PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 17-O-00030
	)	
DRAGO CHARLES BARIC,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 105383.	)	
	)	

Drago Charles Baric appeals a hearing judge's recommendation of disbarment in this, Baric's fourth, disciplinary matter. Baric filed four separate personal bankruptcy petitions over a 30-month period, seeking to avoid losing possession of his residence. The judge found Baric culpable on three of four charges that he violated section 6106 of the Business and Professions Code[1] (moral turpitude): (1) abusing the bankruptcy process in a scheme to defraud and delay a secured creditor with serial bankruptcy filings over a 30-month period; (2) creating a false impression in a declaration filed in bankruptcy court; and (3) misrepresenting to the bankruptcy court his ownership of a consulting firm.

The hearing judge found four aggravating circumstances and no mitigating factors, and recommended disbarment as the appropriate discipline. She emphasized that Baric's dishonesty to the bankruptcy court was an escalation from his prior disciplinary matters and occurred while he was already on suspension. She concluded that only disbarment would protect the public, the courts, and the legal profession.

[1] All further references to sections are to the Business and Professions Code unless otherwise noted. Section 6106 states, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

Baric appeals, contending that he is not culpable of any charge and that the findings on aggravation and mitigation were not appropriate. He also alleges a number of procedural errors and requests that he be considered again for admission to the Alternative Discipline Program (ADP).

The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and asks us to affirm the hearing judge's decision recommending disbarment, but raises an additional aggravating factor not considered by the judge. OCTC also requests that count three be dismissed based on evidence it recently discovered, and that the record be augmented with that evidence.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability determination regarding moral turpitude on count one, but dismiss her culpability findings on counts two and three. Coupled with his prior misconduct, Baric's unethical behavior in pursuing his personal scheme to delay and defraud his creditors demonstrates that he is unwilling or unable to follow ethical rules. We thus recommend disbarment as necessary to protect the public, the courts, and the legal profession.

I. SIGNIFICANT PROCEDURAL HISTORY

On July 13, 2017, OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC), alleging four counts of moral turpitude against Baric.[2] On September 28, Baric asked the hearing judge for a referral to a program judge to determine his eligibility to participate in ADP, which OCTC opposed. The judge denied Baric's request on October 25 because he was not eligible to participate again in ADP. She denied Baric's oral motion for reconsideration on October 30. On November 2, Baric sought interlocutory review in the Review Department of the denial and also sought a stay of the proceedings, both of which we denied on November 9, 2017.

[2] Baric was admitted to the practice of law in California on December 3, 1982.

On November 8, 2017, the parties proceeded to trial. At the beginning of trial, despite Baric's opposition, the hearing judge granted OCTC's motion to quash Baric's trial subpoenas for four State Bar employees. At trial, Baric refused to answer OCTC's questions when he was called to testify. Near the end of the trial, when Baric was objecting to the admission of some exhibits into the record, he referred to the trial on more than one occasion as a "mockery" of justice. Of those exhibits that were admitted, one was Baric's November 1, 2016 deposition from an earlier proceeding[3] and another was a sign-in sheet for that day's trial on which Baric wrote that the purpose of his visit was for a "kangaroo kourt."

The hearing judge issued her decision on February 16, 2018. Baric timely sought review and filed his brief. When OCTC filed its responsive brief, it also filed a motion to augment the record pursuant to rule 5.156(E) of the Rules of Procedure of the State Bar.[4] The motion requested that a proposed exhibit be admitted, which was the basis of OCTC's request in its responsive brief that count three should be dismissed. The exhibit demonstrated that Baric's statement, alleged to be false in count three, was, in fact, "at least partially true." We granted the motion on July 26, 2018.

II. THE HEARING JUDGE'S PROCEDURAL RULINGS WERE CORRECT[5]

A. DENIAL OF REFERRAL TO ADP

Baric asserts that the hearing judge abused her discretion when she denied his request to be placed in ADP. Baric had previously been accepted into ADP on September 9, 2014, and

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[3] This proceeding was Baric's Petition for Relief from Actual Suspension, Case No. 17-V-02674.

[4] All further references to rules are to this source unless otherwise noted.

