

Filed October 1, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 12-O-10026
)	
PATRICK ALEXANDRE MISSUD,)	OPINION AND ORDER
)	
A Member of the State Bar, No. 219614.)	
_____)	

This matter concerns Patrick Alexandre Missud’s egregious misconduct during his disciplinary proceeding and in connection with several frivolous lawsuits he filed from 2005 through 2011. Due to his abusive litigation tactics, a Nevada state court held him in contempt and issued terminating sanctions, and a federal district court declared him a vexatious litigant.

The hearing judge below found Missud culpable of seven counts of misconduct: (1) maintaining unjust actions; (2) moral turpitude [two counts]; (3) communicating with a represented party; (4) failing to obey court orders [two counts]; and (5) failing to report judicial sanctions. The judge also found four factors in aggravation and none in mitigation. Ultimately, the judge recommended that Missud be disbarred.

Missud has appealed without identifying the relief he seeks. Rather than making any good faith argument for modifying the hearing judge’s decision, he claims the judge “lied” in her decision and “ignored all facts and laws to railroad” him. The Office of the Chief Trial Counsel of the State Bar of California (OCTC) urges that we recommend Missud be disbarred. We affirm the hearing judge’s disbarment recommendation.

I. REQUEST FOR SUMMARY DISMISSAL

OCTC requests that we summarily dismiss Missud’s appeal as frivolous and brought for improper reasons. OCTC correctly observes that the opening brief is a diatribe of bullying threats and nonsensical insults, devoid of legally cognizable or even rational arguments. The reply brief is the same, beginning with the declaration: “Missud’s been a Federal Informant for four years.” Missud’s stated purpose in bringing the appeal and seeking oral argument — “to expedite Bar Officials’ indictments” — is both improper and irrelevant to whether we should affirm the hearing judge’s disbarment recommendation. Moreover, he has waived any claim of factual error by failing to specify particular factual findings in dispute and failing to point to the record in support thereof. (Rules Proc. of State Bar, rule 5.152(C).)

While we agree with OCTC that Missud’s appeal is frivolous, we review his case under our duty to independently examine the record. (Cal. Rules of Court, rule 9.12.) However, we consider as aggravation Missud’s improper basis for bringing his appeal and the wildly inappropriate invective that permeates all his submissions to the State Bar Court, such as:¹

- “Don’t bother filing anything with C.J. Cantil-Sakauye. She’ll just put it in the ‘circular file’ because her job is to rubberstamp everything the Member-run Bar does, which primarily include\$ furthering Bar Member\$’ financial predation of a potential 38 Million \$alifornians.”
- The “Bar rigged the D&O to conceal evidence that the judiciary, Bar, and Bar Member\$ control a racketeering ring whereby they target the public for financial predation.”
- “Missud filed well in excess of just 8 \$uit\$ exposing judge\$ turned felon\$. You see ‘judicial immunity’ corrupts absolutely and turns judicial officers into racketeer\$.”
- “setting up judge\$ is my specialty”; “It’\$ not about the money, it’\$ now about judge\$’ pri\$on time.”
- “The purpose of this exposure to make sure that the maximum number of felons rot in prison. DHI’\$ Board members and judge\$ are fair game, \$o don’t drop the \$oap.”

¹ Quoted from Missud’s response to the Notice of Disciplinary Charges and from his opening and reply briefs on review. The spelling and formatting are Missud’s.

