

Filed September 5, 2014

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case No. 10-J-03762
	)	
STEVEN JAMES FOSTER,	)	OPINION AND ORDER
	)	
Member of the State Bar, No. 130975.	)	
_____	)	

Respondent, Steven James Foster, was publicly censured for professional misconduct in Colorado after the disciplinary Hearing Board of the Supreme Court of the State of Colorado found that he reasserted baseless appellate claims with the intention of harassing and vexing his ex-wife. In this reciprocal disciplinary matter, a hearing judge ordered that Foster be publicly reproved for this misconduct.

Foster appeals, raising several due process challenges to his Colorado and California discipline proceedings. He also argues that his conduct in Colorado would not warrant discipline in California. Foster asks us to vacate the hearing judge’s order or remand the matter for a new trial. The Office of the Chief Trial Counsel of the State Bar (OCTC) has not appealed, and asks that we uphold the hearing judge’s disciplinary sanction.

After independently reviewing the record under California Rules of Court, rule 9.12, we reject Foster’s arguments, adopt the hearing judge’s findings, as modified below, and affirm her public reproof order.

## I. FACTUAL AND PROCEDURAL HISTORY

Foster is licensed to practice law in California and Colorado. He obtained his license in California in December 1987<sup>1</sup> and in Colorado in May 1991. Prior to 2012, he had no disciplinary record in either state.

### A. Foster's Misconduct in Colorado

Foster's misconduct stems from his protracted in pro per divorce litigation with his ex-wife. The Colorado district court's register of actions in their divorce proceedings showed more than 630 transactions involving Foster and his ex-wife during a 12-year period. In addition, between 1999 and 2007, Foster initiated probate, civil, and criminal actions against his ex-wife. He also filed nine appeals in the Colorado Court of Appeals (Court of Appeals) and several petitions with the Colorado Supreme Court, all of which arose from the divorce. His Colorado discipline and the instant proceedings focus on his conduct in the fifth and sixth appeals he filed in the Court of Appeals.

In his fifth appeal, Foster challenged the trial court's order modifying the allocation of the parents' decision-making authority and parenting time. As one of the grounds of his appeal, Foster asserted that the trial court had evidenced bias. In its opinion filed on December 1, 2005, the Court of Appeals stated: "[W]e find no hint of bias by the trial court."

In his sixth appeal, Foster challenged, inter alia, the trial court's award of attorney fees to his ex-wife, again claiming judicial bias by the same trial judge. In its opinion filed on September 13, 2007, the Court of Appeals rejected this claim, reasoning: "Many of the grounds husband relies on to support his claim that the trial judge was biased or prejudiced have been reviewed previously and rejected on the merits or found to have been waived . . . ." In concluding that no bias was proven, the Court of Appeals determined that "[h]usband advances

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<sup>1</sup> Foster resigned from the California bar without charges pending in 2001. His membership was reinstated in 2005.

no independent grounds to support his claim that the trial judge unquestionably created an appearance of bias and should have recused himself sua sponte.” The Court of Appeals also awarded Foster’s ex-wife attorney fees and costs on appeal on the grounds that Foster’s “appeal lacks substantial justification” and “is vexatious insofar as it is another example of husband’s stubbornly litigious conduct.” Foster did not appeal this decision to the Colorado Supreme Court.

## **B. The Colorado Disciplinary Proceedings**

Foster’s ex-wife filed a complaint with the Colorado Supreme Court’s Office of Attorney Regulation Counsel in September 2008, which investigated the matter and referred it to the Disciplinary Hearing Board of the State of Colorado (the Board). The Board heard the matter and issued its opinion in March 2010, finding by clear and convincing evidence that Foster had pursued frivolous claims in his sixth appeal and that his post-dissolution conduct reflected his desire to harass his ex-wife, thereby prejudicing the administration of justice in violation of rules 3.1 and 8.4(d) of the Colorado Rules of Professional Conduct.<sup>2</sup> The Board recommended a 90-day actual suspension.