[5] The standard of review we apply to procedural rulings is abuse of discretion or error of law. (*In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454, 461.) The generally accepted test for applying the abuse of discretion standard test is, given all the circumstances before it, did the trial court exceed the "bounds of reason." (*In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74, 78; *H. D. Arnaiz v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368.)

completed it on March 10, 2017, in State Bar Court Case Nos. 11-O-11689; 12-N-11897 (Consolidated), his third disciplinary matter. Rule 5.382(C)(5) provides that an attorney will not be accepted into ADP if that attorney has previously participated in the program and has either successfully completed or been terminated from it. Because Baric successfully completed ADP in another disciplinary matter, the judge properly determined that he was not eligible to participate again. We find no abuse of discretion in denying Baric's request to participate in ADP.

B. GRANTING OF MOTION TO QUASH

Baric also argues that the hearing judge abused her discretion when she quashed four subpoenas,[6] thereby denying him a fair trial because he could not present his affirmative defense that he was improperly prevented from participating in ADP. However, as previously discussed, Baric would not have been able to participate again in ADP in this matter due to his previous participation. Additionally, his current misconduct would render him ineligible in this matter.[7] (Rule 5.382(C)(3) [current misconduct involving moral turpitude resulting in significant harm makes attorney ineligible for ADP].)

The hearing judge granted OCTC's motion to quash the subpoenas at trial because Baric failed to demonstrate good cause for the witnesses' testimony. She also concluded that the subpoenas were overbroad, unduly burdensome, and lacked materiality. In addition, the judge determined that any files regarding Baric would not have to be produced because they were created for trial and would contain protected work product. The hearing judge correctly found that these four subpoenas were improper, and, therefore, she did not abuse her discretion.

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[6] The subpoenas sought to compel the trial testimony of four State Bar employees, including the attorney prosecuting the matter. The subpoenas also requested production of all files in the State Bar's possession that related to Baric. None of the individuals subpoenaed was a percipient witness to any facts the hearing judge relied on to find Baric culpable.

[7] The NDC alleged, and the hearing judge found, that Baric's misconduct involved acts of moral turpitude that caused significant harm to the administration of justice.

C. ADMISSION OF DEPOSITION TRANSCRIPT

Finally, Baric asserts that his deposition transcript from an earlier proceeding was improperly admitted at trial. When Baric took the stand at trial, he refused to answer any questions, due to his alleged medical condition and his perception that the proceedings were unfair. OCTC then moved to admit the transcript of Baric's November 1, 2016 deposition, and the hearing judge admitted it over Baric's objection. We discern no error in the judge's exercise of discretion in admitting the deposition transcript.[8]

III. FACTUAL BACKGROUND[9]

On December 6, 2013, Baric filed a petition in bankruptcy court,[10] Case No. 2:13-bk-38855-WB. In the petition, Baric listed his residence in San Pedro, California, as an asset of the bankruptcy estate and named himself as a co-owner, along with his wife, Susan Baric. Baric also listed Deutsche Bank National Trust Company (Deutsche Bank) as the secured creditor of the San Pedro property.

On February 18, 2014, Deutsche Bank filed a motion for relief from the automatic stay regarding the San Pedro property. In the motion, the bank contended that Baric's "bankruptcy case was filed in bad faith to delay, hinder, and defraud" it by acting to "transfer all or part ownership of, or other interest in, the [San Pedro property] without the consent of [Deutsche

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[8] Furthermore, we conclude that even if it had been error for the hearing judge to admit the deposition transcript, Baric was not prejudiced. The judge relied on only one of Baric's deposition statements when she discussed his culpability for the misconduct alleged in count three. Because we dismiss count three, any error of the hearing judge would be nonprejudicial. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [standard of review for procedural ruling is abuse of discretion and procedural error must be so prejudicial as to result in miscarriage of justice].)

[9] The factual background is based on the trial testimony, the documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rule 5.155(A).)

[10] All bankruptcy petition filings discussed in this opinion were filed in the United States Bankruptcy Court for the Central District of California.

Bank] or court approval." Deutsche Bank also alleged that Baric had filed multiple bankruptcies affecting the San Pedro property.

