

PUBLIC MATTER - NOT DESIGNATED FOR PUBLICATION

FILED MARCH 13, 2009

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of)

06-O-11986

JASON M. KERLAN)

OPINION ON REVIEW

A Member of the State Bar.)
_____)

This case involves respondent Jason M. Kerlan’s violation of a court order that enjoined specified abuses of the Unfair Competition Law (UCL),¹ including filing actions on behalf of the public against small business owners who have committed technical violations of the law in an attempt to obtain a quick settlement, i.e., “shakedown lawsuits.” Based on a finding that respondent violated the court order, the hearing judge recommended that respondent be actually suspended for 30 days. Respondent contends that the record does not support the culpability determination and that the hearing judge committed prejudicial error by admitting into evidence certain deposition transcript excerpts. The State Bar urges us to adopt the hearing judge’s findings and disciplinary recommendation.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12) and find clear and convincing evidence to support the hearing judge’s factual findings and legal conclusions, and we adopt his recommendation that respondent be actually suspended for 30 days.

¹The UCL is set forth in Business and Professions Code section 17200 et seq. All further references to section(s) are to the Business and Professions Code, unless otherwise noted.

I. DISCUSSION

A. FACTUAL AND PROCEDURAL BACKGROUND

1. The Injunction

In 2001, Martin H. Gamulin² and Harpreet Brar formed a partnership called Brar & Gamulin, LLP. On July 8, 2003, the Attorney General of the State of California filed a lawsuit in Orange County entitled *People of the State of California v. Harpreet Brar; Oscar Sohi; California Watchdog; Brar & Gamulin, LLP* (Attorney General Action). The Attorney General Action sought injunctive relief, restitution, and other civil penalties against the named defendants arising out of their alleged improper actions under the UCL in approximately 14 different lawsuits. The action alleged that the defendants were in the “business of extracting money, primarily from small businesses, under the guise of purporting to enforce consumer protection laws.”

Although the partnership, Sohi and California Watchdog were dismissed from the lawsuit, Brar was not, and he ultimately defaulted. On October 13, 2004, the Orange County Superior Court issued a final judgment and permanent injunction (Injunction). The pertinent portions of the Injunction ordered as follows:

Pursuant to Business and Professions Code section 17203, Defendant Harpreet Brar and his representatives, employees, and agents, and all persons, corporations, and other entities acting in concert with or at the direction of any of [sic] Harpreet Brar, are hereby permanently enjoined and restrained from engaging in or performing, directly or indirectly, any of the following:

[¶] . . . B. Filing any case, or bringing any action, under the authority of Business and Professions Code section 17200, without engaging in adequate investigation within the meaning of [Code of Civil Procedure] section 128.7.

²Gamulin was a co-respondent named in the Notice of Disciplinary Charges. Gamulin and respondent served a joint answer and both were represented by attorney Juan Falcon throughout the hearing department proceedings. Gamulin resolved his matter with the State Bar by stipulation, which was approved by a different hearing judge on July 26, 2007 – the day of trial.

C. Naming as defendants, or subsequently identifying any Doe defendant, in any action [sic] two or more parties unless all defendants meet the factual nexus test required under Code of Civil Procedure section 379.

[¶] . . . E. Receiving any money, . . . , as the result of settling any dispute in which Harpreet Brar filed or threatened to file a representative private attorney general action under the authority of Business and Professions Code sections 17204 or 17535 without first filing the action and in a separate pleading disclosing all the terms of such settlement to the trial court where the action is filed and receiving the express approval of that court of each provision of the settlement.

The court also imposed over \$1.7 million in restitution and civil penalties against Brar.

Brar appealed, seeking to set aside his default and attacking the judgment on the ground that it exceeded the relief sought. On November 30, 2005, the Court of Appeal, Fourth Appellate District, filed its opinion denying Brar's request to set aside his default, but modifying the Injunction to delete all references to the False Advertising Law (section 17500 et seq.) as beyond the scope of the complaint, thereby limiting the Injunction to actions under the UCL. All other portions of the Injunction were affirmed.

