PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed February 13, 2023

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-21-O-30558
	)	
TYLER TIMOTHY KIELER,	)	OPINION AND ORDER
	)	
State Bar No. 257591.	)	
	)	

In his first disciplinary matter, Tyler Timothy Kieler was charged with eight counts of misconduct arising from his duties as an escrow agent for a loan transaction. He was charged with breach of a fiduciary duty, misappropriation, failing to maintain funds in a client trust account (CTA), concealment, misrepresentation to a party owed a fiduciary duty (two counts), charging an illegal fee, and misrepresentation to the Office of Chief Trial Counsel of the State Bar (OCTC). The hearing judge found Kieler culpable in six of the counts and recommended disbarment.

Kieler appeals. Although he concedes on review that he is culpable of grossly negligent misappropriation and misrepresentation to a party, Kieler requests dismissal of the remaining counts. Based on these concessions, he argues the appropriate discipline in this matter is two years' actual suspension continuing until he makes restitution and proves his fitness to practice law. OCTC does not appeal the hearing judge's findings and requests that we uphold the judge's discipline recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we find that Kieler is culpable of five counts of misconduct, the most serious of which includes intentional misappropriation and multiple misrepresentations. Given the serious misconduct found, and that

his aggravating circumstances exceed his mitigating circumstances, we uphold the hearing judge's disciplinary recommendation of disbarment.

I. RELEVANT PROCEDURAL BACKGROUND

On August 10, 2021, OCTC filed a Notice of Disciplinary Charges (NDC) alleging seven counts of misconduct. Kieler filed his response on September 3, 2021.

On November 10, 2021, OCTC filed an Amended Notice of Disciplinary Charges (ANDC), adding an additional count of misconduct. The ANDC charged Kieler with (1) breaching his fiduciary duties in violation of Business and Professions Code, section 6068, subdivision (a)[1] (count one); (2) misappropriating $65,000 in entrusted funds in violation of section 6106 (count two); (3) failing to maintain client funds in a CTA in violation of former rule 4-100(A) of the Rules of Professional Conduct[2] (count three); (4) three counts of failing to disclose certain information or making misrepresentations to a party in the loan transaction in violation of section 6106 (counts four, five, and six); (5) paying himself $6,155 in fees from escrow funds without authority in violation of former rule 4-200(A) (count seven); and (6) making misrepresentations to OCTC in violation of section 6106 (count eight). Kieler filed a response to the ANDC on November 19, 2021.

On November 18, 2021, the parties filed a Stipulation as to Undisputed Facts and Admission of Documents (Stipulation), and a two-day trial was held on December 7 and 8. The hearing judge issued her decision on March 8, 2022.[3]

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[1] Further references to sections are to this source unless otherwise indicated.

[2] Further references to former rules are to the Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise indicated.

[3] The hearing judge dismissed counts one and three as pleaded in the ANDC after consideration of the evidence. Neither party challenges these dismissals on review. We find a review of the record supports dismissal of these charges and uphold the judge's dismissal of these counts with prejudice. (*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].)

II. RELEVANT FACTUAL BACKGROUND[4]

A. Events Leading to Loan Transaction Involving Kieler

In August 2016, Kieler was asked by Arthur Jay Lewis, Kieler's client at the time,[5] to act as an escrow agent in assisting with a proposed $6 million loan between a borrower, UPD Holding Company (UPD), and a lender, Oria Holdings, Inc. (Oria).[6] In the negotiations regarding the loan, UPD was represented by Mark Conte and Patrick Ogle, who are principals of UPD,[7] and Oria was represented by Sal Caragliano, a principal of that company.

At the beginning of the negotiations, Ogle briefly performed a due diligence background investigation of Caragliano on Google, and he found no negative information. During a telephone meeting in early August 2016 between UPD and the intermediary brokers, Kieler was

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[4] The facts included in this opinion are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[5] Kieler and Lewis had an ongoing attorney-client relationship extending back in time for approximately four years prior to the events related to the 2016 loan transaction. In October 2012, Lewis and his wife were sued by Compass Holdings, LLC, in an unlawful detainer action relating to a rental property in Poway, California (Compass matter); Kieler later joined the case as co-counsel. Judgment was entered against defendants on November 30, 2012, and a writ of possession was issued. In 2016, Kieler represented Lewis and his wife in another unlawful detainer action brought by Golden Cities Management (GCM), relating to a rental house in Vista, California (Golden Cities matter). On September 8, 2016, judgment was entered in the Golden Cities matter, which required Lewis to pay $11,665 by September 16 and vacate the rental house by September 30. Kieler and GCM's counsel communicated until at least September 22. Kieler also briefly represented Lewis relating to six fraudulent certificates of deposit in May 2016.

[6] At trial, Lewis testified that he was a principal of Oria for 15 years and became a Vice President around 2009 or 2010, though he never appeared on any corporate documents related to Oria. He also testified that he was responsible for facilitating loan funding on behalf of Oria, yet no documents were produced to show that Lewis attempted to procure the $6 million. Regardless, establishing the facts leading to the loan between UPD and Oria are not necessary given the charges in the ANDC.

[7] The hearing judge determined that neither Kieler nor Lewis testified credibly during the disciplinary trial. The judge concluded that their testimonies contradicted the testimonies of Conte and Ogle, which the judge found were largely corroborated by documentary evidence. In particular, she noted several instances where there was a lack of relevant documents to substantiate Kieler's and Lewis's testimonies. Contrary to Kieler's arguments, discussed *post*, we see no reason to come to a different credibility conclusion than the judge did.

introduced to UPD as an "independent escrow agent" for the loan transaction. Conte and Ogle understood Kieler to be an independent and neutral third party, with Kieler stating that he had no prior representation of Oria or its principals, even though Kieler knew that he had a relationship with Lewis and that Lewis was involved in the loan transaction. These facts were not disclosed to UPD during the negotiations, and UPD was unaware of Lewis's existence until after the loan documents were signed and UPD performed its obligation as the borrower under the loan's Funding Agreement.

B. The Parties Execute the Funding Agreement and Escrow Agreement for the Loan Transaction; Kieler Provides Attestation Letter

On September 6, 2016, UPD and Oria entered into an agreement for a private funding loan transaction, entitled "Funding Agreement." Section 2 of the agreement stated that the "Funding Amount" was $6 million, which "Lender [was to] remit . . . to Borrower . . . payable to Borrower through . . . the 'Escrow Account' held by . . . Kieler . . . as the escrow agent for each of Lender and Borrower" and referred to an "Escrow Agreement" for the terms and conditions of escrow. Section 5 of the Funding Agreement detailed the instructions about the funds UPD was to provide, designated as "the Backup Collateral":

> Once the Backup Collateral has been deposited into the Escrow Account, Escrow Agent will confirm the same with Lender, and Lender will submit a request to Escrow Agent that the Backup Collateral be remitted to Lender's third-party paying agent (the "Paymaster"). Borrower and Lender hereby acknowledge that the *Backup Collateral shall be used to pay certain fees associated with Lender's procurement and remittance of the Funding Amount to the Escrow Account*, including, but not limited to, any Paymaster fees; provided, however, that Borrower shall retain all right, title, and interest to the Backup Collateral and Lender shall remain liable to Borrower for the Backup Collateral until such time as the Funding Amount is remitted to Borrower.

(Italics added.) Even at this point, UPD was unaware of Lewis, that his role would be Oria's third-party paying agent ("paymaster" as designated in the Funding Agreement), and that Oria was relying on Lewis to arrange the $6 million funding on which the consummation of the loan

transaction depended. UPD understood the paymaster to be Kieler in his role as the independent escrow agent.

Also on September 6, 2016, Conte (on behalf of UPD), Caragliano (on behalf of Oria), and Kieler (as the escrow agent) executed the Escrow Agreement, which set forth the duties and obligations of the escrow agent. Section 4 of the Escrow Agreement provided that,

> Lender and Borrower will deposit the Backup Collateral [$65,000] and Funding Amount [$6 million] into the Escrow Account [Kieler's CTA] in accordance with the Funding Agreement, and *Escrow Agent [Kieler] shall maintain the deposits until such time as the Parties direct Escrow Agent to break escrow* and distribute the deposits to the intended recipients as set forth in the Funding Agreement.

(Italics added.)

Under sections 5 and 6 of the Escrow Agreement, Conte and Caragliano each had authority to "give and receive directions and notices" and "take all actions and make all determinations" necessary under the Escrow Agreement. This designation was made so that instructions could not be given by unauthorized individuals. As for payment, under section 10 of the Escrow Agreement, Kieler was entitled to receive $500 as payment for preparation and distribution of the "Attestation Letter"—this section specified that the funds could be deducted from either the Backup Collateral or the funding amount at closing if certain condition were met. Pursuant to section 11, Kieler was entitled to a $2,500 "aggregate fee" for his services as the escrow agent, inclusive of reasonable out-of-pocket expenses, with the additional provision that, "the Backup Collateral shall be returned to [UPD] without deduction of the Escrow Agent Fee if there is no [c]losing prior to expiration of the Closing Deadline, and no Escrow Agent Fee shall be due or owing." In sum, the total amount of fees to which Kieler was entitled, if the loan closed, could not exceed $3,000.

Kieler drafted and signed the Attestation Letter and delivered it to UPD and Oria as required under the Escrow Agreement on September 6, 2016, the same date as the Funding

Agreement and Escrow Agreement were executed. In the letter, Kieler attested that he "shall demonstrate proof of funds to any party to the Transaction upon request from such party when said funds are deposited into [his CTA]." The letter also specified that the funds anticipated were the borrower (UPD) funds of $65,000 and the lender (Oria) funds of $6 million. Kieler agreed to refund the $65,000 to UPD, less escrow fees,[8] if Oria failed to timely deliver the loan funds into his CTA. He also stated that any escrow funds were not to be "transferred, liquidated, assigned, called on, nor a lien placed upon . . . without the express written consent of the depositing party." On September 8, 2016, pursuant to the terms of the two agreements and the letter, UPD wired $65,000 to Kieler's CTA.

C. Kieler Takes UPD's Funds Held in Escrow

On September 8, 2016, Conte, on behalf of UPD, wired the $65,000 to Kieler's CTA with the designation that the fund's purpose was "ESCROW ORIA FUNDING." On September 9, the day after receiving the escrow funds, Kieler began removing those funds from his CTA. The record demonstrates that Kieler made two cash withdrawals of $12,010 and $10,000 from the escrow funds and delivered the funds to Lewis. On September 12, he wired $11,665 to Kimball, Tirey & St. John, LLP, who represented GCM, to pay the stipulated judgment owed by Lewis and his wife in the Golden Cities matter. Kieler also paid Lewis's rent by wiring $3,500 from the escrow funds to GCM on September 27. He again wired $3,500 to GCM on November 3 for an additional rent payment on Lewis's behalf. On October 21, Kieler withdrew $1,500 in cash from the escrow funds and gave the money to Lewis.

[8] Section 22 of the Escrow Agreement states it "contains the entire agreement between the Parties with respect to the escrow contemplated . . . ." Further, it states, "the rights and obligations of Escrow Agent shall be limited to, and determined solely in accordance with, the provisions of this Escrow Agreement . . . ." Therefore, to the extent that a difference exists between the Escrow Agreement and the Attestation Letter on the deduction of Kieler's fees from the escrow amount, we conclude that the language of the Escrow Agreement controls as it is the document signed by UPD, Oria, and Kieler.

Additionally, between September 13 and November 18, Kieler made 15 online banking transfers from his CTA into his personal checking account, totaling $22,825 from the Backup Collateral. From the $22,825, Kieler gave Lewis $16,670 and kept the remaining $6,155 for himself. By November 18, a little over two months after Lewis received the Backup Collateral from UPD, the escrow funds were gone and Kieler's CTA balance was zero.

Kieler did not inform UPD of the way he disbursed the $65,000 that was UPD's Backup Collateral, and Kieler never sent an invoice or any receipts to document his disbursements. He also did not communicate to UPD that he had paid himself $6,155 from the Backup Collateral.

D. UPD Makes Inquiries to Kieler and Requests Return of Backup Collateral

The $6 million funding from Oria never occurred by the closing deadline of September 23, 2016. When the transaction did not timely close, UPD contacted Caragliano regarding the loan and eventually learned for the first time that the funding for Oria was actually being arranged by someone referred to as "Jay" or "Jay Lew." Thereafter, Caragliano stopped accepting calls or responding to correspondence from UPD, and Lewis became UPD's only point of contact concerning the funding. Lewis repeatedly promised UPD that funding would arrive in the near future, but the funding never occurred and the loan never closed.

On October 3, 2017, Conte emailed Kieler reiterating a previous request that Kieler respond to UPD's auditors who had twice attempted to contact him. On October 9, Steven Vertucci, a CPA auditing UPD, sent an email to Kieler stating, "We are trying to get in touch with you regarding confirmation of the company's funds with your firm as of June 30, 2017. If we send you a confirmation signed by the company are you able to confirm the activity and balance?"

Kieler responded the following day, stating, "Steven … I can confirm backup collateral funds in the amount of $65,000.00, which are held pending completion of a transaction with

another party. There is no known or anticipated litigation on that transaction. I have no further information relevant to this request." However, when Kieler sent the email to Vertucci, the $65,000 had been removed by him from his CTA at least 11 months earlier, as discussed *ante*.

On September 6, 2018, Conte sent a letter to Kieler via hand delivery, demanding the return of the $65,000 to UPD. He did not respond to the letter. On October 10, 2019, Conte sent Kieler a letter via FedEx demanding the return of the $65,000 to UPD. He did not respond to the second letter. To date, Kieler has not returned the $65,000 to UPD.

E. The State Bar's Investigation

On March 26, 2020, Conte filed a complaint against Kieler with the State Bar. As a part of its investigation, OCTC sent Kieler four letters of inquiry dated June 3, August 31, and October 1, 2020, and March 12, 2021. OCTC's second letter asked, in relevant part, the following questions:

> 2. Provide a detailed explanation of Mr. Kieler's business and/or professional relationship with Mr. Lewis.
>
> 3. Was Mr. Kieler previously involved in any legal representation concerning Mr. Lewis? If so, please explain. [¶] . . . [¶]
>
> 9. What is/was Mr. Kieler's professional/business relationship with the Paymaster?

On September 29, 2020, Kieler responded through his attorney to OCTC's second letter and stated, "Mr. Kieler has no business or professional relationship with Mr. Lewis. Before the transaction between ORIA and UPD, he had advised Mr. Lewis on unrelated matters. Mr. Lewis asked Mr. Kieler to assist with the UPD transaction. . . . Prior to this transaction, Mr. Kieler advised Mr. Lewis on civil matters but did not appear." On March 26, 2021, Kieler responded through his attorney to OCTC's fourth letter. In that response, he included a document purportedly detailing how he earned the $6,155 in fees for disbursing the $65,000.

III. CULPABILITY FINDINGS

A. Count Two: § 6106 (Moral Turpitude—Misappropriation)

Count two alleges Kieler misappropriated, intentionally or through gross negligence, the $65,000 in Backup Collateral that he was required to hold in escrow on behalf of UPD and Oria in violation of section 6106.[9] The hearing judge found clear and convincing evidence[10] that Kieler intentionally misappropriated the funds. On review, Kieler accepts culpability under this count to the extent that his misconduct was grossly negligent in the way he handled the distribution of the Backup Collateral. He claims he had an "honestly held and not unreasonable" belief that his role was "purely ministerial" and that he owed no fiduciary duty to any party based on the language stating as such in the Escrow Agreement. Further, Kieler argues that Lewis was the appropriate paymaster who "had the right to dictate the disbursal of the [B]ackup [C]ollateral." As discussed *post*, we find no merit to Kieler's arguments and affirm culpability for his intentional misappropriation of the $65,000 Backup Collateral as charged in count two.

An escrow holder owes fiduciary duties to the escrow parties and "must comply strictly with the instructions of the parties." (*Summit Fin. Holdings, Ltd. v. Continental Lawyers Title Co.* (2002) 27 Cal.4th 705, 711; see *Crooks v. State Bar* (1970) 3 Cal.3d 346, 355 [attorney acting as escrow agent held fiduciary duty to third party involved in transaction and breached fiduciary duty by not distributing funds according to escrow agreement].) On September 8, 2016, Kieler received a wire transfer of $65,000 Backup Collateral into his CTA pursuant to the Escrow Agreement that he executed with UPD and Oria. Kieler was thus obligated as a

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[9] Section 6106 provides, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

[10] 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.)

fiduciary to maintain the Backup Collateral in trust and disburse the funds according to the express terms of the agreements.[11] We see no relevance to Kieler's argument that his duties under the agreements were only ministerial or otherwise limited,[12] especially since he also admits on review that he misappropriated the Backup Collateral thorough his gross negligence, which is premised on the fact that a fiduciary duty exists. (See *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 208 [attorney's breach of fiduciary duty as result of gross carelessness and negligence involves moral turpitude].)

On review, Kieler asserts that he acted under the direction of Lewis, who Kieler claims identified himself as the paymaster. Even though the loan documents do not specifically reference the identity of the paymaster, Kieler maintains it was reasonable for him to take direction from Lewis because the Funding Agreement stated the paymaster as the "[l]ender's third-party paying agent." We find the evidence does not support Kieler's claim that he properly relied on the language of the agreements to conclude that Lewis had the authority to unilaterally direct the disbursement of the funds.

As discussed *ante*, when the loan transaction was negotiated, Lewis was not involved, and his name was not listed on any of the loan related documents. UPD was not even aware of Lewis's existence until the closing deadline passed and the loan did not close.[13] Yet at that time,

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[11] Additionally, on the same day Kieler executed the Escrow Agreement with UPD and Oria, he drafted, signed, and delivered the Attestation Letter as required by the Escrow Agreement, attesting that the escrow funds would not be transferred or encumbered in any way "without the express written consent of the depositing party [UPD]."

[12] Even though the language of the Escrow Agreement states, "Escrow Agent . . . shall under no circumstance be deemed a fiduciary for any of the Parties to this Escrow Agreement[,]" an attorney cannot contract to avoid ethical duties. (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 639-640.) At oral argument, Kieler's attorney was asked for authority to support his argument that no fiduciary relationship existed, and he was unable to provide any.

[13] Ogle testified that he would not have advised UPD to engage in the transaction with Oria if he had known Kieler was a "non-independent escrow agent" given his "ongoing relationship [and] the ongoing representation of Mr. Lewis by Mr. Kieler."

and unbeknownst to UPD, Kieler maintained a relationship with Lewis by representing him in legal matters, including an ongoing unlawful detainer action against GCM in early September 2016. Considering his undisclosed relationship with Lewis, we cannot accept Kieler's argument that he had a reasonable belief UPD understood Lewis could be the paymaster and could unilaterally dictate the disbursal of the Backup Collateral.[14] (See, e.g., *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410-411 [unreasonable reliance on third party does not vitiate culpability for misappropriation when attorney's fiduciary obligations pertaining to trust account duties are involved].)

An attorney can maintain a defense to misappropriation, be it intentional or grossly negligent, if his mistaken or unreasonable belief is otherwise honest. (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 relevant facts (i.e., insurance settlement proceeds) is persuasive evidence of lack of honest belief and supports moral turpitude finding].) Kieler, while conceding he is culpable on count two, argues on review that his actions were grossly negligent and not intentionally dishonest. As noted *ante*, we reject his argument, and, like the hearing judge, we find the record clearly supports a finding that Kieler acted intentionally. First, within a few days of Kieler signing the Escrow Agreement and the Attestation Letter on September 6, 2016, and then receiving the Backup Collateral, he withdrew almost half of the $65,000 to give to Lewis or to

[14] Quite to the contrary, section 5 of the Funding Agreement limited the paymaster's ability to disburse the Backup Collateral for only "certain fees associated with [Oria's] procurement and remittance of the Funding Amount to the Escrow Account." As the record clearly indicates, Oria never procured the funding for the loan, and the disbursements of the Backup Collateral were almost exclusively for Lewis and not for Oria to cover its expenses related to funding the loan. Further evidence that Kieler's belief was unreasonable is that the Funding Agreement required that the funds be remitted to the "Paymaster," who was a "third-party agent." Throughout Lewis's testimony—though found not credible by the hearing judge—Lewis maintained that he was a long-term employee of Oria; thus, taking Lewis's words at face value, no person could reasonably conclude that Lewis was, in fact, a third-party as required in the agreement.

pay the stipulated judgment in the Golden Cities matter.[15] On September 9, Kieler emailed counsel in the Golden Cities matter informing him that he had "received cash for the settlement to this matter into [his] trust account" and would "initiate a wire" on Lewis's behalf. This evidence clearly demonstrates that Kieler intended to misappropriate the funds by using the Backup Collateral to pay Lewis's personal expenses. These actions were done notwithstanding the language in the agreements and letter that he would maintain the $65,000 in his CTA until the parties directed him to break escrow, refund the Backup Collateral should Oria fail to timely deliver the funding amount, and would not transfer or encumber the funds in any way without the express written consent of UPD. Kieler's misconduct thus does not support a finding that he held an honest belief that he had the authority to disburse the Backup Collateral at Lewis's direction against the language of the loan agreements when he never disclosed his relationship with Lewis to UPD.

Additionally, Kieler's later actions also belie his argument that he had an honest belief that he could use the Backup Collateral funds. He concealed his misappropriation by misrepresenting to UPD's auditor that the funds were still held in escrow when they had long since been misappropriated. Kieler also ignored UPD's letters requesting a refund when the transaction never closed. Lastly, he provided a document to the State Bar months after it began its investigation, which sought to establish his fees of $6,155, when his fees were to be $500 if the transaction did not close. Kieler's actions after he received the Backup Collateral and his inaction when UPD wanted its money returned provides sufficient circumstantial evidence of his intent to misappropriate the funds. (*Zitny v. State Bar* (1966) 64 Cal.2d 787, 792 [intent may be proved by direct or circumstantial evidence]; see *Grim v. State Bar* (1991) 53 Cal.3d 21, 30

[15] Kieler's subpoenaed CTA records for September 2016 show that, on September 1, his CTA had $5,030. Other than Conte's wire transfer on September 8, no other deposits were put into his CTA until September 30.

[misappropriation where attorney acted deliberately and with full knowledge that funds did not belong to him].)

Contrary to Kieler's arguments on review, the record amply demonstrates that he intentionally misappropriated the Backup Collateral. Kieler was aware of his obligations under the Escrow Agreement and Attestation Letter, and he knew that he was not authorized to use the money for his or Lewis's use. He stipulated that he made numerous transfers and cash withdrawals from his CTA into his personal account and also made payments for Lewis's benefit with the Backup Collateral, and these actions immediately began once he received the Backup Collateral and continued for two and a half months until the funds were depleted. This was not a one-time mistake, but a repeated practice. As escrow agent, Kieler was required to maintain the Backup Collateral in trust, not to use it as he or anyone else wished. Therefore, we find that Kieler intentionally misappropriated $65,000 as charged and affirm the hearing judge's culpability finding under count two.

B. Count Four: § 6106 (Moral Turpitude—Concealment)
Count Five: § 6106 (Moral Turpitude—Misrepresentation)

Count four alleges Kieler committed an act of moral turpitude in violation of section 6106 by failing to disclose Lewis's identity and his role in the loan transaction to UPD, despite owing UPD a fiduciary duty by virtue of his role as escrow agent. OCTC further alleges that if UPD were aware of Lewis and his role in the transaction at the time, UPD would not have entered into the transaction, agreed to Kieler's role as escrow agent, or wired the $65,000 Backup Collateral to Kieler's CTA. Count five alleges Kieler committed an act of moral turpitude by misrepresenting to UPD that he did not have a relationship with Oria or any party to the transaction, was not acting as counsel for Oria or its principals and had not done so in the past, and had no conflict of interest when representing UPD and Oria as escrow agent. The hearing judge found that by concealing Lewis's identity and his conflict of interest relating to

Lewis, Kieler breached his fiduciary duty to UPD and engaged in an act of moral turpitude as charged in count four. The judge also found Kieler culpable under count five but assigned no additional weight since the misconduct was duplicative of count four. We agree.

Kieler contends that he is not culpable under counts four and five. He argues that Conte and Ogle are not credible witnesses, and the record is ambiguous if Lewis participated in the conference call in early September 2016 when the terms of the loan transaction were negotiated. He claims that the testimonies from Conte and Ogle are "suspect" because their complaint to the State Bar against him was "motivated by a desire to extort payment." He also argues that their testimonies lack credibility because Ogle continued to speak with Lewis and never involved the police.

The hearing judge found Conte and Ogle credibly testified that UPD was unaware of Lewis until around the closing deadline of September 23, 2016, and did not confirm his actual name and identity until several months later. The judge did not find Lewis's or Kieler's testimony credible that UPD was aware of Lewis or that Lewis was on conference calls with the parties prior to the signing of the loan documents. The judge determined that no documentary evidence in the record supported Kieler's claims, and our review of the record reveals that the judge's findings on this point are supported. The earliest email showing Lewis's participation in discussions regarding the loan transaction is dated September 21, 2016, which is consistent with the testimonies from Conte and Ogle and well after the agreements were signed and the Backup Collateral had been given to Kieler. We give great weight to the judge's credibility findings because that judge is best suited to resolve credibility having observed and assessed the witnesses' demeanor and veracity firsthand. (See *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032.) We find no reason to disturb the judge's credibility findings and therefore reject Kieler's arguments on these points.

As discussed *ante*, case law makes clear that an attorney serving as an escrow holder owes fiduciary duties to the parties to the escrow. (*Crooks v. State Bar* (1970), *supra*, 3 Cal.3d at p. 355.) At the time Kieler agreed to become the escrow agent, he was representing Lewis in the Golden Cities matter and he continued to do so until at least September 22, 2016. He had also represented Lewis in an earlier litigation involving the Compass matter and made a brief representation on Lewis's behalf concerning certificates of deposit. Given Kieler's fiduciary duty to UPD, he had an obligation to disclose any conflicts of interest he may have had while serving as the escrow agent for the loan transaction. Yet he failed to do so and thus breached his fiduciary duty to UPD. (*Ibid*.)

When Ogle asked Kieler whether he had any known conflicts of interest, he stated he had no legal relationship with Oria or any party to the loan transaction. (*McKinney v. State Bar* (1964) 62 Cal.2d 194, 196 [attorney should not under any circumstances attempt to deceive another person].) Kieler's deception about his dealings with Lewis clearly rises to moral turpitude as concealment or a misrepresentation as it was material and intentional. (See *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes affirmative misrepresentations].) Accordingly, we affirm culpability under both counts four and five but assign no additional weight in discipline for the moral turpitude violation under count five. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight in discipline when culpability is based on same facts underlying culpability for misconduct in related counts].)

C. Count Six: § 6106 (Moral Turpitude—Misrepresentation)

Count six alleges Kieler committed an act of moral turpitude by intentionally misrepresenting to UPD that he still had the $65,000 Backup Collateral in his CTA. OCTC alleges that Kieler's statements to UPD's auditor were false and misleading. On October 9,

2017, the auditor emailed Kieler stating, "We are trying to get in touch with you regarding confirmation of the company's funds with your firm as of June 30, 2017." Kieler replied, "I can confirm backup collateral funds in the amount of $65,000.00, which are held pending completion of a transaction with another party." We find that Kieler's statement was intended to give a false impression to the auditor regarding the status of the funds when Kieler knew the funds had been depleted as of December 1, 2016. On review, Kieler concedes that he misrepresented to UPD that he still had the $65,000 of Backup Collateral in his CTA and does not challenge culpability. We therefore affirm the hearing judge's finding that Kieler committed an intentional misrepresentation in violation of section 6106 as charged in count six.

D. Count Seven: Former Rule 4-200(A) (Collecting an Illegal Fee)

Count seven alleges Kieler violated former rule 4-200(A) by collecting $6,155 for himself from the escrow funds held in his CTA without permission from UPD or Oria. Former rule 4-200(A) specifically prohibits an attorney from "entering into an agreement for, charging, or collecting an illegal or unconscionable fee." The hearing judge found him culpable of collecting a fee that was both illegal and unconscionable. Kieler argues this count should be dismissed and OCTC argues that, as the judge found, Kieler's conduct was unlawful because he essentially paid himself to misappropriate the Backup Collateral.

We do not find that the facts support a finding that Kieler's conduct falls within the meaning of former rule 4-200(A). While the loan documents did not prescribe that Kieler was entitled to $6,155, as discussed *ante*, the payment that Kieler would have been entitled to pursuant to the agreements is not a fee that would be categorized as illegal or unconscionable under the case law. (See, e.g., *In the Matter of Harney* (Review Dept.1995) 3 Cal. State Bar Ct. Rptr. 266, 284 [medical malpractice fee of $266,850 in excess of statutory limit is illegal but not unconscionable because proportional to value of services rendered]; *In the Matter of Wells*,

supra, 4 Cal. State Bar Ct. Rptr. at p. 905 [unconscionable fee where three times the amount client agreed to pay].) More to the point, this is not an illegal or unconscionable fee case; instead, Kieler's act of paying himself in the form of fees supports our finding of intentional misappropriation, as found in count two. We therefore dismiss count seven with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

E. Count Eight: § 6106 (Moral Turpitude—Misrepresentation)

Count eight alleges Kieler made intentional or grossly negligent misrepresentations constituting moral turpitude based on statements he made to OCTC investigators in his letter dated September 29, 2020, when he was asked to provide a "detailed explanation of [his] business and professional relationship with Mr. Lewis." Kieler stated, "Mr. Kieler has no business or professional relationship with Mr. Lewis. Before the transaction between Oria and UPD, he had advised Mr. Lewis on unrelated matters. Mr. Lewis asked Mr. Kieler to assist with the UPD transaction." The hearing judge found Kieler culpable of intentionally making false statements in his response to OCTC's investigative letter.

On review, Kieler contends that he answered the investigator's questions in the present tense, meaning he had no relationship with Lewis as of September 20, 2020, the date he replied to OCTC.[16] He claims he answered the questions narrowly but truthfully and that no evidence contradicts his responses or that he intended to mislead OCTC. Kieler's argument misses the point. As OCTC aptly points out in its brief, the question by the OCTC investigator was not limited in time. Case law is clear that moral turpitude includes concealment as well as affirmative misrepresentations with no distinction to be drawn between "concealment, half-truth, and false statement of fact." (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) Further, while

[16] Kieler responded to OCTC's second inquiry letter on September 29, 2020, and not September 20, 2020, as erroneously stated in his opening brief.

Kieler's answer to OCTC vaguely disclosed that he was representing Lewis in an "unrelated" matter prior to the parties' execution of the loan transaction documents on September 6, 2016, he continued to represent Lewis until at least September 22 in the Golden Cities matter, which was after the loan documents had been executed. Clearly left out of his answer was the fact that Kieler and Lewis had ongoing dealings with each other long after September 6 and even September 20, based on the multiple cash withdrawals and deposits that Kieler made to Lewis using the Backup Collateral. Leaving out this salient fact can only be interpreted as an intentional attempt to hide relevant information from OCTC in response to its question.[17] We find that Kieler's statements to the investigator contained intentional misrepresentations and constitute moral turpitude in violation of section 6106. We affirm culpability under count eight.

IV. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence under standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.[18] Kieler has the same burden to prove mitigation under standard 1.6.

[17] Such a finding on intent based on the circumstantial evidence of the timing of Kieler's response to OCTC's letter and the timing of the payments to Lewis is supported by case law. (See *Zitny v. State Bar*, *supra*, 64 Cal.2d at p. 792 [intent may be proved by direct or circumstantial evidence].) At the very minimum, Kieler's behavior in crafting his response to OCTC would be a reckless omission, and thus he would be culpable on count eight for a grossly negligent misrepresentation to OCTC as alternatively charged in the ANDC. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91.) However, a finding of gross negligence for this count would not change our disbarment recommendation as discussed *post*.

[18] All further references to standards are to this source.

A. Aggravation

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

The hearing judge found that Kieler committed multiple acts of misconduct by collecting an illegal or unconscionable fee, making several misrepresentations, and intentionally misappropriating funds—which consisted of at least 21 improper CTA withdrawals. The judge assigned substantial weight in aggravation to this circumstance. Notwithstanding our dismissal of count seven, we find Kieler culpable on the remaining five counts of misconduct involving numerous bad acts based on his intentional misappropriations, misrepresentations to third parties and OCTC, and other misconduct. Accordingly, we affirm the judge's finding of substantial weight in aggravation under this circumstance. (*In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 317 [significant weight in aggravation for 24 counts of misconduct involving harm to clients over four-year period].)

2. Indifference (Std. 1.5(k))

Standard 1.5(k) provides that indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. The hearing judge assigned substantial weight in aggravation for Kieler's failure to appreciate the wrongfulness of his misconduct. The judge concluded that Kieler has not accepted responsibility for breaching his fiduciary duties and that he has yet to return any portion of the funds he misappropriated.

While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Kieler's failure to accept responsibility is established in the blame he attempts to place on the complainant for these disciplinary proceedings. An attorney who does not accept responsibility for his actions and instead seeks to shift blame to others demonstrates indifference and a lack of remorse. (*In the*

Matter of Wolff (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.) Throughout these proceedings, Kieler attempted to avoid responsibility—his testimony was often self-serving and inconsistent. He also attempted to minimize the seriousness of his actions by claiming he did not owe a fiduciary duty when he misappropriated the entrusted funds. We assign substantial aggravation for Kieler's indifference.

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

Standard 1.5(l) allows aggravation for lack of candor and cooperation during disciplinary proceedings. The hearing judge found that Kieler lacked candor by presenting a fabricated document to OCTC and the court during the disciplinary trial. The judge found the document falsely claimed to be an invoice that Kieler submitted to Oria detailing the amount of time he spent disbursing UPD's Backup Collateral and his fees earned for that time. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [hearing judge's findings on candor entitled to great weight]; *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 522 [fraudulent or misleading statements to State Bar constitute aggravating circumstance].) The judge assigned substantial aggravating weight to this circumstance based on Kieler's actions.

Kieler argues aggravation is not warranted because the hearing judge's finding was "based solely on speculation about how the document was created." OCTC requests that we affirm the judge's finding and contends that the document evidences a lack of candor because it purportedly "authorizes" Kieler to bill against the Backup Collateral, which violated the Escrow Agreement. We find material inconsistences between the document that Kieler claims details his disbursement of the Backup Collateral and the agreements pertaining to the loan transaction. As discussed *ante*, the record contains no evidence to establish that UPD authorized Kieler to pay himself $6,155 from the Backup Collateral. Also, Kieler did not produce any documentary

evidence showing that UPD authorized him to bill fees associated with withdrawing cash, wiring money, and other minuscule tasks.[19] During the disciplinary trial, the judge evaluated Kieler's testimony concerning the documentary evidence, and we are given no good cause to differ from the judge's adverse finding that Kieler's lack of candor to the court is a substantial aggravating factor. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-792 [deception to State Bar may be more serious than substantive conduct being investigated].) We affirm the judge's finding of substantial aggravation for Kieler's lack of candor.

B. Mitigation

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

Standard 1.6(a) provides mitigation for the "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur." (Std. 1.6(a).) The hearing judge assigned limited weight to Kieler's nearly eight years of discipline-free conduct prior to when the misconduct began. On review, Kieler seeks additional mitigation based on his four years of practice in Wisconsin since 2004. Even if we were to take into consideration the additional time Kieler practiced in Wisconsin, the judge's finding of limited weight would be appropriate because, given the multiple acts of misconduct, Kieler's complete lack of insight into his misconduct, and his failure to make restitution, we view his misconduct as likely to recur. (See *Cooper v. State Bar* (1987) 43 Cal. 3d 1016, 1029 [when misconduct is serious, long record without discipline is most relevant when misconduct is aberrational].) Therefore, we affirm the judge's finding and assign limited weight in mitigation for this circumstance.

[19] While section 11 of the Funding Agreement would allow Kieler to be paid for his reasonable out-of-pocket expenses as part of his "aggregate fee," such expenses could only be charged against the Backup Collateral if the loan had closed.

2. Cooperation (Std. 1.6(e))

The hearing judge afforded only limited mitigating weight to Kieler for entering into the Stipulation with OCTC, in light of the court's lack of candor finding and that the Stipulation contained easily provable facts. On review, Kieler concedes he is culpable for misappropriation under count two—though only as grossly negligent—and admitted culpability for count six. However, Kieler did not admit culpability for any of the three remaining counts we affirmed and "more extensive weight in mitigation is afforded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) We therefore conclude that Kieler is entitled to limited weight for his cooperation as the judge found.

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

Kieler may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) Six witnesses, including three attorneys, submitted declarations regarding Kieler's good character. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"].) All the witnesses were aware of the full extent of Kieler's misconduct, and they attested the charges did not change their high opinion of him. Each of the witnesses has known Kieler for a considerable length of time, most for nearly 20 years. They praised his kindness, honesty, and skills as a lawyer. OCTC does not challenge the hearing judge's finding of substantial weight. We affirm the finding of substantial weight for this mitigating circumstance.

4. Community Service

An attorney's pro bono work and community service can be a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge assigned nominal weight to Kieler's community service because the evidence proffered was sparse and remote in time. Neither party seeks to change the judge's finding. Kieler provided evidence that he volunteered at the San Diego Volunteer Lawyer Program briefly in 2015 and 2017. He also volunteered as a judge for the Greater San Diego Science and Engineering Fair in 2016. He testified that he volunteered at the fair in other years but did not provide supporting documents or details. Based on the lack of specific details, we conclude Kieler is only entitled to nominal weight for his community service. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [diminished mitigating weight for community service established solely by attorney's own testimony].)

V. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) After establishing the applicable standards, we look to comparable case law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

We first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.1(a) is the most severe and presumes disbarment for Kieler's

intentional misappropriation of entrusted funds.[20] Misappropriation of funds "breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) It is grave misconduct for which disbarment is the usual discipline. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) "Even a single 'first-time' act of misappropriation has warranted such stern treatment." (*Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 657.)

Standard 2.1(a) also provides that an attorney may avoid disbarment if the amount misappropriated is "insignificantly small" or "sufficiently compelling mitigating circumstances clearly predominate." 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].) Neither of the conditions to avoid a disbarment recommendation applies here. Kieler misappropriated $65,000, a significant amount of money. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [$1,355.75 held to be significant amount].) Although four mitigating circumstances are present, in totality their mitigating weight is not impressive. They are not compelling, nor do they clearly predominate over the three aggravating circumstances, each warranting substantial weight.

In light of the standards, the hearing judge recommended disbarment. OCTC asserts that the judge's recommendation is well supported by the record and case law. Kieler argues that a two-year actual suspension continuing until he pays restitution and provides proof of his rehabilitation and fitness to practice law is the appropriate discipline. To support his request, Kieler cites two cases where discipline less than disbarment was imposed when intentional

[20] Standard 2.11 is also applicable, which provides that disbarment or actual suspension is the presumed sanction for an act of "moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact."

misappropriation was found: *In the Matter of Davis*, *supra*, 4 Cal. State Bar Ct. Rptr. 576 and *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364.

Neither case cited by Kieler is on point, and, despite involving misappropriation, both are factually distinguishable from his misconduct. *Davis* involved an attorney who was found culpable of willful misappropriation, among other acts. He represented an entity at the direction of one of the directors, which resulted in the misappropriation of funds because the director lacked authority to act after the other board members removed his authority. Davis received two years of actual suspension. *McCarthy* involved an attorney who managed a partnership as a general partner and when the limited partner failed to distribute funds to him, McCarthy used the limited partner's funds to pay creditors even though the partnership agreement required limited partners to be paid before general partners. In *McCarthy*, we recommended a two-year actual suspension rather than disbarment, noting that he had practiced discipline-free for over 40 years. We also found that McCarthy's misconduct was aberrational.

Kieler intentionally misappropriated $65,000 and failed to offer compelling mitigation that clearly predominates—we see no reason to deviate from the presumptive discipline of disbarment called for in standard 2.1(a). