PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed January 22, 2021

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	15-O-15368 (16-O-12414; 16-O-12978);
	)	17-O-01203 (17-O-07288); 18-O-11996
RUSSELL ALAN ROBINSON,	)	(Consolidated)
	)	
State Bar No. 163937.	)	OPINION AND ORDER
	)	

This matter concerns Russell Alan Robinson's serious misconduct that spanned several years from 2010 through 2018. He misappropriated client funds, made misrepresentations, and failed to perform competently in multiple client matters. The Office of Chief Trial Counsel of the State Bar (OCTC) charged Robinson with 58 counts of misconduct involving 17 clients. After a 10-day trial, the hearing judge found him culpable of 46 counts and recommended disbarment. Robinson still owes a total of over $222,000 in restitution for misappropriations in five client matters. Robinson appeals, contesting the culpability findings and raising claims of judicial bias and procedural errors. OCTC supports the judge's decision.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings, the most serious of which include large-scale misappropriations, misrepresentations, and several failures to perform competently or to timely return files and provide refunds. We also affirm the judge's aggravation findings but find one mitigating circumstance. This is Robinson's second disciplinary case and both involved misappropriations. His repeated serious misconduct has caused significant harm to clients. The record establishes that Robinson is unfit to practice law, and we conclude that a disbarment recommendation is necessary to protect the public, the courts, and the profession.

I. RELEVANT PROCEDURAL BACKGROUND

On May 8, 2018, OCTC filed a Notice of Disciplinary Charges (NDC-1) alleging 13 counts of misconduct.[1] Robinson filed his answer on June 25. On July 18, OCTC filed a second NDC (NDC-2) alleging nine counts of misconduct.[2] Robinson filed an answer to NDC-2 on August 13 and an amended answer on September 11.[3] On December 10, he filed five motions in limine requesting, inter alia, to exclude evidence of settlement negotiations between himself and two clients, which the hearing judge denied.[4] On October 9, 2018, OCTC filed a third NDC (NDC-3) alleging 36 counts of misconduct; Robinson filed his response on January 3, 2019.[5]

During the 10 days of trial between January 22 and February 13, 2019, the hearing judge granted OCTC's request to dismiss counts seven and ten from NDC-1 and count nine from NDC-2. Posttrial closing briefs followed, and the judge issued her decision on June 4, 2019. We agree with the hearing judge's factual and culpability findings except as otherwise stated below.

[1] NDC-1 includes Case Nos. 15-O-15368, 16-O-12414, and 16-O-12978.

[2] NDC-2 includes Case Nos. 17-O-01203 and 17-O-07288.

[3] With his amended answers to NDC-1 and NDC-2, Robinson filed a motion to dismiss, which the hearing judge denied on December 11, 2018.

[4] As discussed in Section III, Robinson raised procedural challenges to the hearing judge's denial of his motions; however, we find the evidence relevant to determining restitution.

[5] NDC-3 includes Case No. 18-O-11996.

II. FACTUAL FINDINGS AND CULPABILITY[6]

A. The Cohn Matter (Case No. 15-O-15368, NDC-1; Counts One, Two, Three, Five, & Six)

1. Factual Background

In April 2010, psychiatrist David Cohn hired Robinson to represent him in a dispute with Kaiser Foundation Hospital (Kaiser) regarding Kaiser's refusal to renew Dr. Cohn's physician credentials. Robinson was retained to prepare and file a petition for writ of mandate in the Alameda County Superior Court on Dr. Cohn's behalf. During the representation, from October 2010 to April 2012, Dr. Cohn inquired by email about the status of the Kaiser appeal. Robinson failed to promptly respond, and when he finally did, he made the following misrepresentations:

> (1) On October 27, 2010, that a hearing had been set in the Kaiser appeal for November 30, 2010;
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> (2) On December 2, 2011, that the Kaiser appeal had been assigned to Alameda County Superior Court Judge Roesch;
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> (3) On February 3, 2012, that a hearing in the Kaiser appeal was set for April 24, 2012, in Department 31; and
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> (4) On April 23, 2012, that he sent an email to Dr. Cohn, which purportedly was from an Alameda County Superior Court clerk, continuing the April 24, 2012 hearing to June 2012.

Robinson's statements were false; the court docket reveals that Robinson did not file the petition for writ of mandate until June 29, 2012, well after the statements were made. He also

[6] The hearing judge dismissed 12 counts with prejudice: NDC-1 count four (moral turpitude—misrepresentation), count seven (failure to report judicial sanctions), count 10 (moral turpitude—misrepresentation), and count 13 (failure to maintain complete records); NDC-2 count nine (failure to cooperate in State Bar investigation); and NDC-3 count 10 (moral turpitude—misappropriation), count 11 (failure to maintain client funds in trust), count 14 (moral turpitude—misappropriation), count 15 (failure to maintain client funds in trust), count 18 (moral turpitude—misappropriation), count 19 (failure to maintain client funds in trust), and count 23 (failure to notify clients of receipt of client funds). Neither party challenges these rulings. We adopt the dismissals as supported by the record. (See *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

made at least four additional misrepresentations after filing the writ of mandate with the Alameda County Superior Court, as follows:

> (1) On January 31, 2013, that Kaiser was late to court and he requested leave to file a motion for summary judgment;
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> (2) On March 25, 2013, that a trial date of April 24, 2013 had been set;
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> (3) On June 6, 2013, that Kaiser was ordered to appear on July 8, 2013; and
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> (4) On December 3, 2013, that the court ordered a hearing in January and the case was moving toward judgment when, in fact, only a case management conference was set for January.

The statements were false because Robinson did not properly serve Kaiser until June 25, 2015. He asserts that he served Kaiser on January 16, 2013, but he did not provide credible proof of service or evidence that he hired the process server who purportedly served the defendants. On May 4, 2015, the court ordered Robinson to show cause why Dr. Cohn's petition should not be dismissed. The court determined that Robinson offered no indication he was making an effort to prosecute the action. Despite 15 case management conferences, Robinson had not served the defendants, lodged the administrative record with the court, requested defaults, or filed any brief in support of the petition. Dr. Cohn's petition was dismissed by the court on August 4, 2015. Robinson testified that the dismissal resulted from his Alameda County Superior Court case (RG15786661). On July 22, 2016, the court in that case issued an order for Robinson to pay Dr. Cohn and his counsel $1,134 in sanctions for failure to comply with the court's June 2 order requiring Robinson to provide Dr. Cohn with documents he had agreed to produce. As noted by the court's July 22 order, Robinson did not dispute that he failed to comply with the court's prior order. On May 12, 2017, judgment was entered against Robinson in *Cohn M.D. v. Robinson* for fraud and breach of contract. Robinson failed to report the judgment to the State Bar.

2. Culpability Findings

Count One—Rule 3-110(A) Failure to Perform with Competence[7]

OCTC alleged that Robinson repeatedly failed to perform with competence in his handling of Dr. Cohn's petition for writ of mandate against Kaiser in the Alameda County Superior Court. Robinson contends that he is not culpable because his representation was limited to managing the appeal through Kaiser's internal arbitration process and because OCTC did not present expert testimony to establish culpability. Robinson's claim that OCTC was required to present expert testimony is not supported by legal authority. Secondly, he cannot rebut the overwhelming evidence that establishes he filed a petition for writ of mandate that was later dismissed for his failure to prosecute. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action to accomplish purpose for which client retained him].) We find that Robinson's failure to act competently is manifestly reflected in his handling of Dr. Cohn's case. He did not serve the defendants until June 2015, did not file any brief in support of the petition, failed to promptly respond to status update emails, and made numerous misrepresentations when he did communicate with Dr. Cohn.

Count Two—Section 6068, subdivision (m) Failure to Respond to Client Inquiries[8]

Between October 2010 and April 2012, Dr. Cohn sent Robinson numerous emails inquiring about his case and expressing concern about the lack of progress. Robinson repeatedly failed to respond to Dr. Cohn's emails, in willful violation of section 6068, subdivision (m).

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[7] Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. All further references to rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

[8] Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. All further references to sections are to this source unless otherwise noted.

Count Three—Section 6106 Moral Turpitude–Misrepresentation[9]

Robinson is culpable as charged for committing moral turpitude by misrepresenting the status of the Kaiser appeal. After continually ignoring Dr. Cohn's requests for updates, Robinson attempted on at least eight occasions to conceal his inaction by making false statements about the status of the petition. As outlined above, between October 2010 and December 2013, Robinson lied about hearing dates and orders issued by the court. On review, he claims that there was "some confusion" and asserts "mitigating factors." He contends that his office was ransacked and flooded. However, this does not negate culpability for his dishonesty, nor does his attempt to use personal medical issues to justify his deceitful behavior. Robinson was dishonest when assuring Dr. Cohn that the case was progressing when he had yet to file the petition and properly serve it on the defendants. "[A]n attorney who intentionally deceives his client is culpable of an act of moral turpitude. [Citation.]" (*Gold v. State Bar* (1989) 49 Cal.3d 908, 914 [actual suspension for intentional misrepresentation to client that attorney settled her case and for fraudulently documenting settlement distribution authorization calculating his fees].)

Count Five—Section 6103 Failure to Obey Court Order[10]

An attorney willfully violates section 6103 when, despite being aware of a final, binding court order, he or she knowingly takes no action in response to the order or chooses to violate it. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) OCTC alleged that Robinson failed to comply with the Alameda County Superior Court's June 2, 2016 order requiring him to produce documents for Dr. Cohn to inspect and copy.

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[9] Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

[10] Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which the attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

Robinson acknowledges he was aware of the order but unpersuasively argues that he did not violate it because the parties later reached an agreement. Like the hearing judge, we find that Robinson willfully violated section 6103 by failing to comply with the court order. (*In the Matter of Khakshooy* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 681 [attorney cannot rely on opposing party's sanction waiver]; see *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, 134 [disregard of judge's order violates § 6103].)

Count Six—Section 6068, subdivision(o)(2) Failure to Report Entry of Judgment

Section 6068, subdivision (o)(2), provides that, within 30 days of knowledge, an attorney has a duty to report to the State Bar, in writing, the entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity. Robinson was charged with failing to report to the State Bar the judgment entered against him in *Cohn M.D. v. Robinson*. At trial and in his brief, Robinson stated he did not believe he needed to report the judgment since Cohn's State Bar complaint against him included it. He is mistaken. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47–48 [attorney has independent duty to report sanctions].) Thus, we find Robinson willfully violated section 6068, subdivision (o)(2).

B. The McGlynn Matter (Case No. 16-O-12978, NDC-1; Counts Eight, Nine, & 11)[11]

1. Factual Background

Kevin McGlynn hired Robinson to represent him in a medical malpractice case against St. Francis Memorial Hospital (St. Francis). On July 15, 2013, Robinson filed a complaint in the San Francisco Superior Court against St. Francis and various medical providers. During the course of litigation, Robinson failed to respond to discovery requests from one of the defendants,

[11] As previously noted, counts seven and ten were dismissed at trial by the hearing judge at OCTC's request.

prompting that defendant to file a motion to compel discovery. Robinson did not oppose the motion, and on June 26, 2014, the court granted it. Robinson was ordered to file verified responses to discovery and to pay $760 in monetary sanctions.

Robinson testified that he was aware of the June 26, 2014 court order, but he did not recall notifying McGlynn about the sanctions. Neither Robinson nor McGlynn paid the $760 sanctions owed. On July 14, the defendant filed a second motion requesting further sanctions based on the failure to comply with the June 26 order. Again, Robinson did not oppose the motion. On August 13, the court granted the motion for additional sanctions of $1,285 against McGlynn, and precluded McGlynn from offering evidence central to his medical malpractice claim. Although Robinson's inaction resulted in the $1,285 sanctions award, the court's August order did not specifically impose sanctions against him. On January 5, 2015, the court granted St. Francis's motion for summary judgment. Robinson did not notify McGlynn that summary judgment had been entered against him or that the case was dismissed.

2. Culpability Findings

Count Eight—Rule 3-110(A) Failure to Perform with Competence

We find that Robinson failed to competently perform legal services by failing to respond to repeated discovery requests and by not filing a response to the summary judgment motion. Robinson claims he is not culpable and his inability to perform was due to his health. OCTC argues Robinson had an obligation to substitute out or withdraw from the representation if he was unable to competently represent McGlynn. Robinson was obligated to comply with the discovery orders. (*In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, 558–559). By doing nothing and allowing McGlynn's case to be dismissed, Robinson violated rule 3-110(A). (See *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr.

480, 490 [attorney "could not simply let excessive time pass, lead his client to believe he would advance her claim and neither do so nor take appropriate action to withdraw"].)

Count Nine—Section 6068, subdivision (m) Failure to Inform Client of Significant Development

The hearing judge found that Robinson violated section 6068, subdivision (m), by failing to inform McGlynn about the superior court's sanctions, summary judgment, and dismissal of his case. Robinson insists that McGlynn's testimony and the evidence support his claim that he kept McGlynn informed by sending him status emails. However, McGlynn testified that whenever he emailed Robinson for updates on his case, Robinson "flip flopped" by claiming he would perform certain actions but would not follow through and that this cycle of inaction continued throughout Robinson's representation. McGlynn stated that "[Robinson] didn't do anything for me. He stole. He lied . . . he told me nothing about what was going on." OCTC asserts that McGlynn unequivocally testified that Robinson did not apprise him of significant events during the litigation, including the June 26, 2014 court-ordered sanctions of $760; the August 13, 2014 court-ordered sanctions of $1,285; and the court's order granting St. Francis's summary judgment motion on January 5, 2015. The hearing judge found that McGlynn testified credibly regarding Robinson's failure to disclose that he did not appear at hearings, the sanctions orders, Kaiser's motion for summary judgment, and the dismissal of the case. We give great weight to the judge's credibility findings. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility issues "because [the judge] alone is able to observe the witnesses' demeanor and evaluate their veracity firsthand"].) We conclude the evidence supports culpability under section 6068, subdivision (m).

Count 11—Section 6103 Failure to Obey Court Order

Similar to his argument in the Cohn matter, Robinson insists he complied with the court's order because he "worked out an arrangement" with the opposing party after the court-imposed

sanctions were issued. However, Robinson's argument is neither credible nor persuasive. As we noted above, court-ordered sanctions cannot be excused by party waiver. (*In the Matter of Khakshooy*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 681.) We find Robinson culpable under section 6103 for his failure to comply with the San Francisco Superior Court's June 26, 2014 sanctions order.

C. Robinson's Trust Accounting Violations (Case Nos. 16-O-12414; 18-O-11996)

1. Count 12 (NDC-1) and Count 35 (NDC-3)—Commingling–Paying Personal Expenses from Client Trust Account (CTA)

OCTC charged Robinson with violations of rule 4-100(A) based on his numerous withdrawals of funds from his CTA for personal and business transactions. In count 12, OCTC alleged that Robinson issued 30 payments from his CTA between December 2015 and June 2016 to the following individuals and entities: Bruce Kyles, Rosemary Hernandez, Capital One Visa, Legacy Visa, and Shell Vacation. In count 35, OCTC alleged that at least 131 checks or electronic withdrawals, totaling $269,398.37, were paid to various individuals and entities[12] from Robinson's CTA between March 27, 2015, and June 14, 2018.

The hearing judge found Robinson culpable for issuing checks from his CTA for nine personal or business transactions under count 12, and 18 others under count 35.[13] Robinson contends he is not culpable because some transactions were "made in error" and the judge

[12] These entities include: Capital One Visa, T-Mobile, Legacy Visa, Shell Vacations, Winford Century Limited, Rosemary Hernandez, Legal Funding Group, Rise DE Db, David D. Ernst Esq., American General Life Insurance, Fpb CR Card, Total Card/Mabtc, Aaron Cohn, Vayera International, Ricardo Gutierrez Bressan, Emma Jackson, Thomas Jackson, Adam Robinson, First United Credit Union, Holly Gas and D Web, Lucky, USPS Kiosk, Kaiser Pharmacy, and Comcast.

[13] The hearing judge found that OCTC did not establish by clear and convincing evidence that the remaining transactions were issued from the CTA, in violation of rule 4-100(A). 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.) OCTC does not dispute these findings, and we affirm.

erroneously relied on the testimony from OCTC investigator Jay Buteyn as an "expert" and "fraud examiner."[14] Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a CTA and no funds belonging to the attorney or law firm may be deposited therein or otherwise commingled except for limited exclusions. This rule "is violated where the attorney commingles funds or fails to deposit or manage the funds in the manner designated by the rule." (*Guzzetta v. State Bar*, *supra*, 43 Cal.3d at p. 976 [referring to previous version of rule].) We agree with the hearing judge's finding that Robinson issued a total of 27 checks from his CTA for personal or business purposes, clearly violating rule 4-100(A). (*In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 625 [payment of business non-trust expenses from CTA is misuse of trust account and clear violation of [former rule 4-100(A)]].)

2. Count 13 (NDC-1) and Count 36 (NDC-3)—Failure to Maintain Complete Records

Rule 4-100(B)(3) provides that an attorney must maintain records and render appropriate accounts of all client funds, securities, and other properties coming into the attorney's possession. OCTC alleged that Robinson failed to maintain complete records for each client between December 2015 and June 2016 (count 13) and between February 2015 and June 2018 (count 36), a written journal for each CTA, and a monthly reconciliation of his CTA.

