State Bar Court No. 16-J-17208

S262869

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re GREGORY MELVIN HAYNES on Discipline.

The petition for rehearing is denied. The order issued on October 14, 2020 imposing discipline is hereby amended in its entirety:

The court orders that Gregory Melvin Haynes (Respondent), State Bar number 111574, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and he is placed on probation for three years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first nine months of his probation;
2. Respondent must also comply with the other conditions of probation recommended by the Review Department of the State Bar Court in its Opinion filed on February 11, 2020; and
3. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Respondent must provide to the State Bar's Office of Probation proof of taking and passing the Multistate Professional Responsibility Examination as recommended by the Review Department in its Opinion filed on February 11, 2020. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Respondent must also comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension. Respondent must also maintain the records of compliance as required by the conditions of probation.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

CANTIL-SAKAUYE

Chief Justice

State Bar Court No. 16-J-17208

S262869

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re GREGORY MELVIN HAYNES on Discipline.

The petition for review is denied. The court orders that Gregory Melvin Haynes, State Bar number 111574, is suspended from the practice of law in California for two years, execution of that period of suspension is stayed, and he is placed on probation for three years subject to the following conditions:

1. Actual Suspension. Gregory Melvin Haynes is suspended from the practice of law for the first nine months of his probation.
2. Review Rules of Professional Conduct. Within 30 days after the effective date of this order, Haynes must (1) read the California Rules of Professional Conduct and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury attesting to his compliance with this requirement, to the State Bar Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.
3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions. Haynes must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
4. Maintain Valid Official State Bar Record Address and Other Required Contact Information. Within 30 days after the effective date of this order, Haynes must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. He must report, in writing, any change in the above information to the ARCR, within 10 days after such change, in the manner required by that office.
5. Meet and Cooperate with Office of Probation. Within 15 days after the effective date of this order, Haynes must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of this order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the period of probation, he must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court. During Haynes's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his office membership address as provided above. Subject to the assertion of applicable privileges, Haynes must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. Quarterly and Final Reports.

a. Deadlines for reports. Haynes must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Haynes must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation.

b. Contents of Reports. Haynes must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Haynes is directed to maintain proof of his compliance with the above requirements for each report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. State Bar Ethics School. Within one year after the effective date of this order, Haynes must submit to the Office of Probation satisfactory evidence of completion of the State Bar 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 that session. If he provides satisfactory evidence of completion of the Ethics School after the date of the State Bar Review Department opinion but before the effective date of this order, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. Commencement of Probation/Compliance with Probation Conditions. The period of probation will commence on the effective date of this order. At the expiration of the period of probation, if Haynes has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Gregory Melvin Haynes must also take and pass the Multistate Professional Responsibility Examination (MPRE) within one year of the effective date of this order and provide satisfactory proof of such passage to the State Bar Office of Probation within the same period. Failure to do so may result in automatic suspension. (Cal. Rules of Court, rule 9.10(b).) If he provides satisfactory evidence of completion of taking and passage of the MPRE after the date of the State Bar Review Department opinion but before the effective date of this order, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.

Gregory Melvin Haynes must also comply with the California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order. Failure to do so may result in disbarment or suspension. He must file a rule 9.20(c) affidavit even if he has no clients to notify on the date this order is filed.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless time for payment of discipline costs is extended pursuant to Business and Professions Code section 6086.10, subdivision (c), costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

CANTIL-SAKAUYE

Chief Justice

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

22 day of October 2020

Month

By: _____ Deputy

PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	16-J-17208
	)	
GREGORY MELVIN HAYNES,	)	OPINION
	)	
State Bar No. 111574.	)	
	)	

Gregory Melvin Haynes was disbarred by the United States District Court for the Northern District of California (Northern District) for professional misconduct in two client matters. Among other things, he failed to perform with competence, appeared without authority, violated court orders, and misled a judge. In this reciprocal disciplinary matter, a State Bar Court hearing judge found that Haynes's district court misconduct warranted discipline in California, and recommended an actual suspension of nine months.

