PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed June 23, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 09-O-19259
	)	
WADE ANTHONY ROBERTSON,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 217899.	)	
	)	

Respondent Wade Anthony Robertson appeals from a hearing judge's decision recommending disbarment. The judge found that Robertson defrauded his elderly business partner and client, Dr. William C. Cartinhour, Jr., made material misrepresentations in the process, and ultimately misappropriated $3.5 million of Cartinhour's funds, which Robertson has not returned. The judge also found Robertson abused the litigation process by asserting frivolous positions in civil and bankruptcy proceedings. The judge found no mitigation, but serious aggravation for multiple acts of misconduct, significant harm to Cartinhour and to the administration of justice, and lack of remorse.

On review, Robertson raises a host of unmeritorious legal and factual challenges and seeks dismissal. The Office of the Chief Trial Counsel of the State Bar (OCTC) does not appeal and generally supports the hearing judge's findings and conclusions.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm. Using his relationship as Cartinhour's attorney, Robertson perpetrated a years-long multi-million dollar theft. A jury in a federal district court awarded Cartinhour $7 million in compensatory and punitive damages against Robertson, which was affirmed in 2012. Yet Robertson has not paid the award or returned any of the funds he took from Cartinhour. Given his grave misconduct,

including a massive misappropriation unprecedented in this court, and his utter lack of remorse, we conclude disbarment is necessary to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On December 5, 2012, OCTC filed a nine-count Notice of Disciplinary Charges (NDC) in this matter. A nine-day trial followed in April and May 2013. Robertson was called as a witness by OCTC and also testified on his own behalf. Cartinhour did not testify, but OCTC presented his video deposition testimony, taken during litigation between Robertson and Cartinhour. On September 4, 2013, the hearing judge issued a decision finding Robertson culpable of four counts of misconduct and dismissing the other five counts.[1] OCTC has not appealed or challenged the dismissals; we affirm them and focus our analysis on the four counts for which the judge found Robertson culpable.

II. FACTUAL BACKGROUND

We give great weight to the hearing judge's factual findings. (Rules Proc. of State Bar, rule 5.155.)[2] We summarize those findings key to our analysis and supplement them with additional facts from the record.

A. Robertson Solicited Cartinhour to Finance a Class Action Litigation

Robertson was admitted to practice law in California in December 2001.[3] Less than three years after admission, in September 2004, Robertson solicited Cartinhour, a 77-year-old man from Maryland, to finance out-of-pocket litigation expenses on behalf of the plaintiffs in a class action lawsuit alleging securities violations, *Liu v. Credit Suisse Boston*, pending in the United

[1] The unchallenged dismissed charges are: failure to maintain funds in trust (Count 4); two counts of failure to counsel or maintain only such actions, proceedings, or defenses as appear legal and just (Counts 6 and 8); failure to communicate significant developments to a client (Count 7); and failure to support the laws of the State of California (Count 9).

[2] All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

[3] In December 2005, he was admitted to practice in the District of Columbia Court of Appeals.

States District Court for the Southern District of New York (Credit Suisse litigation). Robertson never entered an appearance in the Credit Suisse litigation, but worked on the case behind the scenes. He represented to Cartinhour that the litigation involved multi-billion dollar claims with a high likelihood of success. And he offered Cartinhour a fixed percentage of the litigation recovery in exchange for his investment. Cartinhour agreed to finance the litigation.

On September 16, 2004, Robertson and Cartinhour entered into an operating agreement that provided for the creation of a business partnership that would "have as its sole business the provision of legal services . . . ." The agreement contained a confidentiality clause providing that Robertson and Cartinhour had "not made any disclosures regarding this partnership or agreement to any third parties except as specifically provided for in [the] agreement," and that they "agree and affirmatively covenant not to make any disclosures in the future to any third-parties except as provided for by this agreement or as specifically agreed to in a subsequent writing . . . ."

The next day, Robertson and Cartinhour executed a partnership agreement, forming W.A.R. LLP, a District of Columbia partnership entity (W.A.R.). The partnership agreement, like the operating agreement, provided that the "**sole** purpose of the Partnership shall be the provision of legal services, and to do all other incidental acts pursuant to the laws of the District of Columbia." (Bold underline in original.) It specified that Robertson was involved at that time in "exactly one large securities class action litigation," and that "in the event that any monies, proceeds, profits or property is received at any time in the future from this litigation, that they will be deposited in their entirety into the appropriate accounts of the Partnership as capital." (Underline in original.)

The agreement provided that Cartinhour would contribute $1 million as initial capital and would receive a 99.900% capital interest in the partnership, while Robertson would provide $1,000 and would receive a .100% capital interest. The partnership agreement also set forth their

fiduciary duties to the partnership and stated that, "[n]o partner, during the continuance of the Partnership, shall pursue, or become directly or indirectly interested in, any business or occupation that is in conflict with either the business of the Partnership or with the rights, duties, and responsibilities of such partner to the Partnership." Under the agreement, Robertson had general authority and powers, including the "exclusive right and authority to manage the business of the Partnership." He also had authority to make loans on the partnership's behalf. And, under the agreement, the partnership could make recourse loans from partnership capital to the partners at zero interest.