As supporting evidence, Deutsche Bank referred to two earlier bankruptcy petitions involving the San Pedro property: a December 16, 2010 petition filed by Phyllis Anderson, Baric's mother-in-law,[11] and a December 21, 2011 petition filed by Susan.[12] The bank's motion also stated that on July 8, 2011, while Anderson's bankruptcy petition was pending, Anderson quitclaimed her ownership interest in the San Pedro property to Susan, as a married woman and as her sole and separate property, without consent of the previous mortgage holder or approval of the bankruptcy court. Finally, Deutsche Bank stated that, at the time it filed the motion, it did not know how Baric had acquired an interest in the San Pedro property other than his listing it as an asset in his bankruptcy petition.[13] On March 3, 2014, the bankruptcy court dismissed Baric's bankruptcy petition for "failure to comply with the Court's directive."[14]

Eleven days later, on March 14, 2014, Baric filed a second bankruptcy petition, Case No. 2:14-bk-14935-SK. On March 26, the bankruptcy court granted Deutsche Bank's motion for relief from the automatic stay in his first bankruptcy proceeding. The court found that Baric

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[11] At the time Anderson filed her bankruptcy petition, she was the sole owner of the San Pedro property.

[12] We refer to Susan Baric by her first name to avoid confusion with her husband; no disrespect is intended.

[13] Later, Deutsche Bank discovered that on December 5, 2013, the day before Baric filed his bankruptcy petition and while Susan's bankruptcy petition was still pending, Susan transferred her ownership interest in the San Pedro property to herself, as a married woman, and to Baric, as a married man, as community property, without Deutsche Bank's consent or bankruptcy court approval. Also on December 5, Susan lost a motion for reconsideration on an order obtained by Deutsche Bank in her bankruptcy case for relief from the automatic stay regarding the San Pedro property.

[14] The record does not contain any explanation as to the nature of the directive. On March 31, 2014, the bankruptcy court's docket states, "Bankruptcy Case Closed – DISMISSED. An [o]rder dismissing this case was entered and notice was provided to parties in interest. Since it appears that no further matters are required and that this case remain open, or that the jurisdiction of this [c]ourt continue, it is ordered that the Trustee is discharged, bond is exonerated, and the case is closed."

filed the petition as part of a scheme to delay, hinder, and defraud creditors that involved a transfer of all or part ownership of, or other interest in, the property without the bank's consent or bankruptcy court approval and because multiple bankruptcies affected the San Pedro property. The court's order authorized the bank to enforce its remedies to foreclose upon and obtain possession of the property. Additionally, the bankruptcy court issued an in rem order that, ". . . [i]f recorded in compliance with applicable law governing notices of interests or liens" for the San Pedro property, Deutsche Bank's remedies would be "binding and effective . . . in any other bankruptcy case" that involved that property "not later than 2 years" after the date of entry of the order, unless a debtor in a subsequent bankruptcy proceeding could establish good cause for relief from the order.

Notwithstanding the March 26, 2014 order, the next day, March 27, Deutsche Bank filed a motion for relief from the automatic stay in Baric's second bankruptcy. On April 25, the bankruptcy court granted the motion. The court again found that Baric's bankruptcy filing was part of a scheme to delay, hinder, and defraud creditors. As before, the bankruptcy court also authorized Deutsche Bank to enforce its remedies to foreclose on the San Pedro property and obtain possession by in rem order with the same terms as in the March 26 order in the first bankruptcy.

On May 9, 2014, in the second bankruptcy case, Baric filed a motion for relief from judgment, in which he requested reconsideration of the bankruptcy court's April 25, 2014 order granting relief to Deutsche Bank. On June 11, the bankruptcy court effectively denied Baric's motion when it dismissed his second bankruptcy proceeding after the petition's confirmation hearing concluded. The dismissal order also prohibited Baric from filing "any new bankruptcy petition within 365 days from the entry of this order."

On July 8, 2014, Deutsche Bank foreclosed on the San Pedro property, and on July 21, a Trustee's Deed Upon Sale was recorded against it. On August 4, Deutsche Bank served on Baric a notice to quit the San Pedro property. On December 18, the bank filed an unlawful detainer action against Anderson, Baric, and Susan, and it obtained a judgment for possession of the San Pedro property on July 15, 2015.

On July 15, the same day that Deutsche Bank obtained its judgment for the San Pedro property, Baric filed a third bankruptcy petition, Case No. 2:15-bk-21152-BR. In this proceeding, he filed a motion for relief from the second bankruptcy court's April 25, 2014 in rem order on August 18, 2015, which was denied the following day for lack of good cause. This third bankruptcy petition was closed without discharge by the bankruptcy court on October 26, 2015, because Baric failed to file a financial management course certificate.