2. Respondent Collaborates with Brar and Gamulin

Respondent was admitted to the practice of law in California on December 2, 1996. After he passed the bar, respondent opened a law office in Fresno. Gamulin had an office in the same building, and he and respondent became friends. Respondent then met Brar through Gamulin. Respondent's misconduct started in May 2005 when he, Brar, and Gamulin decided to pursue actions under the UCL.

On May 12, 2005, the three men filed a complaint on behalf of Satinder D. Brar, Brar's wife, in Los Angeles County Superior Court entitled *Satinder Brar v. Ed's Liquor, et al.* (Complaint). Respondent, Brar and Gamulin each signed the Complaint alleging violations under the UCL against more than 50 liquor store defendants and their owners and 250 Doe defendants. Specifically, the Complaint alleged that the defendants violated the UCL by

charging transaction fees for use of their point-of-sale terminals and failing to properly disclose such fees as required under Financial Code section 13081.³

Prior to filing the Complaint on May 12, 2005, respondent was aware of the terms of the Injunction issued against Brar. In fact, respondent stated that he and Gamulin had reviewed the Injunction carefully to make sure they would not violate it by filing the Complaint. Respondent had heard about the problems Brar had with the State Bar and the Attorney General and did not want to “tarnish his record.” Although not specifically named in the Attorney General Action or in the Injunction, respondent was subject to its terms because he was within the class of persons covered by the Injunction since it enjoined Brar, along with “his representatives, employees, and agents, and all persons, corporations, and other entities acting in concert with or at the direction . . .” of Brar.

Prior to filing the lawsuit, respondent and Brar visited numerous liquor stores to determine whether they posted the proper fee disclosures. If no fee disclosures were found, Brar would question a store employee to ascertain whether a fee was charged for using the point-of-sale terminal. If a fee was charged, then Brar would make a small purchase at the store to obtain a receipt reflecting the transaction fee. Those stores that did not disclose the fee were named in the Complaint. After the Complaint was filed, respondent asserts he paid a private investigator to revisit the stores to determine if a sign had subsequently been posted to disclose the fee. If posted, respondent claims that the store was not to be served with the Complaint. However, as discussed below, the plan did not always work as intended.

One of the liquor stores that Brar visited was Liquor Land. Brar entered the store, and asked the store manager whether a point-of-sale fee would be charged if he used his ATM card.

³“No operator of a point-of-sale device in this state shall impose any fee upon a customer for the use of that device unless that fee is disclosed to the customer prior to the customer being obligated to pay for any goods or services. . . . [¶] [T]he fee disclosure shall be on a label meeting federal standards.” (Fin. Code, § 13081, subd. (b)(1).)

The store manager confirmed that a fee was charged and then Brar asked why she did not have the fee posted as required by law. After Brar left, the store manager verified that she was required to disclose the fee in writing, and that same day, she posted the fee in three different locations within the store. However, despite the manager's immediate compliance with the fee disclosure requirement, Liquor Land was named as a defendant and served with the Complaint.

On May 18, 2005, Brar sent Liquor Land a letter on behalf of himself, respondent, and Gamulin, demanding \$750 to settle the matter. Liquor Land paid the settlement amount to Brar. However, no separate pleading was filed disclosing the Liquor Land settlement or seeking prior court approval. Although the settlement letter is from Brar and respondent is copied on the letter, respondent testified that he could not remember if he saw an actual copy of this particular letter. He did acknowledge that Brar had e-mailed a similar letter to him around the same time the Liquor Land letter was sent and respondent reviewed it. Respondent was aware that Brar was planning to send the demand letter to all defendants, but denied knowledge of Liquor Land's settlement or any other settlement related to the Complaint. Respondent said he never asked Brar about defendants who settled and never sought an accounting from Brar regarding receipt of settlement funds because he "wasn't interested."

After one of the defendants filed a motion to disqualify Brar and brought the Injunction to the attention of the superior court, the court issued an order to show cause (OSC) directing respondent, Gamulin and Brar to appear on November 16, 2005, to show why the "complaint bearing their signatures is not being presented primarily for an improper purpose . . . The complaint, which not only violates an order issued by the Superior Court of California, appears to have been brought primarily for the purpose of harassing the defendants and extorting pre-appearance settlements." Instead of responding to the OSC, Brar dismissed the Complaint without prejudice as to all remaining defendants on November 14, 2005.