B. Cartinhour Believed Robertson Was Acting as his Attorney

Cartinhour signed both the operating agreement and the partnership agreement without reading either document. His deposition testimony and other evidence show that he trusted Robertson and believed Robertson was acting as his attorney and looking out for his best interests. Cartinhour thought that his belief that Robertson was his attorney was confirmed by the fact that Robertson's letters to Cartinhour about the investment and the Credit Suisse litigation were marked as "*Attorney work product*" and "*Attorney-client privilege*." Notably, however, the operating agreement provided that "at no time prior to now has Robertson been, nor at any time in the future shall Robertson be Cartinhour's attorney, nor shall any attorney-client relationship between Cartinhour and Robertson be implied at any time[, and] that so long as the business partnership . . . continues to exist, there can in any event be no attorney-client relationship between Cartinhour and Robertson."

C. Robertson Used $2 Million Received from Cartinhour for Personal Securities Trading

On September 17, 2004, Cartinhour issued two checks payable to W.A.R. and Robertson, in the total amount of $1 million, and Robertson deposited those funds into a bank account in the name of W.A.R. (the Partnership Account). In October 2004, Robertson executed a $975,000

promissory note in favor of the partnership for a zero interest loan to himself. On October 25 and 26, 2004, Robertson withdrew $5,000 and $970,000, respectively, from the Partnership Account, and deposited $970,000 of those funds into his personal securities trading account on October 25, 2004.

On October 7, 2004, Credit Suisse filed a motion to dismiss the Credit Suisse litigation. On November 15, 2004, Robertson sent Cartinhour a letter in which he assured him that any time there was "any development whatsoever (positive or negative) that is reasonably material to the outcome" of the Credit Suisse litigation, Robertson would promptly notify Cartinhour. Robertson stated that "all is proceeding well" and that he continued to remain confident and had "strong expectations of success." He did not mention that a motion to dismiss had been filed or that he had withdrawn $975,000 from the Partnership Account and deposited $970,000 of those funds into his personal securities trading account.

Four months later, on March 4, 2005, Robertson informed Cartinhour of the pending motion to dismiss, characterizing it as "purely procedural." Robertson also represented that due to "a recent sequence of very positive developments," the plaintiffs' case against Credit Suisse likely was "unbeatable." He stated further that the litigation team had been "extremely conservative in our capital outlays," and noted that he thought it would be prudent for the litigation to raise its capital level to provide adequate funds to pursue class certification, a "purely procedural battle" that "usually occurs without a problem in cases of this type." Again, Robertson made no mention of the $975,000 loan from the partnership to himself.

On March 14, 2005, Robertson wrote to Cartinhour about the possibility of doubling Cartinhour's investment and equity in the partnership. Robertson stated that he raised this possibility with other plaintiffs' counsel in the Credit Suisse litigation, and their reception was "cool," in light of the "present strength and posture of the case . . . ." Nevertheless, he

represented to Cartinhour that he had persuaded the other counsel to allow Cartinhour to double his investment and equity in the partnership. Robertson noted also that Cartinhour would be receiving year-end and quarter-end financial reports for the partnership and that Cartinhour would be pleased to learn that there had been no draws on the partnership's capital. Again, Robertson made no mention of the $975,000 loan.

On March 16, 2005, Robertson replaced the $975,000 into the Partnership Account and discharged the October 2004 promissory note. Less than a week later, he and Cartinhour signed a "Limited Waiver," prepared by Robertson, waiving the partnership's obligation to obtain a year-end certified public accountant audit for 2004. And, on March 21, 2005, Robertson amended the partnership agreement to increase Cartinhour's total capital contribution to $2 million and his own contribution to $2,000.

On April 1, 2005, the district court dismissed the complaint in the Credit Suisse litigation with prejudice. Robertson did not inform Cartinhour of this fact. Unaware of the dismissal, Cartinhour wired $1 million into the Partnership Account on April 5, 2005. Within a week, again unbeknownst to Cartinhour, Robertson issued a promissory note, in favor of the partnership, lending himself $1.97 million at zero percent interest. Days later, he withdrew $1.97 million from the Partnership Account, deposited the funds into his personal securities trading account, and used the monies for securities trading.

D. Robertson Continued to Misrepresent the Status of the Credit Suisse Litigation

In mid-May 2005, the district court granted, in part, the plaintiffs' motion to reconsider the order dismissing the Credit Suisse litigation, but declined any relief from the dismissal with prejudice. Robertson was aware of the order but wrote Cartinhour in late June 2005 that everything was on track and "[t]here is nothing substantively new to report with the case that the

partnership is involved in." Robertson did not mention that the litigation had been dismissed with prejudice.