- “State Bar Court Judge Lucy Armendariz ordered **Federal Informant** Missud to prepare very Specific Responses to each and every enumerated paragraph of the Bar’s whistleblower-retaliatory ‘Notice of Disciplinary Charges’ [NDC]. Those SR’s are dutifully provided herein so be careful of what you wish for Lucy.”
- “I can design a site and upload approximately 10,000 documents in a single day. That’s what I’m also going to do in regard\$ to . . . judge\$ McElroy and Armendariz. They will each get extra special treatment and exposure.”
- “Lucy – I now dare you to ignore [the evidence]. . . .You’ll get 10 year\$ per count of conspiracy and violation of official dutie\$ if you ignore that evidence. . . .I’ve been Setting up judge\$\$\$\$\$ for three year\$. Trust me Lucy-I know how it\$ done.”
- “Remke’s\$ ignorance of the same guarantees that \$he will herself become Armendariz’ cell-mate.” “P.J. Remke, and judges Epstein and Purcell – if you ignore the above diamond-hard evidence which was already presented at Trial and ignored by your colleague Armendariz, ‘Do not pass Go. Go directly to jail,’ . . . if you gals don’t immediately reinstate my \$150,000 Bar license, and expunge the \$100,000+++ money judgments sought from me, then ‘Do not pass Go. Go directly to jail.’ ”
- “This Trio will independently rule, and suffer similar prison terms as Armendariz upon affirmation of her rigged D&O. Remand to Armendariz is favored as FI Missud would like to add several more years to her prison sentence.”
- “Antonin and Clarence are likewise good lap dog\$ which do as told. For their masters, they run through obstacle course, do back flips, and jump through burning hoops of fire.”

II. FACTUAL BACKGROUND

A. Missud Filed Eight Frivolous Lawsuits

Missud has been a member of the State Bar of California since 2002. His dissatisfaction with D. R. Horton, Inc. (Horton) began in 2004, when he and his wife purchased a Nevada home from the company. The couple had the option to finance the purchase through Horton’s preferred lender, DHI Mortgage Company, LTD (DHI), only if the home would be a primary residence, not a rental. Because Horton understood Missud intended to use the home as a rental, Horton required him to use another lender. Missud believed himself wronged by this and other aspects of the purchase process and began a crusade first against Horton, and later, the judiciary. To start, he repeatedly and unsuccessfully sued Horton, DHI, and six of Horton’s officers and

employees and contacted them about his dispute with Horton, even after their counsel specifically requested that he not do so. The first five lawsuits were:

<i>Filed</i>	<i>Case Name / Cause of Action</i>	<i>Outcome</i>
8/22/05	<i>Missud v. D.R. Horton et al.</i> (Super. Ct. S.F. City and County, 2005, No. CGC 05-444247). Complaint for infliction of emotional distress.	Court sustained motion to quash service of summons and complaint; dismissed without prejudice on November 14, 2005.
12/9/05	Refiled <i>Missud v. D.R. Horton et al.</i> (Super. Ct. S.F. City and County, 2005, No. CGC 05-447499). Refiled claim for emotional distress and property damage.	Dismissed without prejudice due to lack of personal jurisdiction on April 25, 2006 (as to Horton) and remaining defendants on January 11, 2007.
10/23/06	<i>Missud and Julie Missud v. D.R. Horton et al.</i> (Super. Ct. S.F. City and County, 2006, No. CGC 06-457207). Complaint for fraud.	Dismissed due to lack of personal jurisdiction as to all defendants on February 20, 2007.
5/17/07	<i>Missud and Julie Missud v. D.R. Horton et al.</i> (N.D. Cal. No. 07-cv-2625-SBA). Complaint in federal court for breach of contract and fraud.	Dismissed for lack of personal jurisdiction, forum non conveniens, and statute of limitations on October 30, 2007 (the court's docket lists Missud as counsel for his wife, Julie Missud).
11/13/07	<i>Missud and Julie Missud v. D.R. Horton et al.</i> (Nevada County, Nevada, District Court Case No. A551662). Complaint for breach of contract, deceptive trade practices, defamation, and personal injury.	Court determined Missud was in contempt of court and should be sanctioned for abusive litigation tactics; case dismissed on October 4, 2010; Nevada Supreme Court affirmed dismissal.