Robinson claims that several client files were stolen or destroyed when his office was "ransacked" in 2013 and flooded in 2014. He asserts that he was in the process of rebuilding his practice, which caused a significant strain. This argument is not persuasive as the evidence established that Robinson failed to comply with the rule's requirements because Robinson experiencing issues in 2013 and 2014 is not relevant to him failing to maintain records between 2015 and 2018. Rule 4-100(B)(3) requires attorneys to maintain proper client ledgers, account

[14] Robinson's procedural challenges relating to Buteyn's testimony are discussed below in section V of the opinion.

journals, and monthly reconciliations for a CTA.[15] Thus, we affirm the hearing judge's culpability finding under count 36.[16]

D. The Turesin Matter (Case No. 17-O-01203, NDC-2; Counts One, Two, & Three)

1. Factual Background

Elisa Turesin retained Robinson to (1) sue the City of Sunnyvale and other named defendants for false arrest, excessive force, and various civil rights violations; (2) submit a petition for factual innocence; and (3) obtain a final accounting and refund from Turesin's former counsel. She paid Robinson $7,500 in attorney fees. On July 29, 2015, she emailed Robinson requesting copies of the California Public Records Acts documents (CPRA request) he had agreed to send to the City of Sunnyvale and to the Santa Clara County Sheriff's Office. Between July and September, she continued to request the information from Robinson. On September 23, Robinson attached copies of four supposed CPRA requests to an email to Turesin, claiming they had been submitted. However, the only CPRA request Robinson submitted was on September 24, the day after he emailed the purported copies to Turesin.

On October 2, 2015, Robinson filed a complaint in the United States District Court for the Northern District of California against the City of Sunnyvale and other named defendants (Case No. 15-cv-04551) on behalf of Turesin. When he failed to serve the defendants, the court issued an order to show cause (OSC) why the complaint should not be dismissed. Robinson

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[15] The State Bar's Handbook on Client Trust Accounting also provides detailed guidance on required recordkeeping. It mandates that attorneys must maintain the following records for their CTAs: (1) a written ledger for each client; (2) a written journal for each bank account; (3) all bank statements and canceled checks; and (4) monthly reconciliations for each account. (The State Bar of Cal., Handbook on Client Trust Accounting for California Attorneys (2018) (Handbook), § II, p. 3.) The Handbook is available online at the following website: http://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/CTA-Handbook.pdf.

[16] The hearing judge found count 13 to be duplicative of count 36—since the time frames of the alleged misconduct overlap—and dismissed count 13 with prejudice. OCTC does not challenge the judge's dismissal, and we affirm.

requested more time to investigate; the court granted him until February 19, 2016. On March 11, the court issued a second OSC. When Robinson failed to serve the complaint by March 16, the court dismissed the case.

On April 1, 2016, Turesin sent Robinson an email terminating their attorney-client relationship and requesting a refund. Robinson refused to refund any fees.

2. Culpability Findings

Count One—Rule 3-110(A) Failure to Perform with Competence

Robinson argues that he did not violate rule 3-110(A) since the parties were involved in a fee dispute and Turesin was a difficult client. This argument does not excuse his misconduct. An attorney may violate rule 3-110(A) by acting "in reckless disregard of a client's cause." (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155, fn. 17.) The record shows that Robinson failed to serve the complaint on the defendants for several months after filing it, even though the court held two OSC hearings and allowed Robinson filing extensions. After filing the complaint, Robinson took no substantive action to litigate the matter. (See *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 554 [attorney who continues to represent client has obligation to take timely, substantive action on client's behalf].) Therefore, we find that Robinson's actions were reckless, in willful violation of rule 3-110(A).

Count Two—Moral Turpitude—Misrepresentation

Count two of NDC-2 alleged that Robinson made a misrepresentation constituting moral turpitude on September 23, 2015, when he claimed to Turesin that he had submitted four CPRA requests, knowing that he had not. As outlined above, on September 23, Robinson sent Turesin an email with multiple attachments purporting to be copies of CPRA requests to the Santa Clara County Sheriff's Office and the City of Sunnyvale, which he had not sent.

Robinson testified that the CPRA requests were mailed to the Santa Clara County Sheriff's Office and the City of Sunnyvale in May and June 2015. Michelle Couvarrubias, the records administrator for the Santa Clara County Sheriff's Office, and Rebecca Moon, an attorney for the City of Sunnyvale, testified at the disciplinary trial. Both asserted that their respective offices had no record of Robinson mailing CPRA requests in May or June. Moon testified that the only request the City of Sunnyvale received from Robinson in the Turesin matter was submitted through its online system on September 24.[17] The hearing judge did not find Robinson's testimony about the claimed May and June mailings credible, and nothing in the record justifies disturbing that credibility determination. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241 [great weight given to hearing judge's credibility findings].) We find that Robinson intentionally misled Turesin to believe he had submitted four CPRA requests when he had not, in violation of section 6106. *(Bach v. State Bar* (1987) 43 Cal.3d 848, 855–856 [misrepresentation regarding existence of court order]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 220 [concealment of material facts just as misleading as explicit false statements].)

Count Three—Failure to Refund Unearned Fees

Rule 3-700(D)(2) requires an attorney to promptly refund, upon termination of employment, any part of a fee paid in advance that has not been earned. Robinson asserts that he earned the fees paid, even though he took no action on Turesin's behalf after filing the complaint on October 2, 2015, resulting in the case being dismissed on March 15, 2016. He charged Turesin $7,500 but claims he actually spent 54 hours working on the case and incurred an

[17] This is corroborated by documentary evidence that shows Robinson received an email from the City of Sunnyvale on September 24, 2015, indicating that his online CPRA request submission had been received.

additional $27,000 in fees as of November 4, 2015. OCTC argues Robinson did not earn the fee because he did not provide any legal services of value to Turesin.

The evidence establishes that, when he was terminated on April 1, 2016, Robinson had completed almost none of the services he was retained to accomplish. To justify retention of legal fees, an attorney is required to perform more than minimal preliminary services of no value to the client. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 324 [violation of rule 3-700(D)(2) for failure to perform any services of value].) As such, we find Robinson violated rule 3-700(D)(2) by failing to refund the unearned fees.[18]

E. The Boyd Matter (Case No. 17-O-07288, NDC-2; Counts Four, Five, Six, Seven, & Eight)[19]

1. Factual Background

Robinson agreed to represent Robert Boyd, who was incarcerated at the time, and filed a petition for habeas corpus and other appellate relief to challenge Boyd's criminal conviction.[20] Since Boyd was in prison, he authorized his fiancée, Kirstee Rivera, to communicate with Robinson on his behalf. Robinson was paid $11,000 in total for his representation.[21] On February 11, 2016, Robinson filed a petition for writ of habeas corpus in San Bernardino County Superior Court. On May 17, he filed an appeal with the Fourth District Court of Appeal. The appellate court denied Boyd's appeal as untimely. Robinson did not file any additional petitions

[18] While we recognize Robinson performed some work in the Turesin matter, we do not decide the amount of fees, if any, that Robinson earned. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 425 [precise amount earned need not be determined to constitute rule 3-700(D)(2) violation].)

[19] The hearing judge dismissed count nine of NDC-2, a violation of section 6068, subdivision (i), at OCTC's request during the disciplinary trial.

[20] Robinson testified that he sent Boyd a copy of a fee agreement detailing the framework of the representation; however, Boyd never returned a signed copy to Robinson.

[21] Boyd paid Robinson $7,500 and Rivera paid him an additional $3,500.

on Boyd's behalf. Boyd sent several letters to Robinson inquiring as to why Robinson did not file any other petitions; Robinson did not respond.

On January 8, 2018, Boyd sent Robinson a final letter terminating his services. He demanded a copy of his case file and a detailed accounting of the $11,000 fee. Robinson did not provide the file or the accounting to Boyd or Rivera nor did he respond to the letter. Rivera sent numerous text messages to Robinson inquiring about the status of Boyd's habeas petitions. She expressed Boyd's frustration and her own with Robinson's handling of the case and requested that he return at least half of the attorney fee. She also warned that Boyd would file a complaint with the State Bar[22] if Robinson did not issue a partial refund. Robinson never refunded any portion of the attorney fees to Boyd. In November 2017 and again in May 2018, Boyd filed State Bar complaints stating that Robinson had failed to perform legal services as agreed and refused to communicate with Boyd.

2. Culpability Findings

Count Four—Failure to Perform with Competence

Robinson contends that: he is not culpable of violating rule 3-110(A) because expert testimony is required to establish culpability; just because his petitions were unsuccessful does not mean that he performed incompetently; and the NDC was "fatally defective" because it identified the date of retention as November 2015, rather than the correct date of December 2015. His claims are unavailing. As stated previously, expert testimony is not required to establish culpability under rule 3-110(A). The record is clear that Robinson did not file subsequent appeals, which he was hired to do, and he did not provide any explanation or evidence that it was reasonable for him to fail to do so. His assertion that the NDC was "fatally

[22] Robinson testified that he stopped communicating with Boyd and Rivera when they threatened to file a State Bar complaint against him.

defective" because it mistakenly listed the date of retention fails. (See *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 928–929 [slight variance in evidence relating to noticed charges does not deprive attorney of adequate notice unless he can demonstrate his defense was compromised].) Further, the NDC adequately articulated the specific misconduct at issue. (See *In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171–172 [NDC must articulate specific conduct at issue, correlating alleged misconduct with rule allegedly violated].) As such, we affirm the hearing judge's culpability finding.

Count Five—Failure to Respond to Client Inquiries

The evidence establishes that Robinson failed to respond to Boyd's letters or Rivera's calls and messages as to the status of his petition for writ of habeas corpus and subsequent petitions. This failure supports culpability for misconduct under section 6068, subdivision (m). Rivera testified that Robinson became increasingly inattentive and ignored their inquiries about the case and the filing of subsequent appeals.

Count Six—Failure to Release Client File

Under rule 3-700(D)(1), an attorney whose employment has been terminated must promptly release, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. Robinson argues that Rivera had access to some files electronically via email. This argument fails because the rule explicitly states that an attorney is required to provide "*all* [of] the client papers and property" upon termination of employment. (Rule 3-700(D)(1), italics added.) By failing to return the file in January 2015, when Boyd terminated him, Robinson violated rule 3-700(D)(1). (*In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, 612–613 [violation of rule 3-700(D)(1) for six-month delay in returning client file].)

Count Seven—Failure to Refund Unearned Fees

OCTC charged Robinson with a violation of rule 3-700(D)(2) for his failure to return any part of the $11,000 fee he received to represent Boyd since he failed to file the subsequent appeals mandated under the fee agreement. The hearing judge found that Robinson violated the rule by not performing several services for which he was retained and failing to refund any portion of the fee.[23] Robinson argues that he earned the fee prior to the termination and that his billings for the case, as of February 2, 2017, exceeded $40,000. This argument fails, as it did in the Turesin matter. The fee agreement did not state that the services contemplated were to be billed hourly but instead Robinson agreed to provide the defined services for a flat fee of $11,000. As discussed above, he did not perform all of the work provided for under the fee agreement prior to his termination. Thus, by failing to refund the unearned fees, Robinson violated rule 3-700(D)(2). (*In the Matter of Phillips*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 324 [conclusion that attorney did not earn fee and failed to promptly refund any portion after termination results in culpability for willfully violating rule 3–700(D)(2)].)

Count Eight—Failure to Render Accounting

Rule 4-100(B)(3) requires an attorney to render appropriate accounts to a client. The hearing judge found Robinson culpable for not providing Boyd with an accounting of the $11,000 fee despite Boyd's request on January 8, 2018. On review, Robinson argues that he emailed Boyd an accounting and offer to refund a portion of the fee on February 2, 2017. His argument lacks merit because his February 2017 email simply stated that his "fees exceeded $40,000" and provided

[23] While the judge concluded that Robinson performed only a portion of the work he was retained to accomplish, she found that the record lacked specific evidence to determine the percentage of the fee that was earned. Therefore, the judge was unable to make a restitution recommendation. We also are unable to recommend specific restitution owed based on the limited record in relation to work performed.

no further details of the work performed. This does not qualify as an appropriate accounting. Further, since the email predates Boyd's January 2018 request, it could not have been provided in response to Boyd's request. Accordingly, Robinson willfully violated rule 4-100(B)(3). (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 188–189.)

F. The Kyles Matter (Case No. 18-O-11996, NDC-3; Counts One, Two, Three, Four, & Five)

1. Factual Background

On May 21, 2012, Bruce Kyles retained Robinson to substitute into pending litigation against the City of Pittsburg and other named defendants for injuries Kyles suffered during an altercation with the police and a police dog. On January 29, 2015, the case settled for $145,000. Pursuant to the settlement, the City of Pittsburg issued two checks: the first for $627.30 payable to Medicare and Robinson, and the second for $144,372.70 payable to Robinson in trust for Kyles. Under the fee agreement, Kyles was entitled to 60 percent of the settlement, and was responsible for paying certain litigation costs.[24] On February 11, Robinson deposited both settlement checks into his CTA. He did not inform Kyles that he had received the funds.

Robinson was required to maintain $86,623.62 of the settlement funds (Kyles's 60 percent share) in his CTA. Between February 11 and 17, the CTA balance dropped to $203.67. On several occasions between 2015 and 2018, Kyles inquired about the status of the settlement funds. Robinson offered multiple fraudulent excuses for not providing the funds, e.g., claiming that the City of Pittsburg was "sitting on its hands and hadn't issued the check" and the city's delay prompted the United States Marshals to seize the city's assets to force it to pay a lien on the settlement funds.

[24] During the disciplinary trial, Robinson offered as evidence a document he created as an attempt to show the costs advanced on Kyles's behalf. The hearing judge did not consider the document reliable and rejected it. Further, Kyles testified that he had never seen the costs document and that he was unsure of several purported costs and advances Robinson identified.

Between March 30, 2015, and January 17, 2018, Robinson issued partial payment to Kyles by making 68 separate disbursements to him, ranging from $200 to $9,100, which totaled $39,161. Robinson asserted that these disbursements were "advances" for Kyles until the settlement was received. He falsely informed Kyles that he had filed a motion for monetary sanctions in the United States District Court for the Northern District of California to enforce the settlement judgment against the City of Pittsburg. Robinson also emailed Kyles a fraudulent notice of electronic filing, indicating that a hearing on the nonexistent motion was scheduled for October 14, 2015.

Between 2015 and 2018, Kyles faced financial hardship and homelessness. In September 2015, he borrowed $4,500 from Legal Funding, a settlement recovery lender, and informed Robinson that he had done so. It was not until July 2018 that Kyles learned Robinson had received the settlement funds three years before. On October 16, 2018, he retained a new lawyer. Kyles has yet to receive the remaining $47,462.62 he is owed from the settlement.[25]

2. Culpability Findings

Count One—Moral Turpitude—Misappropriation
Count Five—Failure to Maintain Client Funds in CTA

Robinson's CTA balance fell below $86,623.62, the amount of funds due Kyles and entrusted to Robinson. When the balance of a trust account drops below the amount the attorney is required to hold for a client, a presumption of misappropriation arises, which Robinson then has the burden to rebut. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618; *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37.) He did not credibly rebut this presumption. His claims on review that his total payments to Kyles "exceeded $75,000" do not justify his

[25] The remaining settlement amount owed to Kyles is calculated by subtracting $39,161 (representing the total amount of settlement "advances" he received) from $86,623.62 (the amount due to him under the fee agreement).

misconduct. An attorney who returns misappropriated funds is still culpable for misappropriation. (*In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541, 544.) Here, the misappropriation first occurred in February 2015 when the CTA dropped as low as $203.67 while Robinson had a duty to maintain $86,623 in the account. He issued "advances" to Kyles from March 2015 to January 2018. However, Kyles did not become aware that his settlement funds had been received until July 2018, which was over three years after Robinson deposited the settlement into his CTA. We conclude that Robinson intentionally misappropriated $86,419.95,[26] an act of moral turpitude. (See *In the Matter of Blum* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 170 [intentional misappropriation of $55,000 where attorney removed funds from trust account].) We also find Robinson culpable for failing to maintain funds in his CTA but assign no additional weight in culpability. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127.)

Count Two—Failure to Notify Client of Receipt of Client Funds

Under rule 4-100(B)(1), an attorney is required to notify a client promptly of the receipt of the client's funds, securities, or other properties. Robinson willfully violated the rule by not promptly informing Kyles that he had received and deposited the settlement funds into his CTA on February 11, 2015.

Counts Three and Four—Moral Turpitude—Misrepresentation

The hearing judge found Robinson intentionally deceived Kyles from March 2015 to July 2018 that his settlement funds had not been received, thus willfully committing acts of dishonesty and moral turpitude, in violation of section 6106. She also found him culpable under section 6106 for forwarding to Kyles a fraudulent notice of electronic filing stating that the

[26] This amount was calculated by subtracting Kyles's share of the settlement ($86,623.62) from the balance in the CTA ($203.67) on February 17, 2015.

hearing on the nonexistent motion for monetary sanctions was set to be heard on October 14, 2015, when Robinson knew the document was false since he had not even filed a motion for monetary sanctions. We agree.

The record establishes that Robinson falsely asserted to Kyles on multiple occasions from 2015 to 2018 that he had yet to receive the settlement, the settlement funds were "on the way," and the payments he was issuing Kyles were "advances." Robinson was dishonest by continuing to lie to Kyles for three years to conceal that he had received the settlement funds. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [moral turpitude includes concealment as well as affirmative misrepresentations with no distinction to be drawn between "concealment, half-truth, and false statement of fact"].) This misconduct establishes that Robinson willfully violated section 6106 by making multiple misrepresentations to Kyles.