On May 18, 2016, Baric filed his fourth bankruptcy petition, Case No. 2:16-bk-16559-VZ. On August 5, Deutsche Bank filed a motion for relief from the automatic stay in this proceeding. The motion was based on the ground that Baric had no right to continued occupancy of the San Pedro property because, as of the date of this petition's filing, Deutsche Bank had obtained an unlawful detainer judgment against Baric. The motion also alleged that Baric filed his petition in bad faith because other bankruptcies involving this property had previously been filed, and listed Anderson's bankruptcy case, Susan's previous bankruptcy cases,[15] and Baric's previous bankruptcy cases to support the motion's allegations.

On August 23, 2016, Baric filed an opposition to the motion, and declared, under penalty of perjury, that "[d]ebtor purchased the [San Pedro property] over 30 years ago, in June 1986." On September 22, the bankruptcy court filed an order granting, in part, Deutsche Bank's motion for relief. The court's order authorized Deutsche Bank to regain possession of the San Pedro

[15] In addition to Susan's 2011 bankruptcy petition discussed previously, she filed another petition on June 4, 2014, that included the San Pedro property.

property despite Baric's bankruptcy petition or any other bankruptcy petition filed. On October 4, the bankruptcy court dismissed Baric's fourth petition because he failed to appear at the required creditors' meeting.

IV. CULPABILITY

A. Count One: Section 6106 (Moral Turpitude—Scheme To Defraud)

In count one, OCTC alleged that Baric "engaged in a scheme to defraud his creditors, specifically the mortgage holder for the mortgage" on the San Pedro property by filing four bankruptcies during a three-year period from December 5, 2013, through October 2016. OCTC further alleged that Baric's actions were done "only as part of a scheme to delay, hinder, and defraud creditors," and thus were an abuse of the bankruptcy process and constituted acts of moral turpitude, dishonesty, or corruption in violation of section 6106.

The hearing judge found that Baric violated section 6106 based on two points. First, she agreed with the bankruptcy court's findings that his first two bankruptcy petitions filed on December 6, 2013, and March 14, 2014, were "'part of a scheme to delay, hinder, and defraud creditors.'" Second, she found that Baric abandoned his petitions or otherwise failed to cooperate with the bankruptcy court once the mortgage company had obtained relief from the automatic stay that applied to the San Pedro property. Based on her findings, she determined that clear and convincing evidence[16] revealed that he had intentionally filed five bankruptcy

[16] 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.)

petitions specifically to delay foreclosure on the San Pedro property rather than to obtain bankruptcy relief, and thus violated section 6106.[17]

Baric challenges the hearing judge's conclusion and primarily argues that clear and convincing evidence does not exist to find him culpable of count one as charged. More specifically, he argues that the judge's conclusions are not based on "any particular act that constituted dishonesty, moral turpitude, or corruption," but rather that she determined that "the filings as a whole" were an abuse subject to sanction under section 6106.

We agree with the hearing judge that Baric violated section 6106 by his serial filing of bankruptcy petitions in a scheme to defraud and delay Deutsche Bank, and we disagree with Baric that insufficient evidence exists in the record to support the charge in count one. His first bankruptcy petition was filed on December 6, 2013, only one day after obtaining an interest in the San Pedro property that Susan had owned as her separate property, and also one day after the bankruptcy court had denied Susan's attempt to keep the previous mortgage lender from proceeding to legally obtain the San Pedro property, which had been delayed by her filing of her own bankruptcy petition.

Because Baric had failed to follow a directive from the bankruptcy court, it dismissed Baric's first petition on March 3, 2014;[18] however, 11 days later, he filed his second petition on

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[17] We note the NDC alleged that only four of Baric's bankruptcy petitions were filed in violation of section 6106: those filed on December 6, 2013; March 14, 2014; July 15, 2015; and May 18, 2016. While the record shows that Baric filed a fifth bankruptcy petition on July 16, 2017, we can only consider the petitions identified in the NDC. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171 [purpose of NDC is to give respondent attorney notice of specific misconduct that OCTC intends to prove at trial].)

[18] As noted in the factual discussion above, Deutsche Bank filed for relief from the automatic stay in this bankruptcy proceeding. After the petition was dismissed, the bankruptcy court subsequently ordered the lifting of the automatic stay, and found that Baric's bankruptcy case was filed "in bad faith to delay, hinder, and defraud" Deutsche Bank. Such a finding is entitled to a strong presumption of validity if supported by substantial evidence, but nonetheless must be independently analyzed under the clear and convincing standard applicable in disciplinary proceedings. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.)