By the end of July 2005, Robertson's personal trading account balance fell to $60,226.52, as a result of significant securities trading losses. Robertson transferred that same amount into the Partnership Account on August 3, 2005.

On September 6, 2005, five months after the dismissal, Robertson sent Cartinhour a letter in which he informed him that the Credit Suisse litigation had "hit a 'snag,' " because the judge accepted one of the defendants' "purely procedural objections regarding the form of the complaint." Robertson stated that the case would "now be delayed while this purely-procedural issue is worked out." Still, he did not explain that the judge had dismissed the case with prejudice. To the contrary, he stated: "If the litigation had been stalled or dismissed on the merits, that would be something entirely different." He reassured Cartinhour that he continued to be "excited and optimistic," and that the magnitude of their "success will be very, very large." (Underline in the original.) At this time, Robertson knew that he had lost almost all of the partnership's funds through his personal trading.

E. Robertson Prepared Estate Planning Documents for Cartinhour

At some time before April 7, 2006, Cartinhour hired Robertson to prepare estate planning documents. Earlier, on December 6, 2005, Robertson had amended the partnership agreement to state that if a partner died or was adjudicated incompetent, the partnership interest would be held in trust until dissolution of the partnership, and that, upon dissolution, a deceased partner's interest of the partnership would be disbursed to either: (1) a beneficiary in accordance with the partner's will or codicil; or (2) if no beneficiary was designated, then to the deceased partner's surviving estate. On the same date, Cartinhour executed a codicil that Robertson had prepared,

in which he designated the William C. Cartinhour, Jr. Foundation, a charitable foundation, as the beneficiary of his W.A.R. partnership interest.

Robertson also had prepared an "Analysis," dated January 21, 2006, in which he assessed the vulnerability of Cartinhour's will to a challenge by Cartinhour's sister. The cover page of the "Analysis" disclaimed any attorney-client relationship between Robertson and Cartinhour, but, in fact, the document contained legal analysis and provided legal advice. On April 7, 2006, Cartinhour executed a Last Will and Testament, in which he appointed Robertson as the executor. The December 2005 codicil Robertson had prepared was attached to the will. Also on that day, Cartinhour signed two additional documents Robertson had prepared—an "Attestation and Certification of No Attorney-Client Relationship with Attorney Wade A. Robertson," in which he attested that Robertson was not his attorney and was strictly a business partner, and a second document in which Cartinhour agreed to hold harmless, indemnify, and waive all claims against Robertson or W.A.R. (the Hold Harmless Agreement).

F. Robertson Solicited an Additional $1.5 Million from Cartinhour

On March 15, 2006, almost one year after the Credit Suisse litigation had been dismissed, Robertson sent Cartinhour a letter and stated: "I am confident that our position continues to grow stronger and that we will ultimately be wildly successful in this endeavor." Robertson also told Cartinhour that he was pushing hard to convince the other plaintiffs' counsel to allow Cartinhour to increase his partnership stake through an additional investment. Then, on April 10, 2006, Robertson amended the W.A.R. partnership agreement to increase Cartinhour's total capital contribution to $3.5 million and to increase Robertson's capital contribution to $3,500.[4] On

[4] Robertson claims his total contribution to the partnership should be valued at over $3 million because the partnership agreement provided that he would be compensated for his legal work on the Credit Suisse litigation. Because we find, *infra*, that he defrauded Cartinhour, we value his contribution at $3,500.

April 20, 2006, Robertson deposited a $1.5 million check from Cartinhour into the Partnership Account.

On April 9, 2006, Robertson and Cartinhour executed a "Vote & Agreement" to continue the life and duration of the partnership, even though the Credit Suisse litigation had been dismissed and was on appeal. The Vote & Agreement provided that if the dismissal was affirmed, it could be appealed to the Supreme Court of the United States and that, in any event litigation might be subsequently re-filed on behalf of different named plaintiffs. However, Cartinhour and Robertson's following communications, as described herein, reflect that Cartinhour did not understand the dire status of the litigation. The Vote & Agreement also revoked the partnership agreement's requirement that "[o]nly upon a unanimous affirmative vote . . . shall Wade Robertson embark upon any new legal representation that would implicate or include the partnership's interests" and provided instead that Robertson was authorized to "embark upon a new legal representation that is wholly unrelated to the present litigation . . . and shall do so in a manner and at a time of his choosing." (Underline in original.)

G. Robertson Used Another $1.435 Million for Personal Securities Trading

In May 2006, the United States Court of Appeals for the Second Circuit affirmed the district court's dismissal of the Credit Suisse litigation. Robertson did not advise Cartinhour of this affirmance.