G. Misappropriation Findings in Seven Client Matters

In the following seven client matters, OCTC failed to admit retainer agreements into evidence to prove the exact amount Robinson owed to clients in relation to the charges for misappropriation and failure to maintain funds below. Nevertheless, we find culpability in these matters. The mere fact that the balance has fallen below the total amounts deposited into a CTA on a client's behalf draws an inference of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474.) Further, in each case, Robinson made payments that establish at least the amount that he should have held in trust. The burden then shifts to Robinson to show that misappropriation did not occur. (*In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 618). To rebut this presumption, the following factors are considered: policies and procedures for depositing and withdrawing funds from the CTA; maintenance of banking records, bookkeeping, access and control over the CTA; and other general office practices and procedures. (*Palomo v. State Bar* (1984) 36 Cal. 3d 785, 796.) Robinson has failed to rebut this

presumption. His argument that culpability cannot be established since the seven clients did not testify and OCTC cannot prove the existence of an attorney-client relationship is not a defense to the misappropriation charges. Even if no such relationship had been created, Robinson, being entrusted with the funds, listed as "attorney" payee on the checks, and having deposited the checks into his CTA, is still held to a fiduciary duty.[27] (See *Johnston v. State Bar* (1966) 64 Cal.2d 153, 155–156 ["When an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary . . . the funds in his possession are impressed with a trust, and his conversion of such funds is a breach of the trust"]; *In the Matter of Lily* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 185, 191.) Such a breach of fiduciary duties was encompassed within the allegations in support of the charged section 6106 violations. A finding of gross negligence supports a finding of moral turpitude where an attorney's fiduciary obligations are involved, particularly related to his handling of a CTA. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.) Therefore, we find that Robinson is culpable of grossly negligent misappropriation in six of the client matters discussed below, and intentional misappropriation in the Walker matter.

1. The Nguyen Matter (Case No. 18-O-11996, NDC-3; Counts Six & Seven)

a. Factual Background

On March 8, 2016, the Dentist Insurance Company issued a settlement check on behalf of Nguyen for $9,999, payable to Robinson's law office and Nguyen, which Robinson deposited into his CTA on March 14. The Dentist Insurance Company issued a second settlement check in the same amount and to the same payees on March 29, which Robinson deposited in his CTA on

[27] We also note that Robinson did not refute the inference that he was entrusted with the clients funds as shown by him endorsing the checks and depositing them into his CTA. (See *McCray v. State Bar* (1985) 38 Cal.3d 257, 266–267 [holding that clear endorsement on back of check and no evidence to contrary can support finding of misappropriation].)

April 6. Between March 14 and May 17, Robinson did not distribute any funds to or on behalf of his client. On May 17, the balance in his CTA dropped to $8.95. Robinson did not distribute funds to Nguyen until November 1, 2016, when he provided $14,600 to his client.

b. Culpability Findings

Count Six—Moral Turpitude—Misappropriation
Count Seven—Failure to Maintain Client Funds in CTA

Robinson disputes that he is culpable for misappropriation and argues lack of proof because Nguyen did not testify during the disciplinary trial. The hearing judge found Robinson culpable of moral turpitude for intentionally misappropriating the funds. We find the evidence supports at least grossly negligent misappropriation because Robinson received two settlement checks as Nguyen's attorney; allowed his CTA to drop below $14,600, the minimum amount of entrusted funds he was required to hold; and delayed paying Nguyen for eight months. Although a fee agreement was not introduced into evidence, we find that Robinson owed Nguyen at least the $14,600 that he paid on November 1, 2016. Robinson did not present any evidence to rebut the presumption of misappropriation due to the CTA balance dropping to $8.95 before he paid his client any money. In light of the evidence, including the belated $14,600 settlement check Robinson sent to Nguyen on November 1, 2016, we find he misappropriated client funds and violated section 6106 through his grossly negligent handling of his CTA obligations. We find this misconduct also forms the basis of Robinson's culpability for failing to maintain client funds, but we do not assign additional weight in culpability. (*In the Matter of Sampson, supra,* 3 Cal. State Bar Ct. Rptr. at p. 127.)

2. The Romeyn Matter (Case No. 18-O-11996; NDC-3; Counts Eight & Nine)

a. Factual Background

On March 29, 2016, Robinson deposited a check for $50,000 payable to Sara Romeyn and the Law Office of Russell Robinson into his CTA. The memo line of the check stated, "For:

BI Settlement for Sara Romeyn." By May 17, Robinson had not distributed any funds to Romeyn and his CTA balance was $8.95. On December 23, Robinson transferred $2,500 to Romeyn. On February 13, 2017, he transferred an additional $3,250 to Romeyn.

b. Culpability Findings

Count Eight—Moral Turpitude—Misappropriation
Count Nine—Failure to Maintain Funds in CTA

Our review of the record determines that Romeyn was owed at least $5,750 from the settlement because Robinson issued payment of this amount to her, and therefore Robinson had a duty to maintain at least that amount in his CTA. We find that Robinson misappropriated $5,741.05 of Romeyn's funds by allowing his CTA balance to drop to $8.95 on May 17, 2016. (See *In the Matter of Blum*, *supra*, 3 Cal. State Bar Ct. Rptr. 170.) Robinson did not present any evidence to rebut the presumption of misappropriation resulting from his CTA dipping below the minimum amount of $5,750 he was required to hold in trust. Accordingly, we conclude he committed an act of moral turpitude under section 6106 for misappropriating Romeyn's funds through his grossly negligent management of his CTA. We also find that this misconduct forms the basis of his culpability under rule 4-100(A) for failing to maintain client funds, but we do not assign additional weight in culpability. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

3. The Malaver Matter (Case No. 18-O-11996; NDC-3; Counts 12 & 13)

a. Factual Background

On July 25, 2015, Robinson deposited a $20,000 check issued by Rental Insurance Services, payable to "Juan Malaver and attorney of record, Law Office of Russell A. Robinson," into his CTA. As of August 6, Robinson's CTA balance had fallen to $21.35. On April 14, 2016, Robinson distributed $6,738.75 to the City and County of San Francisco on behalf of

Malaver. On June 9, Robinson issued a check to Malaver for $6,648.43 for his share of the settlement. The memo line of Robinson's check to Malaver states "Disb."

b. Culpability Findings

Count 12—Moral Turpitude—Misappropriation
Count 13—Failure to Maintain Funds in CTA

Robinson was required to maintain at least $13,387.18[28] in trust on Malaver's behalf but he failed to do so when his CTA dipped to $21.35 on August 6, 2015. By allowing his CTA balance to fall below the minimum amount he was required to hold in trust, Robinson misappropriated Malaver's funds through gross negligence, thus violating section 6106. Like the hearing judge, we find that this misconduct also forms the basis of Robinson's culpability under rule 4-100(A) for failing to maintain client funds, but we assign no additional weight in culpability. (*In the Matter of Sampson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

4. The Aryana Matter (Case No. 18-O-11996; NDC-3; Counts 16 & 17)

a. Factual Background

On October 7, 2016, Robinson deposited a $56,000 check issued by Allstate Insurance, payable to Arash Aryana and Robinson into his CTA. Between October 7 and December 16, Robinson did not distribute any settlement funds to Aryana. As of December 16, the CTA balance had fallen to $13.18. On April 4, 2017, Robinson distributed $7,500 to Aryana. On April 5 and August 24, Robinson transferred $12,750 and $12,795, respectively, to Aryana. In total, Robinson paid her $33,045.

b. Culpability Findings

Count 16—Moral Turpitude—Misappropriation
Count 17—Failure to Maintain Funds in CTA

[28] This amount is calculated based on the $6,738.75 paid to the City and County of San Francisco and the $6,648.43 paid to Malaver from the settlement funds.

We find that Robinson was required to maintain at least $33,045 in trust on Aryana's behalf. Although we do not have a fee agreement to show the exact amount of funds he owed Aryana, we find that he owed at least the amounts that he ultimately paid. He failed to maintain the funds in trust by allowing his CTA to dip to $13.18 on December 16, 2016, before he had made any payment to Aryana Therefore, we find Robinson culpable of misappropriating client funds belonging to Aryana by gross negligence, thus violating section 6106. This misconduct also forms the basis of Robinson's culpability for failing to maintain client funds under rule 4-100(A), but we do not assign additional weight. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

5. The Halligan Matter (Case No. 18-O-11996; NDC-3; Counts 20 & 21)

a. Factual Background

On December 19, 2016, Robinson deposited a check for $23,750 issued by Farmers Insurance, payable to Joseph Halligan and the Law Office of Russell A. Robinson, into his CTA. Robinson had an obligation to maintain at least $17,887.50 in trust for Halligan. As of January 11, 2017, Robinson had not distributed any funds to Halligan, yet the balance of his CTA had fallen to $75.58. On January 30, Robinson transferred $100 to Halligan, and on February 8, he transferred an additional $17,787.50 to Halligan, for a total of $17,887.50.

b. Culpability Findings

Count 20—Moral Turpitude—Misappropriation
Count 21—Failure to Maintain Funds in CTA

We find that Robinson was required to maintain at least $17,887.50 in trust on Halligan's behalf based on the payments Robinson issued to him. He failed to do so and allowed his CTA to dip to $75.58. We find that Robinson committed an act of moral turpitude by misappropriating $17,711.92 of Halligan's funds through gross negligence, thus violating section 6106. The hearing judge found that this misconduct also forms the basis of Robinson's

culpability for failing to maintain client funds under rule 4-100(A) but did not assign additional weight in culpability, and we affirm. (*In the Matter of Sampson, supra,* 3 Cal. State Bar Ct. Rptr. at p. 127.)

