Eastman on Discipline

Supreme Court of California

April 15, 2026, Opinion Filed

S292011

Reporter
2026 Cal. LEXIS 1897 *; 2026 LX 164394

In re JOHN CHARLES EASTMAN on Discipline.

Notice: DECISION WITHOUT PUBLISHED OPINION

Prior History: [*1] No. SBC-23-O-30029.

Eastman on Discipline, 2025 Cal. LEXIS 6602 (Sept. 4, 2025)

Opinion

Petition for review denied; disbarred. The petitions for review are denied.

The court orders that John Charles Eastman (Respondent), State Bar Number 193726. is disbarred from the practice of law in California and that Respondent's name is stricken from the roll of attorneys.

Respondent must comply with California Rules of Court, rule 9.20, and perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date this order is filed. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45, 184 Cal. Rptr. 728, 648 P.2d 950 [the operative date for identification of clients being represented in pending matters and others to be notified is the filing date of this order].) Failure to do so may result in denial of any future application for reinstatement. (Cal. Rules of Court, rule 9. 20(d).)

Respondent must pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary' sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law.

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, and may be collected by the State Bar through any means permitted by law.

Any monetary requirements imposed in this matter shall be considered satisfied or [*2] waived when authorized by applicable law or orders of any court.

End of Document

FILED M2
June 13, 2025
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER—DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-23-O-30029
	)	
JOHN CHARLES EASTMAN,	)	
	)	OPINION
State Bar No. 193726.	)	
	)	

In a democracy nothing can be more fundamental than the orderly transfer of power that occurs after a fair and unimpeded electoral process as established by law. In this disciplinary matter, we consider the appropriate discipline to recommend to the California Supreme Court when an attorney, who has sworn to uphold the laws and constitutions of the State of California and the United States, attempts to actively undermine the results of an election to the most powerful office in the United States with the goal of delaying or invalidating the lawful installation of his client's electoral opponent and thereby keep his client in office.

The Office of Chief Trial Counsel of the State Bar (OCTC) charged respondent John Charles Eastman with 11 counts of misconduct arising from his actions surrounding the representation of President Donald J. Trump (President Trump) and his campaign during the 2020 presidential election. Following 34 days of trial, the hearing judge found Eastman culpable on 10 of the 11 counts. While finding that Eastman's actions were mitigated by "his many years of discipline-free practice, cooperation, and prior good character," the judge found his wrongdoing was "substantially aggravated by his multiple offenses, lack of candor[,] and

indifference." She concluded Eastman's actions constituted "a fundamental breach of an attorney's core ethical duties," and that "his unwillingness to acknowledge any ethical lapses regarding his actions [demonstrated] . . . a significant risk that Eastman may engage in further unethical conduct, compounding the threat to the public." Based on the record established at trial, the judge recommended disbarment.

Eastman appeals the hearing judge's recommendation. He disputes all of the judge's culpability findings: that he failed to uphold the United States Constitution and laws of the United States by conspiring with others, including President Trump, to obstruct the electoral count on January 6, 2021, in violation of title 18 United States Code (U.S.C.) section 371 (count one); seeking to mislead the Supreme Court of the United States (U.S. Supreme Court) by filing a motion to intervene in a case brought by the State of Texas (count two); seeking to mislead a United States district court by the filing of a verified complaint (count four); and making multiple misrepresentations to former Vice-President Michael Pence (former Vice-President Pence), his counsel, and to the general public who watched, heard, or read Eastman's statements on a January 2, 2021 "Bannon's War Room" podcast, at the "Stop the Steal" rally on January 6, and in an article he wrote that was published on January 18, "Setting the Record Straight," (counts three and five through ten). Eastman also asserts free speech protections under the First Amendment to the United States Constitution (First Amendment) and claims due process violations premised on a combination of adverse pretrial rulings and the way in which the judge conducted the trial. Finally, Eastman disputes one aggravation finding made by the judge and argues the judge did not properly balance the aggravating and mitigating circumstances. Hence, if culpability is affirmed, he argues less discipline is warranted.

OCTC appeals the hearing judge's decision on three grounds but supports the discipline recommendation of disbarment. First, for counts five and seven, OCTC seeks a clarification that

Eastman's misrepresentations were intentional, stating the judge described Eastman's misrepresentations in various places of both counts as intentional, grossly negligent, and reckless. Second, OCTC seeks culpability for count eleven, which the judge dismissed based on the finding that no evidence existed in the record showing Eastman's statements contributed to the assault and breach of the United States Capitol as alleged by OCTC. Finally, OCTC asserts that the judge should have assigned aggravation for significant harm.

Upon our independent review (Cal. Rules of Court, rule 9.12), we reject Eastman's First Amendment defenses and his various due process claims. We find Eastman is culpable on all counts of misconduct, except count eleven. We further find Eastman's conduct in counts five and seven was intentional. We affirm the hearing judge's mitigation and aggravation findings, except we find less weight for Eastman's absence of a prior record of discipline. The record does not support aggravation for significant harm as argued by OCTC. Due to the serious nature and extent of Eastman's misconduct and the weight of aggravating circumstances in relation to mitigation, we recommend that Eastman be disbarred. Disbarment is necessary to protect the public, the courts, and the legal profession.[1]

I. PROCEDURAL BACKGROUND

OCTC filed the Notice of Disciplinary Charges (NDC) on January 26, 2023. The NDC alleged 11 counts of misconduct relating to Eastman's representation of President Trump during and after the 2020 presidential election. Eastman was charged with one count of failing to support the Constitution and laws of the United States (Bus. & Prof. Code, § 6068, subd. (a));[2]

[1] Any arguments raised on review, but not specifically addressed in this opinion, have been considered and rejected. Additionally, any factual error not raised on review is waived by the parties. (Rules Proc. of State Bar, rule 5.152(C).) All further references to rules are to the Rules of Procedure of the State Bar of California unless otherwise noted.

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

two counts of seeking to mislead a court (§ 6068, subd. (d)); and eight counts of moral turpitude through misrepresentations or other acts of dishonesty or corruption (§ 6106). Eastman filed his response on February 15. The parties filed their joint pretrial statement on June 5 followed by a stipulation to undisputed facts on June 12. Additional stipulations regarding exhibits were filed on October 27 and December 1.

A 34-day trial commenced on June 20, 2023.[3] Approximately seven motions in limine were filed by the parties. Although the hearing judge issued numerous and significant pretrial and trial rulings, neither party sought interlocutory review of those rulings. The parties thereafter submitted closing briefs, and the judge issued a decision on March 27, 2024. OCTC and Eastman timely filed requests for review. Oral argument was held on March 19, 2025.

II. EASTMAN'S DUE PROCESS RIGHTS WERE NOT VIOLATED

Eastman raises three issues on review, claiming his due process rights were violated.[4] We begin our discussion of his arguments by noting that, "[t]he 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.) "Due process" includes the right to be adequately notified of charges or proceedings, the right for an opportunity to be heard at those proceedings, and the right to have an impartial person or panel make the final decision in the proceedings. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 267-268, 271.) In sum, Eastman's due process entitlement in this disciplinary proceeding was to a "fair hearing." (*In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 501, citing *Rosenthal v. State Bar*

[3] Trial occurred June 20-23 and 29-30; August 24-25; September 5-8, 12-15, and 26-29; October 3-4, 6, 17-20, 23-24, and 30; and November 2-3, 8, and 13.

[4] While Eastman makes repeated references to "due process," we presume he is specifically invoking language from the Fourteenth Amendment to the United States Constitution, which prohibits any state from depriving "any person of life, liberty, or property, without due process of law . . . ."

(1987) 43 Cal.3d 612, 634.) Here, Eastman specifically contends that the trial proceeding lacked an impartial adjudicator; he was unable to compel testimony of out-of-state witnesses and refused an opportunity to substitute witnesses; and bias occurred in the conduct of the trial. After our review of the record and as detailed below, we conclude that Eastman indeed received a fair hearing and thus his due process violation claims lack merit.

A. Eastman's Trial Did Not Lack an Impartial Adjudicator

Eastman contends that his discipline matter involves "an intensely[ ]partisan dispute over a presidential election," and "several indicia" demonstrate a "lack of impartiality." Eastman claims OCTC's decision to file charges against him was triggered by "an activist organization" and OCTC's Chief Trial Counsel and prosecutors assigned to his case are all registered Democrats who should have been recused. He argues that, because his case is political and not "the run-of-the-mill disciplinary [case]," it should have been adjudicated by an electoral commission or similar committee with bipartisan membership. He further asserts that three of the five Hearing Department judges, including the hearing judge who presided over his case, are appointed by partisan elected officials and made political donations in support of former President Joseph R. Biden, Jr. (former President Biden) or the Democratic Congressional Campaign Committee. These concerns, according to his briefs, raise an unconstitutional potential for bias.

In essence, Eastman, who challenges how State Bar Court judges are appointed, seeks a different adjudication system for his matter.[5] In his pursuit to make his disciplinary case political, Eastman ignores the salient fact that he was a licensed California attorney at the time of

[5] Several points raised by Eastman about the appointment process are based on facts outside of the record and Eastman failed to request judicial notice or file a request to augment the record. (Rule 5.156(B), (C).)

his misconduct. His license to practice is subject to the jurisdiction of the California Supreme Court, which Eastman does not dispute. Section 6079.1 provides that, of the five judges of the State Bar Court Hearing Department, two shall be appointed by the Supreme Court of California (California Supreme Court), one by the Governor, one by the Senate Committee on Rules, and one by the Speaker of the Assembly. The statute's constitutionality was upheld by the California Supreme Court a quarter of a century ago:

> "[A]lthough this court's inherent authority over attorney admission and discipline includes the power of this court to appoint the judges of the State Bar Court and to specify their qualifications, other appointment mechanisms specified by the Legislature are permissible so long as they are subject to sufficient judicially controlled protective measures to ensure that such appointments do not impair the court's primary and ultimate authority over the attorney admission and discipline process. . . . [B]ecause of our continuing primary authority over the operations of the State Bar Court—including the appointment of that court's judges—and the numerous structural and procedural safeguards, described herein, that exist both within the attorney discipline system and within the State Bar Court appointment process established by this court, we conclude that the legislation here at issue, providing that some of the hearing judges shall be appointed by the executive and legislative branches . . . does not defeat or materially impair our authority over the practice of law, and thus does not violate the separation of powers provision."

(*Obrien v. Jones* (2000) 23 Cal.4th 40, 44.) Thus, in this disciplinary matter, we find no due process violation has occurred from the appointment process of State Bar Court judges.[6]

Eastman next contends that the assigned hearing judge made political donations to Democratic candidates or causes, which Eastman states are his political opponents. As Eastman's contention is premised on facts outside the trial record, and no request for judicial

[6] Eastman argues that the current process for appointing hearing judges is "anathema to due process." The State Bar Court is without jurisdiction to declare the appointment process unconstitutional. (Cal. Const., art. III, § 3.5.) However, in recommending a suspension or disbarment to the California 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 decline to make such a recommendation.

notice or to augment the record was sought, his contention fails and is rejected. Even if the facts as asserted were in the record, his claim would fail. Canon 5 of the California Code of Judicial Ethics states, "Judges . . . are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity that may create the appearance of political bias or impropriety." Eastman infers that the judge's campaign donations to a candidate must equate to the political activity of an organization who subsequently receives funds from the candidate, thus creating an appearance of bias or impropriety, but he offers no authority for this unreasonable interpretation of the canon. Eastman even recognizes canon 5(A)(3), which provides, in relevant part, that judges may make monetary contributions to a political party, organization, or candidate that do not exceed certain limits. Eastman makes no allegation that the judge failed to comply with the limits in canon 5(A)(3), only that the judge's donations here "may create the appearance of political bias or impropriety," but he states he does not argue that "judges should be required to relinquish their political party affiliations and not donate to campaigns."

In the end, Eastman states his case is unique, calling it "the most politicized disbarment proceeding in California's history," but his belief is not evidence nor does it create an appearance of impropriety regarding the hearing judge. Because he identifies no evidence other than his subjective belief, we reject his claims of bias as speculative and conclusory. (*In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 226.)

Beyond his claims of judicial bias, Eastman also asserts that the Chief Trial Counsel and OCTC prosecutors involved in his disciplinary matter are biased because they are registered Democrats, including one who donated to former President Biden's 2020 campaign. Based on this information, Eastman contends that rule 2201(a)(2) requires the recusal of OCTC because OCTC's participation "creates an appearance" of partiality and likely unfair treatment. Once

again, Eastman's arguments are based on facts outside of the record. Further, under the plain language of rule 2201(a)(2), the State Bar of California's Board of Trustees has delegated to the Chief Trial Counsel the discretion to determine if OCTC can function "in an evenhanded manner" and otherwise provide "that an attorney will receive fair treatment." No evidence exists in the record that the Chief Trial Counsel failed to properly exercise his discretion.

B. Eastman's Due Process Violation Claims Regarding His Witnesses Fail

Eastman makes two contentions regarding his proposed witnesses that he claims affected his due process rights. First, he was unable to compel testimony from out-of-state witnesses due to rule 5.62[7] and section 1989 of the Code of Civil Procedure.[8] Second, the hearing judge refused to allow him to substitute new witnesses on behalf of designated witnesses in the pretrial conference statement who had withdrawn after learning they were potentially implicated in ongoing investigations by the United States Department of Justice (DOJ) and other investigative agencies.

A judge has broad discretion to admit or exclude evidence. (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 499.) The standard of review we apply to procedural rulings is abuse of discretion or error of law. (*In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454, 461.) An abuse of discretion occurs when a judge has "exceeded the bounds of reason, all of the circumstances before it being considered." (*H. D.*

---

[7] Rule 5.62 provides, "Any party may issue trial subpoenas under Business and Professions Code §§ 6049(c) and 6085 and Code of Civil Procedure § 1985. And any party may compel another party to testify or produce documents at trial by serving a notice to appear under Code of Civil Procedure § 1987."

[8] California Code of Civil Procedure section 1989 provides, "A witness, including a witness specified in subdivision (b) of Section 1987, is not obliged to attend as a witness before any court, judge, justice or any other officer, unless the witness is a resident within the state at the time of service." California Code of Civil Procedure section 1987 details the process for service of the subpoena, including required fees and time to prepare for travel and attendance.

Arnaiz, Ltd. v. County of San Joaquin (2002) 96 Cal.App.4th 1357, 1368.) Of particular importance here, Eastman must also show actual prejudice resulting from the ruling. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [to prevail on claim of error for procedural ruling, abuse of discretion and actual prejudice resulting from ruling must be established]; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [party must establish actual prejudice when asserting violation of due process].)

Eastman has failed to demonstrate any actual prejudice regarding either generalized contention. His arguments on appeal are brief and conclusory. Eastman did not explain how any witness that was beyond the reach of a subpoena or the late-disclosed replacement witnesses would have provided admissible and relevant evidence at his trial. On this basis, we reject his arguments as presented on appeal. (*Wells v. State Bar* (1978) 20 Cal.3d 708, 715 ["casual claims of prejudice are insufficient to warrant relief"]; cf. *Jones v. State Bar* (1989) 49 Cal.3d 273, 288-289 [no due process violation when failure to call witnesses was based on attorney's lack of due diligence].)

C. Eastman's Generalized Claims of Bias in the Conduct of the Trial Also Fail

Eastman claims on review that the hearing judge exhibited bias during these proceedings in the following circumstances: (1) hostility towards Eastman or his witnesses resulting in prejudgment of the issues; (2) a clear pattern of arbitrary and selective admission or exclusion of evidence favoring OCTC or prejudicing Eastman, including the unjustified exclusion of U.S. Supreme Court briefs from state attorneys general and legislators and the disparate treatment in admission of post-January 2021 evidence; and (3) political partisanship as evidenced by the judge's disparate treatment of witnesses based on political affiliation. In support of Eastman's alleged claims, he cites to numerous examples in the record. Upon our review of the record, we find no support for his allegations of bias, which we detail, *post*.

Eastman's general theme here is his belief that "blatant partisan bias" and "double standards" influenced the hearing judge's rulings. As the U.S. Supreme Court has stated,

> "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. [Citation.] . . . [T]hey . . . can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. . . . Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge."

(*Liteky v. U.S.* (1994) 510 U.S. 540, 555.) Our rules state that "[t]he hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time." (Rule 5.104(F); accord, *In the Matter of Farrell*, *supra*, 1 Cal. State Bar Ct. Rptr. 490, 499.) Further, a judge has the discretion to preclude irrelevant lines of questioning. (*In the Matter of Lucero* (Review Dept., Aug. 13, 2024, SBC-21-O-30658) 6 Cal. State Bar Ct. Rptr __.) Eastman's complaints of bias due to the judge's active participation in the proceeding ignores the principle that, while a judge's "questioning must be temperate, nonargumentative, and scrupulously fair," a judge "has both the discretion and the duty to ask questions of witnesses, provided this is done in an effort to elicit material facts or to clarify confusing or unclear testimony. [Citations.]" (*People v. Cook* (2006) 39 Cal.4th 566, 597.)

We have reviewed the multiple citations Eastman has referenced from the record in his opening brief and his arguments to support his claims. Contrary to Eastman's assertions that the hearing judge "routinely badgered and harassed" him, or otherwise mischaracterized or ignored his or the other witnesses' testimonies, our review reveals the record is replete with instances of the judge requiring compliance with trial rules and procedures. For example, the record shows Eastman's counsel required continuous reminders to ask non-leading questions of Eastman's

own witnesses.[9] Additionally, counsel tried on numerous occasions over the course of the trial to elicit expert testimony from his percipient witnesses, notwithstanding the fact that his attempts were well past the expert witness disclosure date. These witnesses included retired Wisconsin Supreme Court Justice Michael J. Gableman, Garland Favorito,[10] John Droz, and Raymond M. Blehar.[11] Finally, Eastman's counsel repeatedly attempted to admit exhibits that had previously been excluded without stating that a reconsideration of a prior ruling was sought or continued to question witnesses about an exhibit even when the judge had denied admission of the exhibit. That the judge may have at times expressed frustration with Eastman's and his counsel's actions and statements is understandable upon review of the complete record.

Further, Eastman's assertions that the hearing judge "prohibited [him] from presenting any evidence postdating January 2021," and "not a single one of the dozens of [his] post-January . . . 2021 exhibits" was admitted, while OCTC was permitted to admit such evidence, are not supported by the record. We note that in his reply brief, Eastman conceded the judge did admit some but not "much" of his 2021 evidence. Based upon our review of the record, we find Eastman's allegations of bias in the exclusion and admission of post-January 2021 evidence lack

---

[9] OCTC's summary of approximately 90 instances of sustained objections or the judge's directives to ask non-leading questions is consistent with our review of the record.

[10] Favorito, discussed *post*, is a retired Georgia information technology professional whose educational background includes a certification in computer programming. Favorito testified that just prior to retirement he was a systems development methodology consultant and had worked with "Big Eight" accounting firms. Favorito volunteered for about two decades in Georgia elections as a poll worker and audit and recount monitor. He had never been a paid expert for election-related issues. He was a cofounder of VoterGA, a volunteer organization that proposes legislative changes to address what it perceives as "verifiability" and "auditability" issues, and he pursues election-related litigation.

[11] To work around State Bar Court procedure rules, Eastman argued the witnesses were "nonretained experts" and therefore allowed pursuant to Code of Civil Procedure section 2034.310, subdivision (b). In March 2023, Eastman identified roughly 600 witnesses in this category, which led the hearing judge to conclude the designation was not made in good faith.

support in the record and, therefore, he has not established an abuse of discretion and resulting prejudice. (*In the Matter of Aulakh*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 695.)

Eastman also argues the hearing judge exhibited bias when she denied admission of U.S. Supreme Court amicus briefs and motions filed by state attorneys general and legislators in *State of Texas v. Commonwealth of Pennsylvania, et al.* (2020) 141 S.Ct. 1230 (*Texas v. Pennsylvania*), detailed *post*, but admitted OCTC exhibits consisting of opposition briefs filed by the defendant states in that action. First, Eastman does not specifically identify on review the briefs that should have been admitted or the relevance of each denied exhibit, and he has not sought in his appeal to admit any denied exhibit. Whether others adopted or repeated inaccurate and untrue information in their own court filings in *Texas v. Pennsylvania* is not probative of whether Eastman committed the charged misconduct. As for the judge admitting the briefs filed by the defendant states, at a minimum, we see no actual prejudice to Eastman by the judge's admission of those briefs. On this issue and after review of the record, Eastman has not established an abuse of discretion or any resulting prejudice, let alone bias. (*In the Matter of Johnson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 241.)

Eastman additionally claims that the judge showed political partisanship and bias because he was not allowed to ask an OCTC witness if he was a Democrat. In contrast, Eastman argues that OCTC was allowed to ask a witness if Georgia Secretary of State Brad Raffensperger was a Republican. We see this difference not due to bias but due to the relevance of the issue at trial. Specifically, Raffensperger's political affiliation was relevant to count six, detailed *post*, and its allegations of Eastman's misrepresentation in his January 3, 2021 memorandum that the election was stolen by a "strategic Democrat[ic] plan." The fact that Raffensperger, an elected *Republican* party official, upheld the election outcome in Georgia was contrary to Eastman's claim and, therefore, that official's political affiliation was relevant.