Missud then initiated another round of lawsuits. This time, he asserted conclusory allegations of a conspiracy between Horton and numerous state and federal judges and magistrates, private neutrals, state and federal public officials and agencies, and opposing

counsel.² In the complaints, Missud listed unfavorable decisions against him by the defendants as evidence of collusion. Those three lawsuits were:

<i>Filed</i>	<i>Case Name / Cause of Action</i>	<i>Outcome</i>
1/19/10	<i>Missud v. D.R. Horton et al.</i> (N.D. Cal. No. 10-cv-235-SI). Claim in federal district court asserting Horton conspired with and purchased cooperation from each defendant.	Court dismissed claims against federal judges on grounds of absolute federal immunity and dismissed the remaining claims against other defendants without prejudice based on Missud's voluntary dismissal on April 2, 2010.
4/18/11	<i>Missud v. San Francisco Superior Court et al.</i> (N.D. Cal. No. 11-cv-1856-PJH). Complaint in federal district court asserting fraud in superior court's alternate dispute resolution system.	Dismissed with prejudice because claims were "implausible and/or woefully deficient" and amendment of complaint would be futile in light of judicial and Eleventh Amendment immunities on February 13, 2012; appeal dismissed by Ninth Circuit Court of Appeals.
7/20/11	<i>Missud v. State of Nevada, D.R. Horton et al.</i> (N.D. Cal. No. 11-cv-3567-EMC). Complaint in federal district court alleging public corruption and civil rights violations.	Court declared Missud a vexatious litigant and dismissed the action on March 22, 2012.

B. Two Courts Found Missud's Litigation Conduct Objectionable³

1. Nevada State Court Held Missud In Contempt

More than two years into the Nevada state court litigation, Horton and DHI brought the following motions against Missud: (1) for terminating sanctions and for costs and fees for

² Missud filed suit against five federal district court judges, two San Francisco Superior Court judges and a court-appointed mediator, a Nevada state district court judge and the discovery commissioner of Nevada's Eighth Judicial District Court of County of Clark, seven justices of the Supreme Court of Nevada, a special magistrate from South Carolina, and numerous California, Nevada, and Texas state officials and regulators. He also sued the State Bars of California, Nevada and Texas, the San Francisco Superior Court and ADR Services, Inc., the State of Nevada, the Eighth Judicial District Court of County of Clark, the Nevada Supreme Court, and the Securities and Exchange Commission and SEC Chair Mary L. Schapiro.

³ Generally, we give a strong presumption of validity to a civil court's findings if supported by substantial evidence. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) We find the civil court findings discussed below to be supported by substantial evidence.

discovery abuses and for personal threats against defense counsel; and (2) for a protective order to preclude Missud's continued posting of pleadings, discovery, and correspondence regarding the case on his websites.⁴ The sanctions motion was set aside as the parties stipulated to, and the court issued, a protective order (Stipulated Protective Order). As part of the Stipulated Protective Order, Missud agreed to immediately remove facts about the case from his various websites and to cease making attacks on Horton and the other defendants, their counsel, and the Nevada judiciary. Later, after a full evidentiary hearing, the court found that Missud had "knowingly and intentionally" violated the Stipulated Protective Order and that he was "knowingly and intentionally" in contempt of court. The court also found that he admitted to sending "threatening communications to witnesses and counsel in connection with this litigation." Based on these findings, the court found Missud in contempt, awarded defendants \$48,691.97 in fees and costs, and dismissed the case. Missud has not paid any portion of the fees.

2. Federal District Court Declared Missud a Vexatious Litigant

In the federal case pending before District Court Judge Edward Chen, Horton filed a motion to declare Missud a vexatious litigant and to impose a pre-filing order against him.⁵ The

⁴ Missud created and maintained numerous websites: drhortonfraud.com, drhortonhomelemon.info, drhortonhomeofhorrors.com, drhortonhomesstink.com, donalddomnitzisacrook.com, drhortonsucks.info, drhortonsjudges.com, and drhortoncouldhavekilledme.com. These sites targeted Horton and public officials and made extrajudicial and potentially prejudicial statements about pending litigation, Horton's counsel, and its employees.