### **1. Foster’s Appeal to the Supreme Court**

Foster appealed to the Colorado Supreme Court. Because he raised due process claims, the Court reviewed the record de novo to determine if the Board had afforded Foster procedural and substantive constitutional protections. In May 2011, that Court reversed the Board’s imposition of the 90-day actual suspension on the grounds that his “aggregate conduct

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<sup>2</sup> Rule 3.1 of the Colorado Rules of Professional Conduct provides in relevant part that “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.” Rule 8.4(d) of the Colorado Rules of Professional Conduct provides that it is professional misconduct for a lawyer to “engage in conduct that is prejudicial to the administration of justice.”

throughout a dissolution proceeding and a portion of a frivolous appeal were protected by the First Amendment . . . .”

However, the Colorado Supreme Court affirmed the Board’s finding that Foster violated Colorado Rules of Professional Conduct rules 3.1 and 8.4(d) by reasserting a claim of judicial bias in his sixth appeal. The Court reasoned that “Foster’s claims in his sixth appeal of bias by a district court judge were so wholly duplicative of claims made and rejected in his fifth appeal that Foster cannot have had a subjectively proper motivation for making them.” The Court emphasized that this “was not a situation where new circumstances or new evidence could possibly have led to a different result; Foster simply asserted the same arguments to the same court for a second time.” As such, the Court held his conduct in relitigating the judicial bias issue was not protected by the First Amendment because it “constituted sham litigation.”

In its decision, the Supreme Court noted — in error — that the appellate court found that Foster’s *fifth* appeal was frivolous and vexatious, and had imposed attorney fees. In fact, the Court of Appeals did not find Foster’s claim of judicial bias was frivolous and vexatious, nor did it sanction him, until his *sixth* appeal.<sup>3</sup> Foster did not seek a rehearing in the Supreme Court to correct its mistakes.

## **2. The Supreme Court Remands the Matter to the Board**

The Colorado Supreme Court remanded the case to the Board for a redetermination of the appropriate sanction. On remand, Foster waived a hearing, agreeing to have the Board consider the appropriate sanctions based on post-remand briefs submitted by the parties. In its opinion and decision on remand, dated December 6, 2011, the Board concluded that Foster’s “deliberate and frivolous relitigation in a sixth appeal of his earlier-appealed claim of judicial bias . . .

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<sup>3</sup> Significantly, elsewhere in its opinion, the Colorado Supreme Court correctly noted the Board’s finding of insufficient evidence to establish that Foster’s fifth appeal was frivolous, vexatious, or prejudicial to the administration of justice.

violated the Rules of Professional Conduct.” It further found that Foster “reasserted the bias issue in [his sixth] appeal with the primary purpose of harassing and vexing [his ex-wife]” and that such conduct caused the appellate court “to expend unnecessary time and resources . . . .” The Board found in aggravation that Foster refused to acknowledge the wrongfulness of his misconduct by continuing to assert on remand that the trial court judge was biased against him. In mitigation, the Board expressly recognized that “[t]he court of appeals determined [Foster’s] *sixth* appeal was vexatious and remanded it for attorney’s fees and costs.” (Emphasis added.) As such, the Board found that the “monetary sanction mitigates the sanction we impose.” In light of that mitigation and the additional mitigating factors of his lengthy discipline-free career and his cooperation, the Board found that a public censure was appropriate.

Foster did not appeal the Board’s findings or the imposition of a public censure. The Board’s decision is now final and deemed an order of the Colorado Supreme Court pursuant to Colorado Rules of Civil Procedure, rule 251.19(b)(6).<sup>4</sup>

### **C. The California State Bar Reciprocal Disciplinary Proceeding**

Based on the Colorado Board’s final decision and the Colorado Supreme Court’s order of public censure, OCTC filed a Notice of Disciplinary Charges (NDC) in September 2012, charging Foster with professional misconduct in a foreign jurisdiction under section 6049.1 of the California Business and Professions Code.<sup>5</sup> OCTC alleged that Foster’s Colorado

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<sup>4</sup> Colorado Rules of Civil Procedure, rule 251.19(b)(6) provides that “[u]nless stayed, vacated, reversed, or otherwise modified by order of the Supreme Court, a final decision of the Hearing Board . . . shall be considered for all purposes an order of the Supreme Court.” The Colorado Supreme Court issued its order and notice of public censure on January 11, 2012, *nunc pro tunc* to January 6, 2012.