March 14. Baric's automatic stay again caused Deutsche Bank, the new mortgage holder, to file a second motion for relief from the stay. The bank obtained the requested relief on April 25,[19] and, at a subsequent hearing on June 11, 2014, Baric's second petition was dismissed. In its order, the court specifically barred him from filing any new bankruptcy petitions for 365 days.

Because Baric could not file another bankruptcy petition for 365 days and obtain an automatic stay, Deutsche Bank could continue its efforts to obtain possession of the San Pedro property. The bank acquired legal ownership of the San Pedro property in July 2014, and then obtained a judgment of possession in an unlawful detainer action against Baric, Susan, and Anderson on July 15, 2015. Since Deutsche Bank obtained a judgment of possession for the San Pedro property after the order prohibiting Baric from filing another petition had expired, Baric could, and did, file his third bankruptcy petition on the same day that Deutsche Bank obtained its judgment for possession. Because an in rem order was still in effect notwithstanding the automatic stay, Baric filed a motion to have it lifted. When this motion was denied on August 19, 2015, he took no further action to obtain bankruptcy relief, and his third petition was dismissed on October 26 because he did not file a required financial management certificate.

Still in possession of the San Pedro property, and shortly after the in rem order expired, Baric filed a fourth bankruptcy petition on May 18, 2016, which resulted in Deutsche Bank again seeking to have the automatic stay lifted against the San Pedro property. Once Deutsche Bank obtained relief from the automatic stay on September 22 along with an order authorizing the bank to obtain possession regardless of any bankruptcy petition involving the San Pedro

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[19] In his second bankruptcy matter, when the court granted relief on April 25, 2014, it found again that Baric's second bankruptcy petition was filed "in bad faith to delay, hinder, and defraud" Deutsche Bank. As before, such a finding is entitled to a strong presumption of validity if supported by substantial evidence, but nonetheless must be independently analyzed under the clear and convincing standard applicable in disciplinary proceedings. (*Ibid.*)

property, Baric took no further action to obtain bankruptcy relief and the petition was dismissed on October 4, 2016.

The record is clear and convincing that Baric's actions of filing bankruptcy petitions and their timing were aimed not at having a fair opportunity to save his residence as he claimed, but only to vex the secured creditor through the use of the automatic stay and to keep Deutsche Bank from obtaining the San Pedro property for almost three years. Abandoning his bankruptcy petitions or otherwise failing to cooperate with the bankruptcy court each time he was unable to prevent Deutsche Bank from moving to take possession of the San Pedro property provide further evidence to support our conclusion. We conclude that Baric's actions comprised a pattern or scheme to achieve his goal, and, taken as a whole, constitute moral turpitude. (See *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 14 [multiple acts of misconduct as a pattern may constitute moral turpitude].) We agree with the hearing judge that Baric "abused the bankruptcy system" by his actions and determine that Baric willfully violated section 6106. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186 ["serious, habitual abuse of the judicial system constitutes moral turpitude in violation of section 6106"].)

B. Count Two: Section 6106 (Moral Turpitude—Misrepresentation)

In count two, OCTC alleges that Baric violated section 6106 by submitting a declaration to the bankruptcy court, signed under penalty of perjury on August 23, 2016, that created "the false impression of continuous ownership when respondent had only a partial ownership interest in the property from 1986 to 1999 and no ownership interest from 2004 to 2013." Specifically, the declaration stated, as quoted by OCTC in the NDC, that "[respondent] purchased the real property in question … over thirty (30) years ago, in June of 1986."

The hearing judge found that Baric violated section 6106 by knowingly making misrepresentations because he concealed relevant information that his ownership of the San Pedro property and his liability for the mortgage payments were not continuous. She based that conclusion on her determination that three other statements, not alleged in count two of the NDC, were untruthful, and therefore his statement, as alleged in count two, created an "impression that he had continuous ownership of the property since 1986."

Baric argues that his statement in count two can only been seen as truthful and that the hearing judge relied on the other statements not alleged in count two to erroneously find culpability. OCTC agrees with the judge's analysis as to culpability.