⁵ Title 28 United States Code Section 1651(a) provides federal district courts with the inherent power to enter pre-filing orders against vexatious litigants. A pre-filing order is appropriate if: (1) plaintiff is given adequate notice and an opportunity to oppose the order; (2) the court compiles an adequate record for review; (3) the court makes substantive findings as to the frivolous or harassing nature of the litigant's actions; and (4) the order is narrowly tailored. (*Molski v. Evergreen Dynasty Corp.* (9th Cir. 2007) 500 F.3d 1047, 1057.)

court considered orders and filings from eight actions between Missud and Horton⁶ and made substantive findings as to the frivolous and harassing nature of Missud's actions.

First, the court found Missud's claims against Horton lacked "any credible factual basis," that he refused to comply with court rules and procedures in making his claims, and that his abusive tactics in the pending federal case were similar to those found by the Nevada state court. Second, the court concluded that Missud "appear[ed] to be motivated more by obtaining press for himself and imposing expense on Horton than by any legitimate claim for relief," citing Missud's communications with the press and a fax to Horton counsel stating his goal was to make things "horrendously expensive" for Horton. Third, the court found as harassment Missud's repeated attempts to sue Horton in California despite multiple court rulings that the company is not subject to personal jurisdiction here. Fourth, the court found he demonstrated "intent to continue frivolously litigating against [Horton] and others in spite of judicial rulings against him" and to continue harassing Horton and its affiliates and employees. Based on these findings, Judge Chen declared Missud a vexatious litigant and ordered him to provide a copy of any complaint against Horton for a pre-filing determination of whether the complaint should be accepted for filing.

C. Missud's Conduct During His Disciplinary Proceedings Was Outrageous

Missud has conducted himself without respect toward these disciplinary proceedings. In addition to the frivolous nature of his appeal, he proclaimed in his opening statement at trial: "There is no doubt that criminality runs rampant throughout the judiciary and that this Bar Court trial is being railroaded to lift my license." Then, over the course of his five-day hearing, he

⁶ The court reviewed materials from seven of the eight cases identified above. We did not consider the record for *Missud v. San Francisco Superior Court, et al.* (N.D. Cal. No. 11-cv-1856-PJH), as Horton was not a party to that litigation. The court also reviewed materials from a California state court suit initiated by Horton to domesticate the Nevada state court judgment in California.

failed utterly to refute the charges against him and, instead, spent hours railing against Horton, accusing judges and public officials, by name, of corruption, and referring to one judge as an “asshole.”⁷ Similarly, without any basis, Missud accused three of OCTC’s four witnesses⁸ of lying, insisted that the hearing judge initiate State Bar investigations against them and other attorneys, and threatened to have one witness criminally investigated. Finally, he threatened the State Bar prosecutor and State Bar Court judges with criminal prosecution.

III. CULPABILITY

A. Counts One and Two

OCTC charged Missud with maintaining an unjust action in violation of Business and Professions Code section 6068, subdivision (c)⁹ (Count One), and committing moral turpitude in violation of section 6106¹⁰ (Count Two). The hearing judge found Missud culpable on both counts. The two counts, however, are based on the same alleged vexatious litigation conduct. We find Missud committed moral turpitude, and dismiss Count One as duplicative. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little, if any, purpose is served by duplicate allegations of misconduct in State Bar proceedings].)

The record clearly and convincingly establishes that Missud has committed “serious, habitual abuse of the judicial system,” which constitutes moral turpitude. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186.) First, each of his lawsuits

⁷ Missud used profanity frequently throughout his disciplinary trial.

⁸ OCTC’s four witnesses were counsel for defendants: (1) James Wagstaffe for court-appointed mediator, Michael Carbone, (2) Horton’s Nevada counsel, Joel Odou; (3) Horton’s California counsel, Leonard Marquez, and (4) Colleen Ryan for ADR Services Inc.

⁹ Business and Professions Code section 6068, subdivision (c), provides that an attorney must maintain only those actions or proceedings that appear “legal or just.” All further references to sections are to the Business and Professions Code.

