconduct. She has repeatedly and willfully disobeyed court orders. Such misconduct is cause for great concern. As the Supreme Court stated, “Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbecoming an attorney.” (*Barnum v. State Bar, supra*, 52 Cal.3d at p. 112.) She has engaged in this misconduct for more than 18 years. Therefore, her actions demonstrate a pattern of wrongdoing. (*Levin v. State Bar, supra*, 47 Cal.3d at p. 1149, fn. 14 [pattern involves serious misconduct over extended period of time]; *In the Matter of Varakin* (1994) 3 Cal. State Bar Ct. Rptr. 179 [twelve-year pattern of misconduct involving delay, abuse of legal process, frivolous and harassing pleadings resulting in multiple sanctions justified disbarment].)

²⁸ Therefore, standard 2.9(a) applies to Lacher’s violations of section 6068, subdivisions (c) and (g), under counts six and seven. (See std. 2.12(d) [violations of § 6068, subs. (c), (g), covered in std. 2.9].)

²⁹ Standard 2.12(a) applies to counts one and two. Despite finding aggravation for Lacher’s pattern of misconduct, the hearing judge focused the discipline analysis on standard 2.12(a), not standard 2.9(a).

³⁰ Standard 1.8(b) provides for disbarment when an attorney has two or more prior records of discipline. Standard 1.8(b) is “intended as a deterrent to recidivism, which is not at issue when, as here, the misconduct predates the attorney’s other discipline cases. [Citation.]” (*In the Matter of Hansen* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 464, 476.) Even though Lacher’s misconduct is ongoing, we do not find that presumptive disbarment under standard 1.8(b) is applicable here. (*Ibid.*; see also *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136-137 [former std. 1.7(b) not applied where prior discipline given less weight because it was imposed after commencement of second disciplinary proceeding].)

In addition, in 2018, the appellate court found that Lacher's 2016 appeal lacked merit and was taken as another delay tactic.³¹ The appellate court described Lacher as unprofessional and found she had repeatedly requested additional time to file documents, yet never filed them, evidencing "dishonesty, delay, and an abuse of process that wastes judicial resources and undermines judicial efficiencies." The appellate court decision documents the long history of Lacher's dispute with ECI, noting Lacher's meritless arguments challenging the assignment order and amended assignment order and her refusal to pay the debt owed under these orders. Her challenges to the December 2016 minute order compelling responses to interrogatories were also without merit. It is material that the appellate court is concerned with Lacher's repeated attempts to delay paying her debt and delay court proceedings. For these reasons, we find that Lacher's pattern of misconduct constitutes grounds for disbarment under standard 2.9(a). Disbarment is further supported when we consider the additional aggravating misconduct, including the 2003 appeal, which was also determined by the appellate court to be frivolous. Therefore, we find no basis to deviate from disbarment as called for under standard 2.9(a). (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reason necessary for departure from standard].)

Lacher's lack of remorse and argument that she is not culpable for violating any court order is troubling. She has fought against ECI relentlessly for 18 years and the courts have repeatedly told her she is wrong, yet she refuses to listen. In addition, courts have found that she has pursued her causes only to harass or delay payment of what she owes. She has shown an unwillingness to conform to ethical responsibilities. The mitigating circumstances pale in comparison to the aggravation and the harm that Lacher has caused. Public protection requires

³¹ The superior court also found that Lacher filed a frivolous motion in 2016.

that Lacher be disbarred. (*In the Matter of Thomas, supra*, 5 Cal State Bar Ct. Rptr. 944 [disbarment under standard 2.9(a) appropriate when pattern established].)

VII. RECOMMENDATIONS

We recommend that Pamela Gayle Lacher, State Bar Number 174895, be disbarred from the practice of law in California and that her name be stricken from the roll of attorneys.³²

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We recommend that Lacher be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.³³ (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [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 imposing discipline].)

IX. MONETARY SANCTIONS

The hearing judge recommended waiving monetary sanctions based on Lacher's financial hardship and so as not to impact the \$161,243.33 superior court judgment. OCTC argues Lacher did not establish financial hardship by clear and convincing evidence, and should pay \$2,500 or \$5,000, depending on the level of discipline recommended. Rule 5.137(E)(4) of the Rules of Procedure of the State Bar provides that the standard of evidence for proving financial hardship

³² The hearing judge recommended that Lacher be actually suspended for nine months and until Lacher paid the superior court judgment. Because we recommend disbarment, this recommendation is not necessary.

³³ Lacher is required to file a rule 9.20(c) affidavit even if she 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).)

is preponderance of the evidence. In addition, an attorney's ability to pay a civil judgment is a factor to consider for waiver under rule 5.137(E)(4). We find no reason to disturb the judge's recommendation regarding monetary sanctions, especially considering the superior court judgment. Therefore, we do not recommend the imposition of monetary sanctions.

X. COSTS

We 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, and may be collected by the State Bar through any means permitted by law.³⁴ 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 applying for reinstatement or return to active status.

XI. INVOLUNTARY INACTIVE ENROLLMENT

Pamela Gayle Lacher is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Her inactive enrollment will be effective three calendar days after this opinion and order is served and will terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

HONN, P. J.

WE CONCUR:

McGILL, J.

RIBAS, J.

³⁴ We agree with the hearing judge's recommendation that costs should be based on a one-day trial.

No. SBC-22-O-30551

In the Matter of
PAMELA GAYLE LACHER

Hearing Judge
Hon. Yvette D. Roland

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