<sup>5</sup> Subsequent references to sections are to the California Business and Professions Code.

misconduct constituted violations of section 6068, subdivisions (b), (c), and (g), and California Rules of Professional Conduct, rules 3-200(A) and (B) and 3-700(B)(1) and (2).<sup>6</sup>

In this proceeding, the Board's final order is conclusive evidence that Foster is culpable of professional misconduct in California. (§ 6049.1, subd. (a).) Accordingly, the hearing judge below was limited to determining: (1) the degree of discipline to be imposed; (2) whether, as a matter of law, Foster's professional misconduct in Colorado would warrant discipline in California; and (3) whether the proceedings in Colorado lacked fundamental constitutional protection. (§ 6049.1, subd. (b)(1), (2), and (3).) It was Foster's burden to establish that discipline is not warranted in California and that the Colorado proceedings lacked fundamental constitutional protections. (§ 6049.1, subd. (b).)

After a one-day trial, the hearing judge found that Foster's misconduct in Colorado violated section 6068, subdivision (c), which provides that an attorney shall maintain only "legal or just" actions. The violation was aggravated by lack of insight and significant harm to the administration of justice and mitigated by a long discipline-free record and cooperation. The judge further ruled that Foster failed to prove that the Colorado proceedings lacked fundamental constitutional protection and she accordingly ordered a public reproof.

## **II. FOSTER'S CONSTITUTIONAL CHALLENGES**

Central to Foster's appeal to this court is his claim that California's reciprocal discipline statute, section 6049.1,<sup>7</sup> violates his due process rights. He argues that the conclusive effect of

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<sup>6</sup> Subsequent references to rules are to the California Rules of Professional Conduct unless otherwise indicated.

<sup>7</sup> Section 6049.1, subdivision (a), provides in relevant part that "a certified copy of a final order . . . determining that a member of the State Bar committed professional misconduct in [another] jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state . . ." unless, as a matter of law, the member's culpability in the other jurisdiction would not warrant discipline under California laws or rules or the proceedings of the other jurisdiction lacked fundamental constitutional protection.

section 6049.1, subdivision (a), is fundamentally unfair as it precludes him from challenging any legal or factual infirmity, thereby perpetuating the erroneous Colorado Supreme Court opinion. Foster maintains that but for the Colorado Supreme Court's error in its opinion, he would not have been sanctioned in Colorado for pursuing the judicial bias claim. He also argues that section 6049.1 is unconstitutional because it denies a hearing judge any discretion to weigh the factual and legal quality of another jurisdiction's discipline order.

We note at the outset that under section 6049.1, subdivision (a), we do not look to the Colorado Supreme Court's opinion; rather, we look to the Board's subsequent and final decision on remand as conclusive evidence of Foster's professional misconduct. Indeed, the error in the Supreme Court's May 23, 2011 opinion was not material to the discipline imposed by the Board on remand. The Board's decision sets forth factual support for its findings, which correctly identified that it was the sixth appeal, not the fifth, wherein the appellate board found Foster's litigation was vexatious and imposed sanctions. Moreover, Foster's complaint of error is not well taken because he did not seek a rehearing in the Colorado Supreme Court to correct the erroneous findings.

Most importantly, we are without jurisdiction to consider Foster's constitutional challenges to section 6049.1 since we are affirming the hearing judge's order of public reproof, which does not require Supreme Court's approval. (§ 6078 [State Bar Court may impose discipline by reproof without recommendation to Supreme Court].) "In cases involving suspension or disbarment . . . no constitutional impediment appears to prevent us from recommending that a rule or statute be declared unconstitutional by the Supreme Court . . . . However, with respect to decisions of this court which may be implemented without Supreme Court action . . . we deem the judges of the State Bar Court limited to interpreting the existing

law . . . .” (*In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424, 433, fn. 11.)