After a thorough review of the record, we see no legally cognizable bias as Eastman has argued. The hearing judge exercised appropriate trial and courtroom management. We reject his arguments on this issue entirely.

III. FACTS AND ANALYSES ESTABLISHING EASTMAN'S CULPABILITY[12]

A. Introduction

Eastman's actions between October 2020 and January 2021 regarding the 2020 presidential election were multifaceted; thus, conduct charged in various counts frequently overlaps. Hence, we have organized our discussion based on factually related charges. We, however, do not compartmentalize Eastman's conduct into isolated events when examining the record for evidence of his knowledge and intent. (See *U.S. v. Brown* (1978) 578 F.2d 1280, 1286 [trier of fact entitled to regard evidence as a whole and to consider all surrounding relevant circumstances in evaluating presence or absence of specific intent].)

The facts are based on the trial testimony, documentary evidence, stipulated facts, and the hearing judge's factual and credibility findings, which are entitled to great weight. (Rule 5.155(A); *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 638 [deference given to credibility findings absent specific showing that such findings were erroneous].) After independently examining the record and the weight of the evidence, we affirm the judge's factual and credibility findings as supported by the record. (See *Coppock v. State Bar* (1988) 44 Cal.3d 665, 676-677 [sufficiency of evidence].) Given the voluminous record, we have summarized the facts, but, where necessary for our analyses, we provide

[12] All affirmed culpability findings have been established by clear and convincing evidence. Clear and convincing evidence demonstrates a high probability that a fact is true. (*In re White* (2020) 9 Cal.5th 455, 467, citing *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090; *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].)

additional details. Therefore, we do not repeat the judge's description of the general electoral process, including the Electoral College, and the application of the Twelfth Amendment to the United States Constitution (Twelfth Amendment), and the Electoral Count Act (ECA),[13] including the required January 6, 2021 joint session of the United States Congress (Joint Session).[14]

As a matter of initial background to our discussion of the individual counts, Eastman's attorney-client relationship with President Trump and the Trump campaign (Campaign) began approximately in September 2020, following President Trump's request for the formation of an "Election Integrity Working Group" to prepare for any post-election litigation. For the first few months that he worked with the Campaign, Eastman acted informally with no written agreement between him and President Trump or the Campaign. His early contributions included research into state election codes in anticipation of an election challenge.

Following the November 2020 election, Eastman's representation of President Trump and the Campaign was formalized in a December 5, 2020 engagement letter, received by Eastman the next day (engagement agreement). The scope of Eastman's representation included "federal litigation matters in relation to the 2020 presidential general election, including election matters related to the Electoral College."[15] Eastman was paid for a portion of his work even

---

[13] Title 3, United States Code, chapter 1. The ECA was first enacted in 1887 and was most recently amended following the events of January 6, 2021.

[14] To the extent either party referred to or relied on materials outside the trial record in making their arguments, we have not considered those materials as no request for judicial notice (rule 5.156(B)) or to augment the record (rule 5.156(C)) was made. Similarly, we have not considered any cited exhibit that was excluded at trial where review of a particular exhibit's exclusion had not been sought, nor have we considered withdrawn exhibits. (Rules 5.151.2, 5.156.)

[15] Eastman testified that in the first week of December he was asked by President Trump in a phone call to consider representing him in a potential original action to be filed in the U.S. Supreme Court.

though the engagement agreement stated Eastman volunteered his services. Nevertheless, Eastman testified that he did not recall keeping records regarding his time and did not remember whether he kept notes of the work he completed pursuant to the engagement agreement. Eastman did not recall taking notes about the consultation work he did on other election-related litigation in various states. As discussed *post*, Eastman maintained a spreadsheet to track election-related claims and litigation across the country, not just the matters in which he was personally involved. However, regarding the scope of vice-presidential power in the Joint Session electoral vote tally when acting as the President of the United States Senate, Eastman did not take notes or catalogue his research. He was unable to provide an estimate of how much time he spent on such research.

B. Eastman Attempted to Mislead Two Courts in December 2020 (§ 6068, subd. (d))

1. Eastman Files Intervention Motion in U.S. Supreme Court Case

On December 7, 2020, the State of Texas filed in the U.S. Supreme Court a motion for leave to file a bill of complaint against its sister states Georgia, Michigan, Pennsylvania, and Wisconsin (collectively "defendant states") in *Texas v. Pennsylvania*. The bill of complaint (Texas complaint) was included in the motion for leave. Eastman testified that he had some involvement in drafting the Texas complaint and read at least one draft before it was filed.

The Texas complaint, with attachments, exceeded 100 pages and requested, inter alia, that the U.S. Supreme Court declare the defendant states had unconstitutionally administered the 2020 presidential election and that any electoral college votes cast by the defendant states not be counted. Texas also requested injunctive relief to prevent the use of the 2020 election results to appoint presidential electors to the Electoral College or to certify those presidential electors. To support its prayer for relief, the Texas complaint alleged that "rampant lawlessness [arose] out of

[the] Defendant States' unconstitutional acts," and described in detail the acts that occurred. It also alleged the "unconstitutional modification of statutory protections designed to ensure ballot integrity, [which] created a massive opportunity for fraud" in the defendant states. Texas also claimed, inter alia, that the defendant states violated the "Electors Clause" of the United States Constitution[16] when the defendant states implemented non-legislative changes that nullified or ignored state election statues governing the appointment of presidential electors in those states. More specifically, according to Texas, the defendant states used the pandemic as a "justification . . . [to usurp] their legislatures' authority and unconstitutionally [revise] their state's election statutes," and changes were made by "executive fiat or friendly lawsuits thereby weakening ballot integrity."[17] Hence, the defendant states were inundated "with millions of ballots to be sent through the mails, or placed in drop boxes, with little or no chain of custody and, at the same time, [the defendant states] weakened the strongest security measures protecting the integrity of the vote—signature verification and witness requirements." In sum, Texas asserted that significant grounds existed to question whether the presidential election outcomes in the defendant states were legitimate. Thus, Texas sought to extend the December 14, 2020

[16] Article II, section 1, clause 2 of the United States Constitution provides, "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

[17] As one example of the problems that existed in the Texas complaint, Texas alleged that Pennsylvania officials adopted "differential standards" in heavily Democratic counties to maximize a Democratic party advantage in order to benefit former President Biden. Texas cited to a November 18, 2020 case filed by the Campaign in the United States District Court for the Middle District of Pennsylvania to support this particular allegation. However, Texas failed to disclose that the action was dismissed without leave to amend days after it was filed. The United States Court of Appeals for the Third Circuit upheld the dismissal in short order, which was also not disclosed.

deadline for certification of presidential electors so investigations could take place in those states.

The U.S. Supreme Court quickly dismissed the Texas complaint for lack of standing on December 11, 2020. In the few days between the filing and dismissal of the motion for leave, Eastman filed a motion to intervene to file a bill of complaint on behalf of President Trump (intervention motion).[18] Eastman's December 9 filing expressly adopted the Texas complaint's allegations as its own.[19] The intervention motion became moot with the U.S. Supreme Court's dismissal of the motion for leave.

2. Eastman Files Action in Federal District Court

On December 31, 2020, Eastman and cocounsel Kurt Hilbert filed a verified complaint by President Trump in the United States District Court for the Northern District of Georgia (*Trump v. Kemp*, No. 1:20-CV-5310 (N.D. Ga.) (*Kemp* action)). The *Kemp* action expressly incorporated a previously filed action in Fulton County, Georgia, entitled *Trump v. Raffensperger* (*Raffensperger* action),[20] and its supporting documents, including the expert declarations of Bryan Geels, Matthew Braynard, and Mark Davis. The *Kemp* action included allegations that Georgia election officials permitted numerous categories of unqualified individuals to vote, and that ballots "hidden" in "suitcases" at the State Farm Arena tabulation

[18] The pleading was entitled, in relevant part, "Motion of Donald J. Trump, President of the United States, to Intervene in his Personal Capacity as Candidate for Re-Election, Proposed Bill of Complaint in Intervention."

[19] Specifically, paragraph 8 of Eastman's bill of complaint in the intervention motion states, "Plaintiff in Intervention . . . incorporates by [reference] the allegations of paragraphs 1-134 set out in the Bill of Complaint filed by the State of Texas."

[20] The *Raffensperger* action, No. 2020CV343255, filed on December 4, 2020, was premised, in part, on an assertion that substantial doubt existed regarding the Georgia election results due to systemic misconduct, fraud, and other election irregularities. Eastman provided "a little bit" of legal advice on the *Raffensperger* action.

center in Atlanta, Georgia were counted outside the presence of observers in violation of state law. Eastman saw his role in the litigation as limited to constitutional issues. Eastman testified that he believed the responsibility for factual accuracy fell to his cocounsel, and Eastman deferred to Hilbert's factual assessments.

Weeks before Eastman filed the *Kemp* action, the *Raffensperger* action expert declarations[21] had been challenged by Georgia's experts, including a submission by the Elections Director for the Georgia Secretary of State's Office and a Massachusetts Institute of Technology professor with elections and research methodology expertise. Eastman believes he read all the defense expert declarations submitted in the *Raffensperger* action prior to filing the *Kemp* action, but Eastman saw these as falling within a "typical" scenario of disputing experts—part and parcel of the adversarial process. Eastman further rationalized that enough "caveats" existed in the *Kemp* pleading and declarations to "make the statements all true." In addition, Eastman testified that he had some questions about the Davis declaration and its omission of when Davis obtained database information, but Eastman went ahead and submitted it in support of the *Kemp* action thinking it could be cured or even withdrawn later.

Prior to Eastman filing the *Kemp* action, investigative personnel within the Georgia Secretary of State's Office concluded their investigation regarding the allegation of ballots

[21] In general terms, Geels's December 1, 2020 declaration asserted that over 66,000 voters were underage when they registered to vote. Geels was a certified public accountant, and his declaration did not disclose any experience in political science, statistics, or election administration. In Braynard's declaration, he asserted that almost 5,000 absentee voters were no longer Georgia residents, another 15,700 voters "may have" left their residences as evidenced by a national change of address registry, and in excess of 1,000 absentee voters used a post office box as a registration address. Braynard held a bachelor's degree in business administration and a Master of Fine Arts in writing. He had experience as a political consultant and with nonprofit voter registration organizations. In 2016, Braynard was a director of the Campaign's data division. Davis purported to do an analysis of Georgia voter records and the National Change of Address Registry.

hidden in suitcases at the State Farm Arena. Following witness interviews and review of videotape footage, investigators concluded no suitcases of ballots had been hidden and ballots were not improperly counted. The investigation's results were detailed in a declaration filed December 6, 2020, in a different federal case challenging the election. Eastman admitted to having seen the declaration but could not recall when. The State Farm Arena video covered a 24-hour period; however, Eastman watched only a 15- to 20-minute excerpt at the time he filed the *Kemp* action. Prior to his filing the *Kemp* action, Eastman knew Georgia officials had issued statements, and he read information provided by the Georgia Secretary of State's Office regarding the State Farm Arena video.

Days before the *Kemp* action was filed, Eric Herschmann, an attorney in the Office of White House Counsel, told Eastman there were inaccuracies in the complaint filed in the *Raffensperger* action, including "evidence proffered by the experts."[22] Subsequently, Eastman and Hilbert agreed to insert a footnote that, in essence, rendered President Trump's required verification meaningless as it was a broad disclaimer of President Trump having any personal knowledge of the facts and figures contained in the complaint. The footnote concluded with "Plaintiff has not sworn to any facts under oath for which he does not have personal knowledge or belief," notwithstanding his disclaimer that he had no personal knowledge. The *Kemp* action

[22] Eastman testified at trial that Herschmann "raised a concern . . . that some of the numbers *may* have been inaccurate." (Italics added.) In fact, Eastman was very clear in an exchange with the hearing judge that Herschmann told him that inaccuracies "may" have existed in the *Raffensperger* action allegations. However, a review of the email that Eastman wrote to his cocounsel Hilbert and another person on December 31, 2020, just before the *Kemp* action was filed, does not state "may" but makes clear that Eastman believed that inaccuracies existed, including "evidence proffered by the experts," to the point that Eastman was concerned about possible criminal liability, and he and Hilbert drafted a verification footnote that President Trump signed to address those concerns, discussed *post*. Contrary to Eastman's assertion that he did not share Herschmann's view that the expert declarations contained inaccuracies, we conclude that Eastman's trial testimony on this point is not credible given Eastman's December email and his action in drafting President Trump's verification footnote.

was voluntarily dismissed on January 7, 2021, following the settlement of the *Raffensperger* action.

3. Eastman's Two Court Filings Violate Section 6068, subdivision (d) (Counts Two and Four)

The NDC charged violations of section 6068, subdivision (d), based on Eastman's actions in his intervention motion (count two) and the *Kemp* action (count four). Section 6068, subdivision (d), imposes a duty upon attorneys to not seek to mislead a judge "by an artifice or false statement of fact or law." (See *Bach v. State Bar* (1987) 43 Cal.3d 848, 855-856 [representations made in motion that attorney knew were false violated §§ 6068, subd. (d), 6106].) Section 6068, subdivision (d), can be violated by either making knowingly false statements or material omissions, and OCTC need not show that an attorney's attempt at deception was successful in order to establish a willful violation. (*Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240, citing *Pickering v. State Bar* (1944) 24 Cal.2d 141, 144-145 [presenting facts to a court "known to be false presumes an intent to secure a determination based upon" those facts and "is a clear violation of [§ 6068]"]; *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162-163 [attorney's contention that failure to disclose material information is irrelevant when court should have known undisclosed information is "untenable" and supports violation of § 6068, subd. (d)].) Whether Eastman violated section 6068, subdivision (d), is dependent upon clear and convincing evidence of his intent to deceive. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174-175.) A defense to a section 6068, subdivision (d), charge is an attorney's good faith in making the charged false statement. (*Vickers v. State Bar* (1948) 32 Cal.2d 247, 253-254; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280.)

In our review of counts two and four, front of mind is the longstanding principle that "Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense." (*Paine v. State Bar* (1939) 14 Cal.2d 150, 154.) "Counsel should not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice." (*Furlong v. White* (1921) 51 Cal.App.265, 271.) Eastman conceded at trial he had an obligation to verify the substance contained in his filings. Yet, his testimony attempted to minimize the scope of his duty when pressured by time constraints or when he deemed something in his pleadings to be "preliminary" or "setting the stage."

a. Culpability Established in Count Two

In count two of the NDC, Eastman was charged with violating section 6068, subdivision (d), when his intervention motion filed with the U.S. Supreme Court adopted certain false and misleading statements contained in the Texas complaint, knowing the charged assertions were false. The hearing judge found no culpability for two of the four charged statements.[23] Hence, we turn to the two remaining allegations set forth in count two (paragraphs 36(a) and (b)) and find sufficient evidence of culpability in the record. Regarding the NDC's paragraph 36(a), Eastman was charged with knowing the assertions in the Texas complaint, that there was "'rampant lawlessness arising out of Defendant States' unconstitutional acts,'" and that "'[t]aken together, these flaws affect[ed] an outcome-determinative numbers of popular votes in a group of States that cast outcome-determinative numbers of electoral votes,'" were false and misleading. OCTC alleged Eastman was aware "[t]here was no evidence upon which a

[23] The hearing judge found Eastman was not culpable for the allegations set forth in count two, paragraphs 36(c) and (d). OCTC did not appeal and we affirm.

reasonable attorney would rely of [*sic*] fraud in any state election in sufficient numbers that could have affected the outcome of the election." Regarding paragraph 36(b), OCTC charged Eastman knew the Texas complaint's assertions that statewide and local election officials in two Pennsylvania counties "'violated Pennsylvania's election code and adopted . . . differential standards favoring [Democratic] voters in [those two counties] with the intent to favor former Vice[-]President Biden,'" were also false and misleading. Here too, OCTC alleged that Eastman knew no evidence existed in those counties upon which a reasonable attorney would rely to support such a claim.

As detailed by the hearing judge, Eastman knew the claims of "rampant lawlessness" in at least Georgia, Michigan, and Pennsylvania were false. Moreover, Eastman's intervention motion repeatedly concealed material information. We highlight here a few examples of the evidence that most clearly support a culpability finding related to paragraph 36(a) of count two.

As a starting point, Eastman maintained a spreadsheet of election-related litigation, which he testified was utilized to track litigation across the country. Eastman ignored various statements regarding the election, such as former United States Attorney General William Barr's December 1, 2020 conclusion that insufficient evidence existed of widespread outcome-determinative fraud. Eastman also believed that statements from the Cybersecurity and Infrastructure Security Agency (CISA) about the integrity of the 2020 election were "laughable."[24]

[24] CISA is part of the United States Department of Homeland Security and is one of the entities tasked with protecting election infrastructure. Jonathan Marks, the Deputy Secretary for the Department of State for the Commonwealth of Pennsylvania testified that he considered CISA to be "credible" and one of the state's "'federal partners' in ensuring that elections are secure and safe."

Next, Eastman's knowledge that no "rampant lawlessness" existed, which changed the outcome of the 2020 election, is illustrated by an email exchange about Georgia with Cleta Mitchell.[25] In their late November 2020 exchange, Eastman stated, in order to "trigger" post-election legislative action in Georgia, "a failure to conduct the election . . . in accord with the statutory requirements" would have to be shown. To make the "extraordinary" request palatable to the legislature, Eastman opined that "compelling evidence of fraud" would be needed. Eastman implicitly acknowledged that such evidence did not exist, because he concluded, "[I]t would be nice to have actually hard documented evidence of the fraud in the areas to which the analyses pointed."[26] Thus, Eastman knew his intervention motion's adoption from the Texas complaint about "rampant lawlessness" in Georgia was without evidentiary support.

Further, Eastman also knew that Georgia's statutory election provisions had been followed lawfully. Before his email exchange with Mitchell, *Wood v. Raffensperger, et al*., No. 1:20-CV-04651 (N.D. GA) (*Wood* case) was filed, which was a motion for a temporary restraining order (TRO) that included a challenge to a settlement agreement, into which the Georgia Secretary of State had entered months earlier in order to resolve litigation and set forth procedures to review absentee ballot signatures. Those procedures had been used in at least three elections prior to the November 2020 election with no challenges. The TRO had been denied by a federal district court judge[27] and the denial was affirmed on December 5, 2020, by the United

[25] According to Eastman, Mitchell was an attorney tasked by President Trump in September 2020 to recruit people to handle potential election challenges and was also one of the people tasked to coordinate the Georgia litigation.

[26] Quoted material from the record may include spelling and grammatical errors from the original source.

[27] The federal district court judge denied Wood's injunction request on multiple grounds. Relevant to our count two discussion, the judge found that the settlement agreement met constitutional requirements and that his evidentiary claims related to the settlement agreement were "not supported by evidence at this stage."

States Court of Appeals for the Eleventh Circuit. In his December 9 intervention motion, Eastman challenged the same settlement agreement at issue in the *Wood* case and alleged the Georgia Secretary of State had "destructively revis[ed] signature and identity verification procedures," and that the settlement agreement was an impermissible change to election law designed to benefit former President Biden. However, Eastman failed to disclose the dismissal of the *Wood* case and its reasoning, along with the denial of the appeal, to the U.S. Supreme Court in his intervention motion. Eastman's assertion was baseless. We find his failure to disclose pertinent information presumes an intent to mislead the court. (*Vickers v. State Bar*, *supra*, 32 Cal.2d at pp. 252-253, citing *Pickering v. State Bar*, *supra*, 24 Cal.2d at pp. 144-145.)

Turning to Michigan, Eastman stated at trial he was "vaguely aware" of election illegality claims in Michigan and two other states at the time, but "didn't have the particulars." Months before Eastman's intervention motion was filed, a lower Michigan state court rejected claims that the Michigan Secretary of State did not have the authority to send absentee ballot applications to all registered voters. Eastman knew the ruling was affirmed by an appellate court on September 16, 2020.[28] Yet, his intervention motion claimed the Secretary of State "illegally flooded the state with absentee ballot applications mailed to every registered voter" in spite of strict state law limits. Weeks after the dismissal of the Texas complaint by the U.S. Supreme Court, Eastman was still looking for evidence of election law violations in Michigan. On January 2, 2021, Eastman emailed an attorney for information about election law violations to use at an upcoming presentation to legislators. Eastman asked if anything "went on in Michigan that fits the bill?" Given his evasive testimony, along with his January 2 email, we conclude that Eastman never possessed at any time reliable information about Michigan election law

[28] Eastman also knew the Michigan Supreme Court ultimately denied review.

violations, and his adoption of the Texas complaint's allegations regarding Michigan was also baseless.

Regarding events in the two Pennsylvania counties as alleged in paragraph 36(b), the Texas complaint referred to a second amended federal court complaint filed in *Donald J. Trump for President, Inc., et al. v. Kathy Boockvar, et al.*, No. 4:20-CV-02078 (M.D. Pa., Nov. 18, 2020) (*Boockvar* case).[29] However, Eastman's intervention motion failed to mention that the *Boockvar* case was dismissed on November 21, 2020, and the United States Court of Appeals for the Third Circuit affirmed the dismissal the next week.[30] Eastman's omission is consistent with his earlier failure to disclose in the *Wood* case as discussed, *ante*. Eastman knew about the *Boockvar* case as it was listed on the first page of his election-related litigation spreadsheet. Again, we find his failure to disclose pertinent information presumes an intent to mislead the court. (*Vickers v. State Bar*, *supra*, 32 Cal.2d at pp. 252-253, citing *Pickering v. State Bar*, *supra*, 24 Cal.2d at pp. 144-145.)

Eastman also adopted the Texas complaint's allegations that Pennsylvania "unilaterally abrogated" several signature verification statutes without its legislature's ratification of these changes. This allegation was based on a settlement in another legal case,[31] resulting in Boockvar's September 11, 2020 revised guidance regarding the handling of certain absentee

---

[29] At all relevant times, Kathy Boockvar was the Secretary of State of the Commonwealth of Pennsylvania.

[30] *Donald J. Trump for President, Inc. v. Boockvar* (M.D. Pa. 2020) 502 F.Supp.3d 899, affd. *sub nom*. *Donald J. Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania, et al.* (3d Cir. 2020) 830 Fed.Appx. 377. This case involved the Campaign's challenge to, inter alia, the counting of certain absentee ballots and claims that poll watchers were blocked. The Campaign only appealed the district court's dismissal of the second amended complaint without leave to amend.

[31] *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT, (E.D. Pa. Aug. 7, 2020).

ballots. Both Eastman's intervention motion and the Texas complaint failed to advise the U.S. Supreme Court that the Pennsylvania Supreme Court had ruled in October 2020 that the challenged guidance was consistent with that state's election laws.[32] Eastman knew that the dismissal occurred as he had worked on the unsuccessful U.S. Supreme Court certiorari petition and the case was referenced on the first page of his litigation spreadsheet.[33] Eastman's failure to include adverse rulings demonstrates a violation of section 6068, subdivision (d). (*In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 174 [concealment of material fact is just as effective as false statement in misleading judge and violates § 6068, subd. (d)].)

Eastman argues that the dismissal of the *Boockvar* case for lack of standing and jurisdictional issues means no fact-based adverse ruling exists that can support a disciplinary charge. That argument misses the mark. A jurisdictional ruling does not abrogate an attorney's duty to refrain from misleading a court. To find to the contrary would undermine the purpose of section 6068, subdivision (d).[34] Additionally, the Michigan and Pennsylvania supreme courts are the final authority on state law in their respective states. The U.S. Supreme Court generally does not review state law determinations unless federal issues are implicated. (*Kansas v. Marsh*

---

[32] *In re November 3, 2020 General Election* (2020) 662 Pa. 718, cert. den. *sub nom. Donald J. Trump for President, Inc. v. Degraffenreid* (2021) __ U.S. __ [141 S.Ct. 1451, 209 L.Ed.2d 172].

[33] Eastman offered his spreadsheet at trial as an exhibit and testified about the steps he took to track litigation across the country when he was working for the Campaign. On review, he asserts that because OCTC did not establish when he compiled the spreadsheet, the hearing judge was wrong to conclude that he knew the federal courts had rejected claims of irregularities when he filed his intervention motion. We do not find Eastman's argument persuasive here, given the record and Eastman's testimony that he tracked cases before creating the spreadsheet.

[34] Similarly, we reject Eastman's related argument that, because the U.S. Supreme Court made no ruling on the merits and it did not find the allegations were untrue, no culpability finding can be established here. Eastman did not have to be successful in deceiving the U.S. Supreme Court to be culpable for a willful violation of section 6068, subdivision (d). (*Davis v. State Bar*, *supra*, 33 Cal.3d at pp. 239-240.) The operative fact is what Eastman placed before the court, not the result.

(2006) 548 U.S. 163; *Huddleston v. Dwyer* (1944) 322 U.S. 232.) While the intervention motion raised federal constitutional issues, it challenged the same provisions that the Michigan and Pennsylvania supreme courts had already determined were not misapplied.

Eastman argues the NDC's failure to specifically allege that he omitted the *Boockvar* case's Pennsylvania Supreme Court decision precludes it from being used as a basis for culpability. This contention is without merit.[35] The NDC must provide an attorney fair notice of the nature of the charges. (*In re Ruffalo* (1968) 390 U.S. 544, 551; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929; see also § 6085 [attorneys "shall be given fair, adequate and reasonable notice" of disciplinary charges against them].) The salient issue is whether the attorney has a reasonable opportunity to prepare a defense. (Compare *Sullins v. State Bar* (1975) 15 Cal.3d 609, 618 [no "miscarriage of justice" where respondent had "sufficient notice to eliminate prejudicial surprise in the preparation of his defense"] with *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387, 397 [failure to charge violation of rule against conflicts of interest precluded argument that fee agreement provision created conflict of interest and thus violated rule].) Count two specifically identified that a violation of section 6068, subdivision (d), was charged for adopting certain Texas complaint allegations in Eastman's intervention motion. The NDC, at paragraph 38(b), further alleged Eastman knew the Texas complaint's claim, that Pennsylvania election officials violated their state's election codes in order to leverage a historical Democratic party advantage with the intent to benefit former

[35] Eastman's related point that he included an internet address in his intervention motion, which identified "all of the election cases that had been brought addressing various challenges to the 2020 election," does not absolve him of responsibility to inform a court about the relevant subsequent history of any case that he cites to support his or the Texas complaint's allegations. We also reject Eastman's argument that he is not culpable because his failure to correct the Texas complaint's allegations only "'left the impression' that no court had resolved" the *Boockvar* case and such an impression is analogous to an inference that must be resolved in his favor. Such an argument is contrary to well-established precedents cited above.

President Biden, was false and misleading as there "was no evidence upon which a reasonable attorney would rely" to support the claim.

Eastman had sufficient notice of the charge and his failure to disclose the Pennsylvania Supreme Court's determination, that the challenged guidance was consistent with Pennsylvania state law, is simply evidence used to prove the allegation. Overall, we find the record establishes culpability for the allegation made in paragraph 38(b) of count two.

b. Culpability Established in Count Four

In count four, the NDC charged that Eastman sought to mislead a court by willfully making multiple knowingly false allegations in the *Kemp* action filed in federal district court in violation of section 6068, subdivision (d). These allegations included the incorporation of the *Raffensperger* action's accusations that Georgia engaged in fraudulent or unlawful actions involving several categories of unqualified persons who were allowed to vote and accepting votes cast by deceased voters. In addition, count four also quoted Eastman's allegation that Fulton County election officials "'remove[d] suitcases of ballots from under a table where they had been hidden, and processed those ballots without open viewing in violation of [state law].'" The hearing judge found the allegations to be false and made with actual knowledge that Eastman intended to deceive the federal district court. Upon our review of the record, sufficient evidence exists of Eastman's attempt to mislead the federal district court to support culpability for count four.

First, we find an attempt to mislead regarding the false allegations that Georgia engaged in fraudulent or unlawful actions involving several categories of unqualified persons who were allowed to vote and accepted votes cast by deceased voters. The *Kemp* action incorporated the

Raffensperger complaint and its supporting expert declarations,[36] and the record shows Eastman knew there were serious factual errors by the experts, and this issue was made known to him before the *Kemp* action was filed. Once Herschmann made Eastman aware of inaccuracies, the record shows that Eastman did nothing to rectify the problem, except to create a footnote that would render Georgia's complaint verification requirement useless in an attempt to avoid potential criminal responsibility. The December 31, 2020 email and the resulting footnote show that Eastman had actual knowledge that the *Kemp* action contained false information,[37] or, at the very least, he was willfully blind to the inaccuracies after Herschmann raised them.[38]

Next, we consider the *Kemp* action's allegations regarding the hidden suitcases of ballots that were improperly counted. Like the hearing judge, we also find this allegation to be false,

---

[36] We reject Eastman's argument that the hearing judge erred in her assessment of the expert declarations. Eastman argues at length that it was improper for the judge to perform a "gatekeeping" analysis pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) 509 U.S. 579 as to those experts. The judge, as the trier of fact, was required to examine the evidence and decide whether the charged statements in the *Kemp* action violated section 6068, subdivision (d). Because the *Kemp* action incorporated the complaint and supporting documents filed in the *Raffensperger* action, the judge was required to examine it all. Hence, the judge had to resolve whether the allegations in count four were based on information upon which a reasonable attorney could rely. This is a factual finding and not *Daubert* "gatekeeping." We also reject Eastman's arguments that the judge failed to give "serious consideration" to Favorito's opinions, whose testimony was allowed only as a percipient witness.

[37] Given our finding, we reject Eastman's argument that "the allegations of outcome-determinative illegality/irregularity woven into the fabric of the complaint were, at the very least, tenable."

[38] Willful blindness is the legal equivalent to actual knowledge. (See *In the Matter of Carver* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 427, 432-433 [willfully ignoring evidence of ineligibility in committing unauthorized practice of law supported culpability finding of intentional moral turpitude].) The doctrine of willful blindness requires two elements: (1) the defendant must subjectively believe that there is a high probability that a fact exists; and (2) the defendant must take deliberate actions to avoid learning of that fact. (*Global-Tech Appliances, Inc. v. SEB S.A.* (2011) 563 U.S. 754 769.) Here, both elements are satisfied as noted, *ante*. Although Eastman argues we have not previously applied willful blindness to a section 6068, subdivision (d), charge, we find our prior application of the concept in establishing moral turpitude for intentional acts sufficiently analogous under the facts presented here.

and we note that, at trial, Eastman agreed with OCTC that "the ballots under the table" at the State Farm Arena "were not a surreptitiously hidden suitcase of ballots, but were actually regular absentee ballots in a regular processing container." Prior to the filing of the *Kemp* action, Eastman had seen a 15- to 20-minute portion of the full video at the State Farm Arena, and he was aware of the Georgia Secretary of State's statements regarding the video that did not support the allegation. Based on the video excerpt he did see and knowing the statements from the Georgia Secretary of State, we can only conclude that, at the very least, Eastman was willfully blind to the falsity in his assertion in the *Kemp* action that hidden suitcases of ballots were improperly counted at the State Farm Arena. Eastman attempts to dissuade us from finding culpability by arguing that the "gravamen" of the allegation was the "illegal counting of the ballots outside the presence of poll watchers." This point is a red herring. While the *Kemp* action did allege that ballots were counted without poll watchers present, the fact remains that the allegation was also comprised of false information about ballots.

Eastman raises multiple general defenses to count four, which we have reviewed, but none persuade us to reverse the hearing judge's culpability finding. We find Eastman's challenges are not supported by the record, and we focus our discussion on his two primary arguments. First, Eastman presents a "division of labor" defense. He claims his role was to address the constitutional issues and that he reasonably relied on his cocounsel Hilbert, who was responsible for the factual allegations. We find this defense unpersuasive under the facts of this case. (Cf. *Cole v. Patricia A. Meyer & Associates, APC* (2012) 206 Cal.App.4th 1095, 1100, 1117 [division of labor between counsel is no defense to malicious prosecution and defamation claims].) Next, Eastman asserts a "press of business" excuse—that the time constraints and numerous other legal tasks rendered him unable to verify the information in the *Kemp* action. Throughout the trial, Eastman consistently explained away his lack of due diligence because he

was busy and at times "drinking from a fire hose," which is not an appropriate defense to a charge of misleading a court by knowingly presenting a false statement or concealing material information. (Cf. *Blair v. State Bar* (1989) 49 Cal.3d 762, 780 [press of business not a mitigating factor]; *Carter v. State Bar* (1988) 44 Cal.3d 1091, 1101.) In fact, Eastman's admissions made in support of his "press of business" and "division of labor" defenses actually support our findings of willful blindness.

We find the totality of the record contains clear and convincing evidence of Eastman's attempt to deceive the federal district court. The record supports culpability for count four.

C. Moral Turpitude Established for Seven of Eight Counts Due to Eastman's Multiple False and Misleading Assertions Related to the 2020 Presidential Election (§ 6106)

Counts three and five through eleven allege Eastman made various false and misleading assertions amounting to moral turpitude under section 6106. Like the hearing judge, we find Eastman culpable for all the alleged moral turpitude counts, except count eleven.

1. Applicable Law

Misconduct reflecting dishonesty, particularly when committed in the practice of law, is conduct involving moral turpitude. (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.) A fundamental rule of attorney ethics is common honesty. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815.) Moral turpitude "includes creating a false impression by concealment as well as affirmative misrepresentations. [Citations.]" (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910.) Moral turpitude also includes knowingly making dishonest statements to clients. (*Fitzpatrick v. State Bar* (1970) 20 Cal.3d 73, 87-88.)

Section 6106 is violated by an attorney's material omissions or misrepresentations of material facts. (Cf. *Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [§ 6068, subd. (d), violation involving concealment as well as affirmative misrepresentations with "no distinction . . . drawn

among concealment, half-truth, and false statement of fact"].) A moral turpitude violation can be either intentional or grossly negligent. To discern between intentional or grossly negligent moral turpitude, we may examine intent, which can be established by direct or circumstantial evidence. (*Zitny v. State Bar* (1966) 64 Cal.2d 787, 792.) Willful blindness can also provide evidence of specific intent. (*In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433.) We apply these principles to the counts detailed below.

2. Eastman's December 23, 2020 and January 3, 2021 Memoranda (Counts Three and Six)

a. Facts

Eastman had a longstanding belief that Congress counts the electoral votes and is the sole entity to resolve any disputes, as illustrated by his testimony before the Florida Legislature in late November 2000.[39] This belief lasted at least until mid-October 2020, as reflected in an October 16, 2020 email exchange with Bruce Colbert, who had emailed Eastman a draft letter for both of their signatures and intended for President Trump. Colbert's draft letter stated the United States Senate President decided "authoritatively what 'certificates' from the states to 'open' and what electoral votes are 'counted,' under the [Twelfth] Amendment and the Electoral Count Act of 1887, 3 U.S.C. [section] 15."[40] On October 16, 2020, Eastman wrote the following in-line comment on the draft:

> "I don't agree with this. The [Twelfth] Amendment only says that the President of the Senate opens the ballots in the joint session and then, in the passive voice, that the votes shall then be counted. 3 [U.S.C. section] 12 says merely that he is the presiding officer, and then it spells out specific procedures, presumptions, and default rules for which slates will be counted. Nowhere does it suggest that the

[39] Eastman was introduced at that Florida legislative hearing as an expert in the Electoral College.

[40] The Twelfth Amendment, ratified in 1804, provides, in pertinent part: "The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted . . . ."

> President of the Senate gets to make the determination on his own. [Section] 15 doesn't, either."

Moreover, Eastman also opined in his contemporaneous email reply that the draft letter relied too heavily on "getting injunctions from the Supreme Court, with requests that are not supported by statutory or constitutional text or on matters for which the Constitution gives the last word elsewhere."[41]

Eastman's position markedly changed following President Trump's election loss and his formal retention by President Trump and the Campaign. Eastman began to press the theory that the ECA was unconstitutional and former Vice-President Pence had the unilateral authority to resolve disputed electoral votes. Eastman testified he started his "extensive research" into the Twelfth Amendment and the ECA in October 2020. According to Eastman, his research into the ECA and vice-presidential authority included review of historical congressional records, constitutional convention materials, several law review articles, and some non-scholarly articles. However, at trial, Eastman could not recall the election years he reviewed during this October through December 2020 time frame. Eastman conceded he may have simply relied on references made in law review articles about the historical records.[42] Notably, Eastman kept no

[41] Eastman testified at trial that, until mid-October 2020, he assumed that the ECA was constitutional.

[42] Eastman testified he relied upon multiple articles published prior to December 23, 2020: Vasan Kesavan, *Is the Electoral Count Act Unconstitutional* (2002) 80 N.C. L.Rev. 1653; Bruce Ackerman and David Fontana (2004) *Thomas Jefferson Counts Himself Into the Presidency* 90 Va. L.Rev. 551 (Ackerman article); Nathan Colvin and Edward B. Foley (2010) *The Twelfth Amendment: A Constitutional Ticking Time Bomb* 64 U. Miami L.Rev. 475; Edward B. Foley, *Preparing for A Disputed Presidential Election: An Exercise in Election Risk Assessment and Management* (2019) 51 Loyola Chi. L.J. 309; and a October 19, 2020 non-academic article written by University of California, Berkeley Professor John Yoo (who also testified as an expert on behalf of Eastman) and University of St. Thomas Professor Robert Delahunty, which was published in the online magazine "The American Mind," entitled *What Happens If No One Wins* (Yoo/Delahunty article).

contemporaneous records of his research and he did not take research notes. Eastman was unable to recall the name of one of the two former students that assisted him in the research, and he could not provide any estimate of the amount of time he spent on his research. Eastman had no recollection of cataloging the information he reviewed, unlike his approach to tracking election litigation and election-related issues. Eastman testified, "I just don't recall the timetable of when I looked at all that information."[43]

At trial, Eastman used his 2023 NDC answer, responses to OCTC investigative inquiries, and his trial testimony in an attempt to fill the void left by the absence of any contemporaneous notes about the materials he claims he reviewed in October through December 2020. This included Eastman's review of the pre-Twelfth Amendment elections and their related counts. However, according to Yoo's testimony, neither the 1796 nor the 1800 election and their related electoral counts provided historical precedent. Eastman also claimed he reviewed post-Twelfth Amendment and pre-ECA election counts of 1817, 1821, 1837, and 1857. Neither Yoo nor OCTC's expert Matthew Seligman[44] found those first three elections probative as to whether a

---

[43] In an attempt to explain the absence of any notes, Eastman asserts in his responsive brief that his October and November research was mere "scholarly curiosity" in the months prior to his December 2020 retention by President Trump and the Campaign. This is a direct contradiction of his trial testimony that he undertook—in his own words—"extensive research" starting in October 2020. It also conflicts with his argument that the October 2020 emails between Colbert and him and the Yoo/Delahunty article caused him to shift his position regarding vice-presidential authority and the ECA. The hearing judge did not find Eastman's claim credible that his opinion about the ECA or the Twelfth Amendment changed because of his email exchanges with Colbert and his review of the Yoo/Delahunty article. The judge determined Eastman's new position seemed to correlate more closely with the time frame of his representation of President Trump and the Campaign. We give deference to the judge and affirm her credibility finding given Eastman's failure to provide any documentation of his research into this issue and his changed argument that his research was because of curiosity. (*In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 638 [deference given to credibility findings absent a specific showing that such findings were erroneous].)

[44] Seligman holds a doctorate in philosophy from New York University and a law degree from Stanford University. He clerked for a federal appeals court judge and has taught at Harvard

vice-president has unilateral authority in the electoral count process, and the 1857 count dispute was resolved by the Congress. Eastman also examined the 1960 election where Hawaii issued three slates of electors, two official and one unofficial. The first official slate was for then Vice-President Richard M. Nixon and signed by the outgoing governor. Following a court-ordered recount resulting in then Senator John F. Kennedy's victory, a second official slate was signed by the new governor and sent to the United States Congress in advance of the January 6, 1961 joint session. Nixon, with no objections raised, sought and received unanimous consent to accept the second official slate. At trial, Yoo noted no legitimate, alternate slate of electors existed to proffer for the January 6, 2021 electoral count. Yoo believed former Vice-President Pence was on "unassailable grounds" in his determination he had no right to overturn the election. Finally, although Eastman mentioned he reviewed the 1787 constitutional convention records in a submission to OCTC, Eastman claimed for the first time at trial that those convention records contained the most important, supportive evidence of his positions and that he reviewed the materials in late 2020.

Eastman testified that he created two documents based on his research, which he prepared in furtherance of his representation of President Trump and the Campaign. Eastman claims he did not share either document with President Trump. The two documents are the only written record of Eastman's research. Neither document names a recipient, client, or author, but each had "privileged and confidential" at the top and were in an outline format. Both documents were undated but had the same title: "January 6 scenario."

University and Cardozo School of Law, including a class entitled "War Gaming 2020" that focused on disputed elections. At the time of the trial in this matter, Seligman was a Fellow with the Constitutional Law Center at Stanford. Since 2016, Seligman has done extensive research into the history of United States elections.

The first document is two pages long. Eastman sent it to attorneys Boris Epshteyn and Kenneth Chesebro on December 23, 2020 (December 23 memo). Epshteyn worked with the Campaign. Eastman did not know whether Chesebro had a formal attorney-client relationship with President Trump or the Campaign, but he knew Chesebro volunteered on a President Trump-related Wisconsin legal team. Chesebro made initial edits to the December 23 memo.[45] Eastman also gave a copy of the December 23 memo to a person who was not part of the Campaign but asked Eastman for advice.[46]

In its first line, Eastman's December 23 memo stated that seven states "have transmitted dual slates of electors to the President of the Senate." However, the governors of those seven states only submitted official elector slates for former President Biden as established by their respective "Certificates of Ascertainment." Following that opening statement, Eastman quoted a provision of the ECA and opined, "This is the piece that we believe is unconstitutional." He also stated, with a quick reference to John Adams's and Thomas Jefferson's actions in their respective elections of 1796 and 1800, there was "very solid legal authority, and historical precedent, for the view that the [Vice-President] does the counting, including the resolution of disputed electoral votes . . . and all the Members of Congress can do is watch." Then, he set forth six numbered paragraphs as to how former Vice-President Pence should proceed. Eastman concluded that the United States Constitution made the Vice-President the "ultimate arbiter," and stated, "We should take all of our actions with that in mind." Besides the ECA, the only source

[45] Chesebro is also a licensed California attorney and has been suspended since February 2024 due to his Georgia felony conviction for violating Official Code of Georgia Annotated sections 16-4-8 and 16-10-20.1(b)(1) (conspiracy to commit filing false documents).