The State Bar filed a three-count Notice of Disciplinary Charges in December 2006, alleging that respondent failed to obey a court order, maintained an unjust action, and failed to obey the law. During the single day of trial in July 2007, as discussed below, respondent chose not to personally appear, but appeared instead only through his counsel. No witnesses were called, but the hearing judge admitted the deposition transcripts of respondent and Gamulin from this matter and the testimony of Liquor Land's store manager from a previous disciplinary proceeding against Brar. The hearing judge determined that respondent failed to obey a court order but dismissed with prejudice the charges that respondent maintained an unjust action and failed to obey the law.

B. ADMISSION OF THE DEPOSITION TRANSCRIPTS

Prior to trial, the State Bar deposed respondent and Gamulin. The State Bar did not timely subpoena respondent or Gamulin, or otherwise timely notice respondent's appearance at trial in lieu of subpoena. Although respondent's counsel appeared on respondent's behalf, neither respondent nor Gamulin chose to appear at trial. Over respondent's objection, the deposition transcripts of respondent and Gamulin were admitted pursuant to the provisions of section 6049.2, which permits relevant testimony of a witness to be received in evidence where that testimony was given in a contested civil action or special proceeding in which the respondent was a party.⁴ On review, respondent contends that the depositions were improperly admitted and should be excluded.

⁴Section 6049.2 provides: "In all disciplinary proceedings . . . , the testimony of a witness given in a contested civil action or special proceeding to which the person complained against is a party, or in whose behalf the action or proceeding is prosecuted or defended, may be received in evidence, so far as relevant and material to the issues in the disciplinary proceedings, by means of a duly authenticated transcript of such testimony and without proof of the nonavailability of the witness; provided, the board or administrative committee may order the production of and testimony by such witness, in lieu of or in addition to receiving a transcript of his testimony, and may decline to receive in evidence any such transcript of testimony, in whole

Respondent's counsel objected during trial to admission of the deposition transcripts under section 6049.2 on the ground that the depositions were not given under circumstances that allowed "an opportunity for full cross examination." However, the "cross examination" provision of section 6049.2 is not a mandatory requirement that deems the transcript inadmissible as a matter of law if not satisfied, but is merely a factor for the court to consider in deciding whether to order the production of a witness in lieu of or in addition to the transcript. Although our review of the record is de novo, "the hearing judge has broad discretion in determining the admissibility and relevance of evidence." (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 401.) Respondent had actual notice of the trial and chose not to attend, and we find it disingenuous of him to now argue that the use of his deposition testimony, or that of his co-respondent, given as part of this proceeding constitutes an unfair trial. As to respondent's deposition transcript, we further note that it was properly admitted under Code of Civil Procedure section 2025.620, subdivision (b), which permits an adverse party to use the deposition of a party for any purpose.⁵ Under the circumstances, we find that the hearing judge did not abuse his discretion in admitting the transcripts without requiring the additional testimony of respondent or Gamulin at trial. (See *Caldwell v. State Bar* (1975) 13 Cal.3d 488, 497 [record of civil action filed against attorney, including attorney's deposition, was properly admitted in disciplinary proceedings under § 6049.2].)

Respondent now contends for the first time on appeal that disciplinary proceedings are neither a contested civil action nor a special proceeding as required under section 6049.2. Where

or in part, when it appears that the testimony was given under circumstances that did not require or allow an opportunity for full cross examination."

⁵"An adverse party may use for any purpose, a deposition of a party to the action It is not ground for objection to the use of a deposition of a party under this subdivision by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing." (Code Civ. Proc., § 2025.620, subd. (b).)

inadmissible evidence is offered, a party must object at trial, specifically stating the grounds of the objection, and directing the objection to the particular evidence that the party seeks to exclude. (3 Witkin, Cal. Evidence (4th ed. 2000) Presentation at Trial, § 371, pp. 460-461.) “It is settled that points not raised in the trial court will not be considered on appeal. [Citations.] This rule precludes a party from asserting on appeal claims to relief not asserted in the trial court. [Citations.]” (*Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422-423.) Accordingly, we find that both transcripts were properly admitted.