We also reject Foster’s claim that he was denied procedural due process in the Colorado proceedings and therefore this matter should be dismissed under section 6049.1, subdivision (b), which requires that the Colorado proceedings employ fundamental constitutional protections. The hearing judge correctly found that Foster received full and fair hearings before the Colorado Supreme Court and the Board. He elected to forego a full hearing on remand to the Board, and chose not to appeal the Board’s decision to the Colorado Supreme Court on constitutional or any other grounds, waiting to relitigate his claims in these reciprocal proceedings. He also did not assert a procedural due process claim to the hearing judge below, and did not present any evidence on this issue. We therefore find that he not only failed to satisfy his evidentiary burden under section 6049.1, subdivision (b), but he waived his claim of violation of his due process rights. (*In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483, 491 [attorney who failed to present constitutional due process issue to hearing judge waived issue on appeal]; *Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422-423 [points not raised in trial court will not be considered on appeal].)

### III. CULPABILITY

Foster maintains that his misconduct in Colorado does not warrant discipline in California. (§ 6049.1, subd. (a).) We disagree. The hearing judge correctly found that Foster’s violations of rules 3.1 and 8.4(d) of the Colorado Rules of Professional Conduct constituted ethical misconduct warranting discipline in California.

#### A. **Section 6068, subdivision (c) [attorney shall maintain legal or just actions]**

Section 6068, subdivision (c), requires an attorney to “maintain those actions, proceedings, or defenses only as appear to him or her legal or just . . . .” The Board found



Foster's relitigation of the judicial bias claim was frivolous, vexatious, and intended to harass his ex-wife. Accordingly, the hearing judge correctly found that Foster violated section 6068, subdivision (c), by engaging in such conduct. (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117-118 [attorney's appeal of issue decided in prior litigation violated § 6068]; *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 187 [attorney who filed frivolous litigation violated § 6068, subd. (c)].)

**B. Rule 3-200 (A) and (B) [prohibited objectives of employment]**

Under rule 3-200, it is disciplinable conduct "(A) To bring an action . . . for the purpose of harassing or maliciously injuring any person; or [(¶)] (B) To present a claim . . . that is not warranted . . . ." Foster's professional misconduct in Colorado also is disciplinable in California under either rule 3-200(A) (*Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1039-1042 [attorney violated rule 3-200(A) by filing lawsuit to harass, menace, and oppress defendant]) or rule 3-200(B) (see *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591 [attorney who advanced unfounded legal theory not entitled to mitigation for good faith belief under rule 3-200(B)]). However, these violations are premised on the same facts we considered to find culpability for violating section 6068, subdivision (c), and are therefore duplicative. (See *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little if any purpose served by duplicative charges].)

**C. Section 6068, subdivision (b) [duty to maintain respect to courts]**

The hearing judge also correctly found that the facts underlying Foster's frivolous judicial bias claim did not establish a violation of section 6068, subdivision (b), which requires attorneys to maintain respect to the courts and judicial officers. Foster twice asserted his judicial bias claim relying on essentially the same evidence and legal arguments. But that alone, and the substance and tenor of his briefs, do not establish disrespect to the courts.

**D. Rule 3-700(B)(1) and (2) [termination of employment]**

Rules 3-700(B)(1) and (2) prescribe when an attorney must mandatorily withdraw from representing a client. Since Foster represented himself and not a client, the hearing judge correctly found these rules inapplicable.

**E. Section 6068, subdivision (g) [duty to not commence action based on corrupt motive]**

Section 6068, subdivision (g), prohibits attorneys from commencing an action based on “any corrupt motive of passion or interest.” The hearing judge did not find culpability because she mistakenly decided there was no evidence that Foster intended to vex his ex-wife. However, OCTC correctly points out that the Board found upon remand that Foster reasserted the judicial bias claim in his sixth appeal for the specific purpose of harassing his ex-wife. We accordingly disagree with the hearing judge and conclude that Foster violated this section. (*In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446, 457 [§ 6068, subd. (g) violated where evidence showed civil rights claims in four successive lawsuits were motivated by vindictiveness].)