We disagree with the hearing judge on culpability for this count as we view the evidence differently. (Rule 5.155(A) [review department independently reviews record and may make different findings].) Simply put, we find that the statement used to support the charge in count two only declares that Baric purchased the San Pedro property in 1986—nothing more, nothing less. We fail to understand how OCTC can use his other unalleged statements to create the impression of continuous ownership in the statement as alleged in the NDC and that this simple, declaratory statement means something other than what it states.[20] Accordingly, OCTC failed to present clear and convincing evidence that the statement Baric made is a misrepresentation, and we therefore dismiss count two with prejudice.

C. Counts Three and Four: Section 6106 (Moral Turpitude—Misrepresentation)

In count three, Baric is charged with making a misrepresentation to the bankruptcy court by submitting a declaration that he started and owned a consulting firm. The hearing judge found culpability. However, on July 26, 2018, we granted OCTC's request to augment the

[20] See *In the Matter of Glasser*, *supra*, 1 Cal. State Bar Ct. Rptr. at pp. 170 - 171 [express allegations of specific conduct required in charging document in order to provide reasonable notice that conduct is ethical violation].

record, and the received evidence demonstrates that Baric established Beach City Partners in February 2011. As admitted by OCTC in its request to dismiss count three, the evidence shows that Baric did not misrepresent his ownership interest, and therefore, we dismiss count three with prejudice.

In count four, Baric is charged with misrepresenting his income to the bankruptcy court. Upon review of the evidence, the hearing judge determined that clear and convincing evidence did not exist and found him not culpable, and OCTC has not challenged the judge's finding of culpability. We agree that OCTC failed to present clear and convincing evidence that Baric made a misrepresentation as to his income, and we thus affirm the judge's dismissal with prejudice for this count.

V. AGGRAVATION AND MITIGATION

Standard 1.5[21] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Baric to meet the same burden to prove mitigation.

A. AGGRAVATION

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

Baric has three serious prior records of discipline, all with actual suspensions. First, on June 15, 2011, the Supreme Court suspended him for two years, stayed the suspension, and placed him on probation for three years subject to an actual suspension of one year. (Supreme Court Case No. S190894; State Bar Court Case No. 07-O-13120.) Baric's misconduct occurred in 2007 and 2008 and involved five separate matters. He was found culpable of 16 counts of misconduct including failing to return unearned fees, failing to act with competence, failing to notify a client of the receipt of client funds, failing to provide an accounting, failing to communicate with clients, and failing to cooperate in the State Bar investigation. Baric's

[21] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

misconduct was aggravated by multiple acts, client harm, and indifference. He received mitigation for cooperation with the State Bar and his 24 years of discipline-free practice.

Next, on November 30, 2011, the Supreme Court actually suspended Baric for 18 months and until he has paid restitution of $5,000 and the State Bar Court has granted a motion to terminate his suspension. (Supreme Court Case No. S196655; State Bar Court Case Nos. 08-O-14008 (08-O-14372).) He was found culpable of three violations for misconduct occurring in 2008: failing to return unearned fees and two counts of failing to maintain client funds in trust. He received aggravation for his prior record, multiple acts, bad faith in failing to refund unearned fees, and failing to participate in the disciplinary proceeding, and he established no mitigating circumstances.

Finally, on September 28, 2017, the Supreme Court suspended Baric for three years, stayed the suspension, and placed him on probation for four years subject to an actual suspension of two years and until he proves his rehabilitation, fitness to practice, and learning and ability in the general law. (Supreme Court Case No. S243284; State Bar Court Case Nos. 11-O-11689; 12-N-11897 (Consolidated).) Baric's misconduct occurred from 2010 through 2012. He stipulated to the following violations: failing to take reasonable steps to avoid foreseeable prejudice to his client upon termination of employment, failing to respond promptly to reasonable client status inquiries, failing to promptly release his client's file after termination, failing to refund unearned fees, and failing to cooperate in the disciplinary proceeding. He also stipulated to failing to timely file with the State Bar Court a declaration of compliance with rule 9.20 of the California Rules of Court. He received aggravation for his two prior records of discipline and for his multiple acts of misconduct. He received mitigation for entering into a stipulation of facts.

Overall, the hearing judge found significant aggravation for Baric's three prior records of discipline. We agree and conclude that his prior record of discipline merits substantial weight in aggravation. Baric's prior misconduct was serious, and, combined with his current misconduct, makes clear that he is unable to conform his conduct to ethical norms. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [part of rationale for considering prior discipline as having aggravating impact is that it is indicative of recidivist attorney's inability to conform his conduct to ethical norms].) Further, the weight of this aggravating circumstance is magnified because Baric began to commit his current misconduct while on probation for his first discipline. (See *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438.)