[46] Eastman also recalled that he also shared his thinking with several unnamed members of Congress around the same time. The December 23 memo eventually became public in October 2021, when it was in a book published by Bob Woodward and thereafter detailed in media outlets such as CNN and *The Washington Post*.

cited in Eastman's December 23 memo was a link to a law review article by Laurence Tribe, a retired constitutional law professor from Harvard University.

Eastman's January 3, 2021 memorandum (January 3 memo) is six pages long, single-spaced, and, according to Eastman, an evolution of the December 23 memo. Eastman shared the January 3 memo with Epshteyn, perhaps Chesebro, but not President Trump.[47] The memo had four sections: (1) examples of various election officials' "misconduct" in Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin; (2) a quick analysis of the constitutional and statutory process of opening and counting electoral votes pursuant to the Twelfth Amendment and the ECA; (3) "War Gaming the Alternatives" with proposed strategy and courses of action for former Vice-President Pence to ultimately declare President Trump reelected; and (4) justification for taking Eastman's recommended "bold" action. Eastman's statements regarding the historical record were simply based upon his recollection of his research as he had no notes or other materials on which to rely.

Eastman characterized both memos as being internal brainstorming ideas without any recommendations. However, the ultimate beneficiary was Eastman's and Epshteyn's client: President Trump.

Underpinning the January 3 memo's demand for "bold" action was Eastman's assertion that election results were tainted in states where Biden had won by a relatively narrow margin. However, Eastman's push for action ignored information that belied his assertions of tainted elections, and he relied on individuals that had no background, training, or experience in election administration. For example, Eastman relied on Droz and his "Election Integrity Group," an ad

[47] Once the December 23 memo became public in October 2021, Eastman publicly released his January 3 memo as well.

hoc collection of individuals culled from subscribers to his online newsletter.[48] While several of Droz's volunteers had impressive careers, they were not election professionals.[49] Eastman did not ask if members of Droz's group had election-related experience, and he knew the group had not provided evidence that fraud occurred in the 2020 election.

In the January 3 memo, Eastman's references to "illegal conduct by election officials" in seven states, including Arizona, Nevada, and New Mexico, were not based on any personal knowledge. Approximately one week after the December 23 memo and two days before the January 3 memo, Eastman asked Epshteyn in an email whether any information about election law violations existed in these three states. Eastman conceded at trial that, as of January 2, 2021, he was only "vaguely aware, from news accounts and otherwise, that there were allegations of illegality" in Michigan, Arizona, and Nevada. In fact, Mitchell wrote to Eastman on January 2 requesting data to get to members of Congress "who are now clamoring for facts and data re[garding] illegal votes." Mitchell stated they had "plenty of data" from Georgia but knew "nothing" regarding other states. Other than responding to her that "serious forensic investigations have been blocked at almost every turn," Eastman provided her nothing because he had nothing to offer.

For example, Eastman did not reach out to state election officials in either New Mexico or Nevada for information or utilize publicly available information from various states. He did not consider statements from Pennsylvania and Michigan state election officials that confirmed election results and debunked disinformation circulating about the election because they were

[48] Droz created "Media Balance Newsletter" and highlighted stories not in "mainstream media."

[49] In fact, Droz did not think specialized knowledge was needed to analyze election statistics because "numbers are numbers." Three members of Droz's group who testified at trial were Droz, Blehar, and Stanley Young. Only Young, with a background in statistics, qualified as an expert witness at trial.

elected "partisan" Democratic officials, even though Republican election officials in Georgia who had similar conclusions were also deemed by Eastman to be untruthful. Multiple detailed state court findings in Nevada, Arizona, Wisconsin, and Michigan regarding claims of election malfeasance were issued that predated both the December 23 and the January 3 memos, in which those courts concluded that election irregularity allegations were meritless.

Beyond events and litigation occurring at the state level, Eastman ignored as "implausible" and "laughable" the November 12, 2020 statement from CISA that there was "no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised." Similarly, Eastman gave no accord to a November 16, 2020 open letter signed by approximately 60 top election security and computer scientists that opined, "To our collective knowledge, no credible evidence has been put forth that supports a conclusion that the 2020 election outcome in any state has been altered through technical compromise." Moreover, the open letter noted there were "alarming assertions being made that the 2020 election was 'rigged' by exploiting technical vulnerabilities. However, in every case of which we are aware, these claims either have been unsubstantiated or are technically incoherent." Barr, the United States Attorney General at that time by appointment of President Trump, issued a December 1, 2020 statement proclaiming that "we have not seen fraud on a scale that could have effected a different outcome in the election." However, this did not persuade Eastman as he believed the DOJ, headed by Barr at the time, did not conduct a sufficient investigation.

Throughout the trial, Eastman attempted to rationalize why the universe of conclusions from numerous election and law enforcement officials in both political parties were of no import. We do not find his attempts persuasive upon review of the detailed record submitted to us.

b. False and Misleading Statements in the December 23 Memo (Count Three)

Count three alleged Eastman's opening sentence in his December 23 memo, that seven states "have transmitted dual slates of electors to the President of the Senate," was intentionally false and misleading, and made with the intent to provide legal advice to President Trump and former Vice-President Pence. The hearing judge found Eastman culpable as charged. More specifically, the judge determined "Eastman used the false assertion concerning dual slates of electors to provide an alternative strategy for Vice[-]President Pence to declare President Trump as the winner of the 2020 presidential election. The two-page memo was designed to provide legal support and convince Vice[-]President Pence to carry out that strategy."

On review, Eastman argues (1) OCTC does not have the authority to seek discipline for statements made in an internal "brainstorming" memo that was not shared with President Trump, (2) the December 23 memo was only a rough draft, and (3) no case law exists with analogous facts to support a culpability finding. Eastman further contends the charged statement was not false.[50]

The record demonstrates sufficient evidence that the charged statement in the December 23 memo was indeed false. First, Eastman understood the "alternate electors" he and others worked to gather for President Trump were not authorized by any state government. Eastman stated as much in an editorial comment to Colbert's draft letter to President Trump with direct references to the Twelfth Amendment and the ECA, and he held that view on

[50] In his September 2022 response to an OCTC investigative letter, Eastman described the advice he gave former Vice-President Pence, which he testified at trial that he used that word "loosely" and may have been technically inaccurate in his response because he had to provide OCTC "a lot of information."

December 19, 2020.[51] Second, Eastman knew the governors of the seven states (Arizona, Georgia, Michigan, Pennsylvania, Nevada, New Mexico, and Wisconsin) had each sent only one slate of duly appointed electors. No other branch of a state's government, such as a state legislature, sent an opposing slate. As Eastman's own expert Yoo testified, "[A] court has to find something, or the legislature and the governor have to send in two electoral votes." The implication of Yoo's statement is clear: a dispute cannot be fabricated, which Eastman and others attempted to do.

Eastman's assertion on review that the December 23 memo was an internal memo or rough draft is not consistent with the facts. Eastman provided the December 23 memo to at least one other person outside the Campaign. To the extent Eastman argues the December 23 memo was not providing legal advice, the text of the document reveals otherwise: "this is the piece that *we* believe is unconstitutional"; "here's the scenario *we* propose"; and "*we* should not allow the Electoral Count Act constraint on debate to control." (Italics added.) These statements show (1) the memo gave legal advice about potential next steps in President Trump's pursuit of an electoral victory and (2) the memo was within the scope of the engagement agreement.

Based on the facts of this case and the broad expanse of section 6106, we find OCTC within its authority to charge any dishonesty relating to the December 23 memo. Section 6106 plainly covers "*any act* involving moral turpitude, dishonesty or corruption," (italics added) and the conduct need not occur while acting as an attorney. A basic principle of statutory construction is to give every word meaning (*Klein v. United States of America* (2010) 50 Cal.4th 68, 80), and we give the words "any act" their ordinary meaning. Eastman's engagement letter

[51] Eastman's opinion on this point did not change. In an email to Valerie Moon, on January 10, 2021, Eastman told her that the alternate electors "had no authority."

included "election matters related to the Electoral College." We also find Eastman's arguments unpersuasive that the hearing judge used case law that was not factually similar, and no case law exists with analogous facts to support a section 6106 culpability finding. A section 6106 violation is not limited to fact patterns detailed in prior decisions. Our culpability determination is based upon the plain language of section 6106 and case law guidance on how to analyze whether particular conduct falls within the broad scope of section 6106. Section 6106 violations include misconduct that reflects dishonesty. (*Read v. State Bar*, *supra*, 53 Cal.3d at p. 412; *In the Matter of Wells*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 910.) That is precisely the approach the hearing judge took when she analyzed whether the charged conduct amounted to moral turpitude and cited to cases such as *In the Matter of Chesnut*, *supra*, 4 Cal. State Bar Ct. Rptr. 166; *Grove v. State* Bar, *supra*, 63 Cal.2d 312; and *Zitny v. State* Bar, *supra*, 64 Cal.2d 787. The record supports culpability for this count.

c. False and Misleading Statements in the January 3 Memo (Count Six)

Count six charged that the following four assertions in Eastman's January 3 memo were false and misleading: (1) "outright fraud" occurred through "electronic manipulation of voting tabulation machines"; (2) seven states had submitted dual slates of electors because the President Trump electors in seven states met, "cast their electoral votes for [President] Trump, and transmitted those votes to [former Vice-President] Pence"; (3) Michigan mailed absentee ballots to all registered voters without the statutorily required absentee ballot application; and (4) the 2020 presidential election "was [s]tolen by a strategic Democrat[ic] plan to systematically flout existing election laws for partisan advantage." The hearing judge found Eastman culpable on the first three statements.[52] The judge did not consider "Eastman's beliefs to be sincere, honest, or

[52] OCTC does not challenge the hearing judge's finding of no culpability for the fourth charged misrepresentation that the election was "stolen." We affirm.

credible," regarding the three statements. The judge stated that Eastman "knowingly ignored any evidence contradicting the notion of voting machine manipulation; was aware that the Michigan Secretary of State had not distributed [absentee] ballots to all registered voters; and, as a constitutional scholar, understood that no conflicting dual slates of electors had been transmitted."[53] She also rejected the argument that Eastman was simply providing President Trump with vigorous representation as he crossed the line into unethical deception.

As with count three, we reject Eastman's arguments on review that the charged statements in the January 3 memo were not material because it was an internal document and was not distributed directly to President Trump. It was a document prepared pursuant to the terms of Eastman's engagement agreement with President Trump and the Campaign. It outlined a course of action to be taken. Consistent with our holding regarding the December 23 memo, we find the misrepresentations made in the January 3 memo are also subject to discipline as acts of moral turpitude. We agree with the hearing judge that sufficient evidence exists to support culpability.

Turning to the individual allegations, we reject Eastman's argument that the selected quotes used in paragraph 54(a) of the NDC's count six altered the context of his full sentence.[54] The allegation removed the parenthetical in the charged statement. Under the header "Illegal conduct of election officials," Eastman's January 3 memo stated, "Quite apart from outright

---

[53] We find it difficult to accept that Eastman, as a constitutional scholar, did not keep records and was unorganized in documenting his research on this important matter. We are further troubled that at trial, Eastman frequently had only vague recollections about important points that cut against his theory of the case, yet he clearly remembered other facts helpful to him. This strains Eastman's credibility and leads to the conclusion Eastman is intellectually disingenuous when it suits his purposes. We discuss the issue of candor in our aggravation discussion, *post*. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282) [analytical differences regarding believability (credibility) and falsity (candor)].)

[54] Paragraph 54(a) alleged the memo asserted, "[t]here had been 'outright fraud' through 'electronic manipulation of voting tabulation machines.'"

fraud (both traditional ballot stuffing, and electronic manipulation of voting tabulation machines), important state election laws were altered or dispensed with altogether in key swing states and/or cities and counties." Eastman argues the first portion of the sentence plus the parenthetical is an "aside" and not the main point of the sentence. Eastman asserts the primary point was that state election laws were violated. The NDC did not mischaracterize the charged statement in the January 3 memo. Eastman's single sentence makes two independent claims. The first clause claimed outright fraud, including fraud by electronic manipulation of votes. The second clause of the sentence focused on violations of election laws in certain states.[55]

We also reject Eastman's arguments that items such as the December 2020 report authored by Peter Navarro[56] and unnamed "statistical experts" provide support for the charged statement about electronic vote manipulation specifically and voter fraud generally. Initially, Eastman was not able to recall whether Navarro's report was published before January 2, 2021. The report was later eventually admitted for the limited purpose of establishing Eastman possessed or reviewed it prior to January 18, 2021. As to reliance on "statistical experts,"

---

[55] In addition, Eastman further argues that there can be no culpability finding for this count because his claim of fraud through vote tabulation manipulation by machines "was not provably false at the time," citing *Standing Committee v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1438-1440. To the extent Eastman argues the charged sentence was "rhetorical hyperbole" and therefore entitled to First Amendment protection, the argument is not well founded. We consider Eastman's First Amendment defenses, *post*. Rhetorical hyperbole provides protection for statements that cannot "reasonably [be] interpreted as stating actual facts . . . . [Citation.]" (*Milkovich v. Lorain Journal Co*. (1990) 497 U.S. 1, 20.) Here, Eastman's assertion of "quite apart from outright fraud (both traditional ballot stuffing, and electronic manipulation of voting tabulation machines)" is reasonably interpretated as a factual statement and is not afforded constitutional protection. Moreover, false statements that are either intentionally false or made with reckless disregard for the truth are not protected speech and may be the basis of attorney discipline. (*Ramirez v. State Bar* (1980) 28 Cal.3d 402, 411.)

[56] We have reviewed the report by Navarro that Eastman had admitted into the record. Unlike Eastman's memo, Navarro's report describes "claim[s] that the election may well have been stolen from President . . . Trump," and uses other similar language, as opposed to Eastman's assertion that "outright fraud" was an established fact.

Eastman only called one such expert at trial: Stanley Young. However, Young was only qualified as a general expert in statistics, not in statistics relating to elections. Moreover, Young's trial conclusions regarding his statistical views were effectively rebutted by OCTC's expert witness, Justin Grimmer, Ph.D.[57] To the extent Eastman relied on an Antrim County, Michigan report authored by Russell Ramsland, Eastman himself thought some of Ramsland's analysis regarding electronic vote flipping to be "over the top." As detailed in our discussion of count seven, *post*, Eastman had no real information about Ramsland's background, training, or experience, and only learned at some point later that Ramsland had once given advice to a Texas governmental entity regarding the purchase of voting machines years before.[58] Eastman failed to consider the public information released by the Michigan Secretary of State on the very issue of false claims regarding the election in Antrim County. As was consistently displayed at trial and as we have discussed *ante*, Eastman simply dismissed other credible sources of information when it conflicted with his view. This purposeful lack of intellectual rigor by a constitutional scholar and former law school dean is circumstantial evidence of intentional conduct through willful blindness. (*Zitny v. State Bar*, *supra*, 64 Cal.2d at p. 792.)

Next, as alleged in paragraph 54(b) of count six, Eastman's January 3 memo concluded "there are thus dual slates of electors from [seven] states." Eastman prefaced that conclusion by stating, "Because of these illegal actions by state and local election officials (and, in some cases,

---

[57] Grimmer is a tenured political science professor at Stanford University and a Senior Fellow at The Hoover Institution, a public policy thinktank. Grimmer's background, training, and experience included statistics and political methodology. He authored and/or peer reviewed scholarly works in the areas of statistical theory and methods, election administration, congressional elections, and voter fraud claims.

[58] Eastman further agreed with Alex Halderman, an election security expert who critiqued Ramsland's work in the Antrim County, Michigan litigation in that some of Ramsland's claims were unsubstantiated. Eastman was not aware that in 2023, a federal appellate court upheld sanctions imposed in 2021 on attorneys for using Ramsland's assertions that Dominion machines manipulated votes.

judicial officials), the Trump electors in the above 6 states (plus in New Mexico) met on December 14, cast their electoral votes, and transmitted those votes to the President of the Senate (Vice-President Pence)." First, as stated previously, seven states did not submit official dual slates of electors. As Eastman well knew, each of the seven states submitted one official slate. While groups supporting President Trump formed in those seven states and "voted," they were not "electors" as the term is used in the ECA. Sufficient evidence clearly exists that Eastman knew before he wrote the January 3 memo that these groups were of no import without the imprimatur of a state's governor or legislature.

Finally, as to the charge in paragraph 54(c) of count six, the record supports a finding that Eastman committed intentional moral turpitude. We reject Eastman's assertion that he made a simple mistake when claiming Michigan mailed absentee ballots to all registered voters in violation of Michigan law. Michigan, in accordance with applicable law, mailed absentee ballot applications. Even though Eastman conceded early that he erred using the word "ballot" instead of "applications," the mailing of absentee applications was not a violation of Michigan law either. Yet, Eastman still persisted in his answer to the NDC that Michigan election law did not permit the widespread mailing of absentee ballot applications. Eastman also challenges the hearing judge's materiality finding as to the Michigan statement.[59] Eastman argues it was not material because only Epshteyn received the January 3 memo.[60] This ignores the fact that the January 3 memo (like the December 23 memo) was prepared in furtherance of Eastman's

[59] The hearing judge's decision states, "The misrepresentations about the manipulation of voting machines and Michigan absentee ballots were significant and material. Eastman used them to bolster the argument for Vice-President Pence to reject electoral votes and/or delay or adjourn the Joint Session of Congress."

[60] However, at trial, Eastman could not recall whether Chesebro also received the January 3 memo. He had given the December 23 memo to Chesebro. Hence, it is possible Epshteyn was not the only recipient.

representation of President Trump and for the purpose of helping forge a path to persuade former Vice-President Pence to delay the count or reject electors on January 6. The false Michigan statement was one of Eastman's points that supported his recommended action.

3. Eastman's Meetings and Communications with Former Vice-President Pence and Staff Prior to the January 6, 2021 Joint Session

On January 4, 2021, President Trump called an Oval Office meeting attended by Eastman and former Vice-President Pence, along with Pence's Chief of Staff Marc Short and counsel Greg Jacob. The purpose of the meeting was to talk about former Vice-President Pence's role on January 6.

Eastman's attendance at this meeting was within the scope of his representation of President Trump. Eastman stated his legal opinions to the group over the course of the meeting. Eastman recounted that, during the Oval Office meeting, President Trump asked him if former Vice-President Pence could "simply reject electors if [the former Vice-President] had information that they were not legally certified."[61] Eastman testified that he responded to the President's question, saying "It's more nuanced than that," and explained, with only one set of certified electors, it was, in his opinion, an open question whether the former Vice-President had such power. Eastman ultimately opined that the former Vice-President "had unilateral authority to determine the validity of the electoral vote certificates." However, Eastman stated that even if the former Vice-President had that power, it would be "foolish" to go that route as no state legislature had provided an alternative certified slate of electors. Eastman believed that the more prudent option was for the former Vice-President to delay the electoral count for 10 days, rather than to reject certain electoral votes, and he advocated for a delay.[62] According to Jacob, the

[61] We refer to this as the "reject electors theory."

[62] Also referred to at trial as a "delay option," we refer to this as the "delay theory."

former Vice-President always viewed his role in the electoral count as a ministerial one. The meeting ended with President Trump requesting, and the former Vice-President agreeing, that the former Vice-President's staff would meet with Eastman the next day to discuss the issue further. Following the Oval Office meeting, Jacob drafted a memorandum for the former Vice-President summarizing the meeting's points, including that Eastman "acknowledges that his proposal violates several provisions of statutory law," and sent it the following day.

Eastman met with Jacob and Short around 11:00 a.m. on January 5, 2021. A few hours before that meeting, President Trump tweeted: "The Vice-President has the power to reject fraudulently chosen electors." Upon his arrival at Short's office, and much to Jacob's surprise, Eastman again pressed the reject electors theory.[63] Jacob understood from Eastman that at least five states (Arizona, Georgia, Wisconsin, Michigan, and Pennsylvania) were involved in the pursuit of this theory. In the two-hour meeting, Eastman and Jacob discussed former Vice-President Pence's unilateral authority to reject electoral votes, the texts of the Twelfth Amendment and the ECA, along with the electoral counts of 1797, 1801, and 1961. Jacob testified that, during the course of their "robust" exchange, he understood Eastman conceded the discussed elections were not "examples of vice presidents rejecting electoral vote certificates, or claiming that they had any authority to do so, or claiming that they had any authority to make any kind of substantive decision about electoral vote certificates." Eastman opined that if the former Vice-President rejected the electors, the U.S. Supreme Court would likely not take the case pursuant to the political question doctrine, but if it did, the vote would be nine to zero against a rejection of the official electors. Eventually, the conversation turned to Eastman's

[63] The record supports the hearing judge's determination that Jacob's testimony was more credible than Eastman's as to whether Eastman again pressed the reject electors theory during their January 5, 2021 meeting. (*In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 638.) Eastman does not directly challenge this finding on review.

delay theory. However, no state legislatures had requested a delay; only a few individual legislators had done so.