C. CULPABILITY

1. Count One (§ 6103) – Violation of the Injunction

The State Bar charged respondent with violating section 6103, which provides for suspension or disbarment for an attorney’s “wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear” The State Bar alleges that respondent violated the Injunction by: (a) failing to perform adequate investigation prior to filing the Complaint; (b) filing the Complaint without meeting the factual nexus test under Code of Civil Procedure section 379, and (c) failing to notify and receive express approval from the court prior to receiving money from the Liquor Land settlement.

a. Failure to perform adequate investigation

On review, the State Bar accepts the hearing judge’s finding that respondent conducted adequate investigation prior to filing the Complaint and thus did not violate that portion of the Injunction. Based on our review of the record, we leave undisturbed the hearing judge’s finding.

b. Failure to meet the factual nexus test

The Injunction prohibited respondent from naming as defendants in any action two or more parties “unless all defendants meet the factual nexus test required under Code of Civil

Procedure section 379.”⁶ With respect to the proper joinder of defendants, the factual nexus test is the requirement that “there must be some ‘factual nexus’ connecting the claim pleaded against the several defendants. [Citation.]” (*Southern Cal. Edison Co. v. State Farm Mut. Auto. Ins. Co.* (1969) 271 Cal.App.2d 744, 748.) We find that respondent violated this provision of the Injunction.

In the Complaint, respondent alleged violations of the UCL that are based on separate and distinct transactions at separate and distinct liquor stores that do not establish a common interest in the subject matter of the action or a right to relief that arose out of the same transaction or series of transactions. (See *Coleman v. Twin Coast Newspaper, Inc.* (1959) 175 Cal.App.2d 650, 654 [three chiropractors sued for trespass on separate premises and conversion of separate property].)⁷ Thus, since each defendant was named based on a separate transaction at a separate location, we find that respondent failed to satisfy the “factual nexus” test as required in the Injunction. (*Ibid.*)

c. Failure to obtain court approval of settlement

Respondent also violated the Injunction because prior court approval was not obtained and a separate pleading was not filed with the court regarding the Liquor Land settlement. Six days after the Complaint was filed, Brar sent Liquor Land a letter on behalf of himself, Gamulin and respondent, demanding \$750 to settle the matter. Liquor Land paid the settlement amount.

⁶Code of Civil Procedure section 379 provides that: “(a) All persons may be joined in one action as defendants if there is asserted against them: [¶] (1) Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or [¶] (2) A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.”

⁷Although this case involved the improper joinder of plaintiffs, the requirements for permissive joinder of plaintiffs and defendants are the same. (Code Civ. Proc. § 378.)

However, no separate pleading was ever filed disclosing the Liquor Land settlement or seeking prior court approval.

Respondent attacks the finding of culpability under count one on several grounds,⁸ arguing that the Injunction applied only to representative actions, which are no longer allowed under the UCL; the Complaint was not a representative action subject to the Injunction; he did not “willfully” violate the Injunction because he believed it was stayed pending appeal; and he cannot be held in violation of a court order without a prior finding of contempt. We find no merit to these arguments.

We reject respondent’s argument that representative actions are not allowed under the UCL. A representative action is an action brought by one or several persons on behalf of numerous parties who share a common or general interest in the complaint filed. (Code Civ. Proc., § 382.) Prior to November 2004, various public officials, as well as any person or group, could sue on its own behalf or on behalf of the general public to enjoin unfair or fraudulent business practices under the UCL. However, effective November 3, 2004, Proposition 64 limited standing for individuals to sue under the UCL to persons who: (1) have sustained injury in fact and lost money or property as a result of unfair competition, and (2) comply with section 382 of the Code of Civil Procedure. (§ 17203.) Thus, contrary to respondent’s assertion, representative actions are still permissible under the UCL despite Proposition 64 as long as an individually named plaintiff establishes standing.