¹⁰ Section 6106 makes it cause for disbarment or suspension for an attorney to commit any act involving moral turpitude, dishonesty or corruption.

was fundamentally flawed due to personal jurisdiction issues, the lack of cogent legal claims or factual support, and/or the protection of immunities for certain defendants. Second, as observed by the judges involved, Missud routinely flouted pleading requirements, violated local court and procedural rules, brought frivolous appeals, flooded the courts with dozens of requests for judicial notice totaling thousands of pages, and engaged in abusive discovery and motions practice. For example, a federal district court judge stated: “the court has attempted — as have the defendants — to analyze the substance of plaintiff’s allegations, only to conclude that plaintiff’s stated claims are implausible and/or woefully deficient.” And a California Court of Appeal found: “Missud’s briefs contain no comprehensible legal argument as to why the order he challenges should be reversed.”

B. Count Three

The hearing judge found Missud culpable of violating rule 2-100(A) of the Rules of Professional Conduct.¹¹ We dismiss this count because clear and convincing evidence does not establish that Missud was representing a client, as opposed to himself only, when he repeatedly and knowingly communicated with Horton’s employees regarding the subject of the litigation. Nevertheless, this conduct constitutes harassment, and we consider it in aggravation.

C. Counts Four and Five

OCTC charged Missud with failure to obey a court order in violation of section 6103¹²(Count Four), and with committing moral turpitude in violation of section 6106 (Count Five) by deliberately violating the Stipulated Protective Order in the Nevada litigation.

¹¹ Rule 2-100(A) of the Rules of Professional Conduct provides: “While representing a client, a member shall not communicate directly or indirectly about the subject matter of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.” Missud represented his wife in one of the lawsuits he filed against Horton.

¹² Section 6103 prohibits an attorney from willfully disobeying a court order “requiring him to do or forbear an act connected with or in the course of his profession . . .”

The hearing judge found culpability on both counts. We dismiss Count Four because Missud appeared as a private litigant in the Nevada case, and no violation of section 6103 occurs where an attorney's noncompliance is not in the course of his profession. (*Maltaman v. State Bar, supra*, 43 Cal.3d at p. 950.) Noncompliance with a court order, however, constitutes moral turpitude if the attorney acted in bad faith, *even* in his private capacity. (*Id.* at pp. 950-951.) Missud's repeated violations of the Stipulated Protective Order, "committed willfully and in bad faith, suggest a lapse of character and a disrespect for the legal system [and] bear[s] directly on [Missud's] fitness to practice law" and constitute moral turpitude. (*Id.* at p. 951.) We, therefore, affirm the hearing judge's culpability finding on Count Five.

D. Count Six

OCTC charged Missud with failure to obey a court order by not paying any portion of the \$48,691.97 sanctions award. (§ 6103.) We dismiss this count because his ongoing failure to pay the sanctions order is in his private capacity. (*Maltaman v. State Bar, supra*, 43 Cal.3d at p. 950.) Instead, we consider this misconduct in aggravation.

E. Count Seven

Although the hearing judge found Missud culpable of Count Seven for failing to report sanctions to the State Bar in violation of section 6068, subdivision (o)(3), OCTC concedes it did not prove this charge. We agree and dismiss this count with prejudice.

IV. AGGRAVATION AND MITIGATION¹³

We find five factors in aggravation and assign significant weight to each factor. First, Missud committed multiple acts of misconduct. (Std. 1.5(b).) Second, he demonstrated a pattern of misconduct by repeatedly engaging in vexatious litigation for six years. (Std. 1.5(c); *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149, fn. 14, citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 [most serious instances of repeated misconduct over prolonged period of time characterized as pattern of misconduct].)