After their January 5, 2021 meeting ended, Eastman and Jacob spoke on the telephone twice that day. One of those calls included President Trump and another attorney. In the call with President Trump, Jacob recalled the President's team acknowledged the reject electors theory that Eastman pushed in the meeting earlier in the day was a nonstarter. The group circled back to the delay theory. According to Jacob, former Vice-President Pence was not swayed. Moreover, the delay theory was pragmatically flawed. As noted in Jacob's post-January 4 meeting memorandum, Eastman acknowledged that "no Republican-controlled legislative majority in any disputed state has expressed an intention to designate an alternate slate of electors." Then, late in the evening of January 5, Eastman sent an email with an attached letter to Jacob proclaiming a "major new development." According to Eastman, the Pennsylvania Legislature would "vote to recertify its electors if former Vice[-]President Pence implements the plan we discussed." However, Eastman eventually conceded at trial that no majority of state legislators in any Republican-controlled legislature communicated a desire to send an alternate slate of electors.

About half an hour after Eastman sent this email to Jacob, Eastman had a four-minute call with President Trump.[64] Minutes after this call concluded, President Trump tweeted, "If Vice President @Mike_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!" Eastman testified President Trump's tweet was consistent with his advice.

[64] Eastman has no recollection of the call reflected on the White House call log.

4. Eastman's January 6, 2021 Email to Jacob Contained False and Misleading Statements (Count Eight)

a. Facts

Eastman and Jacob exchanged emails throughout the day on January 6, 2021. Close to 11:00 a.m., Jacob sent a short reply to Eastman's "major new development" email from the night before. Jacob challenged the constitutionality of Eastman's plan in light of the ECA's provisions.[65] By 1:00 p.m., the Joint Session had started in the House of Representatives, but the Senate had withdrawn, as required by the ECA, for each house to consider objections raised regarding Arizona's electoral votes. Eastman emailed Jacob at approximately 1:30 p.m., following his remarks at the "Stop the Steal" rally and less than an hour before the Capitol was breached.[66] At this point in time, President Trump had concluded his remarks at the Ellipse, a park near the White House, and crowds had begun their march from the rally to the Capitol. From the safety of a nearby hotel, Eastman emailed Jacob, called Jacob's earlier reply "small-minded" in light of the United States Constitution "being shredded," and implied that any "statutory requirement" impeding former Vice-President Pence from acting as Eastman advocated should be "ignored."

Jacob crafted a detailed, three-paragraph response to Eastman's email before the sounds of the Capitol attack reverberated near him as rioters began to make their way into the building. Jacob, while hiding from the rioters, sent his response to Eastman at 2:14 p.m., adding a final

---

[65] Several emails note Mountain Standard Time, MST, and are adjusted here to reflect Eastern Standard Time.

[66] By this time, former Vice-President Pence had issued what became known as his "Dear Colleague" letter. In the letter, he explained his position regarding the scope of his authority before he gaveled the Joint Session into order. The former Vice-President stated, "It is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not."

statement, "we are now under siege." Jacob blamed Eastman's actions as the cause of the attack. He reminded Eastman that the ECA provisions, followed for more than a century, were not irrelevant and "cannot be set aside except when in direct conflict with the Constitution," and that "there is no reasonable argument that the Constitution directs or empowers the Vice[-]President to set [aside] a procedure followed for 130 years before it has even been resorted to." Jacob then remarked that Eastman's scheme was "a results[-]oriented position that you would never support if attempted by the opposition, and essentially entirely made up." Immediately thereafter, Jacob was escorted to different building locations for safety.

Seemingly unmoved by the violence happening at and around the Capitol, Eastman responded to Jacob at 2:25 p.m.:

> "You think you can't adjourn the session because the ECA says no adjournment, while the *compelling evidence that the election was stolen continues to build and is already overwhelming*. The 'siege' is because YOU and your boss did not do what was necessary to allow this to be aired in a public way so the American people can see for themselves what happened."

(Italics added.) Minutes before Eastman's email, President Trump tweeted:

> "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!"

The email communication between Eastman and Jacob resumed in the early evening hours of January 6. Eastman complained to Jacob that former Vice-President Pence only mentioned the reject electors theory in his "Dear Colleague" letter when the delay theory was also presented to the former Vice-President. Eastman stated he remained firm that the delay option was "the most prudent course as it would have allowed for the opportunity for this thing to be heard out, but also had a fair chance of being approved (or at least not enjoined) by the Courts." About 30 minutes later, Jacob responded and acknowledged that the delay approach

was more "modest . . . [b]ut the legal theory is not." Jacob also asked Eastman if he had told President Trump that "in your professional judgment, the Vice President DOES NOT have the power to decide things unilaterally?" Eastman quickly replied, "He's been so advised, as you know because you were on the phone when I did it. [. . .] But you know him – once he gets something in his head, it is hard to get him to change course."

Eastman then emailed Jacob again at 11:44 p.m., after the electoral count had resumed. Eastman pointedly remarked that the ECA had been violated, with former Vice-President Pence's approval, when objections to counting Arizona's electoral votes exceeded the allotted time under title 3 U.S.C. section 17.[67] Eastman concluded:

> "So now that the precedent has been set that the Electoral Count Act is not quite so sacrosanct as was previously claimed. *I implore you to consider* one more relatively *minor violation* and adjourn for 10 days to allow the legislatures to finish their investigations, as well as to allow a full forensic audit of the *massive amount of illegal activity that has occurred here*. If none of that moves the needle, at least a good portion of the 75 million people who supported President Trump will have seen a process that allowed the illegality to be aired."

(Italics added.)

b. Culpability

Count eight charged, as false and misleading, Eastman's January 6, 2021 email statement to Jacob made at 2:25 p.m., discussed *ante*. The NDC further alleged the statement was made with the intent to pressure former Vice-President Pence to adjourn the Joint Session and Eastman knew his claim of "compelling evidence that the election was stolen continues to build and is already overwhelming" was false.

[67] According to title 3 U.S.C. section 17, when both houses of Congress separate to decide upon an objection to the counting of any electoral vote or votes from any state, any senator or representative may speak to such objection for five minutes, and not more than once. After such debate has lasted two hours, the presiding officer of each house shall put the objection up for a vote without further debate.

The hearing judge found Eastman culpable for this count as there was no outcome-determinative fraud in the 2020 presidential election and Eastman was aware or should have known that no affirmative proof of outcome-determinative fraud existed. The judge also noted this conduct, to influence former Vice-President Pence, was not duplicative of count two (misleading a judge in the intervention motion in violation of section 6068, subdivision (d), discussed *ante*) and count five (misstatements on Bannon's War Room in violation of section 6106, discussed *post*) as those two counts addressed misrepresentations to different individuals, in different situations, and at different times.[68]

Eastman argues on review that the claims made in his email to Jacob had sufficient evidence to support his statement to Jacob. As with several other counts, Eastman asserts the record shows evidence of "outcome-determinative illegalities," which we have rejected previously and reject here as well. Eastman clearly made a misrepresentation to Jacob in his email when he stated, "compelling evidence that the election was stolen continues to build and is already overwhelming." While, in a few local instances, issues arose in the counting of ballots, no evidence existed that outcome-determinative illegalities occurred in a manner that would have had an effect in any state. We also reject, again, Eastman's assertion that historical authority supported his theory that a vice-president has the "authority to recess, delay, or adjourn the electoral count." Nor were there sufficient scholarly works to support Eastman's vice-presidential authority claim.[69] Eastman also knew that, without another certified slate of

[68] The hearing judge also found Eastman had no First Amendment protection for charged statements, which we affirm in Section IV, *post*.

[69] We note Eastman was unable to recall the articles he read in the months of October through December 2020. He could not remember, at the time of the January 3 memo, any historical records he reviewed or if he took the Ackerman article's discussion of historical records at face value. When pressed at trial, Eastman could not articulate several salient points in one of the articles on which he relied.

electoral votes from a state, former Vice-President Pence did not have the authority to refuse to count a state's electoral votes. We reject his arguments in their entirety.

The record supports the conclusion that Eastman's charged communication with Jacob was not true and made with the intent to have Jacob convince former Vice-President Pence to adjourn or delay the Joint Session. (*In the Matter of Wells*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 910 [moral turpitude for creating false impressions due to affirmative misrepresentations or concealment].) Eastman is culpable as charged in count eight.

5. Eastman's Statements at the Ellipse's "Stop the Steal" Rally (Counts Seven and Eleven)

a. Facts

Eastman spent the night of January 5, 2021, before the Joint Session, mingling with Rudolph Giuliani and others at a Washington, D.C., hotel reception where organizers of the "Stop the Steal" rally had congregated. That evening was also when Georgia held runoff elections for its two United States Senate seats. That evening, Eastman met Russell Ramsland and Joe Oltmann for the first time. Eastman's conversation with Ramsland and Oltmann worked its way into his Ellipse remarks the following day, on which count seven is based.

Eastman had no recollection of Oltmann's educational or professional background or experience. Eastman believed Oltmann ran a "data company" but had no recollection how or when he learned that piece of information. Eastman had slightly more information about Ramsland before their first encounter at the hotel reception. Eastman had a generalized understanding that Ramsland, years before, had once advised a Texas governmental entity on the type of voting machines to purchase or avoid. Eastman testified in broad terms that he knew that Ramsland played a role in challenging the Antrim County, Michigan vote returns and that Ramsland had submitted "expert declarations in other cases." Eastman did not research either

Oltmann's or Ramsland's backgrounds, training, or experience before he spoke at the Ellipse the following day. During Eastman's conversation with them, he discussed their belief that vulnerabilities existed in Dominion voting machines. Oltmann shared with Eastman a one-page chart that purported to show the vulnerabilities. Oltmann primarily provided Eastman with the details of their theory that "phantom ballots" (i.e., copied or replicated ballot images) and "fake ballots" (i.e., pre-loaded ballots not cast by an actual voter) were held in suspense folders stored within the machines' operating system, and that these fake and phantom ballots could be accessed via the internet by someone attempting to interfere in the election.

Following Oltmann's and Ramsland's claims about fake and phantom ballots in Dominion tabulators along with the one-page chart, they made two predictions about the Georgia runoff elections that evening. At trial, Eastman explained the first prediction was "the percentage of ballots would remain constant while additional ballots kept getting reported." The second predication was that the reporting of the counting would stop because bad actors were "drawing ballots in from the suspense folders," and needed time to "tag voters in the voter rolls who had not voted, so that if there was an audit after the fact, the number of ballots would match."

Georgia used Dominion machines for the 2020 presidential election cycle and the 2021 run-off election. Eastman believed he saw the two predictions play out in both of the Georgia Senate runoff elections that night because media reports stopped reporting once the total ballots cast had reached about 95 percent, and that number did not change as additional ballots were reported as being received. However, Eastman did not calculate the total votes cast and did not

know the reports of total votes cast that evening were only estimates.[70] Eastman was quick to embrace the pair's predictions, yet Grimmer in his expert testimony stated these predictions were not "logically coherent." Furthermore, Grimmer testified that once the media's reporting of votes enters into the 90th percentile, not a lot of change occurs in the percentage figure itself even though ballot counting continues. Moreover, he stated election night reporting typically does not broadcast vote returns in precise and incremental terms and are instead only estimates.

On the morning of January 6, 2021, Eastman and Guiliani traveled together from their hotel to the televised "Stop the Steal" rally at the Ellipse. Eastman had little recall of the earlier part of the day, but did remember he was asked that morning to speak, and he pulled his thoughts together while en route to the rally. Eastman decided he wanted to speak about the predictions that Ramsland and Oltmann said to him. Eastman, introduced by Giuliani, spoke at around 10:45 a.m. to a crowd he estimated to be between a quarter to a half a million people.

In his remarks, Eastman told the crowd about matters pending before the U.S. Supreme Court that detail "chapter and verse, the number of times state election officials ignored or violated the state law" in order to elect former President Biden. Eastman declared that "traditional fraud" happened and that "we know that dead people voted."[71] He then went on to tell the crowd that voting machines were an actor in his fraud claims:

> "And, let me, as simply as I can, explain it. You know the old way was to have a bunch of ballots sitting in a box under the floor, and when you needed more, you pulled them out in the dark of night. They put those ballots *in a secret folder* in the machines. Sitting there waiting until they know how many they need. And then, the machine, after the close of polls, we now know [who's] voted and we

[70] Blehar, one of Eastman's witnesses and part of the Droz group, had noticed the election night vote total change and believed that change was likely attributed to underestimating voter turnout. He did not believe, nor did he tell Eastman he believed, election results were manipulated by matching registered voters, who did not vote in the election, to ballots in a suspense folder.

[71] Eastman believed there were ballots cast on behalf of deceased voters in Georgia, Nevada, and perhaps Michigan.

> know who hasn't. And, I can now, in that machine, *match those unvoted ballots with an unvoted voter and put them together in the machine*.
>
> And, how do we know that happened last night in real time? You saw when it got to 99% of the vote total, and then it stopped. The percentage stopped, but the votes didn't stop. What happened, and you don't see this on Fox or any of the other stations, but the data shows that the denominator, how many ballots remain to be counted. How else do you figure out the percentage that you have? How many remain to be counted? That number started moving up. *That means they were unloading the ballots from that secret folder, matching them to the unvoted voter*, and voila. We have enough votes to barely get over the finish line."

(Italics added.) Eastman then turned his focus to former Vice-President Pence and said to the crowd, "all we are demanding of Vice President Pence is this afternoon at 1:00 [p.m.], he let the legislators of the state look into this so we get to the bottom of it, and the American people know whether we have control of the direction of our government or not." Eastman concluded that anyone not willing to "stand up" did not "deserve to be in office."

b. Culpability Established for Count Seven

Count seven charged Eastman with making false and misleading statements at the Ellipse's "Stop the Steal" rally about Dominion electronic voting machines fraudulently manipulating the election results for both the 2020 presidential election and the January 5, 2021 Georgia runoff elections. The NDC quoted from Eastman's remarks to the large crowd where he repeated the claim:

> "'They' put ballots 'in a secret folder in the machines, sitting there waiting until they know how many they need,' and that after the polls closed, 'unvoted ballots' were matched with 'an unvoted voter' to fraudulently change the election totals in favor of [former President Joseph] Biden and the Democratic candidates in the Georgia runoff election. [Eastman] further stated that [an] analysis of the vote percentages showed that 'they were unloading the ballots from that secret folder, [and] matching them to the unvoted voter and voila we have enough votes to barely get over the finish line.'"

Eastman testified that these concepts came from his hotel conversations with Ramsland and Oltmann the night before.

The hearing judge determined Eastman was grossly negligent in his violation of section 6106 because he made reckless statements of voting machine manipulation, and he ignored information that would show his statements were false. On review, OCTC seeks a clear culpability finding that Eastman's misconduct was intentional. Eastman seeks reversal of the hearing judge's culpability finding, arguing insufficient evidence was produced at trial and challenges the hearing judge's factual determinations.[72]

We affirm the culpability finding for this count and further find Eastman's comments at the Ellipse were intentional. Even accepting Eastman's claim that his presence at the "Stop the Steal" rally was not planned, he had sufficient time to consider his actions, including sufficient time to decide he would assert to the assembled crowd a wholly unvetted theory about secret folders or phantom or fake ballots he heard at a hotel gathering the night before as established facts. He had absolutely no evidence of such items, just an uncorroborated theory passed along at a hotel reception, and he did not condition his statements that he had been given this theory the night before or that he had not investigated that theory—he asserted the theory as a fact.[73] Hence, based on this conduct the record supports finding his statements were purposeful, and thus intentional. (*Zitny v. State Bar*, *supra*, 64 Cal.2d at p. 792 [intent may be proved by direct or circumstantial evidence].) Eastman's discussions with a few others at the same hotel reception where he listened to Oltmann and Ramsland's theories of electronic vote manipulation were not a substitute for a reasonable vetting of their claims.

---

[72] Eastman raised a First Amendment defense to this count, which we resolve in Section IV, *post.*

[73] In response to OCTC's question whether Eastman was encouraging listeners not to trust the outcome of the election, Eastman said, "The statements I made were encouraging the listeners to focus on the illegality that had occurred in the election and to get to the bottom of what that illegality was and whether it affected the outcome. My view is that that's encouraging us to get to the bottom of it, to get to the truth." Eastman's statement here misses the point: one cannot "get to the truth" by first asserting mere speculation as truth.

Eastman failed to establish his assertion on review that he had "conflicting credible evidence" to support the charged false statements or that he vetted Oltmann and Ramsland's claims.[74] As detailed in the hearing judge's decision and our discussions of the preceding counts, Eastman consistently rejected information from true experts and relied on unverified assumptions and theories. Contrary to Eastman's arguments, we do not require that he "blindly accept" claims from the government that the election was not conducted fraudulently. However, he is not allowed to assert a theory that he heard the night before as established fact. The record supports a culpability finding of intentional moral turpitude for count seven.

c. Culpability Not Established for Count Eleven

Count eleven alleged Eastman told the crowd of protesters at the Ellipse on January 6, 2021, that election fraud existed, that dead people had voted, that Dominion's electronic voting machines had been used to fraudulently manipulate the election results, that former Vice-President Pence had the legal authority to delay the counting of electoral votes, and that the former Vice-President did not deserve to be in office if he did not delay the counting of votes. OCTC charged that these statements by Eastman were false and misleading and "contributed to provoking the crowd to assault and breach the Capitol in an effort to intimidate [former Vice-President] Pence and prevent the electoral count from proceeding, when such harm was foreseeable," and thus Eastman violated section 6106.

[74] Eastman makes several general references to the record to support his contention that he was familiar with Ramsland's report on Antrim County, Michigan, and that he was aware of "investigations" that identified serious flaws with Dominion voting systems. One basis for Eastman's belief was the documentary "Kill Chain." We have reviewed Eastman's references and do not find them persuasive. Even if others concluded that, in their opinion, security flaws existed, that does not allow Eastman to specifically assert falsely that Dominion voting systems had "secret folders" that allowed election officials to match "unvoted ballots with an unvoted voter and put them together in the machine." Eastman testified he did not recall seeing claims regarding pre-loaded ballots before meeting Oltman and Ramsland.

The hearing judge found that the first four of the five statements made by Eastman at the Ellipse were false and deceptive as charged in other counts: (1) that fraud occurred in the 2020 presidential election (count two); (2) that dead people voted (counts two and four); (3) that electronic voting machines were used fraudulently to alter the election results (count seven); and (4) that former Vice-President Pence had the authority to delay the vote counting (count ten).[75] However, the judge determined OCTC failed to provide any evidence that Eastman's statements "contributed to provoking the crowd to assault and breach the Capitol," and therefore dismissed count eleven with prejudice.

On review, OCTC seeks a culpability finding on count eleven, contending Eastman made false statements to convince the crowd that former Vice-President Pence could stop the electoral count and that he was well aware of the potential for violence. OCTC further contends culpability is established by President Trump, Giuliani, and Eastman acting as coconspirators who made statements that contributed to provoking the violence at the Capitol, which was foreseeable. Eastman's statements followed Giuliani's comments—"let's have trial by combat"—and preceded President Trump's comments—"fight like hell" to save the country—but OCTC presented no evidence to show that Eastman's statements contributed to the assault on the Capitol. Accordingly, the hearing judge did not find Eastman culpable of the misconduct alleged in this count. We agree with the judge's dismissal of count eleven with prejudice, but we

[75] Regarding the fifth statement in count eleven that claimed Eastman said former Vice-President Pence did not deserve to be in office if he did not delay the counting of votes, the hearing judge concluded, "Eastman did not expressly declare that [former] Vice[-]President Pence did not merit holding office if he refrained from delaying the vote counting but stated that 'anybody' unwilling to postpone the vote tallying was unworthy of office." We agree with the judge's understanding of the record and her finding that, while one could conclude Eastman was "alluding" to the vice-president, one could not reasonably conclude Eastman's statement was an assertion of an objective fact. OCTC did not appeal this finding, and we affirm.

elaborate with our discussion of the record, which provides additional support for the judge's conclusion.

We note OCTC argued, that to establish culpability for moral turpitude under section 6106, Eastman's statements would have to be intentional, willfully blind, reckless, or done with gross negligence.[76] Our review of the record does not support a finding in any of these categories as OCTC urges in its brief. First, we see no evidence in the record of intent as alleged in count eleven. (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334 [intentional misrepresentation not found where no evidence or witnesses presented to rebut contrary testimony].) At trial, in direct response to the question as to whether Eastman's statements on January 6, 2021, were intended to incite the crowd at the "Stop the Steal" rally to take violent action, Eastman answered, "Absolutely not." We disagree with OCTC's description in its brief that Eastman "told the crowd . . . that they had to act quickly to stop the count that afternoon," or that "it was essential for them to act." His words at the rally establish that he made false and misleading statements, but in no way does he tell the crowd "to assault and breach the Capitol" as alleged in the NDC. Second, we do not see that he engaged in willful blindness at the rally. While OCTC claims his statements were willfully blind, it does not provide a factual basis to support its assertion. We cannot discern the evidence that existed, but

[76] OCTC, in a footnote, states "the hearing judge suggested . . . that count [eleven] charged Eastman with inciting lawlessness," but disputed that suggestion and emphasized count eleven charged "a violation of section 6106, not criminal incitement." OCTC makes its discussion in count eleven with the clear goal of finding culpability under section 6106 and not as a permissible restriction on speech within the meaning of *Brandenburg v. Ohio* (1969) 395 U.S. 444, which allows limitation on speech where "advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." (*Id.* at p. 447.) Upon review, we do see that count eleven alleges Eastman's statements, as described in this count, "contributed to *provoking* the crowd to assault and breach the Capitol . . . ." (Italics added.) We see little difference between the verbs "provoke" and "incite." We act on OCTC's stated legal position and analyze count eleven using section 6106 and applicable case law.