6. The Walker Matter (Case No. 18-O-11996, NDC-3; Counts 27, 28, & 29)

a. Factual Background

On June 26, 2017, Robinson deposited a $15,000 check issued by Geico Indemnity Co., payable to the Law Office of Russell A. Robinson, City of San Francisco, and Joann Walker, into his CTA. The memo line of the check read, "In Payment of: Bodily Injury Coverage." As of July 14, Robinson had not distributed any funds to Walker or the City of San Francisco, and the balance of his CTA had fallen to $1.41.

On August 21, 2018, Robinson emailed Walker a fraudulent, altered copy of the settlement check that indicated an issuance date of June 22, 2018, rather than the true date of June 22, 2017. In that email, Robinson falsely stated that the $15,000 from Geico "remains on deposit." Robinson did not distribute the settlement funds until August 28, 2018, when he issued two cashier's checks: one for $5,000 payable to the City and County of San Francisco and the other for $10,000 payable to Walker.[29]

b. Culpability Findings

Count 27—Moral Turpitude—Misappropriation
Count 28—Failure to Maintain Funds in CTA

We find that Robinson had a duty to maintain at least $15,000 in trust on behalf of Walker based on his payments to Walker and the City and County of San Francisco. Yet, he failed to do so because his CTA dipped to $1.41 as of July 14, 2017. In light of the evidence,

[29] We also note that in his answer to count 29, which alleged the misrepresentation Robinson made to Walker regarding the fraudulent and altered settlement check, Robinson stated that Walker and the City of San Francisco received payment and he declined to accept an attorney fee.

including Robinson's misrepresentation to Walker detailed below, we find he intentionally misappropriated client funds in the amount of $15,000, thus violating section 6106. Like the hearing judge, we also find that this misconduct forms the basis of Robinson's culpability for failing to maintain client funds under rule 4-100(A), but we do not assign additional weight in culpability. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

Count 29—Moral Turpitude—Misrepresentation

The hearing judge found that Robinson committed acts involving moral turpitude and dishonesty, in willful violation of section 6106, by providing Walker with a fraudulent and altered settlement check with a "remains on deposit" notation. On August 21, 2018, Robinson emailed Walker the fraudulent and altered copy of the check, stating that the $15,000 settlement "remains on deposit" when he knew that statement was false. Robinson had received and misappropriated the funds a year prior to providing Walker with the fraudulent check. Robinson concealed the true date of the check, which was June 22, 2017, and altered it to an issuance date of June 22, 2018, before emailing it to Walker. Altering the check demonstrates that he knew his actions were wrong because he was attempting to conceal the date the funds were actually received. We affirm the judge's culpability finding.

7. The Hightower Matter (Case No. 18-O-11996, NDC-3; Counts 25 & 26)

a. Factual Background

On June 5, 2017, Robinson deposited a $5,000 check issued by Berg Injury Lawyers, payable to the Law Office of Russell A. Robinson, into his CTA. The memo line of the check read, "Hightower, Dennis E./Medpay." On June 13, Robinson deposited a $15,000 check issued by State Farm Insurance, payable to Dennis Hightower, the Law Office of Russell A. Robinson, and Berg Injury Lawyers, into his CTA. On June 15, he issued a $5,000 payment to Hightower.

On September 1, State Farm Insurance issued a check for $10,000, payable to Dennis Hightower, the Law Office of Russell A. Robinson, and Berg Injury Lawyers. Robinson deposited the check into his CTA on September 11. In his response to NDC-3, Robinson admitted that his fee agreement with Hightower provided that he was entitled to 40 percent of the $30,000 settlement, or $12,000. Hightower was to receive the remaining $18,000.

As of October 31, 2017, Robinson had only distributed $5,000 to Hightower and the balance of his CTA had dropped to $346.44. He never paid Hightower the remaining $13,000.

b. Culpability Findings

Count 25—Moral Turpitude—Misappropriation
Count 26—Failure to Maintain Funds in CTA

Robinson had a duty to maintain $13,000 in trust on behalf of Hightower as of October 31, 2017.[30] He failed to do so because on that date his CTA balance was $346.44. Therefore, Robinson is culpable for misappropriating client funds belonging to Hightower through gross negligence, thus violating section 6106. This misconduct also forms the basis of Robinson's culpability for failing to maintain client funds under rule 4-100(A); however, we do not assign additional weight in culpability. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

H. The Berger-Rivers Matter (Case No. 18-O-11996, NDC-3; Counts 22 & 24[31])

1. Factual Background

Lonnie Berger-Rivers retained Robinson to represent him in a personal injury matter. On January 25, 2014, the parties executed a contingency fee agreement. The matter ultimately settled for $125,000.

[30] This amount is calculated by subtracting the $5,000 Robinson paid to Hightower in June 2017 from $18,000, which is the amount Hightower was entitled to from the settlement funds.

[31] As noted below, count 23 was dismissed.

On February 6, 2017, Robinson deposited into his CTA two checks issued by State Farm Insurance Company: (1) payable to the City and County of San Francisco, for $23,348.65; and (2) payable to "Lonnie Berger-Rivers & Law Office of Russell A. Robinson, His Attorney," for $101,651.35. The front of each check referenced "Claim Number 05-2888-479" and "Loss Date of January 8, 2014." The back of the $101,651.35 check was endorsed with the name, "Lonnie Berger-Rivers;" however, Berger-Rivers did not actually sign the check.

On February 7, Robinson informed Berger-Rivers he had received the settlement funds from State Farm but would not pay him until after Robinson negotiated the medical liens filed in his case. This information was false because Robinson knew he had already received and deposited the medical lien payment. In fact, Robinson later paid the full $23,348.65 for the medical lien to the City and County of San Francisco on August 15, 2018.

Between February 6 and March 14, 2017, Robinson did not distribute any funds to or on behalf of Berger-Rivers. By March 14, the balance in Robinson's CTA had dropped to $84.22. Robinson did not distribute funds to Berger-Rivers until June 30. On several occasions before June 30, Berger-Rivers informed Robinson that he was experiencing severe financial hardship and unable to afford basic necessities. In response, Robinson agreed to "loan" Berger-Rivers money for his rent, union dues, and medical expenses: $2,000 disbursed to Berger-Rivers in May 2017, and $3,000 disbursed to Berger-Rivers in June 2017. In total, Robinson distributed $5,000 to Berger-Rivers.[32]

The City and County of San Francisco informed the State Bar that, as of July 20, 2018, a medical lien for Berger-Rivers remained unpaid. On behalf of Berger-Rivers, Robinson disbursed $23,348.65 to the City and County of San Francisco on August 15. Pursuant to the

[32] We note that the hearing judge's decision incorrectly lists the amounts Robinson disbursed to Berger-Rivers as $3,500. Upon our review of the record, we find Robinson provided $5,000 in payments to Berger-Rivers in 2017.

retainer agreement between Berger-Rivers and Robinson, Robinson was entitled to legal fees totaling 40 percent of the settlement proceeds, or $50,000. The remaining $75,000 should have been held in trust for Berger-Rivers and his lienholders.[33]

2. Culpability Findings

Count 22—Moral Turpitude—Misappropriation
Count 24—Failure to Maintain Funds in CTA

Robinson had a duty to maintain $75,000 in trust, which includes the $23,348.65 owed to the medical lienholder and the remaining $51,651.35 due to Berger-Rivers. However, Robinson failed to do so. As of March 14, 2017, his CTA balance dipped to $84.22, although he had not issued any payments on behalf of Berger-Rivers at that time. Here, clear and convincing evidence establishes Robinson intentionally misappropriated client funds, in violation of section 6106, by failing to distribute the funds belonging to Berger-Rivers but instead agreeing to "loan" Berger-Rivers money to cover basic necessities. We find this misconduct also forms the basis of Robinson's culpability under rule 4-100(A) for failing to maintain client funds but we do not assign additional weight in culpability. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

I. The Kapila Matter (Case No. 18-O-11996, NDC-3; Counts 30, 31, 32, & 33)

1. Factual Background

[33] Berger-Rivers's lienholders received $23,348.65 and the remaining balance of $51,651.35 should have been paid to Berger-Rivers. The hearing judge rejected Robinson's testimony asserting that he paid Berger-Rivers and providing a document purportedly demonstrating payment. The judge recommended restitution of $48,151.35 including interest, which represents the balance owed to Berger-Rivers reduced by the $3,500 in so-called "loan" payments. Since we found that Robinson issued $5,000 in "loan" payments, the restitution amount we calculate is $43,151.35 plus interest. However, the record indicates that Robinson issued a check for $55,000 to Berger-Rivers on February 3, 2019, as their agreed payment to settle the outstanding settlement funds.

Robinson represented Dr. Yagya Kapila in a contract dispute filed in Alameda County Superior Court between Dr. Kapila and Dr. Bhupinder Bhandari. Kapila prevailed and judgment was entered against Bhandari for $177,514.75, plus interest of 10 percent per year. On August 15, 2017, Bhandari issued a settlement check payable to "Yagya V. Kapila and Attorney Russell A. Robinson" for $75,000. Robinson deposited the check into his CTA on August 21. He did not inform Kapila about receipt of the settlement check. When Robinson deposited this check into his CTA, it was endorsed with the name "Yagya Kapila," but Kapila did not sign the check.

On September 26, Bhandari issued a second settlement check for Kapila in the amount of $75,000 made payable to "Yagya Kapila and Russell Robinson," which Robinson deposited into his CTA on October 2. Again, he did not notify Kapila that he had received this settlement check. When he deposited it into his CTA, it was endorsed with the name "Yagya Kapila," but again, Kapila did not sign the check.

On October 31, Bhandari issued a third settlement check in the amount of $40,000 made payable to "Yagya V. Kapila and Attorney Russell Robinson," which Robinson deposited into his CTA on November 6. Yet again, Robinson did not tell Kapila that he had received the check, and again, when he deposited it into his CTA, it was endorsed with the name "Yagya Kapila," although Kapila did not sign the check.

On December 27, prior to disbursing any funds to Kapila, Robinson's CTA balance had dropped to $13.13. In early 2018, when Kapila and his wife asked Robinson when they could expect to receive the settlement funds, Robinson told them Bhandari had not paid and suggested that they explore several options, including placing a lien on Bhandari's properties and a lien on Bhandari's medical practice. Robinson also informed Kapila that hearing dates had been set in April 2018 to advance Robinson's efforts to recover the funds from Bhandari. Kapila cancelled

patients' appointments on three or four occasions to attend the nonexistent hearings. When the "hearing" dates approached, Robinson told Kapila that they had been "postponed."

In July 2018, an OCTC investigator informed Kapila and his wife that Bhandari had paid the judgment in full. When the Kapilas confronted Robinson, he acknowledged receipt of the money and told them he had deposited it into an annuity that he had created for the Kapilas without their knowledge. After researching the annuity paperwork Robinson provided, the Kapilas learned that the annuity was fraudulent. Next, Robinson promised to pay the amount of the judgment in 30 to 45 days or by September 21, 2018. The total settlement amount Bhandari paid equaled $190,000, which included $177,514.75 plus $12,485.25 in interest. After subtracting interest and costs ($22,077), the sum remaining is $155,438. Robinson was entitled to $46,631.40 (30 percent) and Kapila was entitled to the remaining $143,368.60. Robinson never paid any funds to Kapila.

2. Culpability Findings

Count 30—Moral Turpitude—Misappropriation
Count 31—Failure to Maintain Funds in CTA

We affirm the hearing judge's finding that Robinson intentionally misappropriated $143,355.47 of Kapila's funds, in willful violation of section 6106. Robinson had a duty to maintain $143,368.60 in trust on behalf of Kapila and he failed to do so when his CTA balance dropped to $13.13 as of December 27, 2017. This misconduct also forms the basis of Robinson's culpability for failing to maintain client funds under rule 4-100(A), but we do not assign additional weight in culpability. (*In the Matter of Sampson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

Count 32—Failure to Notify Client of Receipt of Client Funds

Robinson violated rule 4-100(B)(l) by failing to promptly notify Kapila when he received the settlement funds, as required by the rule. Robinson received settlement payments on behalf

of Kapila on three separate dates in 2017—August 15, September 26, and October 31—but never notified Kapila. It was not until Kapila confronted him in 2018 that Robinson acknowledged that he had received the settlement funds.

Count 33—Moral Turpitude—Misrepresentation

We find that, by telling the Kapilas that Bhandari had not paid the settlement funds and suggesting that liens be pursued to compel payment, Robinson knew he made a false statement, and he committed an act of moral turpitude, in willful violation of section 6106. In 2018, Robinson finally acknowledged to the Kapilas that he had received the funds from Bhandari. We find he intentionally violated section 6106 when he misled them to believe Bhandari had not paid the settlement and lied to them about scheduling hearing dates in an attempt to recover the funds through a lien.

J. Robinson's Misrepresentations to OCTC (Case No. 18-O-11996; NDC-3; Count 34)

1. Factual Background

On July 18, 2018, OCTC investigator Jay Buteyn interviewed Robinson in person in San Francisco. During the course of the interview, Robinson stated: (1) the check for $101,651 that Robinson received from State Farm on February 6, 2017, in the Berger-Rivers matter had been disbursed to Berger-Rivers by cashier's check; and (2) the $190,000 in settlement funds paid by Bhandari in the Kapila matter belonged to Robinson as attorney fees.

2. Culpability Findings

Moral Turpitude—Misrepresentation

The hearing judge found that Robinson committed an act of moral turpitude involving dishonesty by making the two statements above regarding client settlement funds to investigator

Buteyn when he knew the statements were false and misleading.[34] As explained in the culpability findings with regard to the Berger-Rivers and Kapila matters above, both statements were false. Robinson asserts that his statements were inadmissible because they occurred during an Early Neutral Evaluation Conference (ENEC). OCTC challenges his claim as meritless because the interview with Buteyn occurred after the ENEC and we agree. We find the evidence supports the conclusion that Robinson intentionally misled Buteyn. As previously noted, Robinson had already misappropriated the settlement funds referenced in his statements prior to his interview with Buteyn. We view this fact as evidence of concealment. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 589 [attorney's concealment of existence and location of insurance proceeds is persuasive evidence of lack of honest belief in right to proceeds and supports moral turpitude finding].) Robinson's statements to the State Bar investigator were misrepresentations that he knew, or should have known, were false and misleading, which constitutes moral turpitude in violation of section 6106.

III. ROBINSON'S PROCEDURAL CHALLENGES FAIL[35]

Robinson raises five challenges to the hearing judge's procedural and evidentiary rulings. Having considered each of his arguments, we find them meritless.

(1) Robinson broadly claims that he did not receive a fair trial due to the hearing judge's bias against him.[36] He mainly argues that the judge made what Robinson considered to be

[34] OCTC alleged two additional statements in count 34 with regard to the Melendez and Morales matters; however, the hearing judge concluded that the statements were not established by clear and convincing evidence. OCTC does not challenge the judge's findings. Upon review of the record, we affirm the judge's finding.

[35] Having independently reviewed all arguments Robinson raised, those not specifically addressed herein have been considered and are rejected as lacking merit.

[36] At oral argument, Robinson clarified his argument was that the hearing judge was biased against his case and became an advocate for OCTC. He further explained that he made no other claims of bias.

sarcastic and condescending comments when she called him "Robert" instead of "Robinson" at one point during the trial and then said "whoopsie," issued inconsistent rulings allowing OCTC's witnesses to exceed their scope in direct examination while prohibiting him from eliciting further testimony, and improperly allowed OCTC to engage in gamesmanship by permitting investigator Buteyn to testify as an unqualified expert.

A hearing judge is disqualified from a case based on "[b]ias or prejudice toward a lawyer in the proceeding" or when "[a] person aware of the acts might reasonably entertain a doubt that the judge would be able to be impartial." (Code Civ. Proc., § 170.1(a)(6) [grounds for disqualification]; see Rules Proc. of State Bar, rule 5.46(A) [judge must be disqualified when Code Civ. Proc., § 170.1 applies].) We conclude that the judge's statement referring to Robinson by an incorrect name was a mistake and her "whoopsie" statement was a simple recognition of that mistake. Neither of these issues had any prejudicial effect. We find no merit to Robinson's allegations and conclude that the judge provided him with a fair hearing, as required. (*Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634.)

(2) While Robinson argues the judge made more objections to his questions than OCTC, we emphasize that a 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." (Rules Proc. of State Bar, rule 5.104(F); *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 499 [hearing judge has broad discretion to admit or exclude evidence].) We find that the judge's rulings properly limited irrelevant evidence.

(3) Robinson also claims that the judge intervened in the questioning of witnesses. "A trial court 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." (*People v. Cook* (2006) 39 Cal.4th 566, 597.) Robinson has failed to specifically show any actual prejudice

he suffered and nothing in the record supports his claims. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 469 [attorney must show specific prejudicial effect]; *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 98–99 [trial judge did not prejudicially err in exercising discretion to excuse witness where attorney failed to either request witness be recalled or make offer of proof as to testimony expected to elicit from witness].)

(4) Also, contrary to Robinson's assertion, Buteyn did not offer testimony as an expert witness. Thus, we reject this allegation as devoid of factual basis.

(5) Lastly, Robinson argues that the hearing judge improperly denied his motion to dismiss NDC-1 and NDC-3. He also asserts that the judge erred in denying his motions in limine to preclude evidence of settlement negotiations. The standard of review we generally apply to procedural rulings is abuse of discretion. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695; *H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368 ["appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered"].) We find Robinson's arguments unavailing as they lack legal authority and he has not shown an error of law or abuse of discretion in the judge's rulings. Also, Robinson cannot prove that the evidence of settlement negotiations was unduly prejudicial against him. Whether an attorney makes restitution is relevant to attorney disciplinary proceedings. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1093 [attitude expressed regarding restitution is relevant].) We reject Robinson's procedural challenges as meritless and find that he received a fair trial and was treated justly throughout these proceedings.