Third, Missud significantly harmed the public and the administration of justice. (Std. 1.5(f).) Not only did he force Horton and the other defendants to spend time and money defending themselves against baseless claims, but he also clogged the court system for manifestly improper purposes, thereby wasting scarce judicial resources. For example, Horton's California counsel Leonard Marquez testified: "Our attorney's fees and costs were substantial, responding to the extrajudicial activities of [Missud], counseling our clients on those matters, making the complaints to the State Bar, those all obviously took an incredible amount of time and effort." Marquez also testified that Missud's communications became increasingly harassing and overtly threatening, prompting enough concern that they were reported to the Oakland Police Department and the Federal Bureau of Investigation. Horton's Nevada counsel Joel Odou testified that one of his employees: "was basically an office person who was completely terrified that [Missud] was going to find out where she lived and harass her."

¹³ The appropriate discipline is determined in light of the relevant circumstances, including aggravating and mitigating factors. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) OCTC must establish aggravation by clear and convincing evidence (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5 [hereafter standards]), while Missud has the same burden to prove mitigating circumstances (std. 1.6). These standards reflect modifications effective January 1, 2014. Since this case was submitted for ruling in 2014, the new standards apply.

Fourth, Missud's misconduct is aggravated by his utter failure to accept responsibility for his actions. (Std. 1.5(g); *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [while law does not require Missud to be falsely penitent, it "does require that [he] accept responsibility for his acts and come to grips with his culpability. [Citation.]"]) And fifth, Missud's case is aggravated by his display of abusive and disruptive conduct throughout his disciplinary proceedings. (Std. 1.5(h) [lack of cooperation with State Bar during disciplinary proceedings]; see *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 45-46 ["[I]t is a violation of professional standards for counsel to indulge in offensive and demeaning remarks about judges in a spirit of reckless disregard for the truth".])

We adopt the hearing judge's finding that Missud did not prove any factors in mitigation.

V. DISCIPLINE¹⁴

Standard 2.7 provides that "Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law." We are guided by the Supreme Court's reasoning in *Lebbos v. State Bar, supra*, 53 Cal.3d at p. 45, and find it applies four-square in this proceeding: "Multiple acts of misconduct involving moral turpitude and dishonesty warrant disbarment. [Citations.] [Missud's] pattern of serious, recurrent misconduct is a factor in aggravation. [Citation.] Further, unrestrained personal abuse and disruptive behavior characterized [Missud's] conduct during the State Bar proceedings. [Citation.] Failure to cooperate with the State Bar during disciplinary proceedings itself may support severe discipline. [Citation.] It is evident that [Missud] has no appreciation that [his] method of

¹⁴ The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts, and the legal profession. (Std. 1.1.) Though both standards 2.7 and 2.15 apply, we apply standard 2.7 as it calls for the more severe sanctions. (See std. 1.7(a).)

practicing law is totally at odds with the professional standards of this state. Disbarment is thus necessary to protect the public, preserve confidence in the profession, and maintain high professional standards. [Citation.]”

Missud’s actions demonstrate that he is unfit to practice law. Disbarment is the only appropriate discipline given the magnitude of his misconduct; his disregard of professional standards; his disdain for the judiciary; the harm caused to Horton, the courts, and the public; his indifference to such harm; his demonstrated and unrepentant intent to continue his misconduct; and his deplorable behavior before the State Bar Court.

VI. RECOMMENDATION

We therefore recommend that Patrick Alexandre Missud be disbarred and that his name be stricken from the roll of attorneys licensed to practice in this state. We further recommend that he be ordered to comply with the provisions of rule 9.20 of the California Rules of Court and to 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’s order in this matter. Finally, we recommend that the State Bar be awarded costs in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

VII. ORDER OF INACTIVE ENROLLMENT

Because the hearing judge recommended disbarment, she properly ordered Missud to be involuntarily enrolled as an inactive member of the State Bar, as required by section 6007, subdivision (c)(4). The hearing judge’s order became effective on July 4, 2013, and Missud has

been on involuntary inactive enrollment since that time, and he will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

PURCELL, P. J.

I CONCUR:*

HONN, J.

* All other review and hearing judges appointed by the Supreme Court are disqualified under Code of Civil Procedure section 170.1(a)(6)(A)(i) or rule 5.155(F). Accordingly, this appeal was heard en banc with two judges constituting a quorum, pursuant to rule 5.155(D).