Six months later, in November 2006, Cartinhour wrote to Robertson requesting an update on the Credit Suisse litigation. He stated that Robertson had "just disappeared" and had been unresponsive to Cartinhour's repeated requests as to whether Robertson still entertained the same settlement expectations that he did when Robertson "left town 7 months ago." In mid-January 2007, Cartinhour wrote to Robertson again. He complained that Robertson had "dropped off the radar" since receiving the last contribution and stated: "To sell an investment to someone and

then subsequently make yourself the sole and exclusive person who can purvey any and all information about this investment is not a Kosher Act in any investment circles I have ever heard of." (Underline in original.)

In a letter dated "April 2007," Cartinhour wrote to John Watts, a plaintiff's attorney in the Credit Suisse litigation, informing Watts of his $3.5 million investment to fund the litigation and his suspicion that Robertson had duped him. Cartinhour noted that Robertson had described his most recent investment as a "slam-dunk" and had represented that the conclusion of the case would be "wildly successful." (Underline in original.)

On April 18, 2007, Robertson executed a $1.435 million promissory note in favor of the partnership, loaning himself the funds at zero percent interest. The next day, Robertson withdrew $1.435 million from the Partnership Account and deposited the funds into his personal trading account. After Robertson's withdrawal, the Partnership Account balance fell to $5,044.06.

H. Robertson Scolded Cartinhour for Contacting Watts—Cartinhour Hired a Lawyer

On April 28, 2007, Robertson wrote to Cartinhour that Watts had informed him of Cartinhour's letter. According to Robertson, Cartinhour breached the confidentiality provision of the partnership agreement by contacting Watts. Robertson informed Cartinhour that the Credit Suisse litigation had "not moved as expeditiously as [he] had hoped, but that has not changed the expected outcome."

In September 2007, Robertson again wrote to Cartinhour, admonishing him again for his "unfathomable correspondence" to Watts, which Robertson claimed had "wreaked havoc" on his working relationship with other attorneys in the Credit Suisse litigation. Robertson stated that the class representatives were "in the process of being changed," and that he needed to get "the re-newed case moving and on the docket." He did not explain that the prior matter had been

dismissed with prejudice and the dismissal was affirmed on appeal. He assured Cartinhour that "the efforts are still ongoing," and that he still expected the monetary recovery in the litigation "to far exceed our time and money spent."

On January 9, 2009, an attorney, Albert Shibani, wrote to Robertson on Cartinhour's behalf. Shibani informed Robertson that Cartinhour knew the Credit Suisse litigation had been dismissed. He demanded that Robertson refund Cartinhour's $3.5 million capital contribution, plus any accrued capital due to him, or explain why W.A.R. should not provide these funds. Shibani also sought to inspect the partnership's books, records, and accounts, as permitted under the partnership agreement, and requested accounting and tax information from Robertson. Robertson refused to provide the requested information, claiming that his relationship with Cartinhour was confidential. On February 6, 2009, Shibani again wrote to Robertson requesting an accounting and the return of Cartinhour's $3.5 million. Robertson again refused to cooperate, citing confidentiality.

During the same time period, Shibani also attempted unsuccessfully to call Watts. He then contacted another lawyer at Watts's firm, who revealed that his law firm "had absolutely no knowledge or any involvement in Mr. Robertson's arrangement with Dr. Cartinhour" and that the firm never received money from the partnership.

I. Robertson Found Liable for Breach of Fiduciary Duty and Legal Malpractice

In August 2009, Robertson sued Cartinhour in the United States District Court for the District of Columbia for declaratory relief, alleging that Cartinhour's demands for repayment of the partnership funds violated the Hold Harmless Agreement. Cartinhour cross-complained, and alleged claims of legal malpractice and breach of fiduciary duty. In February 2011, a jury found Robertson liable for legal malpractice and for breach of the fiduciary duties Robertson owed Cartinhour, both as his attorney and as his business partner. The jury also found the Hold

Harmless Agreement was unenforceable since it was obtained unconscionably through Robertson's undue influence.

The district court entered judgment against Robertson and awarded Cartinhour $3.5 million in compensatory damages and $3.5 million in punitive damages. To support the punitive damages award, the jury found, by clear and convincing evidence: "One: That Mr. Robertson acted with evil motive, actual malice, deliberate violence or oppression, or with intent to injure, or in willful disregard for the rights of [Cartinhour]; Two: That Mr. Robertson's conduct itself was outrageous, grossly fraudulent, or reckless toward the safety of [Cartinhour]."

In April 2012, the United States Court of Appeals for the District of Columbia Circuit affirmed the judgment on appeal, rejecting Robertson's contention that the partnership agreement permitted his actions, including issuing personal loans to himself as Cartinhour's business partner. The court wrote: "In this case where, in spite of the fiduciary duty Robertson owed Cartinhour as his business partner, Robertson misled the elderly and unhealthy Cartinhour into believing all was 'on track' with the litigation well after the case had been dismissed, we have no trouble upholding the jury's finding." Because the appellate court found Robertson's breach of fiduciary duty as a business partner was sufficient to uphold the jury's award, the court found it did not need to reach the breach of fiduciary duty as an attorney and legal malpractice claims.