We also reject respondent’s contention that the Complaint was not a representative action. Although portions of the Complaint are drafted to appear as if it were brought solely on behalf of the named plaintiff, Brar’s wife, other portions of the Complaint clearly indicate that the Complaint was filed as a representative action. Specifically, the Complaint asserts that the

⁸We have reviewed de novo all arguments set forth by respondent, and any argument not specifically addressed in this opinion has been considered and deemed rejected.

defendants' wrongful conduct "impacts the public interest," that the defendants continue to hold ill-gotten gains belonging to the plaintiff "and other members of the public," and that restitution "of all ill-gotten gains" should be adjudged against the defendants. Furthermore, in support of the prayer for attorneys' fees, the Complaint asserts "if Plaintiff succeeds in enforcing these rights affecting [the] public interest then cost[s], including but not limited to attorney's fees pursuant to California Code of Civil Procedure § 1021.5 may be awarded to each of them, because: [¶] (a) A significant benefit has been conferred on the general public by protecting their health."⁹ Since the recovery of attorneys' fees under Code of Civil Procedure section 1021.5 derives from the private attorney general theory (*Lyons v. Chinese Hospital Association* (2006) 136 Cal.App.4th 1331, 1344), which doctrine was not intended to reward litigants motivated by their own pecuniary interests who only coincidentally protect the public interest (*id.* at p. 1348), we conclude that the Complaint constitutes a representative action subject to the Injunction.

We also find respondent's contention that he did not willfully violate the Injunction because he believed it was stayed pending appeal to be without merit. Willfulness for purposes of disciplinary proceedings "is simply a general purpose or willingness to commit an act or to make an omission; it does not require any intent to violate the law . . . and does not necessarily involve bad faith. [Citations.]" (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.) Furthermore, we have held that an attorney's belief as to the validity of an order is irrelevant to a section 6103 charge. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9, fn. 3.) Although respondent's belief regarding the Injunction's validity

⁹Code of Civil Procedure section 1021.5 states that a court may award attorneys' fees to a successful party if "(a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement . . . make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

might be relevant to establish a circumstance in mitigation, it in no way constitutes a defense to a charge of willfully violating a court order.

Finally, we have also considered and reject respondent's claim that a prior contempt hearing is required before an attorney may be found culpable of violating section 6103. No such prerequisite is necessary. (See *In the Matter of Maloney and Virsik* (2005) 4 Cal. State Bar Ct. Rptr. 774, 787 [essential elements of willful violation of section 6103 are 1) knowledge of binding court order, 2) knowledge of what attorney was doing or not doing, and 3) intent to commit acts or abstain from committing acts which violate court order].)

2. Count Two (§ 6068, subd. (c)) – Maintaining an Unjust Action

The State Bar charged respondent with maintaining an unjust legal action, but the hearing judge determined that there was insufficient evidence to conclude that respondent engaged in litigation for an improper purpose, to harass defendants or to extort settlements in willful violation of section 6068, subdivision (c). After our review of the record, we affirm the hearing judge's dismissal of this count with prejudice.

3. Count Three (§ 6068, subd. (a)) – Failure to Support the Constitution and Laws

The State Bar charged respondent with failing to support the Constitution and laws of the United States and of this State by failing to conduct an adequate investigation within the meaning of Code of Civil Procedure section 128.7 and failing to satisfy the requirements of Code of Civil Procedure section 379 before naming multiple defendants. We affirm the hearing judge's dismissal of this count with prejudice, as it is duplicative of count one.

II. DISCIPLINE

A. AGGRAVATION

The hearing judge determined that the State Bar did not establish any aggravating circumstances by clear and convincing evidence. However, after our independent review, we find an aggravating factor in respondent's repeated assertion that he did nothing wrong and his claim that the judges were "politically charged and motivated" in dismissing the UCL cases. Respondent's failure to acknowledge his wrongdoing raises serious concerns about the likelihood of future misconduct, and demonstrates his indifference toward rectification of or atonement for the consequences of his misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(v).)¹⁰

B. MITIGATION

We consider as a mitigating circumstance respondent's approximately eight and one-half years of discipline-free practice. (Std. 1.2(e)(i).) However, in accordance with prior precedent, we do not afford this circumstance significant weight. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295 [attorney's unblemished practice of law for eight years and four months prior to start of her misconduct was mitigating circumstance but did not deserve significant weight].)