Haynes appeals, asserting that the district court's culpability determinations do not warrant discipline in California. He also makes several constitutional arguments and disagrees with the hearing judge's disciplinary recommendation. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and asks that we affirm the judge's recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's finding that the misconduct found by the federal court warrants reciprocal discipline in California. We also find that Haynes failed to establish any constitutional violations in either the federal or the State Bar Court proceedings. Based on the facts and comparable case law, we find the judge's recommendation of a nine-month actual suspension to be appropriate discipline that will protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND IN STATE BAR COURT

On May 12, 2017, OCTC filed a Notice of Disciplinary Charges (NDC) charging Haynes with professional misconduct in a foreign jurisdiction under section 6049.1 of the Business and Professions Code.[1] Subdivision (a) of that section provides that a certified copy of a final order determining that a California attorney has committed professional misconduct in another jurisdiction is "conclusive evidence that the licensee is culpable of professional misconduct in this state . . . ." OCTC alleged that Haynes's misconduct in the district court constituted violations of sections 6068, subdivisions (b)-(d) and (i), 6103, 6104, and 6106, and rules 3-110(A), 3-500, 3-700(D)(1), and 5-200 of the Rules of Professional Conduct.[2] Since the district court's order was conclusive evidence that Haynes committed professional misconduct in California, the issues before the hearing judge were limited to (1) the degree of discipline to be imposed; (2) whether, as a matter of law, Haynes's professional misconduct in the district court would warrant discipline in California; and (3) whether the proceedings in the district court lacked fundamental constitutional protection. (§ 6049.1, subd. (b).) Haynes's burden was to establish that discipline is not warranted in California and that the district court proceedings lacked fundamental constitutional protections. (*Ibid.*)

Haynes filed a motion to disqualify the hearing judge, which was denied on July 14, 2017. He then filed a petition for interlocutory review of the order denying the motion to disqualify. On August 4, we denied his petition. The hearing judge then issued an order setting

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

[2] All further references to rules are to the Rules of Professional Conduct that were in effect from September 14, 1992, to October 31, 2018, unless otherwise noted. As ordered by the hearing judge, OCTC filed a supplemental pleading on July 10, 2017, specifying the language of the rule or statute violated in the district court and the corresponding California rule or statute that would have been violated by the misconduct in the foreign jurisdiction.

trial dates. Haynes subsequently filed a motion to dismiss the proceedings, which the judge denied on September 18.

Trial was held on September 25 and 26, 2017. The hearing judge issued her decision on January 12, 2018, finding that Haynes's culpability for misconduct in the district court warranted discipline in California under sections 6103, 6104, 6106, and 6068, subdivision (i), and rules 3-110(A), 3-500, 3-700(D)(1), and 5-200. She recommended a nine-month actual suspension.

Haynes filed a request for review on April 23, 2018. After multiple extensions of time granted by the Review Department, Haynes filed his opening brief on November 13, 2018. On January 8, 2019, he filed a motion in the Review Department, which we determined to be a posttrial motion. On January 16, pursuant to rule 5.151(C) of the Rules of Procedure of the State Bar of California, we transferred his motion to the Hearing Department and vacated his request for review. On May 8, the Hearing Department denied the motion. The current appeal is based on Haynes's second request for review, filed on June 12, 2019.

II. THE DISTRICT COURT PROCEEDINGS

A. Factual Background

1. The Cotterill Matter

In 2007, Cheryl Cotterill retained Haynes to represent her in connection with claims arising from her involuntary confinement for 10 days at San Francisco General Hospital in 2006. Haynes filed a complaint on her behalf, alleging federal civil rights and common law tort claims against a variety of defendants, including the City and County of San Francisco (the City), and the Regents of the University of California (the Regents). During the meet-and-confer stage of the litigation, Haynes refused to cooperate and responded with profanity and unprofessional

comments to emails from the Regents' counsel, R. Wesley Pratt. Pratt reported this conduct to the court, but the district judge declined to impose sanctions against Haynes at that time.

The defendants filed a motion for summary judgment, but Haynes failed to file an opposition brief before the August 31, 2009 deadline set by the court. On September 24, a district judge in the Northern District issued an order to show cause (OSC) why the action should not be dismissed for failure to prosecute. A response was due by September 29, but Haynes filed it on September 30, setting forth various reasons that he believed justified his failure to file a timely opposition. He did not inform Cotterill that the defendants had filed a summary judgment motion, that he had missed the deadline for filing the opposition, and that the district judge had issued the OSC.

On October 20, 2009, the district judge granted the City's motion for summary judgment, stating that Haynes's conduct during the prosecution of the case was "reprehensible." The order noted that Haynes had been sanctioned for discovery abuses and had repeatedly been late in filing his submissions.[3] The district judge found Haynes's conduct and submissions to be "consistently dilatory, rambling, and legally deficient." A final judgment was issued on October 21.