J. A Bankruptcy Court Sanctioned Robertson

Meanwhile, W.A.R. became a debtor in a Chapter 7 bankruptcy proceeding initiated in late 2010. In a May 4, 2012 decision, the bankruptcy court sanctioned Robertson after finding that he and Ty Clevenger, counsel for W.A.R., had "repeatedly advanced the frivolous argument that funds that W.A.R. LLP had lent to Robertson in exchange for promissory notes were the property of the estate of W.A.R. LLP, . . . all for the purpose of causing delay and unnecessary expense for [Cartinhour]." The bankruptcy court further found that "Robertson also engaged in

an unusual and unethical strategy of ghostwriting papers on behalf of Ray Connolly, a purported creditor and adversary of Robertson in [the bankruptcy] case" and had done so in order to mislead the court.

The bankruptcy court found by clear and convincing evidence that: (1) "Robertson intentionally misrepresented to other tribunals the significance of [the bankruptcy] proceedings and the impact of the bankruptcy stay . . . as part of his larger litigation strategy against Cartinhour"; and (2) Robertson acted in bad faith by "continuing to advance frivolous arguments in [the bankruptcy] court on behalf of Connolly . . . to cause unnecessary expense to his opponent, Cartinhour, and to keep the [bankruptcy] case pending such that Robertson would have the continued ability to advance frivolous arguments relating to the bankruptcy stay in another tribunal." The bankruptcy court noted:

> Rarely has the court seen such an unrelenting pursuit of a patently frivolous argument undertaken with such complete indifference to the merits. And never before has the court witnessed such a bizarrely unethical strategy as that which Robertson employed through the ghostwriting of Connolly's papers, a strategy that caused an entirely unnecessary and exponential growth of these proceedings, and which served no purpose other than to needlessly delay the closing of this case and put Cartinhour to the burden and expense of defending against another round of meritless claims . . . .

At the time of his disciplinary trial, Robertson had not repaid his loans from the partnership nor any of the $3.5 million to Cartinhour.[5]

[5] We reject as unsupported Robertson's argument that, "[p]er the partnership bankruptcy, Cartinhour received more than $600,000 from Robertson."

III. CULPABILITY

A. Count 1: Moral Turpitude (Bus. & Prof. Code, § 6106)[6]—Scheme to Defraud

The NDC charges that Robertson's conduct collectively amounted to a scheme to defraud Cartinhour. By engaging in such a scheme, Robertson committed acts involving moral turpitude, dishonesty, and corruption, in violation of Business and Professions Code section 6106. The hearing judge found Robertson culpable as charged, and we affirm.

Robertson created a sham partnership and, over a roughly four-year period, fraudulently induced Cartinhour to "invest" $3.5 million in the Credit Suisse litigation with the promise of high returns. He also manipulated Cartinhour into signing many legal documents that served Robertson's own interests but were detrimental to Cartinhour's—notably, the confidentiality provision in the partnership documents, the waiver of the partnership agreement's year-end audit requirement, the will appointing Robertson as executor of Cartinhour's estate, and the "Vote & Agreement."[7] All the while, Robertson intended to use and did use the "investment" money for his own benefit. He perpetuated this fraud by repeatedly mischaracterizing the status of the litigation and its likelihood of generating enormous returns. And his duplicitous conduct continued as he admonished Cartinhour for "breaching" the confidentiality of their agreements and threatened legal action for that alleged breach. Robertson dishonestly exploited his position of trust for his personal benefit and to Cartinhour's detriment in what the hearing judge aptly

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[6] All further references to sections are to this source. Section 6106 provides: "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension. "

[7] We also view with suspicion the estate planning documents Robertson prepared for Cartinhour bequeathing Cartinhour's partnership interest to Cartinhour's charitable foundation, rather than to someone who might question the disappearance of Cartinhour's money. Robertson's claim that he did not personally draft Cartinhour's will does not lessen our concern. Whether he did or not, the record is clear that he was integral in arranging the preparation of a will appointing himself as executor of Cartinhour's estate.

described as "a well-implemented, well-thought out, and deviously orchestrated plan to defraud Cartinhour and misappropriate large sums of money."

Robertson challenges culpability, in part, by claiming he sent Cartinhour courtesy letters enclosing copies of filings in the Credit Suisse litigation, copies of the promissory notes, and a copy of his personal trading account statement reflecting his significant trading losses. The hearing judge did not expressly address evidence that these courtesy letters may have been sent. We have reviewed the evidence and conclude that even if Robertson sent such letters, they were virtually unreadable and incomprehensible. What is clear is that at the same time Robertson purportedly sent these letters, he was materially misrepresenting in clear and specific terms to Cartinhour that his money was being invested in the Credit Suisse litigation and promising Cartinhour that the litigation would be successful.[8]

We also reject Robertson's challenge to the finding that Cartinhour did not receive year-end or quarterly partnership financial reports from Robertson. Whether or not Cartinhour received financial statements, the record is clear that Robertson repeatedly represented, and Cartinhour *at all times understood*, that the partnership funds were being used to finance litigation, not for Robertson's own self-dealing.