IV. AGGRAVATION AND MITIGATION

Standard 1.5[37] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Robinson to meet the same burden to prove mitigation.

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

A. Aggravation

1. Prior Record of Discipline (Std. 1.5(a))

Robinson has one prior record of discipline. On October 27, 2009, he was suspended for 30 days and placed on three years' probation in State Bar Court Case No. 03-0-04008, where he stipulated to misappropriating $13,573.68 from a client in 2003. In aggravation, significant harm was established. In mitigation, Robinson had no prior record of discipline, cooperated with OCTC, and paid restitution. He also demonstrated extensive community service and was experiencing marital and emotional problems at the time of the misconduct. He was not required to attend Client Trust Accounting School. We agree with the hearing judge that substantial aggravating weight should be assigned to Robinson's prior discipline record because, like this case, it also involved large scale misappropriation, which magnifies this aggravating circumstance. (*In the Matter of Gadda*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 443–444 [similarities between prior and current misconduct render previous discipline more serious, as they indicate prior discipline did not rehabilitate].)

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

The hearing judge assigned significant aggravation for Robinson's multiple acts of misconduct because he was found culpable of 46 ethical violations.[38] Given the breadth and scope of his misconduct, we affirm the judge's findings, which warrant substantial weight in aggravation. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

[38] OCTC agrees that Robinson's multiple acts of wrongdoing constitute a significant aggravating circumstance. Although Robinson challenges culpability on most counts, he does not specifically address this factor on review.

3. Intentional Misconduct, Bad Faith, and Dishonesty (Std. 1.5(d))

The hearing judge declined to assign weight in aggravation for intentional misconduct, bad faith, and dishonesty because she found Robinson culpable of intentional misappropriation and repeated misrepresentations. *(In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used for culpability, improper to consider them in aggravation].) Neither party challenges this finding on review. We agree and affirm.

4. Significant Harm to Clients (Std. 1.5(j))

The hearing judge found that Robinson's misconduct caused significant harm to several of his clients, for which the judge assigned significant weight. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) Neither OCTC nor Robinson challenges this finding. We agree that Robinson's misconduct, most notably his intentional misappropriation, caused significant financial harm to multiple clients by depriving them of their funds for extended periods of time. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. at p. 133 [substantial weight assigned for significant harm to client caused by attorney's misconduct that resulted in delayed payment of $22,163 in medical liens].) The most shocking case involves Kapila, who is still owed $143,368.60 in restitution. Kyles faced homelessness and was forced to take out a loan. Berger-Rivers experienced financial hardship so severe that he was unable to afford his rent and other basic necessities. Turesin and Boyd were also financially harmed because Robinson failed to refund attorney fees after they terminated his services. Lastly, multiple clients experienced harm as a result of Robinson's incompetence when he caused their cases to be dismissed.

5. Failure to Make Restitution (Std. 1.5(m))

The hearing judge found that Robinson's failure to make restitution to multiple clients warrants significant consideration in aggravation. To date, he has not repaid any of the

$143,368.60 he owes Kapila; $13,000 he owes Hightower; $7,500 owed to Turesin; $11,000 owed to Boyd; or $47,462.62 owed to Kyles. In sum, Robinson still owes over $222,000 to his clients.[39] This warrants substantial weight in aggravation. (*In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, 445.)

B. Mitigation

Standard 1.6(f) provides that "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" is a mitigating circumstance. The hearing judge did not afford any mitigation for this factor because the four character witnesses who testified on Robinson's behalf were not aware of the full extent of his misconduct. His witnesses included an attorney, his landlord, and two former clients. The attorney witness did not know if any of Robinson's clients received restitution. (See *In re Aquino* (1989) 49 Cal.3d 1122, 1130–1131 [testimony of seven witnesses plus 20 letters affirming attorney's good character not entitled to significant weight in mitigation because most were unaware of details of misconduct].) While his character witnesses demonstrated only a minimal understanding of the alleged misconduct, they did attest to his honesty and integrity. We conclude that Robinson is entitled to minimal mitigation weight for this factor.

V. DISBARMENT IS NECESSARY

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

[39] The evidence shows that Robinson repaid some clients, which explains the difference between the $415,000 in funds he misappropriated and the $222,000 that still remains unpaid.

Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) In determining an appropriate level of discipline, we also weigh factors in aggravation and mitigation. (Std. 1.7(b) & (c).) Finally, we look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

We begin with standard 1.7(a), which instructs that when an attorney commits two or more acts of misconduct, the most severe sanction for all the acts of misconduct must be imposed. Robinson's intentional misappropriation qualifies for application of standard 2.1(a), which states that disbarment is the presumed sanction. [40]

In considering the remaining aspects of standard 2.1(a), an attorney may avoid disbarment if the amount misappropriated is "insignificantly small" or "sufficiently compelling mitigating circumstances clearly predominate." Neither of those conditions applies here. Robinson misappropriated over $400,000, a very significant amount of money. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [$1,355.75 held to be significant amount]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar. Ct. Rptr. 511[disbarment for intentional misappropriation of nearly $40,000 in single client matter].) Moreover, this is Robinson's second disciplinary case involving misappropriation. We view this together with the fact that his misconduct in this matter began in 2010, just one year after he was suspended in his prior disciplinary matter and while he was still on probation, which the hearing judge did not address. Robinson's one mitigating circumstance of good character with minimal weight is clearly not compelling, nor does it predominate over the serious misconduct and four aggravating circumstances of prior discipline, multiple acts, failure to make restitution, and prior record involving significant misappropriation.

[40] Various other standards also apply (i.e., stds. 2.2(a) [commingling], 2.2(b) [failure to maintain client funds in CTA], 2.7(c) [failure to perform competently], and 2.11 [moral turpitude]), with the presumed discipline ranging from reproval to disbarment.

Misappropriation of 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*, *supra,* 52 Cal.3d at p. 37.) "Even a single 'first-time' act of misappropriation has warranted such stern treatment." (*Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 657.)

Lastly, we consider whether any reason exists to depart from the discipline in standard 2.1(a). We acknowledge that disbarment is not mandatory in every case where someone is being disciplined for misappropriation.[41] However, if we deviate from recommending disbarment, we must articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].) Here, we find no reason to deviate from the presumed sanction. Robinson misappropriated over $400,000 of entrusted funds from his CTA, completely disregarding his ethical, professional, and fiduciary duties to multiple clients. And he did so after previously being disciplined for committing moral turpitude for misappropriating $13,573.68 from a client in 2003. We conclude that his unrelenting misconduct—spanning nearly nine years and involving widespread misappropriation, multiple misrepresentations, and failing to perform competently in addition to other ethical violations which affected more than a dozen clients—demonstrates he is unfit to practice law. Accordingly, disbarment is appropriate to protect the public, the courts, and the legal profession.

[41] E.g., *Edwards v. State Bar*, *supra*, 52 Cal.3d 28 [12 years' discipline-free practice, no acts of deceit, full repayment made before aware of complaint to State Bar; one-year actual suspension]; *Howard v. State Bar* (1990) 51 Cal.3d 215 ["relatively small sum" of $1,300 misappropriated and rehabilitation from alcoholism and drug dependency; six-month actual suspension].

VI. RECOMMENDATION

It is recommended that Russell Alan Robinson, State Bar Number 163937, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

It is also recommended that Robinson make restitution to the following individuals, or to such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburses the Client Security Fund, to the extent of any payment from the Fund to any such payee, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof of restitution to the State Bar Office of Probation in Los Angeles:

(1) Elisa Turesin in the amount of $7,500 plus 10 percent interest per year from April 23, 2015;

(2) Robert Boyd in the amount of $11,000 plus 10 percent interest per year from January 8, 2018;

(3) Bruce Kyles in the amount of $47,462.62 plus 10 percent interest per year from February 17, 2015;

(4) Dennis Hightower in the amount of $13,000 plus 10 percent interest per year from October 31, 2017; and

(5) Dr. Yagya Kapila in the amount of $143,368.60 plus 10 percent interest per year from December 27, 2017.

VII. CALIFORNIA RULES OF COURT, RULE 9.20

It is further recommended that Robinson be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[42]

[42] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Robinson is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an

VIII. MONETARY SANCTIONS

The court does not recommend the imposition of monetary sanctions as all the misconduct in this matter occurred prior to April 1, 2020, the effective date of rule 5.137 of the Rules of Procedure, which implements Business and Professions Code section 6086.13. (See *In the Matter of Wu* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 263, 267 [rules of statutory construction apply when interpreting Rules Proc. of State Bar]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208–1209 [absent express retroactivity provision in statute or clear extrinsic sources of intended retroactive application, statute should not be retroactively applied]; *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [where retroactive application of statute is ambiguous, statute should be construed to apply prospectively]; *Fox v. Alexis* (1985) 38 Cal.3d 621, 630–631 [date of offense controls issue of retroactivity].)

IX. COSTS

It is further recommended 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 actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

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attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

X. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Russell Alan Robinson be involuntarily enrolled as an inactive attorney of the State Bar pursuant to section 6007, subdivision (c)(4), effective June 7, 2019, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.