PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed October 11, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 12-O-17912
	)	
STEVEN GREGORY KAPLAN,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 137381.	)	
	)	

Steven Gregory Kaplan appeals a hearing judge's decision that he be disbarred for failing to maintain client funds in a client trust account (CTA) and intentionally misappropriating $9,828.25. He admits to failing to maintain his client's funds in trust and to misappropriating those funds, but denies he did so intentionally. He requests discipline including a two-year suspension rather than disbarment.

At trial and on review, Kaplan argued that he was grossly negligent in failing to deposit the funds in his CTA during a period of personal and financial stress. According to Kaplan, placing the money in a non-CTA account permitted his bank to seize the funds, leaving him without the money to pay his client. The hearing judge rejected Kaplan's arguments and found that he intentionally and dishonestly misappropriated client funds for his personal use and benefit.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we agree with the hearing judge's culpability findings and that Kaplan failed to prove compelling mitigation. Under these circumstances, the applicable disciplinary standards call for disbarment. We find no reason to depart from those standards, and therefore affirm the hearing judge's discipline recommendation.

I. PROCEDURAL BACKGROUND

On June 4, 2013, OCTC filed a three-count Notice of Disciplinary Charges (NDC) alleging that Kaplan: (1) misappropriated client funds of at least $9,828.25, an act involving moral turpitude, dishonesty, or corruption, in violation of section 6106 of the Business and Professions Code;[1] (2) failed to maintain the client funds in a CTA, in violation of rule 4-100(A) of the Rules of Professional Conduct;[2] and (3) failed to pay the client funds despite requests to do so, in violation of rule 4-100(B)(4).[3]

On October 4, 2013, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). The trial began on October 7, 2013, but was abated later that day. In January 2015, the case was unabated, and on April 10, 2015, the trial resumed for one day. At trial, Kaplan orally stipulated to culpability on all counts, including the misappropriation, but argued it was grossly negligent and not intentional. The hearing judge issued her decision on June 29, 2015. We focus our review on the issues Kaplan raised, namely, whether his misappropriation was intentional or by gross negligence, whether he proved compelling mitigation, and whether disbarment is the appropriate level of discipline.

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[1] All further references to sections are to this source. Under section 6106, "[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . constitutes a cause for disbarment or suspension."

[2] All further references to rules are to this source, unless otherwise noted. Under rule 4-100(A), "[a]ll funds received or held for the benefit of clients by a member . . . shall be deposited in one or more identifiable bank accounts labeled 'Trust Account,' 'Client's Funds Account' or words of similar import . . . ."

[3] Under rule 4-100(B)(4), "a member shall. . . "[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive."

II. FACTUAL BACKGROUND[4]

Kaplan was admitted to the practice of law in California on December 7, 1988, and has no prior record of discipline.

Three men—David Benullo, David Goldstein, and David Klawans—retained Kaplan to represent them as their attorney in the sale of a movie script entitled *Mucho Dinero* to Blake Freeman, a producer. Benullo initially contacted Kaplan about retaining him by sending an email with the subject line "lawyer for a deal." On December 29, 2011, Goldstein emailed Benullo, inquiring whether Kaplan was acting as a lawyer or manager in the sale of the script. Benullo replied: "[S]teve's the lawyer who came in to deal with this for us." Kaplan was copied on this email. Shortly thereafter, on January 10, 2012, Benullo, Goldstein, and Klawans entered into a written Deal Memorandum with Kaplan that stated Kaplan would be paid for "professional services in negotiating and drafting the terms of the purchase of the Script by Producer [Freeman]."

In June 2012, the parties agreed on a sales price of $90,000 for the script. The three men agreed to split the proceeds as follows: 42.5 percent each to Benullo and Goldstein and 15 percent to Klawans. Freeman paid the sales proceeds to Kaplan in two installments: $65,000 on August 1, 2012, and $25,000 on September 6, 2012. Kaplan did not deposit the money in his CTA. Instead, he placed it in a Wells Fargo Bank checking account, which he used for his movie production company, Rainstorm Entertainment, Inc. (Rainstorm Account).