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

The hearing judge assigned significant aggravation for Baric's multiple acts of misconduct because he repeatedly filed bankruptcy petitions to delay the foreclosure of the San Pedro property, made false representations, and concealed facts from the bankruptcy court to mislead it. We agree that this aggravating circumstance applies, but assign it moderate weight because we have found him culpable only of count one, which involved the filing of four bankruptcy petitions. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].)

3. Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j))

The hearing judge assigned significant aggravation for Baric's "repeated misuse of the bankruptcy system." She found that, for a lengthy period of time, Baric wasted judicial time and resources. (*In the Matter of Varakin, supra,* 3 Cal. State Bar Ct. Rptr. at p. 189.) We agree and assign substantial weight to this circumstance. (*In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, 398.)

4. Indifference toward Rectification/Atonement (Std. 1.5(k))

The hearing judge found aggravation for Baric's "indifference to his misconduct while exhibiting disregard and disrespect" in the underlying proceeding. Specifically, Baric refused to testify at trial because he claimed he was ill, yet, according to the hearing judge, he "ably and aggressively cross-examined" OCTC's sole witness. The judge found that Baric's actions "[demonstrate] his failure 'to appreciate the seriousness of the charges in the instant proceeding or to comprehend the importance of participating in the disciplinary proceedings. [Citation].' (*Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.)" We agree with her determination.

Moreover, Baric's description of his trial as a "mockery" of justice and a "kangaroo kourt" reflects an overall defiance and lack of respect for the discipline process, despite his claim that these terms were meant to apply only to OCTC. "Put simply, [Baric] [has gone] beyond tenacity to truculence." (*In re Morse* (1995) 11 Cal.4th 184, 209.) We thus assign substantial weight in aggravation for his disrespect toward these proceedings. (See *Weber v. State Bar* (1988) 47 Cal.3d 492, 507 [attorney's contemptuous attitude toward disciplinary proceedings relevant to determination of appropriate sanction].)

5. OCTC's Request for Additional Aggravation

Though the hearing judge did not find this factor, OCTC asks us to assign additional weight in aggravation for Baric's failure to cooperate under standard 1.5(l) because he did not testify at trial. We decline to assign additional aggravation because the basis for the request is duplicative of the facts supporting aggravation for Baric's indifference under standard 1.5(k). (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 133 [finding of aggravation inappropriate for conduct where basis for culpability finding concerns same conduct].)

B. MITIGATION

1. Community Service

In his closing argument, Baric asserted that he deserved mitigation for his community service. In doing so, he referred to his statements in the deposition transcript. At his deposition, Baric stated that he had worked for one to two years with the Toberman Neighborhood Center, a social service agency in San Pedro, where he volunteered several hours per week. He testified that he helped the Harbor Gateway South Neighborhood Council for about a year by attending meetings, providing research, and finding funding for a park acquisition. He also stated that he assisted the Boys and Girls Club of the South Bay by writing grant proposals. He estimated that he spent 100 hours working on one grant proposal. He wrote another grant proposal for the Watts/Willowbrook Boys and Girls Club that consumed a similar amount of time. In addition, he stated that he volunteered at a fundraising event for the Richstone Family Center, an organization that provides family counseling, and also assisted with fundraising events for the Wounded Warrior Project. Finally, he stated that he drafted the legal paperwork to incorporate the Family Assistance Center, a charitable organization.

The hearing judge did not find clear and convincing evidence of any mitigating circumstances. However, we assign moderate weight in mitigation for Baric's community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono work and community service are mitigating circumstances]; see also *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].) We decline to extend significant mitigation, however, because Baric offered no corroborating evidence of his service. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited weight in mitigation where community service evidence based solely on respondent's testimony].)