Robertson's claim that he is not culpable because the civil jury did not find him liable for fraud also lacks merit. In the instant disciplinary matter, OCTC presented clear and convincing evidence of the charged fraud.

[8] Our conclusion is supported by the federal appellate court affirming the civil judgment against Robertson, determining that, "Cartinhour could not through reasonable diligence have gained knowledge of his injuries [caused by Robertson's conduct] before October 28, 2006, because he reasonably relied on his business partner's repeated representations about the likely success of the class action litigation."

B. Count 2: Moral Turpitude (§ 6106)—Misrepresentation

The hearing judge also correctly found that Robertson is culpable for moral turpitude because he made misrepresentations to Cartinhour. Robertson falsely claimed that he persuaded plaintiffs' counsel to allow Cartinhour to contribute additional funds. In addition, even after the Credit Suisse litigation was dismissed, Robertson led Cartinhour to believe that the litigation continued on track, that the partnership would be highly successful, and that Robertson's efforts in the litigation were ongoing. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1146-1147 [intentional misrepresentation to settling insurance company amounted to moral turpitude: "dishonest acts are grounds for suspension or disbarment, even if no harm results"]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211 ["Section 6106 applies to the misrepresentation and concealment of material facts"].) To the extent there is any overlap between the factual bases supporting culpability on Counts 1 and 2, we afford Count 2 no additional weight in discipline. (See *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060.)

We reject Robertson's claims that he is not culpable because he subjectively believed that the litigation would be successful. This claim is belied by the obvious facts that he did not invest Cartinhour's millions in the litigation and that he continued to mislead Cartinhour after the litigation was dismissed. Robertson knew each statement was false when he made it, and he made them in order to lure Cartinhour into continuing to furnish him with millions of dollars to fund his own investment account. Robertson's dishonesty violated section 6106.[9]

[9] We also reject Robertson's claims that the polygraph test results demonstrate the truth of his representations to Cartinhour; those results are not part of the record. Further, we reject Robertson's claim that the hearing judge's findings that he made misrepresentations were based on an incomplete record that did not contain all of Robertson's communications with Cartinhour. Robertson had ample opportunity to introduce additional evidence that he thought was necessary and appropriate to complete the record. (*Yokozeki v. State Bar* (1974) 11 Cal.3d 436, 447 [member has duty to present evidence he deems favorable to himself].)

Robertson also challenges the hearing judge's specific findings about the manner in which he misled Cartinhour. His challenges are unavailing because they are either unsupported or irrelevant to our conclusions. For example, Robertson asserts he did not represent that Cartinhour's investments would be limited to out-of-pocket litigation expenses or that Cartinhour was financing a multi-billion dollar claim with a high likelihood of success. As we found above, this claim is repeatedly contradicted by the record, including Cartinhour's civil deposition testimony, Robertson's letters to Cartinhour, and the partnership agreement's language providing that the partnership's "sole purpose" was to provide legal services.[10]

C. Count 3: Moral Turpitude (§ 6106)—Misappropriation

Like the hearing judge, we find Robertson committed moral turpitude by dishonestly misappropriating funds from Cartinhour. Simply put, Robertson collected $3.5 million in several installments from Cartinhour under the false pretense that the money would be used to fund litigation costs. Then, immediately upon receipt, Robertson converted those funds to his own use, as evidenced by the fact that the Partnership Account balance fell to $5,044.06 as of April 2007.[11] (*Himmel v. State Bar* (1973) 9 Cal.3d 16, 19 [attorney who used entrusted funds for own purpose rather than payment of judgment creditor amounted to conversion]; *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 375 [conversion of trust funds was willful misappropriation involving moral turpitude].)

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[10] Similarly, Robertson's claim that Cartinhour may have been suffering from mental incapacity does not undermine our conclusion. Robertson's own correspondence evidences his active efforts to mislead Cartinhour.

[11] We reject Robertson's claims that the partnership agreement's provision allowing zero-interest loans to partners permitted his conduct. That provision did not give Robertson license to use the funds for his own purposes instead of the partnership's "sole purpose" of providing legal services. And Robertson's repeated representations to Cartinhour that the monies were funding litigation and any return was tied to the success of the litigation leave no doubt that Robertson intentionally misappropriated the monies, knowing he was using them inconsistently with Cartinhour's expectations.

D. Count 5: Moral Turpitude (§ 6106)—Abuse of Process

The hearing judge found that Robertson abused the litigation process by ghostwriting Connolly's bankruptcy filings and by repeatedly asserting frivolous positions causing Cartinhour unnecessary delay and increased litigation costs. We affirm this finding. The record—most significantly, the bankruptcy court's findings—clearly and convincingly supports culpability. (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186 [serious, habitual abuse of the judicial system constitutes moral turpitude in violation of § 6106]; *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947 [strong presumption of validity given to court's findings if supported by substantial evidence].)

IV. ROBERTSON'S ARGUMENTS

On review, Robertson raises 30 factual arguments as well as additional legal and procedural claims. We have considered and reject all of Robertson's arguments and have addressed many, either expressly or implicitly, in our findings and conclusions throughout this opinion.[12] We summarize and reject the remainder of his key arguments as follows.

A. Robertson Acted as Cartinhour's Attorney

Robertson challenges the hearing judge's finding that he acted as Cartinhour's attorney. He cites to the plain language of the operating agreement and other documents he provided to Cartinhour disclaiming any attorney-client relationship between the two. He also points to Cartinhour's admission, during his deposition, that he and Robertson never entered into a representation agreement. But an attorney-client relationship and the attorney's corresponding duties to the client may arise by inference through the conduct of the parties, even without a formal agreement. (*Lister v. State* Bar (1990) 51 Cal.3d 1117, 1126.)

[12] We find it unnecessary to address expressly some of Robertson's challenges to the hearing judge's findings of specific factual details that are not material to our ultimate conclusions and, thus, are not mentioned in this opinion.

The hearing judge's conclusion that Robertson acted as Cartinhour's attorney is supported because: (1) Robertson wrote letters to Cartinhour about the partnership that were designated as attorney-client privileged and attorney-work product; (2) Robertson prepared legal documents for Cartinhour relating to the partnership, such as a codicil to Cartinhour's will, providing for resolution of Robertson's interest in the partnership after Cartinhour's death, and a legal analysis of the likelihood that Cartinhour's sister could raise a successful challenge to his will; (3) a copy of a $40,000 check Cartinhour issued to Robertson personally, not to the partnership, which Cartinhour testified was payment for legal services; and (4) the civil jury's finding that Robertson acted as Cartinhour's attorney (*Maltaman v. State Bar, supra,* 43 Cal.3d at p. 947 ["civil findings bear a strong presumption of validity if supported by substantial evidence"]).

In any event, the issue of whether Robertson acted as Cartinhour's attorney is not determinative of his culpability. (*In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 154 fn. 17 ["[s]ection 6106 . . . expressly covers acts of moral turpitude whether committed in one's capacity as an attorney or not"].) Whether or not he was Cartinhour's attorney, as his business partner, Robertson owed Cartinhour fiduciary duties of loyalty, care, and good faith and fair dealing. (D.C. Code §§ 29-604.07 [providing for fiduciary duties of loyalty and care]; 29-601.04(b) [fiduciary duties of loyalty and good faith and fair dealing are non-waivable in partnership agreement].) Robertson also had a specific fiduciary duty to ensure Cartinhour's funds were used for their intended purpose to benefit the partnership. "When an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary as to such third party. Thus the funds in his possession are impressed with a trust, and his conversion of such funds is a breach of the trust." (*Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156.)

B. The Hearing Judge Did Not Violate Robertson's Rights

The hearing judge did not deny Robertson his right under section 6085 to defend against disciplinary charges by introducing evidence, examining and cross-examining witnesses, and subpoenaing witnesses to testify. Contrary to his claim, OCTC was not required to produce Cartinhour at trial because neither section 6085 nor rule 5.104(B) of the Rules of Procedure of the State Bar, which enumerate the parties' rights to produce evidence, requires the State Bar to produce witnesses pursuant to a notice to appear. (*Walter v. State Bar* (1970) 2 Cal.3d 880, 890 [no requirement that complaining witness testify at disciplinary trial].) Moreover, given that Cartinhour is not a California resident, neither OCTC nor Robertson could compel his attendance at trial via subpoena. (Code Civ. Proc. § 1989 [witness not obliged to appear before any court, judge, justice or any other officer, unless witness is resident within state at time of service].)

Similarly, the hearing judge did not abuse her discretion in denying Robertson's motions to depose two out-of-state witnesses—Cartinhour's psychiatrist and the bankruptcy judge who sanctioned Robertson for frivolous litigation. Robertson had ample opportunity to seek this discovery earlier in the case, and the requested depositions would likely have delayed trial. (Rules Proc. of State Bar, rule 5.66(D)(3).) The hearing judge also did not err by introducing transcripts of Cartinhour's trial and deposition testimony from the federal civil action in which Robertson was a party who had full opportunity to cross-examine him. (Bus. & Prof. Code, § 6049.2; *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 206; *Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 633.)