The City and the Regents filed motions for attorney fees and costs. Haynes did not inform Cotterill of the summary judgment ruling or the defendants' motions. Cotterill discovered the ruling while reviewing her case through the federal court's electronic public access service. She emailed Haynes on November 13, 2009, stating that she was "surprised" he had not contacted her to discuss the ruling. She also wrote that she did not want to appeal, nor did she want to pursue any action except a defense against the motions for fees and costs. Haynes emailed Cotterill on multiple occasions, advising her to file an appeal in order to negotiate with the defendants over the fees and costs. On November 18, she responded: "For the

[3] The district judge stated that the summary judgment motion was "fully-briefed," but that Haynes's response was filed "inexcusably late" and only as a result of the court's OSC.

second time, I do not want to file an appeal." The next day, without her authorization, Haynes filed a notice of appeal without informing her.

After Cotterill emailed Haynes that she knew he had filed a notice of appeal, Haynes replied that he had to file it so that the time to file would not have expired. He again urged her not to dismiss the appeal before she had obtained an agreement from the defendants regarding the costs and fees. On December 2, 2009, Cotterill responded that she understood his point, but did not agree, and that she wanted him to dismiss the appeal. Haynes did not dismiss it, so Cotterill herself filed a request to dismiss the appeal on December 22, which was granted on December 29. In January 2010, Cotterill emailed Haynes stating that he was no longer her attorney and asking him to return her file. When Haynes did not comply, Cotterill requested it again in March and in April.

Meanwhile, on March 10, 2010, a magistrate judge recommended that the award of costs against Cotterill be vacated and denied, but that sanctions be imposed against Haynes for the attorney fees. The magistrate judge found that Haynes's conduct in the litigation was vexatious and unreasonable, and that he had made numerous misrepresentations of fact to the court. The recommendation was adopted by the district judge, and sanctions against Haynes of $362,545.61 were awarded. Haynes appealed. On July 23, 2012, a Ninth Circuit Court of Appeals (Ninth Circuit) panel found that Haynes had engaged in a wide variety of incompetent and unprofessional actions during his representation of Cotterill. The panel remanded the case for determination whether the sanctions amount was excessive in light of Haynes's ability to pay, but it affirmed the sanctions order in all other respects.

2. The Landry Matter

In 2008, Marcus and Daniel Landry retained Haynes to represent them in connection with claims arising from alleged unlawful searches and seizures and use of excessive force by San

Francisco police officers and private security officers. Haynes failed to timely serve initial disclosures or responses to the defendants' discovery requests in March 2008. In June 2009, the magistrate judge issued an order awarding $1,000 in sanctions against Haynes personally for his failure to meet discovery obligations, and directing him to pay them by August 20. Haynes did not pay the sanctions by that date.

After a hearing on October 8, 2009, Haynes and two defense attorneys, Daniel Zaheer and Dirk Larsen, walked from the courtroom into the adjoining corridor to discuss discovery-related matters. During this discussion, Haynes flew into a rage, accosting Zaheer and shouting profanities at him. Zaheer feared for his personal safety and sought help. United States Marshals and Federal Protective Services (FPS) officers arrived on the scene, and Haynes yelled profanities at them too. The attorneys were separated and interviewed. Haynes resumed yelling profanities and several law enforcement officers escorted him out of the building. Codelle Phillimore, a bystander who did not know anyone involved in the incident, testified that Haynes stood very close to Zaheer—"close enough to kiss him"—while yelling profanities at him. She was frightened for Zaheer's safety from the events she observed.

On October 21, 2009, Zaheer wrote a letter to the district judge, asking that all future depositions be taken at the federal courthouse because of Haynes's behavior during the October 8 incident. Haynes filed a declaration in response to Zaheer's letter, claiming that the allegations were without factual support. He stated that "[t]he allegations of profane name calling is [*sic*] disproved," that he "did not lose his composure during the events of [October] 8, 2009," and that he "did not cause a disturbance." On November 20, the district judge advised that any further fighting would result in sanctions. The district judge denied the request to hold depositions at the federal courthouse, and he ordered that further disputes were to be brought to him, not the magistrate judge.

On December 28, 2009, the magistrate judge issued an order requiring the plaintiffs to provide discovery that they had failed to provide in response to interrogatories or in prior depositions. In addition to ordering supplemental depositions, the magistrate judge also ordered Haynes to pay $835 in sanctions to the defendants for half the cost of Marcus Landry's deposition, finding that Haynes "unreasonably multiplied these proceedings by obstructing and delaying" Landry's deposition. Haynes did not object to the December 28 order, but took the position that it was "null and void" because the district judge stated that disputes were to be brought directly to him. The defendants filed a request for clarification. On February 3, 2010, the district judge issued an order stating that, because the magistrate judge's December 28, 2009 order related to a dispute that was pending before the November 20 status conference, the December 28 order was to have "full force and effect."

Subsequently, the defendants attempted to meet and confer with Haynes, but he failed to respond. On February 26, 2010, the defendants filed a motion for terminating sanctions based on the plaintiffs' repeated failure to comply with court orders regarding discovery. On April 9, 2010, the district judge issued an order granting the motion for terminating sanctions and dismissing the case with prejudice.

On May 10, 2010, Haynes filed a notice of appeal. The Ninth Circuit initially set August 17 as the deadline for the plaintiffs to file their opening brief. Haynes then filed eight requests for extensions of time to file the brief. The last two requests were denied and, on September 12, 2011, the appeal was dismissed with prejudice for failure to prosecute.

B. Procedural Background in Federal Court's Disciplinary Proceeding

In February 2010, the chief trial attorney for the San Francisco City Attorney's Office wrote a letter to the chief judge for the Northern District, asserting that Haynes had committed professional misconduct in matters in which he had represented clients in cases adverse to the

City and County of San Francisco. Based on these allegations, the judge referred the matter to the Standing Committee on Professional Conduct for the United States District Court for the Northern District of California (Committee). During its investigation, the Committee twice requested an interview with Haynes, which he refused. The Committee subsequently issued a subpoena seeking Haynes's testimony at a deposition, but he refused to provide a time or place where the subpoena could be served on him. On October 14, 2010, the Committee filed a petition for an OSC why Haynes should not be removed from the bar of the Northern District. Due to a service error, a second petition for an OSC was filed in 2011.

The OSC hearing was held on February 29, 2012. The Committee filed a summary judgment motion on March 7. On April 6, Haynes filed a request for discovery to oppose the summary judgment motion. On July 6, the court denied his motion, finding that the proposed discovery was either unnecessary, as it was directed at issues that were not reasonably disputed, or irrelevant to the pending matter. The court decided that Haynes could not conduct depositions due to the allegations in the petition, Haynes's past conduct, and his "rambling, unfocused, semi-coherent responses to the court's questions." The court also addressed Haynes's procedural objections and determined that his due process rights were not violated and he was not prejudiced in any way. The court allowed Haynes to file another request for discovery, which he did on August 20. Again, the court denied his request to take depositions of witnesses. Instead, the court determined that it would conduct an evidentiary hearing where Haynes could question witnesses.

The evidentiary hearing occurred on October 16, 2012. The Committee called and Haynes cross-examined Zaheer, Phillimore, and Supervisory Deputy United States Marshal, Christian Hanson. Haynes called Larsen. After the evidentiary hearing, the court extended Haynes's deadline to file a response to the Committee's summary judgment motion. Haynes timely filed his opposition on December 10. The Committee filed its reply on December 18.

The court granted the Committee's summary judgment motion on March 22, 2013, and, in a 66-page opinion, disbarred Haynes from practicing in the Northern District.[4] In April 2013, Haynes filed a petition for review of the order of disbarment, and a three-judge panel was appointed to consider his petition. In February 2014, the panel affirmed the disbarment, found no bias or due process violations, and determined that the disbarment was supported by the record. Haynes appealed to the Ninth Circuit, which affirmed his disbarment on April 25, 2016. His petition for a panel rehearing was subsequently denied. Haynes then petitioned the Supreme Court of the United States for a writ of certiorari, which was denied on March 20, 2017.

C. Findings and Conclusions in Order Granting Motion for Summary Judgment

In its March 22, 2013 order, the district court found the evidence clear and undisputed that, with regard to Cotterill and the Landrys, Haynes failed to perform legal services with competence as required by rule 3-110. The court also found that he violated his professional duties as set forth in rules 3-500 and 3-700.[5]

As to Cotterill, the district court found it undisputed that Haynes failed to keep her advised of the progress of her case, including that he had failed to file a timely opposition to the motion for summary judgment, which necessitated the issuance of an OSC, and that the court had granted summary judgment for the defendants. The district court also found it undisputed that Haynes filed a notice of appeal in direct contravention to his client's written instructions, he failed to inform her that he filed the notice, and he failed to dismiss the appeal when she asked. Further, it was undisputed that Haynes failed to promptly release Cotterill's file despite her requests.

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[4] The court stayed the order of disbarment while Haynes filed a petition for review of the disbarment.

[5] Under the district court's Civil Local Rules, members practicing in the Northern District are required to comply with the standards of professional conduct imposed by the State Bar of California; comply with the local rules; practice with the honesty, care, and decorum required for the fair and efficient administration of justice; and discharge his or her obligations to his or her client and the court. (U.S. Dist. Ct., Local Civ. Rules, Northern Dist. Cal., rule 11-4(a).)

Regarding the Landrys, the district court found it undisputed that their case was dismissed at the district level because Haynes failed to comply with discovery obligations and orders of the court. The district court also found it undisputed that the appeal was dismissed because Haynes failed to file the opening brief, despite the granting of numerous continuances.

The district court also found the evidence clear and undisputed that Haynes "failed to practice law in the Northern District with the honesty, care, and decorum required for the fair and efficient administration of justice."[6] It also found that, in the *Cotterill* case, Haynes sent profane emails to opposing counsel. The court noted that Haynes's misconduct in *Landry* was underscored by the involvement of the marshals and the FPS officers during the October 8 incident. The district court found it undisputed that Haynes shouted profanities at Zaheer. It determined that, because of the consistent testimony of the four witnesses, the evidence showed that Haynes yelled at Zaheer, made threatening and abusive remarks,[7] and moved so close to him that Zaheer was forced to step backwards. Zaheer testified that he felt physically threatened, and Phillimore and Larsen testified they were afraid Haynes was going to strike Zaheer. The witnesses also confirmed that Haynes yelled at the court security officers when they arrived.

Additionally, the district court found it undisputed that Haynes failed to comply with his duty not to mislead a judge, in violation of rule 5-200 in the *Landry* matter, when he stated in a filed declaration that the allegations of profane name-calling were disproved, that he did not lose his composure during the October 8, 2009 incident, and that he did not cause a disturbance. The district court determined that Haynes's statements were "false, and designed to mislead the court, as was his overall description of the incident, which downplayed the use of profane and

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[6] The district court noted here that during a deposition in *Gillis v. City and County of San Francisco* (N.D. Cal.) Case No. C-08-3871 RS, Haynes repeatedly referred to opposing counsel as a "poor little white girl."

[7] Haynes disputed that his actions were abusive or threatening.

objectionable language and aggressive posturing." The district court also found that the evidence showed that Haynes failed to cooperate and participate in the disciplinary investigation, in violation of section 6068, subdivision (i), when he refused to meet with Committee members to discuss the allegations and when he refused to accept service of the deposition subpoena.

Ultimately, the district court determined that Haynes's failures to comply with his duties to his clients in the *Cotterill* and *Landry* matters provided sufficient grounds for disbarment. Moreover, the court determined that "the undisputed evidence reveals an ongoing pattern of failure to comply with court orders, failure to follow the rules of practice, and professional misconduct involving abusive and antagonistic behavior toward opposing counsel."

The district court noted that Haynes behaved in the disciplinary proceeding "in exactly the opposite way one would expect from an attorney whose conduct is being scrutinized by a peer review committee and the court." The court stated that Haynes repeatedly refused to cooperate with the Committee and made multiple requests for continuances of every deadline set by the court. The court described Haynes's work product as "sloppy, bordering on incomprehensible, and replete with typographical and grammatical errors, making it difficult for the court to even understand his arguments." Further, the court found that Haynes "has utterly failed to rehabilitate himself, and has demonstrated, time and again, a pattern of refusing to accept responsibility for his actions. Indeed, he has yet to even acknowledge that he has done anything improper. Rather, he has been quick to blame opposing counsel, the judges of this court, the Standing Committee, and his own clients for his professional shortcomings."

III. RECIPROCAL DISCIPLINE IS WARRANTED

The district court's final order is conclusive evidence that Haynes is culpable of professional misconduct in California. (§ 6049.1, subd. (a); *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 358 [under § 6049.1, State Bar Court accepts other

court findings of misconduct as conclusive].) To show that discipline is unwarranted, Haynes must establish that (1) as a matter of law, his professional misconduct in the district court does not warrant discipline in California or (2) the district court proceedings failed to provide him with fundamental constitutional protections. (§ 6049.1, subd. (b)(2) & (3).) On review, he has failed to prove either, and, instead, he has attempted to relitigate the district court's findings. His arguments that he is not culpable for misconduct are without merit.

Haynes also argues that we cannot accept the district court's culpability findings because they were not decided under our clear and convincing evidence standard. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind].) We reject this argument. The district court made its culpability findings based on undisputed evidence, and we may rely on findings from foreign jurisdictions with different evidence standards when considering culpability in reciprocal discipline cases.[8]

Based on the district court's culpability findings, the hearing judge determined that Haynes was subject to discipline for violations of sections 6103, 6104, 6106, and 6068, subdivision (i), and rules 3-110(A), 3-500, 3-700(D)(1), and 5-200.[9] We affirm the hearing judge's findings.

The district court specifically found that Haynes failed to perform with competence, in violation of rule 3-110(A); failed to keep clients reasonably informed about significant developments, in violation of rule 3-500; failed to promptly release a client file, in violation of

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[8] See *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 163 (where sufficient evidence exists in record to independently find culpability under clear and convincing evidence standard, argument that use by foreign jurisdiction of preponderance of evidence standard lacks merit).

[9] The hearing judge dismissed the remaining charges, as pleaded in the NDC, that Haynes's misconduct violated section 6068, subdivisions (b)–(d). OCTC did not appeal the dismissal of those charges, and we affirm the judge's dismissal of them.

rule 3-700(D)(1); misled a judge, in violation of rule 5-200; and failed to cooperate in a disciplinary investigation, in violation of section 6068, subdivision (i). These violations conclusively establish culpability in California. (*In the Matter of Jenkins, supra*, 4 Cal. State Bar Ct. Rptr. at p. 163.)

Based on the district court findings, the hearing judge also determined that Haynes was culpable of violating sections 6104[10] and 6106[11] by dishonestly filing a notice of appeal on Cotterill's behalf without her knowledge and in direct contradiction to her written instructions.[12] Additionally, the judge found culpability under section 6103[13] because Haynes failed to comply with multiple court orders. These conclusions are also based on undisputed evidence found in the district court, and therefore, conclusively establish culpability in California. (*In the Matter of Jenkins, supra*, 4 Cal. State Bar Ct. Rptr. at p. 163.)

IV. HAYNES'S CONSTITUTIONAL CHALLENGES HAVE NO MERIT

A. Section 6049.1 Is Constitutional

Haynes argues that section 6049.1 is unconstitutional on its face and as applied. He asserts that section 6049.1 does not allow for an "independent review" of the record because it does not permit introduction of evidence not included in the foreign jurisdiction nor does it allow the State

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[10] Section 6104 provides that an attorney can be disbarred or suspended for "[c]orruptly or willfully and without authority appearing as an attorney for a party to an action or proceeding."

[11] Section 6106 provides, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . constitutes a cause for disbarment or suspension."

[12] The hearing judge did not assign additional weight for the section 6104 violation as it was based on the same conduct as the section 6106 violation. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.) We agree.

[13] Section 6103 provides that, "A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

Bar Court to determine whether the culpability found in the foreign jurisdiction was proper. The State Bar Court is without jurisdiction to declare section 6049.1 unconstitutional as it is not a court of record. (Cal. Const., art. III, § 3.5.) However, in recommending a suspension or disbarment to the Supreme Court, we may recommend that a rule or statute be declared unconstitutional if "applicable legal principles and precedents" call for such action. (*In the Matter of Respondent B* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 424, 433, fn. 11.) We find no reason to recommend that section 6049.1 be declared unconstitutional since it evaluates (1) whether the proceedings in the foreign jurisdiction violated due process or other constitutional protections and (2) whether the conviction is supported by clear evidence. (See *Selling v. Radford* (1917) 243 U.S. 46, 50–51 [United States Supreme Court recognized discipline of Michigan Supreme Court where there was due process and proof as to facts giving rise to clear conviction]; *In the Matter of Jenkins*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 162–164 [§ 6049.1 provides full opportunity to litigate whether underlying discipline should be conclusive in California disciplinary proceeding].) Haynes's arguments regarding the facial constitutionality of section 6049.1 are without merit.

Further, Haynes has not demonstrated that the proceedings in this court under section 6049.1 were unconstitutional as applied to him. Under section 6049.1, we may rely on the proceedings in the district court unless Haynes shows that those proceedings lacked fundamental constitutional protections. (See *Selling v. Radford*, *supra*, 243 U.S. at p. 49 [loss of bar membership in one jurisdiction for personal and professional misconduct furnishes adequate reason for loss of bar membership in another jurisdiction].) As discussed below, Haynes has made no such showing.

B. District Court Proceedings Provided Fundamental Constitutional Protection

Haynes has the burden of proving that the district court proceedings "lacked fundamental constitutional protection." (§ 6049.1, subd. (b).) He argues that the Committee lacked statutory authority to investigate disciplinary matters, the district court failed to properly follow its own local rules, the assigned judge was biased and appointed in violation of his due process and equal protection rights, and the discipline was improper as it was based on a non-evidentiary hearing.

Haynes's statutory arguments fail as it is clear from the record that due process was followed in the district court. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' [Citations.]" (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.) Under rules 11-6 and 11-7 of the Civil Local Rules of the Northern District of California, the district court had the authority to refer the matter to the Committee, which filed a petition alleging misconduct by Haynes after conducting an investigation and attempting to interview him. The court subsequently issued an OSC based on the petition.

Haynes was given multiple opportunities to be heard by the court. He appeared and presented argument at the OSC hearing, requested discovery, participated in an evidentiary hearing, and filed an opposition to the Committee's summary judgment motion. The court held an evidentiary hearing and ultimately found the evidence to be clear and undisputed that Haynes committed professional misconduct. Haynes's generalized claims that the proceedings were biased do not establish that they lacked fundamental constitutional protection. (*In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219, 228 ["broadly diffuse strokes of unfairness charges" and generalized claims insufficient to show lack of fairness].) Haynes has failed to demonstrate that the district court proceedings lacked fundamental constitutional protection.

V. AGGRAVATION AND MITIGATION

Standard 1.5[14] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Haynes to meet the same burden to prove mitigation.

A. Aggravation

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

The hearing judge found aggravation for multiple acts of misconduct, but did not assign a weight. We agree and assign moderate weight for Haynes's multiple acts in the two client matters that underlie the district court's disbarment. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three wrongful acts considered multiple acts].)

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

The hearing judge found substantial aggravation for the harm Haynes caused his clients in the *Cotterill* and *Landry* matters. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) We agree. His misconduct resulted in his clients' cases being dismissed without adjudication on the merits. (*In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, 613 [attorney caused significant harm where clients' cases were dismissed due to his inaction].)

3. Indifference (Std. 1.5(k))

The hearing judge found Haynes's lack of insight into his own misconduct to warrant significant consideration in aggravation. We agree that his misconduct is aggravated by his failure to accept responsibility for his actions. (Std. 1.5(k); *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [while law does not require attorney to be falsely penitent, it "does require that [he] accept responsibility for his acts and come to grips with his culpability. [Citation.]"].) As discussed by the district court judge in her order granting the Committee's

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

motion for summary judgment, Haynes consistently blamed others for his actions, and he continues this approach on review. We assign substantial weight in aggravation to this factor.

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

The hearing judge concluded that it was not established by clear and convincing evidence that Haynes's misconduct rises to the level of a pattern under standard 1.5(c). We agree. (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217 [only serious instances of repeated misconduct over prolonged period of time evidence pattern of misconduct]; *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [pattern must involve serious misconduct spanning extended time period].)

5. Vulnerability of the Victim (Std. 1.5(n))

The high level of vulnerability of the victim is an aggravating circumstance. The hearing judge did not assign aggravation under standard 1.5(n), but OCTC asserts that it is appropriate because Haynes "himself acknowledged that his clients were vulnerable." However, OCTC does not cite where such a statement exists in the record, and we cannot find anything in the record to support OCTC's assertion. Consequently, OCTC did not prove by clear and convincing evidence that Haynes's clients were vulnerable victims.

B. Mitigation

1. No Prior Record of Discipline (Std. 1.6(a))

The hearing judge found one mitigating circumstance: Haynes's 26 years of discipline-free practice prior to the present misconduct. She determined that his lack of a prior record of discipline warrants "highly significant consideration in mitigation." Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [discipline-free record most relevant where misconduct is aberrational and unlikely to recur].) OCTC asserts that

less weight should be given to this factor as Haynes's misconduct was not aberrational and consisted of multiple acts of misconduct, including moral turpitude and harm to his clients. While we agree with OCTC that his misconduct was not aberrational, we look instead to Haynes's failure to accept responsibility for his actions, which gives us considerable doubt that his misconduct is unlikely to recur. Therefore, we reduce the weight for this circumstance and assign moderate weight in mitigation.

2. Haynes's Request for Additional Mitigation

Haynes asserts that he deserves mitigation credit for serving as the attorney in the *Cotterill* and *Landry* matters because they involved civil rights. However, no mitigation can be provided because Haynes failed to perform competently in these matters.

VI. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.11 is the most severe and

applicable,[15] providing for disbarment or actual suspension for an act of moral turpitude, dishonesty, fraud, or corruption.[16]

The hearing judge found guidance in *Matthew v. State Bar* (1989) 49 Cal.3d 784 and *In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73. She determined that Haynes's misconduct fell between the misconduct in *Matthew* (60 days' actual suspension) and *Peterson* (one-year actual suspension); therefore, she recommended a nine-month suspension.

We note that Haynes's misconduct also reflects an overall lack of civility. Since standard 2.11 calls for a broad range of discipline (from actual suspension to disbarment), we look to comparable case law for guidance to determine the appropriate discipline. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.) We find that *Peterson* is particularly useful in guiding our discipline recommendation.

Peterson failed to perform services competently and abandoned his clients' interests in three separate matters. In two of those matters, he also violated section 6106 when he dishonestly told his clients that he had filed suit on their behalf when he had not. Peterson was also culpable of failing to cooperate in a State Bar investigation, in violation of section 6068, subdivision (i), when he did not answer four letters from a State Bar investigator inquiring about complaints made against him. While Peterson committed misconduct in one more client matter than Haynes, the misconduct was similar. They both failed to competently represent their clients, which caused significant client harm. Peterson and Haynes both failed to cooperate in a disciplinary investigation and were dishonest with their clients regarding the status of their cases. However, Peterson had more aggravation than Haynes, and Haynes established one mitigating circumstance where Peterson established none. Further, Haynes practiced law for approximately 26 years

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[15] The hearing judge misnumbered this standard in her decision.

[16] Standards 2.7(b) (actual suspension for performance violations in multiple client matters) and 2.12(b) (reproval for violation of § 6068, subd. (i)) are also applicable.

without any discipline prior to the present misconduct, while Peterson practiced for only six years before his misconduct began. Accordingly, we find the hearing judge's determination appropriate that the discipline in this matter should be less than in *Peterson*. Considering the standards, the comparable case law, and the facts of this matter, we affirm the hearing judge's recommendation of a nine-month actual suspension.

VII. RECOMMENDATION

For the foregoing reasons, we recommend that Gregory Melvin Haynes, State Bar No. 111574, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for three years with the following conditions:

1. **Actual Suspension.** Haynes must be suspended from the practice of law for the first nine months of his probation.

2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Haynes must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with his first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Haynes must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation.

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Haynes must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Haynes must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Haynes must schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, he may meet with the probation case specialist in person or by telephone. During the

probation period, Haynes must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During Haynes's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, he must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official membership address, as provided above. Subject to the assertion of applicable privileges, Haynes must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports**

a. Deadlines for Reports. Haynes must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Haynes must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Haynes must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Haynes is directed to maintain proof of his compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of his actual suspension has ended, whichever is longer. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Haynes must submit to the Office of Probation

satisfactory evidence of completion of the State Bar 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 will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Haynes will nonetheless receive credit for such evidence toward his duty to comply with this condition.

9. **Commencement of Probation/Compliance with Probation Conditions.** The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Haynes has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VIII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Gregory Melvin Haynes be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).) If he provides satisfactory evidence of taking and passage of the MPRE after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this condition.

IX. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Haynes be ordered to comply with the requirements of California Rules of Court, rule 9.20, 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 order imposing discipline in this matter.[17] Failure to do so may result in disbarment or suspension.

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[17] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Haynes is required to file a rule 9.20(c) affidavit even if he has no

X. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment. Unless time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

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clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is cause for, inter alia, disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)