Eastman otherwise ignored, when he made his statements that would foretell the crowd's later assault and breach of the Capitol. (See *In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433 [willfully ignoring evidence supports moral turpitude finding].) Likewise, OCTC claims Eastman's statements were reckless or grossly negligent, and while it discusses the law on these points generally, it does not explain how the statements he made would consciously disregard "a substantial and unjustifiable risk" that his statement would result in the assault and breach of the Capitol. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 12; see *Sanchez v. State Bar* (1976) 18 Cal.3d 280, 285 [breach of fiduciary relationship that binds attorney by conscientious fidelity to interests of his client is gross negligence].)

Finally, citing *Pinkerton v. United States* (1946) 328 U.S. 640, OCTC contends in its reply brief that, because Eastman acted as a coconspirator, he was therefore responsible for the natural and foreseeable consequences of all other coconspirator actions in furtherance of the conspiracy. Regardless of President Trump's and Guiliani's comments at the "Stop the Steal" rally, we do not see Eastman's statements supporting a conclusion that the assault and breach of the Capitol was a foreseeable result of his statements, and we decline to extend *Pinkerton* vicarious conspiracy liability as a means to establish culpability in a disciplinary matter for the reasons set forth in our discussion of aggravation for significant harm, *post.* We affirm the hearing judge's dismissal of count eleven with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charge for want of proof after trial on merits is with prejudice].)

6. Eastman Knowingly Used Misinformation in His Attempt to Persuade Former Vice-President Pence (Count Ten)

Count ten is premised on four instances where Eastman "repeatedly proposed and sought to encourage that [former Vice-President] Pence exercise unilateral authority to disregard the electoral votes of certain states or delay the counting of electoral votes." Those charged instances were contained in the December 23 memo, the January 3 memo, and two emails to Jacob during the evening of January 6, 2021. According to the NDC, each of these writings urged the former Vice-President to either disregard the electoral votes of particular states or delay the electoral vote count even though Eastman knew no basis in law or fact existed for his positions.

The hearing judge found culpability as alleged and reasoned:

> "Eastman was aware, or should have been aware, that the course of conduct he proposed in his memos was factually and legally unsupported. Eastman's dubious strategy to influence [former] Vice[-]President Pence to take unilateral action to determine the validity of [the] slate of electors in the contested states or delay the Joint Session of Congress constitutes moral turpitude in violation of section 6106 . . . ."

The judge assessed no additional disciplinary weight as the same facts supported culpability for count one. We find the charged statements in the two emails and the two memos were made with the intent to encourage the former Vice-President to take unilateral action at the upcoming Joint Session. We reject Eastman's arguments as detailed *post* and further find Eastman intentionally pushed both his reject electors and delay theories, knowing those theories were not supported by the facts, the relevant historical record, or the law.

On review, Eastman asserts he is a constitutional expert and his theories were supported by scholarly articles and his interpretations of past elections. We reject his arguments, including that his interpretation of the Twelfth Amendment and the ECA were supported by his sources. We have closely examined Eastman's testimony as well as the testimony of Yoo, Seligman, and

Jacob. We note Eastman's trial recollection was frequently poor as to what he reviewed, when he reviewed items, and the content he gleaned from his sources. Eastman was never able to precisely identify at trial the items on which he specifically relied in late 2020 as opposed to materials reviewed after the fact and in anticipation of trial. For example, Eastman did not recall if he reviewed actual historical data or relied on the Ackerman article's recitation of the historical record. Despite Eastman's statement that he is a "constitutional scholar," he made erroneous assertions, in writing, to OCTC about the historical record. For example, Eastman mischaracterized United States Senator Charles Pickney's unconstitutionality arguments relating to an 1800 bill as leading to that bill's defeat. As Seligman detailed, the bill actually passed the Senate but did not survive the congressional reconciliation process. This is but one example of the lack of rigor and discernment Eastman applied to the issue of vice-presidential authority and the analysis of the historical record.

The record established that Eastman presumed the ECA was constitutional for decades and it did not run afoul of the Twelfth Amendment. His December 23 and January 3 memos and the change in his position were part of Eastman's actions to convince former Vice-President Pence to reject properly appointed electors or delay the January 6, 2021 electoral count, and the memos themselves contained false and misleading statements as discussed, *ante*. Moreover, in a January 6 email to Jacob, Eastman conceded that the former Vice-President did not have unilateral authority to reject electors or postpone the count and then reminded Jacob he told that to President Trump, writing "as you know because you were on the phone when I did it. [. . .] But you know him - once he gets something in his head, it is hard to get him to change course." Yet, Eastman continued to press Jacob to convince the former Vice-President to delay the January 6 proceeding.

Eastman's argument on review references Jacob's December 8, 2020 memorandum to former Vice-President Pence that there was debate about his Joint Session role, but this argument misses the mark. Jacob testified that, at the time he drafted that document, he was just at the start of his research and had not yet reached a definitive conclusion. By December 14, Jacob clearly realized there would be no dual slates of electors. By the time Eastman and Jacob met on January 4 and 5, 2021, Jacob was more fully versed in the issues as established by Eastman's own trial testimony and Jacob's post-January 4 meeting memorandum. Finally, there were still unresolved factual issues in early December 2020 that were no longer at play by January 4, 2021.

Eastman claims Yoo testified that others shared Eastman's views and that Yoo also agreed a vice-president has authority to resolve disputed electoral ballots submitted for counting. This argument contorts Yoo's testimony and ignores distinctions drawn by the witness. First, even if Yoo was correct in his conclusion that a vice-president may have a role to act in a scenario that does not fall under a provision in the ECA, such as a governor or a legislative body submitting competing slates, Yoo's opinion was premised on a real dispute that existed. According to Yoo, the dispute in the 2020 presidential election was contrived rather than an actual dispute. Further, Yoo stated former Vice-President Pence was on "unassailable ground" when he determined the former Vice-President did not have the right to overturn the election.

Eastman worked to create an appearance of a legitimate dispute when in fact none existed. Eastman, through his knowing use of misinformation in his two memos and the charged emails with Jacob, repeatedly pushed for the former Vice-President to delay the electoral count or reject electors on January 6, 2021. We find Eastman engaged in misconduct that violated section 6106 as alleged in count ten; however, no weight will be given to this finding in our

culpability analysis as the misconduct is duplicative of count one, discussed *post*. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)[77]

7. Eastman's January 2021 Media Statements About the 2020 Election (Counts Five and Nine)

In addition to Eastman's efforts to convince former Vice-President Pence to reject electors or delay the electoral count and his involvement in election-related litigation alleging fraud and other illegalities, Eastman also had a media presence. Eastman is charged with making knowingly false and misleading statements in two of those media efforts: a podcast appearance before the January 6, 2021 Electoral College vote and an article he published in the days following the vote.

a. Eastman Made Misrepresentations During his Appearance on "Bannon's War Room" Podcast (Count Five)

Before Eastman completed his January 3 memo, attended the January 4, 2021 Oval Office meeting, and the January 5 follow-up meeting with Jacob and Short, Eastman appeared on the nationally broadcast program "Bannon's War Room." At the start of Eastman's January 2 interview by host Steve Bannon, Bannon described Eastman to his audience as "[o]ne of the great thinkers about the Constitution, and also a man of action. He's the President – He runs the overall operation over there. But John Eastman is the *constitutional lawyer* that's been putting up these lawsuits." (Italics added.) Bannon described Eastman as President Trump's lawyer to his audience two additional times. During the Bannon interview, Eastman stated action was needed in the states:

> "[W]hat we have here is *massive evidence that this election was at least conducted illegally*. In violation of the state statutes. But, lots of evidence, as well, that as a result of that illegal conduct, removing checks against fraud in the

[77] Eastman raised a First Amendment challenge as well for this count, which we resolve in Section IV, *post*.

> absentee ballot process *that we have absentee fraud more than enough to have affected the outcome of the election*."

(Italics added). Eastman further claimed Georgia, Pennsylvania, and Wisconsin were the states with the most egregious examples of state election laws being ignored or improperly altered. Prior to Eastman's January 2 appearance, Georgia, Pennsylvania, and Wisconsin election officials issued various public statements refuting claims of outcome-determinative absentee ballot fraud. Eastman testified that he did not give "much credence" to press releases issued by Democratic elected officials in Pennsylvania and Michigan, and he did not give any weight to Republican election officials in Georgia because he felt they were untruthful. He also stated he was frequently unaware (or only vaguely aware) of election officials' public statements. Eastman had no specific information about election law violations in Arizona, Michigan, or Nevada. For example, the same day he appeared on Bannon's podcast, Eastman sent an email to an attorney asking for information about Michigan "to the extent the violations are clear."

The NDC charged Eastman's statements on Bannon's War Room broadcast in count five as follows: "[Eastman] stated there was 'massive evidence' of fraud involving absentee ballots in the November 3, 2020 presidential election, 'most egregiously in Georgia, Pennsylvania, and Wisconsin.' [Eastman] further stated that there had been 'more than enough' absentee ballot fraud 'to have affected the outcome of the election.'" In finding Eastman culpable, the hearing judge determined he was grossly negligent. On review, OCTC seeks culpability based on intentional conduct. Eastman seeks a reversal of the judge's finding, arguing the NDC selectively quoted his statement and that the allegation was not proved at trial.[78]

[78] Eastman also argues his charged statements in this count are protected under the First Amendment. We address and reject that argument, *post*.

Turning first to Eastman's "selective quote" argument, Eastman said the following during the interview:

> "No, this is a power the Constitution assigns exclusively to those state legislators. And they need to act because what we have here is *massive evidence that this election was at least conducted illegally*, you know, in violation of the state statutes. But *lots of evidence*, as well, that as a result of the illegal conduct, removing checks against fraud in the absentee ballot process, that *we have absentee fraud more than enough to have affected the outcome of this election*."[79]

(Italics added.) Eastman claims that, when he said there was "massive evidence that this election was at least conducted illegally … in violation of state statutes," he did not refer to fraud. We find his argument wholly unpersuasive when considering the entirety of the interview and the charge. At the outset of the interview, Eastman asserted that election laws—specifically, those requiring a verified signature on absentee ballots designed to minimize the risk of fraud—had not been followed, "most egregiously in Georgia, Pennsylvania, and Wisconsin," and thus, those states had conducted the election illegally.[80] A couple minutes later, Eastman explicitly stated that "absentee fraud" occurred because of the illegal conduct he had described and that it was "more than enough to have affected the outcome of this election." Towards the end of the interview, he described the resulting slates of electors in those states as "illegally certified" and "fraudulently certified," which is factually untrue. The NDC provided Eastman with the nature of the charge—moral turpitude by misrepresentation, in violation of section 6106—and sufficient factual allegations in support of the charge for Eastman to prepare a reasonable defense. (§ 6085; *In re Ruffalo*, *supra*, 390 U.S. at p. 551; *Van Sloten v. State Bar*, *supra*, 48 Cal.3d at p. 929; S*ullins v. State Bar*, *supra*, 15 Cal.3d at p. 618.)

---

[79] This quotation is from the simultaneous transcription that appears in the video at minutes 2:55 to 3:09, which has some minor differences from the separate, printed transcript, both of which were admitted into the record as a single exhibit.

[80] Eastman reiterated this claim later in the interview when he said there "was a concerted effort to thwart the . . . anti-fraud provisions [the state legislators] had put in place."

Although OCTC was not technically accurate in attributing Eastman's use of the phrase "massive evidence" to "fraud," as pleaded in the charge, Eastman's own words inextricably linked "massive evidence" to illegal conduct. Therefore, he has failed to articulate how his claim that "massive evidence that the election was . . . conducted illegally" is meaningfully different from the NDC's charge. (See, e.g., *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171 [no due process violation when NDC characterized respondent's post-conviction disclosure duty as legal rather than ethical].)

Even if OCTC's allegation inaccurately conflated Eastman's concepts of state election law violations and fraud, and Eastman's statement of "massive evidence" referred to "illegalities," that misstep does not defeat the charge. OCTC accurately alleged Eastman said there was "more than enough" absentee ballot fraud "to have affected the outcome of this election." This statement strikes at the gravamen of the charge as set forth in the NDC: "[T]hese allegations regarding absentee ballot fraud were false and misleading, as [Eastman] knew at that time that there was no evidence upon which a reasonable attorney would rely of absentee ballot fraud in any state in sufficient numbers that could have affected the outcome of the election." Eastman argues that, while potentially ambiguous, the "more than enough" phrase likely modifies "illegal conduct" and not "absentee fraud." Reviewing the video of the War Room podcast with the attendant transcript shown in minute increments, we reject this argument as it is apparent that the phrase is modifying "absentee fraud."

As to culpability, OCTC met its burden of proof that Eastman's statements were not made with gross negligence but were intentionally false and misleading statements. Thus, the record supports an intentional moral turpitude finding under section 6106. The record supports the conclusion that Eastman knew no basis existed for the assertion that there was sufficient absentee ballot fraud to alter the outcome of the 2020 election. Based upon our review of the

record, as discussed *ante*, no massive evidence of either illegality or fraud existed in the states of Georgia, Pennsylvania, and Wisconsin. As was evident throughout the trial, Eastman simply rejected information and court decisions that were contrary to his views.

b. Eastman Made Misrepresentations in His "The American Mind" Article (Count Nine)

After the Capitol attack and on the eve of former President Biden's inauguration, Eastman published an article in the Claremont Institute's online publication, "The American Mind." Eastman's article, published on January 18, 2021, was entitled *Setting the Record Straight on the POTUS "Ask."* The NDC charged in count nine that Eastman made, in the course of the article, false election irregularity claims: (1) votes were electronically "flipped" from President Trump to former President Biden in Antrim County, Michigan; (2) more absentee ballots were cast than requested in parts of Wayne County, Michigan; and (3) "suitcases of ballots were pulled from under the table after election observers had been sent home for the night" at the State Farm Arena in Fulton County, Georgia. We take each charged statement in turn.

As to the article's claim that, in Antrim County, Michigan, votes were "electronically flipped" from President Trump to former President Biden, the Michigan Secretary of State issued a press release on November 6, 2020, months before Eastman published his article. It informed the public that the "erroneous reporting of unofficial results from Antrim County was a result of accidental error on the part of the Antrim County Clerk." The press release further advised the public that there had been human error in an unofficial release of results caused by failure to complete a software update, but no equipment malfunction occurred and the county's software functioned properly in counting ballots. Another press release followed on December 8 to once again address allegations about the Antrim County vote. A month before Eastman's article was

published, yet another press release was issued on December 17 that announced a hand audit of all presidential votes in Antrim County confirmed the equipment accurately counted the Antrim County votes. This is consistent with Halderman's March 2021 conclusion, who was an election security expert retained by Michigan's Secretary of State and Attorney General and who Eastman praised at trial.[81]

Eastman had a generalized aversion to information provided by state government officials and also failed to actively seek out credible experts to advise him. As was consistent throughout the trial, Eastman either claimed he was too busy to verify information or had an inability to recall what he knew and what steps he took to verify information forwarded to him. We reject Eastman's assertion that his Antrim County allegation is "demonstrably true." The testimony of Michigan officials at trial and the documentary evidence in the record show the contrary. Thus, Eastman's statement in his article was false, and he is culpable under section 6106.

Regarding Eastman's allegation in his article about Wayne County having more absentee ballots cast than requested, Eastman failed to take into account that Wayne County does not report absentee votes by precinct, but rather by separate counting boards covering multiple precincts. Wayne County precinct data would show no absentee ballots because those ballots are separately counted by an absentee voting board, a different entity from Wayne County. Eastman conceded at trial he did not recall the source of the allegation or whether it was true and repeats

[81] Halderman's March 26, 2021 report of his forensic investigation found, inter alia, "inaccurate unofficial results were a consequence of human errors" and "not caused by a security breach." Further, Halderman found, "The final results match[ed] the poll tapes . . . and there [was] no evidence that the poll tapes [were] inaccurate, except . . . in [a few] down-ballot races." Contrary to Eastman's argument, Halderman did not "confirm that votes had been electronically flipped from Trump to Biden in Antrim County, Michigan."

the concession on review.[82] We reject Eastman's arguments that his statement was a mistake, given it is an untrue allegation with his having no recollection as to its source, or that he is entitled to First Amendment protection pursuant to *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 271. First, Eastman's reliance on *New York Times Co. v. Sullivan* is not applicable here. As discussed in Section IV, *post*, this is a disciplinary proceeding. Hence, we examine Eastman's conduct pursuant to an objective standard, not a subjective one. Eastman's conduct was not objectively reasonable as he did not know the source of his information. By Eastman's own admission, he repeated unsubstantiated information. This is patently unreasonable. (Cf. *In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370, 375-376 [subjective intent did not apply and no reasonable factual basis existed for attorney's allegation that judge was involved with corporate fraud and bribery].)

Eastman's charged statement was untrue as established by the testimony of the Director of Michigan's Bureau of Elections. The number of absentee ballots counted was consistent with the number of ballots requested. Moreover, the false claim was premised on a fundamental misunderstanding of how Michigan processes absentee ballots. We also reject the contention he was simply negligent in repeating the claim. Intentionality is established by Eastman's willful blindness to the truth or falsity of his published allegation. (*In the Matter of Carver*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 432-433.)

Regarding Georgia, Eastman included the following statement in his article:

> "A large portion of the American citizenry believes the illegal actions by partisan election officials in a few states have thrown the election. They saw it with their own eyes—in Fulton County, Georgia, where suitcases of ballots were pulled from under the table after election observers had been sent home for the night."

[82] We note that, at the end of Eastman's article, it contains an undated correction stating, "a previous version of this article incorrectly stated that there were more votes cast than registered voters in Wayne County, [Michigan]." The parties did not address this on review.

No real dispute exists that Eastman's claim regarding the "suitcases" of ballots at the State Farm Arena was untrue. (See our count four discussion, *ante.*) By December 5, 2020, investigative personnel within the Georgia Secretary of State's Office concluded no hidden suitcases of ballots existed and ballots were not improperly counted. As detailed in our discussion regarding Eastman's First Amendment defense, *post*, his false assertion about the State Farm Arena ballots being in "suitcases" is not protected as "rhetorical hyperbole" as the statement is reasonably "interpreted as stating actual facts." (*Milkovich v. Lorain Journal Co*., *supra*, 497 U.S. at p. 20, citations omitted.)

D. Eastman Failed to Support the Constitution or Laws of the United States in His Pursuit to Delay the Electoral Count (§ 6068, subd. (a)) (Count One)

Count one charged that Eastman failed to support the Constitution or laws of the United States during his drive to delay the electoral count process or cause duly appointed electors of various states to be rejected, in violation of section 6068, subdivision (a), which imposes a duty on attorneys to support the Constitution and laws of the United States and California. Failure to do so warrants discipline. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 110; *In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487.)[83]

As the hearing judge found Eastman culpable only for his failure to support the federal criminal prohibition against conspiring to defraud the United States (title 18 U.S.C. § 371), our

[83] A defense to a section 6068, subdivision (a), charge is a good faith mistake of law. (*In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 631.) However, Eastman raised no such defense as he asserts, erroneously, there was "substantial historical and scholarly support" for the positions he took regarding former Vice-President Pence's authority.

focus is on the conspiracy allegation.[84] We utilize the elements of that federal offense to guide our analysis as to whether Eastman violated section 6068, subdivision (a).[85] The "defraud clause" portion of the general federal conspiracy statute prohibits conspiring "to defraud the United States, or any agency thereof in any manner or for any purpose." The elements to convict under the federal statute are that a person "(1) entered into an agreement (2) to obstruct a lawful government function (3) by deceitful or dishonest means and (4) committed at least one overt act in furtherance of the conspiracy [citations]." (*United States v. Conti* (9th Cir. 2015) 804 F.3d 977, 979-980.)[86] The means used to achieve the goal of the conspiracy need not be independently illegal. (*United States v. Caldwell* (9th Cir. 1993) 989 F.2d 1056, 1059, overruled on other grounds by *Neder v. United States* (1999) 527 U.S. 1, 8-9.) In the seminal case of *Hammerschmidt v. United States* (1924) 265 U.S. 182, the U.S. Supreme Court defined "defraud" in the context of an obstruction conspiracy case as "deceit, craft or trickery, or at least *by means that are dishonest.*" (*Id*. at p. 188, italics added.) A "defraud clause" conspiracy charge reaches to "any conspiracy for the purpose of impairing, obstructing or defeating the

[84] Count one also alleged Eastman did not support the ECA provisions in effect at the time and that he failed to support article II, section 1 of the Twelfth Amendment. The hearing judge found OCTC did not meet its burden of proof as to those allegations because it only established that Eastman intended to violate these provisions rather than proving an actual violation. OCTC did not challenge this finding on review, and we affirm the finding. Hence, we do not address OCTC's legal theory in the NDC as to the interplay between section 6068, subdivision (a), and the charged failure to support the ECA or the Twelfth Amendment. We instead focus on whether Eastman used deceitful means and conspired with others to obstruct the electoral count on January 6, 2021.

[85] State Bar Court proceedings are *sui generis*—neither criminal nor civil. (*Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300.)

[86] The hearing judge relied on *United States v. Meredith* (9th Cir. 2012) 685 F.3d 814, 822 to establish the elements of 18 U.S.C. section 371, which are very similar to our discussion of the elements in the statute set out in *Conti*.

lawful function of any department of government, [citations]." (*Dennis v. United States* (1966) 384 U.S. 855, 861.)

The hearing judge found Eastman conspired with President Trump to obstruct the Joint Session through deceitful means, and Eastman committed numerous overt acts in furtherance of the conspiracy. Eastman argues on review that two of the four elements of the offense were not established: (1) the Joint Session was not a lawful government function due to underlying election illegalities in some states, and (2) the hearing judge's application of "defraud" to his conduct was overbroad.[87] In furtherance of this latter point, Eastman argues the scope of a vice-president's authority was an "open question" and, even if Eastman used a false legal premise, his actions did not amount to "deceit, craft, or trickery." Eastman's arguments are not supported by the record.

Regarding Eastman's first argument, the Joint Session was in fact a lawful government function. No credible evidence exists to the contrary that the meeting of both houses of the United States Congress pursuant to the Twelfth Amendment and the ECA is not a lawful government function. No judicial finding or affirmative legislative action occurred that made the Joint Session unlawful. Sufficient support is in the record, discussed *ante* in several of the other counts and as detailed by the hearing judge, that Eastman used multiple dishonest means to advance his goal to impair, obstruct, or defeat the lawful purpose of the Joint Session.[88] Eastman

---

[87] As Eastman only challenges whether two of the four elements were met, we find he waived the factual findings for the remaining elements. (Rules Proc. of State Bar, rule 5.152(C)). Even if challenged, the remaining elements, based upon our independent review of the record, support a finding they were met. Clear and convincing evidence exists of an agreement with Trump and others, including Eastman, to impede the January 6, 2021 Joint Session. As for the final element, the record is replete with numerous overt acts, such as making intentional false and misleading statements to former Vice-President Pence, his staff, and the public.

[88] Therefore, we reject Eastman's argument that he did not have the requisite mens rea to violate title 18 U.S.C. section 371.

made numerous false claims to help accomplish the conspiracy's shared objective: to have former Vice-President Pence run interference on the electoral vote count with the goal to have him reject or delay the counting of electoral votes on January 6, 2021. The hearing judge's detailed decision of the trial record supports the finding that Eastman used dishonest means in order to help advance the conspiracy detailed in the NDC.

As to Eastman's second argument, the hearing judge's conclusion is consistent with the U.S. Supreme Court's definition of "defraud" in *Hammerschmidt*. Accordingly, Eastman failed to support the law that prohibits defrauding of "the United States, or any agency thereof in any manner or for any purpose." (18 U.S.C.§ 371; *Hammerschmidt v. United States*, *supra*, 265 U.S. at p. 188; *Dennis v. United States*, *supra*, 384 U.S. at p. 861.) We further find this count and count ten duplicative and assign disciplinary weight only to this count. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127 [no additional disciplinary weight for former rule 4-100(A) violation when duplicative of moral turpitude violation].)

IV. EASTMAN'S FIRST AMENDMENT DEFENSES ARE NOT SUPPORTED BY THE FACTS OR CASE LAW

We now address Eastman's contention that his statements in counts one through ten, found as misconduct by the hearing judge and affirmed by us, are protected expressions of his rights under the First Amendment, including freedom of speech and the right to petition the government for a redress of grievances.[89] Eastman contends that his statements cannot be used as grounds for professional disciplinary action. Further, Eastman asserts that the hearing judge misinterpreted and misapplied First Amendment jurisprudence in applying an intermediate

[89] The First Amendment states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

scrutiny standard for advertising and soliciting cases as opposed to the strict scrutiny standard applicable to restrictions on core political speech issues.

The First Amendment rights of attorneys are linked to the critical role they perform within the judicial system. While these rights are fundamental, they must be calibrated to align with the unique role attorneys play in the administration of justice. As we have stated, "attorneys occupy a special status and perform an essential function in the administration of justice. Because attorneys are officers of the court with a special responsibility to protect the administration of justice, courts have recognized the need for the imposition of reasonable speech restrictions upon them." (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 781, citing *Goldfarb v. Virginia State Bar* (1975) 421 U.S. 773, 792 [state's interest in regulating lawyers is especially great because lawyers are essential to primary governmental function of administering justice and have historically been court officers].)

For these reasons, "speech otherwise entitled to full constitutional protection may nonetheless be sanctioned if it obstructs or prejudices the administration of justice." (*Standing Comm. on Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1442, citing *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1074-1075.)[90] Because lawyers are "an intimate and trusted and essential part of the machinery of justice, an officer of the court in the most compelling sense," (*id*. at p. 1072, citations and internal quotations omitted), it is contemplated that a lawyer's right to free speech is especially limited in the courtroom. (*Id*. at p. 1071 ["It is unquestionable that in the courtroom itself, during a judicial proceeding, whatever right to 'free

[90] In *Gentile*, the court reviewed a First Amendment challenge to a Nevada bar disciplinary sanction leveled against a criminal defense attorney who had given a post-indictment press conference, in which he suggested that his client was an innocent scapegoat, that the actual perpetrator was a crooked police detective, and that others likely to testify as witnesses were drug dealers and money launderers.

speech' an attorney has is extremely circumscribed"].) Even beyond the confines of the courtroom or the pendency of a case, attorneys are not necessarily "protected by the First Amendment to the same extent as those engaged in other businesses." (*Id*. at p. 1073.) In examining the Nevada disciplinary rule at issue, the court in *Gentile* held that the "substantial likelihood of material prejudice" standard used in the Nevada rule constituted a "constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the State's interest in fair trials." (*Id*. at p. 1075.)[91]

Eastman contends that the hearing judge erred in applying the commercial speech balancing test to the speech issues in this case. Citing *Gentile*, Eastman argues that strict scrutiny is the appropriate standard when examining core political speech, while OCTC argues that Eastman's speech is subject to intermediate scrutiny pursuant to *Gentile*. We agree with Eastman that strict scrutiny is the applicable standard when examining core political speech and that Eastman's charged statements involved core political speech. (See *Gentile v. State Bar of Nevada*, *supra*, 501 U.S. at pp. 1075-1076 [content neutral Nevada rule was "narrowly tailored" and regulated only limited area of attorney speech]; see also *In the Matter of Parish*, *supra*, 5 Cal. State Bar Ct. Rptr. 370, 375, citing *Republican Party of Minnesota v. White* (2002) 536 U.S. 765, 774 [content-based restriction on judicial campaign speech burdens speech at core of First Amendment freedoms].) [92]

---

[91] Eastman's contention that some of his statements are merely "rhetorical hyperbole" is not persuasive. Eastman's statements, such as "We know there was fraud. Traditional fraud that occurred. We know that dead people voted," would not fall within such an exception. (*Milkovich v. Lorain Journal Co*., *supra*, 497 U.S. at p. 20.)

[92] To the extent that the correct analytical standard is relevant, we believe the applicable standard is one of strict scrutiny. Regardless, our focus remains on Eastman's false statements and whether or not they violate the rules and statutes governing attorney conduct.

While attorneys have a First Amendment right to make statements in public in the course of their professional duties, this right does not extend to making knowing or reckless false statements of fact or law. We addressed this concept in *In the Matter of Parish*.[93] In that case, Parish was a candidate for judicial office and was found culpable for factual misrepresentations that he made about himself and his opponent. These campaign misrepresentations violated former rule 1-700 of the Rules of Professional Conduct, which prohibited, through the incorporation of former canon 5,[94] candidates from "knowingly, or with reckless disregard for the truth" misrepresenting their opponents "identity, qualifications, present position, or any other fact concerning the candidate or [their] opponent." (*In the Matter of Parish*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 372, fn. 1].) Parish argued, consistent with a First Amendment defense, that he unknowingly made one false statement about his opponent and further contended he was not culpable because the prosecution failed to prove he made the statements with a reckless disregard of the truth. *Parish* is also consistent with cases where, in balancing an attorney's First Amendment rights outside of the courtroom with the public protection components of the attorney disciplinary process, the attorney's conduct is assessed under an objective,

[93] Regarding the point of law that false statements do not enjoy First Amendment protection, the U.S. Supreme Court has stated, "Although honest utterance, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity. At the time the First Amendment was adopted, as today, there were those unscrupulous enough and skillful enough to use the deliberate or reckless falsehood as an effective political tool to unseat the public servant or even topple an administration." (*Garrison v. State of Louisiana* (1964) 379 U.S. 64, 75.)

[94] Former California Code Judicial Ethics, canon 5B(2), now canon 5B(1)(b), effective January 1, 2013.

reasonableness standard. (*U.S. Dist. Court for Eastern Dist. of Washington v. Sandlin* (9th Cir. 1993) 12 F.3d 861.)[95]

The evidence and testimony at trial established that Eastman made multiple false and misleading statements in his professional capacity as an attorney for President Trump in court filings and other written statements, as well as in conversations with others and in public remarks. Both this opinion and the hearing judge's decision detail, in the discussion of the individual counts where culpability was found, that Eastman knowingly made these false statements or had no reasonable factual or legal basis for making them. Accordingly, while we have applied the strict scrutiny standard to the facts of this case, we find Eastman's First Amendment defenses regarding his rights to free speech and to petition the government for the redress of grievances do not bar a finding of culpability and discipline in this matter.

Furthermore, the First Amendment does not protect speech that is employed as a tool in the commission of a crime. (See *United States v. Hansen* (2023) 599 U.S. 762, 783 [First Amendment does not protect "speech integral to unlawful conduct"]; *United States v. Williams* (2008) 553 U.S. 285, 298 ["Many long established criminal proscriptions—such as laws against conspiracy, incitement, and solicitation—criminalize speech (commercial or not) that is intended to induce or commence illegal activities"].) Count one of the NDC charges Eastman with conduct and statements made in furtherance of a criminal scheme, i.e., conspiring to promote and assist President Trump in executing a strategy to overturn the legitimate results of the 2020 presidential election by obstructing the count of electoral votes of certain states, in violation of title 18 U.S.C. section 371. Attorneys do not have a constitutional right to collaborate with

[95] In contrast, Eastman's reliance on *New York Times Co. v. Sullivan, supra*, 376 U.S. 254, 269-271, is misplaced as that case involved a claim of defamation by a public official and was analyzed under a subjective standard.

clients for purposes that are unlawful, criminal, or fraudulent. (Cf. Rules Prof. Conduct, rule 1.2.1 [prohibiting attorney from advising or assisting violation of law].)

Eastman, in the scope of his representation of President Trump, wrote in his January 3 memo that former Vice-President Pence had the power to "gavel" in President Trump as reelected on January 6, 2021. Eastman's January 3 memo also contained additional deceptive, untrue, and fraudulent statements, such as the claim that there were dual slates of electors for certain states, that former Vice-President Pence was the ultimate arbiter under the Constitution to determine the result and could even declare President Trump the winner, and that such "bold" action was justified because "this Election was Stolen by a strategic Democrat[ic] plan to systemically flout existing election laws." Eastman knew that his advice lacked a reasonable basis in law because he conceded to Jacob that his argument was contrary to consistent historical practice and would likely be unanimously rejected by the U.S. Supreme Court. In light of the evidence, the First Amendment does not bar disciplinary action against Eastman for his speech in assisting and advising President Trump in illegal, criminal, or fraudulent activities.

Eastman further asserts that he has a separate right to petition for redress of grievances, and we acknowledge Eastman's First Amendment right. However, restrictions on the right to petition generally are subject to the same analysis as restrictions on the right of free speech. (*Wayte v. United States* (1985) 470 U.S. 598, 610, fn. 11.) Specifically, he asserts that, in his own right, he petitioned legislators to investigate and the President of the Senate to accede to his requests to investigate the impact of illegality in the conduct of the election. Eastman claims he was acting as a private citizen, exercising his right to petition at the January 4, 2021 Oval Office meeting and in his January 6 emails with Jacob. We agree with the hearing judge that Eastman did not attend the January 4 meeting in his capacity as a private citizen. We reach this same conclusion as to Eastman's charged January 6 emails. As such, because we have already

determined that Eastman's First Amendment defense to several counts does not preclude disciplinary action against him, we similarly find that Eastman's right to petition for redress does not bar finding culpability and the imposition of discipline. Accordingly, we reject Eastman's First Amendment defenses.

V. AGGRAVATION AND MITIGATION

Aggravating circumstances under the Standards for Attorney Sanctions for Professional Misconduct are "factors surrounding a lawyer's misconduct that demonstrate that the primary purposes of discipline warrant a greater sanction than what is otherwise specified in a given Standard."[96] (Std. 1.2(h).) Mitigating circumstances are "factors surrounding a lawyer's misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard." (Std. 1.2(i).) OCTC is required to establish aggravating circumstances by clear and convincing evidence (std. 1.5), and Eastman must meet the same burden to prove mitigation (std 1.6).

The hearing judge found aggravation for multiple acts of wrongdoing, lack of candor, and indifference.[97] The judge also found mitigation for no record of prior discipline, cooperation, and extraordinary good character. On review, Eastman only disputes the lack of candor finding and asserts that the aggravation and mitigation, when "appropriately balanced," should result in a lesser degree of discipline if culpability is affirmed. OCTC argues on review that aggravation should be assigned for significant harm.

---

[96] All further references to standards are to the Rules of Procedure of the State Bar, Title IV, Standards for Attorney Sanctions for Professional Misconduct.

[97] The hearing judge declined to find aggravation under standard 1.5(d) for intentional misconduct, bad faith, or dishonesty as there were not separate and distinct facts supporting aggravation apart from the facts supporting culpability. Neither party challenges these findings on review, and we agree.

A. Aggravation

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

The hearing judge assigned substantial weight in aggravation for Eastman's multiple acts of wrongdoing, including (1) seeking to mislead the U.S. Supreme Court in *Texas v. Pennsylvania*, (2) seeking to mislead the United States District Court for the Northern District of Georgia in *Trump v. Kemp*, (3) making multiple false and misleading statements amounting to moral turpitude (six counts), (4) encouraging former Vice-President Pence to disregard properly certified electoral votes and delay certification of the votes, amounting to moral turpitude, and (5) conspiring to commit an offense against the United States in violation of title 18 U.S.C. section 371.[98] We agree with the judge that substantial weight in aggravation is appropriate for Eastman's multiple acts of wrongdoing. (Std. 1.5(b).) (See *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [repeated similar acts of misconduct considered serious aggravation].)

2. Lack of Candor (Std. 1.5(l))

Standard 1.5(l) provides that aggravation may include "lack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings." The hearing judge found a portion of Eastman's testimony lacked candor: when Eastman falsely testified that he did not exert pressure on Jacob to reject the certified former President Biden electors in the January 5, 2021 meeting.[99] Such a finding is supported by Jacob's records from that meeting, his testimony about the January 5 meeting, Jacob's testimony

---

[98] Multiple acts of misconduct as aggravation are not limited to the counts pleaded. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279.)

[99] Eastman testified that he had no recollection of advocating for the option of rejecting electors in his meeting with Jacob and further stated he found it "implausible" that he would have made such a statement. As discussed *ante*, we agreed with the hearing judge's determination that Jacob's testimony was more credible than Eastman's on this point.

regarding Eastman's participation in a call later the same day that included President Trump, and Jacob's January 6 email response to Eastman recounting that rejecting electors had been discussed in their January 5 meeting and withdrawn that same night. As the lack of candor finding is supported by the record, we give it great weight. (See *Franklin v. State Bar* (1986) 41 Cal.3d 700, 708 [hearing panel findings on witness credibility entitled to great weight because panel saw and heard witness]; *In the Matter of Dahlz*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 282 [great weight given to hearing judge's finding on candor].)

We reject Eastman's broad claim on review that his testimony was "honest, candid, and fulsome," and the hearing judge erred by assigning aggravation for lack of candor. Eastman's testimony on this subject was not merely based on his "different memory" of the events. (*In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 523.) Based on the record, it is clear that Eastman was not candid about whether he pressured Jacob to reject electors on January 5. No other evidence corroborates Eastman's testimony. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-792 [attorneys lacked candor where record at complete odds with hearing testimony]; *In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965, 981 [lack of candor finding where record contradicted with respondent's uncorroborated testimony].) The judge assigned aggravation to only this portion of the testimony and therefore assigned only limited aggravating weight. We adopt the finding and weight assigned by the judge.

3. Indifference (Std. 1.5(k))

Aggravation may also be found for "indifference toward rectification or atonement for the consequences of the misconduct." (Std. 1.5(k).) While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct.

Rptr. 502, 511.) The hearing judge assigned substantial weight in aggravation for Eastman's indifference, finding that he failed to understand the wrongfulness of his actions surrounding his efforts to obstruct the 2020 presidential election results. The judge noted that Eastman gave no consideration in his testimony to the effect of his January 6, 2021 televised statements to the crowd at the Ellipse, where he misrepresented to thousands that electoral fraud from electronic voting had occurred. The judge also specified that Eastman characterized these disciplinary proceedings as a political persecution, claimed that the charges contained false and misleading statements, and called for the disbarment of the attorneys who brought the charges.

Eastman does not make specific arguments on review regarding the judge's aggravation finding for indifference. Rather, he maintains that his actions were factually and legally justified and continues to focus on his belief that these proceedings are political in nature. He describes these proceedings as "an extraordinary, unprecedented, and abjectly misguided foray by the California Bar . . . into the 2020 presidential election . . . ." His assertions also focus on a claim that the judge was biased against him, which resulted in a "stupefying" decision "ravaging" his rights. The breadth of his attacks on the judge and the labeling of this disciplinary proceeding as a punitive political exercise causes us the greatest of concerns about his ethical abilities as an attorney and officer of the court and demonstrates a fundamental lack of understanding concerning his professional ethical obligations.

When charged with disciplinary misconduct related to positions taken and dismissed by the courts, an attorney's unwillingness to even consider the appropriateness of his actions or acknowledge that at some point his position may have been meritless or wrong shows that the attorney "went beyond tenacity to truculence." (*In re Morse* (1995) 11 Cal.4th 184, 209.) This is the case here as Eastman has shown nothing but defiance and pugnacity and a refusal to consider the propriety of his actions as an attorney, and he persisted in this stance during oral

argument.[100] "It is well settled that an attorney's contemptuous attitude toward the disciplinary proceedings is relevant to the determination of an appropriate sanction. [Citations.]" (*Weber v. State Bar* (1988) 47 Cal.3d 492, 507.) We affirm the hearing judge's finding of substantial weight in aggravation under standard 1.5(k) based on Eastman's continued attacks on these disciplinary proceedings and his inability to show an understanding of his misconduct.

4. Significant Harm (Std. 1.5(j)) Not Established

"[S]ignificant harm to the client, the public, or the administration of justice," may be an aggravating circumstance. (Std. 1.5(j).) OCTC appeals the hearing judge's decision to not assess aggravation under this circumstance. We find OCTC did not present any additional facts beyond those we have already considered in determining culpability that would warrant a separate aggravation finding for significant harm. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 133 [no separate aggravation where culpability conclusions directly addressed misconduct].)

Eastman's actions resulted in culpability that involved (1) conspiring to obstruct the legitimate counting of electoral votes in his campaign to persuade former Vice-President Pence to reject electors or delay the count; (2) misleading courts in two separate cases; and (3) making false and misleading statements to the former Vice-President, other government officials, and the general public. Naturally, Eastman's actions that we have described harmed the public, the courts, and the legal profession, and resulted in culpability for violating section 6068, subdivisions (a) and (d), and section 6106. The harm that was intertwined with the various culpability findings is considered in our determination of appropriate discipline.

[100] Although represented by counsel on review, we granted Eastman's request for an opportunity to address us directly at oral argument.

OCTC additionally argues that Eastman caused significant harm to the general public by "sowing doubt" about the electoral process, which harmed those who administer elections with his unsubstantiated claims of illegality and fraud. We do not disagree with OCTC that misinformation about the 2020 election was rampant and consequentially resulted in a loss of confidence in the election process, but Eastman was just one of many who amplified this misinformation. Eastman's lies were only a part of the reason for the public's increased distrust of our electoral process. As to election administration workers and officials, we acknowledge OCTC presented evidence that, due to misinformation regarding the election in the media, election workers were harassed and states had to work to combat the misinformation. However, OCTC did not provide evidence to directly connect these examples of harm to Eastman's statements.

OCTC also seeks aggravation for the January 6, 2021 assault on the Capitol. Like the loss of public confidence in elections and our system of democracy, the January 6 assault cannot be directly attributed to Eastman in order to support an aggravation finding under standard 1.5(j). Further, OCTC did not show additional facts to justify significant harm to the administration of justice. (See *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 133 [where respondent's misconduct—failure to perform with competence—caused unnecessary sanction motions and hearings, this alone did not establish significant harm to administration of justice].) The record does not reveal specific evidence that considerable court time or resources were expended due to Eastman's misrepresentations. (Cf. *In the Matter of Hunter* (Review Dept.

1994) 3 Cal. State Bar Ct. Rptr. 63, 75, 79-80 [harm to administration of justice where attorney committed multiple acts of misconduct resulting in considerable court resources wasted].)[101]

We agree with the hearing judge that OCTC's evidence offered in support of aggravation for significant harm was speculative, and thus OCTC did not prove Eastman was the cause of the harm.[102] Because OCTC has not presented sufficient evidence of additional harm that can be directly attributed to Eastman—beyond what was considered to find culpability—we decline to assign aggravation under standard 1.5(j). (Std. 1.2(h) [aggravation based on "factors surrounding a *lawyer's* misconduct"] (italics added); *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835, 845 [no aggravation where OCTC failed to establish "specific, cognizable, and significant harm" that could be "directly attributed" to respondent's actions].)[103]

B. Mitigation

1. Extraordinary Good Character (Std. 1.6(f)

A lawyer may receive mitigation for "extraordinary good character" under standard 1.6(f) if it is "attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." The hearing judge credited Eastman's good character evidence and assigned substantial weight in mitigation. Neither party challenges this

---

[101] Counts two and four (the intervention motion and the *Kemp* action) involve harm to the administration of justice, but additional facts beyond those used to determine culpability were not established.

[102] OCTC went so far as to argue aggravation for significant harm based on *Pinkerton* vicarious criminal liability for the natural and foreseeable consequences of Trump's actions in furtherance of the conspiracy to obstruct the January 6, 2021 Joint Session. (See *Pinkerton v. United States*, *supra*, 328 U.S. 640; *United States v. Fonseca-Caro* (9th Cir. 1997) 114 F.3d 906.) We decline to extend aggravation of Eastman's misconduct based on the actions of President Trump.

[103] We have considered the factual record as highlighted in our colleague's concurring opinion that Eastman's actions caused significant harm within the meaning of standard 1.5(j). Nonetheless, we remain convinced that Eastman's actions identified by our colleague either falls within the ten misconduct findings we have affirmed or that the evidentiary record does not demonstrate Eastman's actions, in and of themselves, caused significant harm.

finding on review. Eastman presented several references attesting to his good character who had known him for a considerable amount of time and understood the disciplinary charges. Eastman's character witnesses included three former judicial officers, including a retired United States circuit court judge. We give serious consideration to their testimony and declarations. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys have strong interest in maintaining honest administration of justice].) Several references expressed that if Eastman were culpable of the alleged misconduct, then it was anomalous behavior that would not recur. We affirm substantial mitigation under standard 1.6(f).

2. Cooperation (Std. 1.6(e))

Mitigation may include "spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar." (Std. 1.6(e).) The hearing judge credited the stipulation as to facts and assigned limited weight for cooperation under standard 1.6(e) because Eastman did not admit culpability, the stipulated facts were easy to prove, and the stipulation "obviated very little in terms of OCTC's preparation for trial." We affirm limited mitigating weight for Eastman's cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation for those who admit culpability and facts]; *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 318 [limited mitigation where stipulation was not extensive, involved easily provable facts, and no admission of culpability].)

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

Mitigation for absence of a prior record of discipline may be assigned when there are many years of discipline-free practice coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) Eastman practiced law for approximately 23 years prior to his misconduct. The hearing judge found Eastman has not shown insight into his misconduct and, therefore, the

misconduct was not aberrational. The hearing judge assigned moderate weight under standard 1.6(a).

While we agree with the hearing judge that Eastman has failed to accept responsibility for his wrongdoing, we cannot agree with the weight she assigned here. Given his complete inability to accept responsibility as described in our indifference finding, we have great concern that future misconduct will occur. (*Cooper v. State Bar* (1987) 43 Cal. 3d 1016, 1029 [for protection of the public, court must consider fitness of attorney to continue to practice when determining mitigation for absence of prior discipline].) Eastman continues to fully deny his many unethical actions: he denies he misled the courts; he denies that he made multiple false and misleading statements in various contexts; and he denies that he conspired to subvert the law in order to benefit his client's desire to remain in office after his client lost a fair and lawfully conducted election. Because he fails to recognize his ethical obligations and views any scrutiny of them as an attack on him, we assign only nominal mitigation for Eastman's absence of a prior record of discipline despite his 28 years of being an attorney.[104] (*In the Matter of Jones* (Review Dept. 2022) 5 Cal State Bar Ct. Rptr. 873, 895 [nominal mitigation for nine years of discipline-free practice where respondent failed to acknowledge any wrongdoing and demonstrate understanding of ethical duties]; but see *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218 [no mitigation for 13-year discipline-free record when attorney failed to accept responsibility for wrongdoing].)

[104] OCTC did not challenge the hearing judge's assignment of moderate mitigating weight, but based on the record, we find that less mitigation is warranted. (Rule 5.155(A) [Review Department independently reviews record and may make findings, conclusions, or a decision or recommendation different from those of hearing judge].)

VI. DISBARMENT IS THE APPROPRIATE 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.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

In considering 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 shall be imposed where multiple sanctions apply].) Under standard 2.11, disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, or intentional or grossly negligent misrepresentation.[105] Standard 2.12(a) similarly provides for disbarment or actual suspension for violations of section 6068, subdivisions (a) and (d).

Eastman does not have a prior record of discipline, but that fact alone does not preclude disbarment. In certain circumstances, we have disbarred attorneys who have had no prior record of misconduct. (Cf. *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 41, 45 [disbarment with no prior record for committing multiple acts of moral turpitude and dishonesty, including pattern of abuse of judicial officers and court system combined with failure to appreciate nature of unethical conduct]; *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610, 630

[105] "The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the practice of law." (Std. 2.11.)

[respondent disbarred pursuant to standard 2.11 with no prior record of discipline due to extent of home loan modification scheme and "egregious aggravation"]; *In the Matter of Lucero*, *supra*, 6 Cal. State Bar Ct. Rptr. __ [attorney disbarred with no prior record of discipline due to multiple misrepresentations to clients and OCTC, misappropriation of less than $3,000, failure to repay funds, and lack of candor at trial].) While each of these cases are factually unique, their underlying themes of dishonesty and indifference resonate here.

We also examined the pre-standards case of *Segretti v. State Bar* (1976) 15 Cal.3d 878, where a two-year actual suspension was imposed following a determination that underlying federal criminal convictions amounted to moral turpitude due to Segretti's repeated acts of "deceit designed to subvert the free electoral process" during his time working on former President Richard Nixon's 1972 reelection campaign. (*Id*. at p. 887.) We agree with the hearing judge that *Segretti* provides guidance and, given the circumstances, guides us to a recommendation greater than two years' actual suspension. As discussed by the judge, while both Eastman's and Segretti's conduct involves dishonesty, Segretti recognized the wrongfulness of his misconduct. Eastman here clearly does not. Moreover, although the *Segretti* matter is a pre-standards case, Segretti's case did not involve the amount of aggravation present here, and we note that the overall weight of Eastman's aggravation is greater than his mitigation. Based upon the totality of the evidence and guided by the cases discussed, the unique facts of this case lead to the conclusion that disbarment is appropriate and necessary.

Eastman always had a ready excuse for his failure to verify the work of others. He frequently testified he was "busy" or "drinking from a fire hose." We do not find this a reason for a lesser sanction. An attorney's workload does not mitigate against a culpability finding. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 780 [press of business not a mitigating factor]; *Carter v. State Bar* (1988) 44 Cal.3d 1091, 1101.) In addition, Eastman applied little intellectual rigor

to the task of understanding election administration and did not seek out true experts to guide his analysis. The trial record has numerous examples of Eastman simply accepting information and material relevant to his election analysis as it was handed to him, but he turned a blind eye to information that did not support his goal of assisting President Trump. Eastman, and many of those providing him with inaccurate information, had a generalized and pervasive lack of understanding of how each state runs its elections and how to access and interpret relevant data. In fact, he ignored or otherwise denigrated election officials in both political parties who, from the record, managed their elections in accordance with the law and under the most difficult of circumstances—he paid their work no mind.

After reviewing all the testimony and relevant exhibits, the record shows Eastman vainly searched for evidence that would support his predetermined conclusion—whether it was the scope of vice-presidential authority under the Twelfth Amendment or whether the election resulted in former President Biden's victory because of outcome-determinative illegality or fraud. As for one example, Eastman gave no thought to the import of the Ellipse speech he made before hundreds of thousands of spectators. At trial Eastman asserted, "I never said anything about trusting or not trusting the outcome of the election. I said we had seen evidence of illegality and fraud that warranted further investigation because the election had been certified in the face of illegality." This assertion is simply untrue—he had no evidence of illegality and he offered his unsupported allegations as established fact. He fails to accept his role in making wholly unsubstantiated and untrue statements to the crowd about the illegality of the election. In defense of his false statements at the Ellipse, Eastman asserts on review that "just because governmental agencies made statements does not mean that [he] had to blindly accept them." This illustrates the upside-down nature of Eastman's approach not only to his Ellipse speech but to all the counts where misconduct was found.

Eastman rejected actual experts while he consistently and blindly accepted the ideas of non-experts. Eastman was willing to accept and repeat any theory presented to him, so long as it was consistent with his desire to see President Trump declared the winner of the 2020 presidential election. For example, Eastman was not able to cogently explain Ramsland and Oltmans's phantom ballot theory at trial. Further, Eastman showed a startling lack of intellectual discernment when faced with opposing fact or opinion, especially given his legal career. On review, there was at least one instance where Eastman mischaracterized his own trial testimony in order to avoid a culpability determination. This conduct is even more troubling when compared to his background as a former U.S. Supreme Court law clerk, a professor of law, a law school dean, and a constitutional scholar.

Attorneys must remember they are "officers of the court, and, while it is their duty to protect and defend the interests of their clients, the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice." (*Furlong v. White* (1921) 51 Cal.App.265, 271.) Eastman lost sight of this fundamental requirement. Eastman misled two courts, including our nation's highest court. This conduct alone warrants serious discipline. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 [misleading statements are troubling and oppose fundamental rules of ethics—common honesty—without which profession is "worse than valueless" in administration of justice].)

As we noted in counts two and four, "Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense." (*Paine v. State Bar*, *supra*, 14 Cal.2d at p. 154.) In essence, the way Eastman conducted himself during the course of his representation of President Trump had a negative impact on the judicial system and the administration of justice, which we have noted *ante*. The waste of precious judicial resources

on cases premised on false narratives, especially when an attorney knew the allegations were false, is a harm that must be considered even if it does not equate to aggravation. (Cf. *In the Matter of Reiss*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 220 [wasting judicial time and resources is harmful to administration of justice].) There is a distinction with a difference between hard-fought cases premised on actual facts and cutting-edge legal theories and those cases pushed forward based on, at best, mere speculation and a disingenuous take on the law. Eastman unfortunately took the latter path instead of the former. We also are unable to ignore Eastman's generalized failure to be truthful. Whether in the courts, to former Vice-President Pence and his staff, or to the public, Eastman consistently failed to be honest.

We next examine the wide-ranging impact of Eastman's conduct. Although there was no clear and convincing evidence that Eastman's January 6, 2021 statements had a causal connection to the resulting riots, Eastman's misconduct did cause harm. He used his skills to push a false narrative in the courtroom, in the White House, and in the media. That false narrative resulted in the undermining of our country's electoral process, reduced faith in election professionals, and lessened respect for the courts of this land. To this day, Eastman claims nefarious forces behind former President Biden's 2020 electoral win. Eastman even stands apart from his own expert, Professor Yoo, about former Vice-President Pence's authority under the facts of the 2020 election. Further, Eastman is unable to accept post-election court decisions in favor of the company behind Dominion voting machines.

Eastman argues that disbarment is not warranted if we determine he was culpable of the charged offenses. At oral argument, Eastman requested that if he was found culpable, any suspension should be no longer than the time period between his April 2024 transfer to involuntary inactive status and the issuance of this opinion. We find a 15-month suspension inadequate considering the record we have reviewed. Moreover, when an attorney fails to

understand or appreciate present misconduct, it causes concern that the attorney will commit other ethical violations in the future. (See *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380-381 [failure to understand culpability causes concern regarding handling of future cases].) Eastman's considerable indifference weighs heavily in our disbarment recommendation as we are concerned about future misconduct. In sum, Eastman's misconduct from November 2020 to the present as reflected in the record warrants a recommendation of disbarment.

VII. RECOMMENDATIONS

We recommend that John Charles Eastman, State Bar Number 193726, be disbarred from the practice of law in California and that Eastman's name be stricken from the roll of attorneys.

A. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Eastman be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.[106] (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [operative date for identification of clients being represented in pending matters and others to be notified is filing date of Supreme Court order imposing discipline].)

[106] Eastman is required to file a rule 9.20(c) affidavit even if Eastman has no clients to notify on the date the Supreme Court files 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, inter alia, cause for denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).) The court-approved Rule 9.20 Compliance Declaration form is available on the State Bar Court website at <https://www.statebarcourt.ca.gov/Forms>.

B. MONETARY SANCTIONS

We further recommend that Eastman be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar.[107] Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

C. COSTS

We further recommend that costs be 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, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is disbarred must be paid as a condition of applying for reinstatement.

D. MONETARY REQUIREMENTS

Any monetary requirements imposed in this matter shall be considered satisfied or waived when authorized by applicable law or orders of any court.

---

[107] The hearing judge recommended $10,000 in monetary sanctions based on the "gravity of Eastman's misconduct" that involved multiple acts of moral turpitude, misleading courts, his efforts to interfere with the 2021 electoral count, and the substantial aggravation involved. Eastman does not challenge the sanctions amount on review. Although rule 5.137(E)(2)(a) permits imposition of sanctions for each count of culpability and we agree that Eastman both misled the courts and endeavored to impede the counting of electoral votes, we do not find that there is a need to deviate from the maximum $5,000 sanction for disbarment. (See rule 5.137(E)(3).) Considering the totality of the facts and circumstances of this matter, we find that monetary sanctions of $5,000 is appropriate. (Rule 5.137.)

VIII. INVOLUNTARY INACTIVE ENROLLMENT

The hearing judge's order that Eastman be transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective March 30, 2024, will remain in effect pending the consideration and decision of the Supreme Court on this recommendation.

McGILL, J.

I CONCUR:

HONN, P. J.

RIBAS, J.

Concurring Opinion of RIBAS, J.

I agree with the conclusions of culpability and the recommended discipline for John Eastman's misconduct. I write separately to explain that I find the record contains clear and convincing evidence of significant harm as a factor in aggravation, under standard 1.5(j), for Eastman's conspiracy with the President and others to coerce the Vice-President to reject electoral votes or delay the electoral count and for his acts of moral turpitude based on the numerous false statements and unsupported legal theories he presented.

The hearing judge found there was significant harm to the public evidenced by distrust of democratic institutions and the electoral process, but concluded there was no evidence that Eastman caused this harm. We have not disturbed the judge's finding that the harm identified occurred, and the record contains abundant evidence of such harm and other harm identified by the State Bar. That witnesses did not identify Eastman by name to attribute the cause of its distrust is beside the point when Eastman was operating as a primary architect of a strategy to change an election outcome by, in part, exerting public pressure on government officials. To accomplish this, Eastman became a high-profile disseminator of misinformation. The purpose

was to sow doubt in the public's mind about the integrity of the election and distrust in democratic institutions. That public doubt and distrust, in fact, occurred is distinct from Eastman's culpability and is a significant harm that aggravates his misconduct.

As a member of the President's legal team and, specifically, as the President's "constitutional lawyer," Eastman offered credibility to the unsupported claims he presented in various court filings.[108] The public was aware of these as demonstrated by a December 28, 2020 complaint to Kathy Boockvar, Secretary of the Commonwealth of Pennsylvania: "The *Trump legal team* has produced mountains of evidence that indicates election fraud and voter fraud existed on a massive scale. . . . Unfortunately, nobody has refuted any of the actual evidence in court under oath, as the *Trump legal team* has been unable to get to the evidentiary phase of the lawsuits."[109] This individual pointedly told Boockvar: "'We the People' are comprised of 70-80 million patriots. . . . [W]e will be closely watching all of our elected officials, holding every corrupt official accountable. You still have time to get on the right side of the situation: you have the choice to either be a hero or a traitor." There were many more complaints directed to Boockvar that repeated the false assertions put forth by Eastman in his court submissions. As Pennsylvania's Deputy Secretary for Elections and Commissions testified, the misinformation expressed in the messages was concerning, partially because voters were losing confidence in the electoral process.

Other evidence in the record that identifies Eastman collectively as a cause of the public distrust in the integrity of the election is a press conference by Gabriel Sterling, who worked with Georgia's Office of the Secretary of State and was involved with the election in Georgia. In

[108] As early as November 9, 2020, Eastman was informing people he was a "member of the [President's] legal team."

[109] Italics contained in this and other quotes in the concurrence were added.

addressing voter discontent on the eve of the January 5, 2021 Georgia runoff elections for the U.S. Senate, Sterling first noted that "there are *people in positions of authority and respect* who have said [people's] votes didn't count, and it's not true[.]" Sterling then described in detail a video documenting election workers' activity in the State Farm Arena during the 2020 presidential election showing nothing illegal occurred and said, "The *President's legal team* had the entire tape. They watched the entire tape, and then from our point of view intentionally misled the State Senate, voters, and the people of The United States about this. It was intentional. It was obvious." Specifically addressing potential changes in voter turnout, Sterling said this was "[i]n large part driven by the continuing misinformation and disinformation concerning the value of people's votes in this state," as he sought to restore the public's confidence that every vote would be counted.

And Georgia Secretary of State Brad Raffensperger was compelled to write a ten-page letter, dated January 6, 2021, to members of Congress who publicly stated they would object to counting the electors presented by Georgia. As with Sterling, Raffensperger did this to refute the "false claims" raised by "the President *and his allies*," which were causing doubt about the validity of the presidential election in Georgia.

The public knew that Eastman was an important ally of the President, a member of the President's legal team, and a person of authority and respect, because on January 2, 2021, Eastman was presented by Steve Bannon on the broadcast of Bannon's War Room as "[o]ne of the *great thinkers about the Constitution*," "the *President's constitutional lawyer*," and "the *lead sled dog*." There, Eastman's intent to exert public pressure as part of his strategy was made plain when, after reasserting lies about massive fraud occurring in the election, he told listeners that they should put "rolling thunder pressure" on state legislators to "either decertify the existing slate of electors . . . or certify the correct slate of electors . . . ." If this was not sufficient

amplification of falsehoods made to the public while his stature was promoted, Eastman's Ellipse speech made four days later would be.

At the January 6 rally at the Ellipse, before hundreds of thousands of attendees, Rudy Giuliani introduced "Professor Eastman" as "*one of the preeminent constitutional scholars* in the country" to explain how it was "perfectly legal" for the Vice-President to determine "the validity of these crooked ballots or he can send them back to the legislatures[,]" and to explain how cheating occurred in the election. Following Eastman's remarks—in which Eastman reasserted lies about fraud occurring during the election and reiterated a baseless unilateral authority of the Vice-President—the President spoke, calling Eastman "*one of the most brilliant lawyers in the country*" before repeating and elaborating on the falsehoods, as he encouraged the crowd to take action.[110] These references to Eastman's prestige clearly portrayed to the public an academic heft and credibility to the fabrications asserted by Eastman, Giuliani, and the President and a legitimacy to the crowd's breach of the Capitol. By this point, Eastman had near celebrity status, as evidenced by people approaching him after his speech to introduce themselves and take selfies with him. This status has persisted, as Eastman stated in a 2023 interview with Board Chair of the Claremont Institute Tom Klingenstein: "I'll go into places where people recognize me and give me a standing ovation."

We know that the harm to the public and threat to the democratic process was partially caused by Eastman's actions, because the Vice-President's attorney and Deputy Assistant to the

[110] While we found Eastman's misrepresentations were not proven to be made with the *intent* to provoke the crowd to assault and breach the Capitol, resulting in Eastman escaping culpability under count eleven, the fact remains that significant harm did occur—at a minimum, the public distrusting the legitimacy of the election and government institutions, and at most, the public trying to thwart the democratic process through violence. Additionally, Eastman's remarks at the Ellipse were part of the factual allegations supporting counts one and seven of the Notice of Disciplinary Charges for which we found him culpable and for which we can consider any resulting significant harm.

President, Greg Jacob, who was very familiar with Eastman's activities and influence on the President, was a witness to it and directly attributed the harm to Eastman. He did so first in an email sent to Eastman while the Capitol was under siege on January 6, and then again an hour later, stating, in part, that it was "gravely irresponsible for you to entice the President with an academic theory that had no legal viability . . . . The knowing amplification of that theory through numerous surrogates, whipping large numbers of people into a frenzy over something with no chance of ever attaining legal force through actual process of law, has led us to where we are."

That others may also be responsible for this significant harm does not diminish Eastman's contribution. (See *Spindell v. State Bar* (1975) 13 Cal.3d 253, 260 [immaterial that harm was partly attributed to attorney's secretary].) Eastman was not simply one of many voices. As a prominent figure closely associated with the President, Eastman was a leader and influencer in a collective effort that included the dissemination of falsehoods to overturn the outcome of the presidential election. This resulted in a level of distrust of the electoral process that empowered members of the public to attempt to sabotage a pillar of democracy—the peaceful transfer of power. Recognition under standard 1.5(j) of aggravation for significant harm to the public interest caused by Eastman's misconduct is warranted.

No. SBC-23-O-30029

In the Matter of
JOHN CHARLES EASTMAN

Hearing Judge
Hon. Yvette D. Roland

Counsel for the Parties

For Office of Chief Trial Counsel:	Danielle A. Lee Duncan C. Carling Rachel S. Grunberg Office of Chief Trial Counsel The State Bar of California 180 Howard St. San Francisco, CA 94105
For Respondent:	Randall A. Miller Zachary Mayer Jeanette Chu Miller Law Associates, APC 411 S. Hewitt St. Los Angeles, CA 90013