**IV. AGGRAVATION AND MITIGATION**

We recommend “the appropriate discipline in light of all relevant circumstances. [Citation.]” (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) This includes consideration of aggravating and mitigating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(f) [aggravating circumstances demonstrate need for greater degree of sanction]<sup>8</sup> and 1.2(g) [mitigating circumstances warrant more lenient

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<sup>8</sup> Subsequent references to standards are to this source and reflect modifications effective January 1, 2014.

sanction].) OCTC must prove aggravating circumstances by clear and convincing evidence.<sup>9</sup> (Std. 1.5.) Foster must meet the same burden to prove mitigating circumstances. (Std. 1.6.)

**A. Aggravating Circumstances**

The hearing judge found two aggravating factors (lack of insight and significant harm to the administration of justice) and two mitigating factors (discipline-free record and cooperation). We agree with the finding of lack of insight, but we do not find significant harm to the administration of justice.

**1. Lack of Insight (Std. 1.5(g))**

Aggravating circumstances may include an attorney’s “indifference toward rectification or atonement for the consequences of his misconduct” under standard 1.5(g). The Board found that Foster displayed indifference when he realleged bias in his sixth appeal and contended that the appellate courts wrongly decided this issue. The hearing judge considered this as evidence of indifference, which is an aggravating factor. Foster does not challenge this finding, and we adopt it. (*In re Morse* (1995) 11 Cal.4th 184, 209 [unwillingness to consider appropriateness of legal challenge or acknowledge its lack of merit is aggravating factor].)

**2. No Significant Harm to Administration of Justice (Std. 1.5(f))**

The hearing judge found that Foster caused significant harm to the administration of justice based upon the Board’s decision on remand that his frivolous bias claim “caused the court of appeals . . . to expend unnecessary time and resources . . . .” We do not agree because mere inconvenience or delay does not constitute significant harm. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 133 [misconduct causing unnecessary sanction motions and hearings did not establish significant harm to administration of justice].)

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<sup>9</sup> 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.)

Since we have only considered Foster’s two appeals in this disciplinary proceeding, there is no clear and convincing evidence that his overall conduct in those matters caused the Colorado Court of Appeals to expend *significant* time and resources. We therefore find no aggravation under standard 1.5(f).

**B. Mitigating Circumstances**

The hearing judge acknowledged Foster’s discipline-free career and cooperation to be mitigating. We adopt these findings with slight modification.

**1. No Prior Discipline (Std. 1.6(a))**

Under standard 1.6(a), we afford mitigation for the “absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious.” The hearing judge credited Foster with only 13 years of discipline-free practice because he was not a California bar member from 2001 to 2005. However, Foster was a practicing Colorado bar member during this period. Therefore, when Foster asserted the frivolous bias claim in mid-2006, he had practiced law for approximately 18-1/2 years. This warrants significant weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of practice before misconduct given significant weight].)

**2. Cooperation (Std. 1.6(e))**

“[S]pontaneous candor and cooperation displayed . . . to the State Bar” is a mitigating circumstance under standard 1.6(e). The hearing judge afforded “some consideration in mitigation” to the fact that Foster stipulated to facts and the admission of exhibits. Likewise, we assign only minimal weight as the facts were easily proven. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if relevant and assisted prosecution of case].)

## V. LEVEL OF DISCIPLINE

When recommending discipline for professional misconduct, our primary purposes are to protect the public, the courts, and legal profession, maintain high professional standards, and preserve public confidence in the legal profession. (Std. 1.1.) In arriving at an appropriate discipline, “we must consider the underlying conduct and review all relevant aggravating and mitigating circumstances. [Citation.]” (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 932.)

We begin our discipline analysis with the standards that the Supreme Court instructs us to follow “whenever possible.” (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Although not binding, we give them great weight to promote “the consistent and uniform application of disciplinary measures.” (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal quotations omitted.)

Standard 2.8(a) applies to violations of section 6068, subdivision (c), and section 6068, subdivision (g). Under this standard, appropriate discipline can range from actual suspension to disbarment. Therefore, in view of the wide range of suggested discipline, we consider comparable case law for further guidance. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [decisional law appropriate as guidance when standards provide range of discipline].)