Under the facts of this case, we find unavailing respondent's good faith claim in mitigation that he believed the Injunction was stayed pending appeal. (Std. 1.2(e)(ii).) "In order to establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held *and* reasonable. [Citation.]" (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653, italics added.) To conclude otherwise would reward an attorney for his unreasonable beliefs and "for his ignorance of his ethical responsibilities." (*In*

¹⁰All further references to standard(s) are to this source.

the Matter of McKiernan (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427.) Even if respondent honestly believed the Injunction was stayed, it was not reasonable for him to believe that he did not have to comply with the prohibitory terms of the Injunction until the appeal was resolved. (See, e.g., *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 709 [prohibitory portions of order are not automatically stayed pending appeal].)

C. DEGREE OF DISCIPLINE

We have found respondent culpable of violating section 6103 by failing to comply with the Injunction, which misconduct is significantly aggravated by his indifference towards rectification of his wrongdoing and modestly mitigated by his lack of a disciplinary record.

According to standard 2.6(b), respondent's violation of section 6103 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline" Since the standards are recognized as guidelines, it is not mandatory for us to recommend respondent's suspension or disbarment. Instead, we review relevant case law for additional guidance in order to best achieve the purpose of disciplinary proceedings, which is to protect the public, preserve public confidence in the profession and maintain the highest possible standards for attorneys.

(*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In arriving at his disciplinary recommendation, the hearing judge considered *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, in which we privately reprimanded an attorney who violated a court's confidentiality order. However, unlike respondent's case, that matter involved no aggravating factors and the attorney presented significantly greater mitigation in that he had 18 years of discipline-free practice, suffered from great pressure from his client and co-counsel, and sincerely believed he was acting in support of sound public policy.

The hearing judge also relied on *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, where we found an attorney culpable of failing to obey a court order to pay sanctions imposed as a result of his bad faith tactics and actions while defending an action in superior court. We also concluded that the attorney failed to timely report the sanctions to the State Bar. In adopting the hearing judge's recommendation of a private reproof, we observed that "There is little evidence before us bearing on degree of discipline." (*Id.* at p. 869.) We acknowledged the attorney's lack of prior discipline; however, we neither described the period of discipline-free practice nor application of the disciplinary standards. (*Ibid.*)

We also consider *In the Matter of Klein, supra*, 3 Cal. State Bar Court Rptr. 1 where the Supreme Court adopted our recommendation that an attorney receive a two-month stayed suspension with no actual suspension for ethical lapses in two client matters. In one matter, the attorney failed to obey a court order to halt implementation of a garnishment and failed to promptly refund the garnishment. In the second matter, the attorney failed to competently perform and failed to obtain necessary written consent for joint representation. However, there were no aggravating circumstances, and we afforded significant mitigation to the attorney's discipline-free practice before and after the misconduct, extensive dedication to public service, extraordinary showing of good character, and atonement for his wrongdoing. We also recognized that the State Bar delayed prosecution of the matter.

For the same reason found by the hearing judge, we view respondent's misconduct to be more egregious than that in *Respondent X* or *Respondent Y*. We also find that respondent lacks the significant mitigation set forth in *Klein*. Most importantly, we look to the substance of the judicial order that respondent violated. That order was expressly intended to protect the public from abusive litigation tactics. Even though respondent knew the superior court went to great lengths to issue an Injunction designed to ameliorate the abuses related to the filing of UCL

actions, he nevertheless took affirmative steps to intentionally circumvent the provisions of the Injunction specifically tailored to curb such abuses.

In light of the absence of any significant mitigation, and the aggravation we found on review, we believe that the hearing judge's disciplinary recommendation is appropriate. Thus, after our review of the record, applicable standards and relevant case law, we conclude that a 30-day period of actual suspension will adequately serve the discipline goal of protecting of the public, the courts and the profession.

III. RECOMMENDATION

We recommend that respondent JASON MICHAEL KERLAN be suspended from the practice of law in the State of California for one year, that execution of said suspension be stayed, and that respondent be placed on probation for two years under the conditions set forth by the Hearing Department of the State Bar Court in its Decision filed February 7, 2008, including an actual suspension from the practice of law for the first 30 days of probation. At the expiration of the period of his probation, if respondent has complied with all terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one year shall be satisfied and that suspension shall be terminated.

IV. PROFESSIONAL RESPONSIBILITY EXAMINATION

We recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within one year of the effective date of the discipline herein.

V. COSTS

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

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.