C. The State Bar Court Has Jurisdiction

Robertson has maintained throughout these proceedings that the State Bar Court lacks jurisdiction to discipline him for misconduct that occurred outside of California. He is incorrect. (*In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442, 447 ["there

is simply no jurisdictional requirement that the alleged misconduct must occur in this state in order to be prosecuted by the State Bar of California"]; see also Bus. & Prof. Code, § 6049.1(e) [reciprocal discipline statute does not preclude original proceedings against attorney based upon misconduct in another jurisdiction].)

V. SIGNIFICANT AGGRAVATION AND NO MITIGATION[13]

The hearing judge found Robertson's misconduct unmitigated and aggravated by his multiple acts of wrongdoing, harm to Cartinhour and to the administration of justice, and indifference toward rectification or atonement. Robertson does not challenge these findings on appeal, and we adopt them.

First, Robertson's scheme to defraud Cartinhour, including myriad misrepresentations, misappropriation of $3.5 million, and abuse of the litigation process, involved multiple acts of wrongdoing, warranting significant aggravation. (Std. 1.5(b).)

Second, the significant harm Robertson caused to Cartinhour and to the administration of justice warrants substantial consideration as aggravation. (Std. 1.5(j) [aggravation based on significant harm to client, public, or administration of justice].) Robertson misappropriated millions and has yet to return those funds to Cartinhour. He also deliberately prolonged the time-consuming, costly, and burdensome civil and bankruptcy proceedings. We note with particular concern that Cartinhour's attorney, Patrick Kearney, testified that Cartinhour paid him over $700,000 in legal fees to counter Robertson's efforts to avoid satisfying the $7,000,000 civil judgment. This harm continues to accrue in the form of Robertson's ongoing litigation against Cartinhour in federal and California state courts. We take judicial notice of the fact that three

[13] 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 Robertson to meet the same burden to prove mitigation. The standards were revised and renumbered effective July 1, 2015. Because this request for review was submitted for ruling after that date, we apply the revised version of the standards, and all further references to standards are to this source.

months after the hearing judge recommended his disbarment, Robertson sued Cartinhour, alleging fraud and seeking roughly $3.5 million in damages, in Santa Clara County Superior Court. The case was dismissed for lack of personal jurisdiction and is currently pending in the California Court of Appeal for the Sixth Appellate District.

Finally, we assign significant aggravation to Robertson's lack of remorse for and recognition of the seriousness of his misconduct. (Std. 1.5(k); *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [law does not require false penitence but "does require that the respondent accept responsibility for his acts and come to grips with his culpability"].) Robertson continues to assert that his egregious acts are justified by the terms of the agreements. And he relentlessly misuses the judicial system to avoid making Cartinhour whole, thereby prolonging and exacerbating the effects of his misconduct. His complete indifference "causes concern that he will repeat his misdeeds." (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380.)

VI. DISBARMENT IS APPROPRIATE[14]

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 2.1(a) provides that disbarment is appropriate for intentional misappropriation "unless the amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate." Disbarment is unquestionably appropriate.

Robertson callously misappropriated millions from Cartinhour (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367-1368 [misappropriation of $1,355.75 deemed significant]), and has not proven any mitigating circumstances. Moreover, he engineered this theft using his law

[14] 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.)

license in the most contemptuous manner, harming Cartinhour and the administration of justice with equal disregard. That he shows no remorse for his misconduct is stunning, and the severe sanction of disbarment is necessary.[15]

VII. RECOMMENDATION

We recommend that Wade A. Robertson be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We also recommend that Robertson be ordered to make restitution to William C. Cartinhour, Jr., in the amount of $3,500,000, plus 10 percent interest per year from April 20, 2006 (or reimburse the Client Security Fund to the extent of any payment from the Fund to Cartinhour, in accordance with Business and Professions Code, section 6140.5).

We further recommend that he 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.

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[15] See generally *Gordon v. State Bar* (1982) 31 Cal.3d 748 (disbarred for misappropriating over $27,000, despite 13 years of discipline-free practice, financial difficulties, emotional difficulties, remorse, and lack of harm); *Weber v. State Bar* (1988) 47 Cal.3d 492 (disbarment where attorney with 13 years of discipline-free practice misappropriated over $24,000 and attempted to conceal theft, displayed contempt for State Bar proceeding and no remorse); *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824 (disbarment appropriate for attorney culpable of moral turpitude based on seven-year self-dealing with over $500,000 of investment funds entrusted to him by client, including unilaterally paying himself $450,000 in management and legal fees); *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511(disbarred for misappropriating $40,000, aggravated by client harm and uncharged misconduct, despite 15 years of discipline-free practice, emotional problems, restitution, remorse, good character, community service, cooperation by stipulating to culpability and community service).

VIII. ORDER

The order that Wade A. Robertson be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective September 7, 2013, will continue, pending the consideration and decision of the Supreme Court on this recommendation.

HONN, J.

WE CONCUR:

PURCELL, P. J.

EPSTEIN, J.