Under the Deal Memorandum, Kaplan would be paid 10 percent of Benullo's share of the sales proceeds and 7.5 percent each of Goldstein's and Klawans's shares—$7,706.20 of the $90,000. When Kaplan received the $65,000 payment, he properly withheld $5,565.58 as his fee

[4] The factual background is based on the pretrial written stipulation, trial testimony, documentary evidence, and factual findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

and paid Benullo, Goldstein, and Klawans their respective shares of the remaining $59,434.42, including $25,553 to Goldstein. When Kaplan received the $25,000 payment on September 6, 2012, he properly withheld $2,140.62 as his fee. He stipulated that he paid Benullo and Klawans their shares of the remaining $22,859.38 but failed to pay Goldstein his share, which was $9,828.25.

Goldstein inquired about his share on September 6, 2012, the day Kaplan received the $25,000. Kaplan or an agent acting on his behalf told Goldstein that the funds were not available for disbursement until October 12, 2012. This statement was untrue as bank records showed the money was in the Rainstorm Account. Those bank records further revealed that, within a month of receiving the $25,000, Kaplan made over 100 withdrawals for business and personal expenses, including restaurant bills, airline tickets, credit card payments, parking fees, and a $15,000 payment to Exclusive Resorts. He also withdrew at least $6,000 in cash. By September 17, 2012, the balance in the Rainstorm Account had dropped to $7,130.51, and by October 2, 2012, it fell to a negative $61.91. Kaplan did not disburse Goldstein's funds on October 12, 2012, as promised.

On October 17, 2012, and for a year thereafter, Goldstein or his manager repeatedly asked Kaplan for the money. Kaplan responded with various excuses for his non-payment. After several months, Goldstein's sister, an attorney, contacted Kaplan to demand payment. Kaplan finally paid Goldstein $9,828.25, with interest, on September 16, 2013, more than a year after he received the $25,000 (and collected his $2,140.62 fee), and three months after the State Bar filed and served the NDC in this case. Kaplan testified that during this period of time, he suffered from depression, was involved in divorce proceedings, had significant financial difficulties, and experienced business problems, all of which affected his ability to function on a daily basis.

III. CULPABILITY

A. Intentional Misappropriation [Count One]

The hearing judge found Kaplan culpable of intentionally misappropriating $9,828.25 that he held in trust for Goldstein. As analyzed below, the evidence clearly and convincingly supports the hearing judge's findings, including that the misappropriation was intentional.[5]

To begin, Kaplan decided to deposit his clients' funds into the Rainstorm Account rather than into his CTA, despite ample evidence that the funds were entrusted to him as the attorney for Benullo, Goldstein, and Klawans. Further, even though Goldstein requested payment on the same day Kaplan received the $25,000, Kaplan made no payment. Instead, Goldstein was told that the money was not available until the following month, and Kaplan began a series of over 100 withdrawals to pay his own business and personal expenses. Kaplan spent all of Goldstein's money in the account within a month. He did not repay the funds for a year, and did so only after Goldstein's sister demanded the money and OCTC filed this case. Kaplan made repeated untruthful excuses for his failure to pay. And he still owes Goldstein $400 in arbitration filing fees that he promised to pay during the disciplinary trial.

On review, Kaplan admits he misappropriated Goldstein's funds but contends it was not intentional or dishonest. We reject his arguments because his evidence, as summarized below, consists almost entirely of his own testimony, which the hearing judge found lacked credibility.[6]

First, Kaplan asserts he was not required to deposit the $90,000 sales proceeds from the script into his CTA because he believed—albeit unreasonably—that he was not acting as an

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[5] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

[6] The judge found that "much, if not most, of [Kaplan's] testimony related to the contested issues lack[ed] credibility." We give great weight to this finding. (Rules Proc. of State Bar, rule 5.155(A) [great weight given to findings of fact]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [great weight given to hearing judge's findings on credibility].)

attorney for the three men. The hearing judge found Kaplan's testimony on this point was not credible. We adopt this finding as it is supported by the following evidence: Benullo's initial email to Kaplan clearly sought a lawyer; the December 2012 email between Kaplan and his clients clarified that Kaplan was working as their attorney; and the plain language of the Deal Memorandum states that Kaplan would provide professional services for negotiating and drafting terms of the script purchase. (See *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 543 [activity constitutes practice of law if it involves application of legal knowledge and technique]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 603-604 [negotiating settlement with opposing counsel constitutes practice of law].)[7]