Cases that involve frivolous claims imposed discipline from 30 days’ actual suspension to disbarment.<sup>10</sup> Although we found no case identical to Foster’s limited misconduct, the facts in

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<sup>10</sup> Such cases include *In the Matter of Varakin, supra*, 3 Cal. State Bar Ct. Rptr. 179 (disbarment for filing frivolous and vexatious litigation against ex-wife over 12 years in four matters that involved moral turpitude; aggravated by failure to cooperate, absence of remorse, and significant harm to ex-wife and the administration of justice; mitigated by 32 years’ discipline-free practice); *In the Matter of Scott, supra*, 4 Cal. State Bar Ct. Rptr. 446 (60-day actual suspension for filing four frivolous lawsuits with corrupt motive in violation of § 6068, subs. (c) and (g), and receiving over \$218,000 sanction for filing first frivolous lawsuit in bad faith; aggravated by indifference, harm to judge and administration of justice; mitigated by eight-year discipline-free practice, three years of post-misconduct practice, good character, and community service).

*Sorensen v. State Bar, supra*, 52 Cal.3d 1036 are sufficiently analogous to provide support for a public reproof.

Sorensen filed a fraud complaint against a court reporter over a \$45 billing dispute, and ignored the court reporter's numerous attempts at resolution. Although the court ultimately dismissed the complaint, the court reporter incurred over \$4,000 in legal fees and costs. A hearing panel determined that Sorensen violated section 6068, subdivisions (c) and (g), and rules 3-200(A) and (B), and recommended a public reproof. The panel concluded that Sorensen showed no remorse and had filed the complaint to harass the court reporter "totally out of proportion to what was at issue." (*Sorensen v. State Bar, supra*, 52 Cal.3d at p. 1040.) On appeal, the Supreme Court did not discuss any mitigation and considered the rule 3-200 violations duplicative. It ordered a 30-day actual suspension because a public reproof did not sufficiently address Sorensen's lack of remorse or the harm the court reporter suffered. (*Id.* at p. 1041.)

We consider Foster's misconduct less egregious than Sorensen's, and accordingly believe a deviation from suspension, which is the minimum discipline suggested by standard 2.8(a), is warranted. Like Sorensen, Foster committed a single violation of section 6068, subdivisions (c) and (g), and duplicative violations of rule 3-200. But Sorensen's entire complaint was meritless while only one claim in Foster's sixth appeal was frivolous. And there is no evidence that the harm Foster's misconduct caused is as extensive as the harm Sorensen inflicted. Further, unlike Sorensen, Foster proved significant mitigation with his lengthy discipline-free practice and cooperation.

After considering the unique circumstances of this case, the standards, and relevant case law, we affirm the hearing judge's order for a public reproof.

## VI. ORDER

Steven James Foster is ordered publicly reprovved, effective on the date our opinion becomes final. (Rules Proc. of State Bar, rule 5.127(A).)

Further, Foster must comply with specified conditions attached to the public reprovval. (Cal. Rules of Court, rule 9.19; Rules Proc. of State Bar, rule 5.128.) Failure to comply with any condition may constitute cause for a separate proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct.

Foster is ordered to comply with the following conditions for a period of one year following the effective date of this order:

1. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.
2. Within 30 days after the effective date of this public reprovval, he must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to his public reprovval. Upon direction of the Office of Probation, he must meet with a probation deputy either in person or by telephone. During the one-year reprovval period in which these conditions are in effect, he must promptly meet with probation deputies as directed and upon request.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
4. He must submit written quarterly reports to the Office of Probation on January 10, April 10, July 10, and October 10 of his reprovval period. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his reprovval during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the reprovval period and no later than the last day of the reprovval period.
5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

6. Within one year of the effective date of this public reproof, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School.
7. He must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of this public reproof and provide satisfactory proof of such passage to the Office of Probation within the same period.

## VII. COSTS

We further order that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

EPSTEIN, Acting P. J.

WE CONCUR:

PURCELL, J.

HONN, J.\*

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\* Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure of the State Bar of California.