2. No Other Mitigating Circumstances Established

Baric requests mitigation for two additional circumstances. First, he argues that OCTC engaged in a "concerted effort" to prevent him from returning to the practice of law. He asserts that OCTC withheld filing charges in this matter rather than filing them with his third disciplinary matter, in addition to OCTC filing his first and second disciplinary matters separately. We see no merit to his argument because the misconduct in count one for which culpability has been established (December 5, 2013—October 2016) occurred well after the filing of the two NDCs in his third disciplinary matter (December 29, 2011, and October 2, 2013).[22]

Baric also contends that he is entitled to mitigation for his mental disability, for which he was admitted into ADP in his third disciplinary matter. While standard 1.6(d) does allow for mitigation for extreme mental disabilities suffered by the member at the time the misconduct occurred, a minimum requirement of this standard is that the member establish the mental disability as "directly responsible for the misconduct." (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701; *Read v. State Bar* (1991) 53 Cal.3d 394, 423-424.) We see no evidence in the record that establishes such a connection; thus, we will not provide any weight in mitigation under this standard.

VI. DISBARMENT IS THE APPROPRIATE DISCIPLINE[23]

Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight (std. 1.1; *In re Silverton* (2005) 36 Cal.4th 81, 91-92), and should be

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[22] As noted by OCTC in its responsive brief, the hearing judge in the second disciplinary matter addressed this issue of the second matter prosecuted separately from the first because the misconduct in the second matter also had occurred after the NDC had been filed in the first matter. (See *In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at pp. 618-619 [aggravating force of prior discipline is generally diminished if present misconduct occurred during same period of prior misconduct].)

[23] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession; to preserve public confidence in the profession; and to maintain high standards for attorneys. (Std. 1.1.)

followed whenever possible (std. 1.1; *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11). In analyzing the applicable standards, we first determine which standard applies to the at-issue misconduct. Here, standard 2.11 provides that disbarment or actual suspension is the presumed sanction for culpability based on moral turpitude.

Furthermore, given Baric's disciplinary history, we also look to standard 1.8(b), which states that disbarment is appropriate where an attorney has two or more prior records of discipline if (1) an actual suspension was ordered in any prior disciplinary matter, (2) the prior and current disciplinary matters demonstrate a pattern of misconduct, or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to ethical responsibilities. Baric's case meets two of these criteria: he has previously received three actual suspensions, and, like the hearing judge, we find that Baric's prior and current misconduct, particularly his repeated failures to cooperate with the State Bar and his indifference, establish his unwillingness or inability to conform to ethical norms.

Standard 1.8(b) provides two exceptions for avoiding the application of disbarment, but they do not apply here. First, Baric's one mitigating circumstance—community service—clearly does not create compelling mitigation, nor does it predominate over the substantial aggravation for three prior discipline records, multiple acts of wrongdoing, significant harm, and indifference. Second, his misconduct underlying the prior discipline did not occur during the same time period as the current misconduct.

We next consider whether any reason exists to depart from the discipline as set forth in standard 1.8(b). We acknowledge that disbarment is not mandatory even where someone is being disciplined for the fourth time. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507 [disbarment is not mandatory in every case of two or more prior disciplines, even where no compelling mitigating circumstances clearly predominate (analysis under former std. 1.7(b))]; *In*

the Matter of Miller (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136 [to fulfill "purposes of lawyer discipline, we must examine the nature and chronology of respondent's record of discipline"].) However, if we deviate from recommending disbarment, we must articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].)

Baric has not identified an adequate reason for us to depart from applying standard 1.8(b), and we cannot articulate any. In fact, as noted by the hearing judge, Baric has continued to commit misconduct that has increased in severity even while he has been suspended. The State Bar Court has now been required to intervene four times to ensure that Baric adheres to the professional standards required of those who are licensed to practice law in California. We conclude that further probation and suspension would be inadequate to prevent him from committing future misconduct that would endanger the public and the profession. The standards and decisional law[24] support our conclusion that the public, the courts, and the profession are best protected if Baric is disbarred.

VII. RECOMMENDATION

We recommend that Drago Charles Baric be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Baric must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

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[24] E.g., *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427 (disbarment where attorney with two prior disciplines committed act of moral turpitude and significant aggravation outweighed limited mitigation); *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63 (disbarment where attorney with two prior disciplines was unable to conform conduct to ethical norms with multiple aggravating factors and no mitigation).

Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment.

VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Drago Charles Baric be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective February 19, 2018, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

McGILL, J.

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.

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 6, 2018, I deposited a true copy of the following document(s):

OPINION AND ORDER FILED DECEMBER 6, 2018

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DRAGO CHARLES BARIC
1656 BARRYWOOD AVE
SAN PEDRO, CA 90731 - 1254

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Brandon K. Tady, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 6, 2018.

Mel Zavala
Court Specialist
State Bar Court