Next, Kaplan argues that he did not intentionally misappropriate client funds because he intended to pay Goldstein, but he did not have the money due to an unexpected bank "setoff" of $40,000 as a collection against his line of credit that was in default. The hearing judge found that Kaplan's testimony about the setoff claim lacked credibility and was "convoluted." We agree and note that Kaplan's setoff testimony was equivocal as to its timing and as to which account had been affected—his personal account or his Rainstorm Account. The Rainstorm Account statement that OCTC provided showed no bank setoff, and Kaplan produced no bank records for his personal account. Kaplan's failure to provide documentation to support his setoff claim reinforces the hearing judge's adverse credibility finding. (See *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 13 [attorney's unexplained failure to substantiate testimony with evidence expected to be produced is strong indication testimony not credible].)

[7] Even if Kaplan was not acting as an attorney for the men, he had a duty to safeguard the monies he received on their behalf (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 668 [attorneys must conform to professional standards in whatever capacity they are acting in particular matter]), and was obligated to pay Goldstein his share upon a first request.

Moreover, Kaplan offered no plausible explanation for failing to pay Goldstein immediately upon receiving the $25,000 on September 6, 2012, when the money was deposited in the Rainstorm Account. Like the hearing judge, we reject Kaplan's argument that a bank setoff prevented him from paying Goldstein.

B. Failing to Maintain Client Funds in CTA [Count 2]
Failing to Pay Client Funds upon Request [Count 3]

Kaplan stipulated on the record at trial that he was culpable for count two for failing to hold client funds in a CTA, as required by rule 4-100(A), and for count three for failing to pay his client those funds when requested, as required by rule 4-100(B)(4). While the hearing judge did not reference these stipulations in her decision, she found Kaplan culpable of both counts based on the trial evidence. The judge dismissed count three with prejudice because it was duplicative of count one, the section 6106 violation, explaining that she "already relied on [Kaplan's] failure to pay Goldstein $9,828.25 to find [him] culpable of dishonest misappropriation of $9,828.25 under count one." The judge further reasoned that "it is unnecessary, if not inappropriate, to find redundant/duplicative violations." OCTC does not challenge the judge's dismissal of count three. We adopt the hearing judge's culpability finding in count two as supported by the record, and affirm the dismissal of count three with prejudice as duplicative of count one. (*Conroy v. State Bar* (1991) 53 Cal. 3d 495, 501 [unnecessary if not inappropriate to find duplicative violations; *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.)

IV. AGGRAVATION OUTWEIGHS MITIGATION[8]

A. Aggravation

1. Significant Harm to Client

The hearing judge correctly found that Kaplan's misappropriation and failure to pay restitution for a year significantly harmed Goldstein. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) We agree, and assign significant aggravating weight based on the following evidence.

Goldstein, married with two children, testified that the loss of nearly $10,000 for a year adversely affected his family's finances and caused distress. He explained: "Well, as a screenwriter, you have to—you know, a freelancer—you have to budget your life around sales that you make." Goldstein's wife, who worked for the government, suffered a pay cut during this time, and Goldstein had purchased a car, planning to make payments with the funds he expected from Kaplan. Ultimately, Goldstein had to liquidate stocks he had set aside for college funds and credit card payments to cover expenses while he waited for Kaplan to pay him. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 [substantial harm where attorney's misconduct deprived client of funds at time of desperate need].)

2. Multiple Acts

Standard 1.5(b) provides for aggravation for multiple acts of wrongdoing. Kaplan misappropriated Goldstein's money in more than 100 separate withdrawals in just over a month. He also repeatedly made misrepresentations to his client about the status of the funds. We find that this conduct constitutes multiple acts of wrongdoing, and we assign significant aggravation.

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[8] Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Kaplan to meet the same burden to prove mitigation. All further references to standards are to this source.

(*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [65 improper CTA withdrawals are multiple acts of misconduct constituting significant aggravation].)

3. Lack of Candor and Cooperation

Standard 1.5(l) allows aggravation for lack of candor and cooperation to the victims or to the State Bar during disciplinary proceedings. During the trial, Kaplan promised to reimburse Goldstein for a $400 fee paid to initiate a fee arbitration proceeding. On February 4, 2016, we granted OCTC's Motion to Augment the Record with Goldstein's declaration, which established that Kaplan had not paid this fee. Kaplan's failure to fulfill his promise to Goldstein merits some aggravation for lack of cooperation.

B. Mitigation

1. Cooperation with State Bar

The hearing judge assigned mitigation for Kaplan's cooperation with the State Bar in entering into an extensive factual Stipulation. (Std. 1.6(e) [mitigation for spontaneous candor and cooperation to victims or State Bar].) We assign considerable mitigating weight because Kaplan also stipulated at trial to culpability for most charges in the NDC. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more mitigating weight accorded when culpability as well as facts admitted].)

2. Lack of Prior Discipline

Kaplan was admitted to practice law in 1988, and his misconduct began in 2012. The hearing judge assigned significant mitigation for Kaplan's absence of prior discipline in 24 years.

We assign only limited mitigation credit, however, because Kaplan did not establish his misconduct is unlikely to recur, as required by the standard. (Std. 1.6(a) [mitigation for absence of prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur]; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is

serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur]; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218.) Since Kaplan's misappropriation consisted of over 100 separate bank withdrawals and he made excuses for non-payment for more than a year, we do not view his misconduct as aberrational. (*In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380, 386 [conduct not found aberrational where multiple acts were committed and attorney had time to reflect before each subsequent act].) Accordingly, Kaplan's discipline-free record does not establish that he will avoid future misconduct.

3. Good Character

Mitigation credit is afforded for extraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct. (Std. 1.6(f).) The hearing judge properly assigned credit for three attorney character witnesses Kaplan presented; one testified and two submitted declarations. Though the witnesses spoke of Kaplan as a highly dedicated and competent attorney (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"]), their testimony is insufficient to warrant more credit as they do not represent a broad spectrum of the community nor were they aware of the full extent of Kaplan's misconduct, as the standard requires. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [character testimony from three attorneys not sufficiently wide range of references]; *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 508-509 [no good character mitigation for testimony of two attorneys who did not know scope of charges].)

4. Minimal Mitigation for Extreme Emotional Difficulties or Mental Disabilities

Mitigation is available for extreme emotional difficulties if: (1) an attorney suffered from them at the time of his misconduct; (2) the difficulties are established by expert testimony as being directly responsible for the misconduct; and (3) the difficulties no longer pose a risk of future misconduct. (Std. 1.6(d).) The hearing judge assigned mitigation credit based on Kaplan's testimony that at the time of the misappropriation he was suffering from extreme stress, anxiety, and financial difficulties caused by a contentious divorce and possible adverse business litigation. He recalled these difficulties as a "dark period" in his life.

We afford minimal credit because Kaplan did not prove that his emotional or financial problems caused him to intentionally misappropriate Goldstein's money to pay for business and personal expenses. While Kaplan is not required to prove this nexus through expert testimony (*In re Brown* (1995) 12 Cal.4th 205, 222 [some mitigation is afforded to evidence of attorney's illness despite lack of expert testimony]), he failed to provide other clear and convincing evidence to establish that his problems caused his misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 197 [emotional distress resulting from marital difficulties and similar problems not mitigating absent evidence it was directly responsible for misconduct].) Further, Kaplan offered no corroborating documentary evidence of his financial problems.

Most importantly, Kaplan failed to prove that his difficulties no longer pose a risk of future misconduct. He testified that he is currently using meditation rather than prescribed medications to handle his emotional issues, and believes that his stressors have resolved. This evidence does not prove that the problems he claims led to his misconduct have been resolved or will not recur. (*In the Matter of Wenzel, supra,* 5 Cal. State Bar Ct. Rptr. at p. 386 [no mitigation for extreme emotional distress where evidence fails to establish that difficulties are resolved or no longer pose risk].)

V. DISBARMENT IS APPROPRIATE[9]

Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow them whenever possible (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and to look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 2.1(a) is most applicable and provides that disbarment is the presumed sanction for intentional misappropriation "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate."[10] Kaplan intentionally misappropriated $9,828.25, a significant amount. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [$1,355.75 held to be significant amount].) Further, the limited mitigation we assigned to his cooperation, lack of a prior record, and good character evidence is neither compelling nor does it clearly predominate over his serious misconduct and aggravation for causing significant client harm, committing multiple acts of misconduct, and demonstrating a lack of cooperation with his victim.

Misappropriation of client trust funds "breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) It is grave misconduct for which disbarment is the usual discipline. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) "Even a single 'first-time' act of misappropriation has warranted such stern treatment." (*Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 657.)

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[9] 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.)

[10] Standard 2.11 also applies and provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude."

Kaplan chose to use Goldstein's entrusted funds to pay his own debts at the expense of his professional, ethical, and fiduciary duties to his client. Many attorneys experience financial and emotional difficulties comparable to those that Kaplan faced. "While these stresses are never easy, we must expect attorneys to cope with them without engaging in dishonest activities, as did [Kaplan]." (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 522.) "Misappropriation of a client's funds simply cannot be excused or substantially mitigated because of an attorney's needs, no matter how compelling." (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709.)

Kaplan argues that a two-year actual suspension is appropriate, and cites several cases where discipline less than disbarment was imposed, even for an intentional misappropriation. The circumstances of these older cases, however, are fact-specific and distinguishable from Kaplan's intentional and dishonest misconduct, as follows: *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 596, involved extensive good character, community service evidence, and a five-year period without additional misconduct; *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 415, involved gross negligence; *In the Matter of Bleeker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113, 126-127, did not involve intentional dishonesty and considerable mitigation was proved; *In the Matter of Lilly* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185, 192-193, involved an attorney with 21 years of discipline-free practice combined with a narrow time frame during which misconduct occurred; *In the Matter of Tindall* (1991) 1 Cal. State Bar Ct. Rptr. 652, 665, involved an attorney's lack of understanding of his professional duties, not dishonest intent; and *Weller v. State Bar* (1989) 49 Cal.3d 670, 677, involved two important mitigating factors not present here—prompt voluntary restitution and strong character evidence.

Despite Kaplan's request, we do not recommend a more lenient sanction than disbarment under standard 2.1(a), given his culpability for moral turpitude, the harm he caused his client, his multiple acts of misconduct, his limited mitigation, and his ongoing failure to pay Goldstein the promised $400 arbitration fee. (Stds. 1.2(i), 1.7(c) [lesser sanction than recommended in standard may be warranted where misconduct is minor, little or no injury to client, public, or profession, and attorney able to conform to ethical responsibilities in future]; see *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear reasons for departure from standards should be shown].) We agree with the hearing judge that disbarment is warranted by the facts of this case and under relevant case precedent in order to protect the public, the courts, and the legal profession.[11]

VI. RECOMMENDATION

We recommend that Steven Gregory Kaplan be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Kaplan be ordered to make restitution to David Goldstein in the amount of $400 plus 10 percent interest per year from October 30, 2012 (or reimburse the Client Security Fund to the extent of any payment from the Fund to David Goldstein, in accordance with Business and Professions Code, section 6140.5) and furnish satisfactory proof to the State Bar Office of Probation in Los Angeles.

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[11] E.g., *Kelly v. State Bar*, *supra*, 45 Cal.3d 649 (disbarment for $20,000 misappropriation, moral turpitude, dishonesty, and improper communication with adverse party, despite no prior record and no aggravation); *Gordon v. State Bar* (1982) 31 Cal.3d 748 (disbarment for $27,000 misappropriation, even though 13 years of discipline-free practice, financial difficulties, emotional difficulties due to divorce, remorse, and lack of harm); *In the Matter of Spaith, supra,* 3 Cal. State Bar Ct. Rptr. 511 (disbarment for $40,000 misappropriation, intentionally misleading client about funds, mitigation including emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar not sufficiently compelling).

We further recommend that Kaplan must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

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

VII. ORDER

The order that Steven Gregory Kaplan be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective July 2, 2015, will continue, pending the consideration and decision of the Supreme Court on this recommendation.

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

STOVITZ, J.*

*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.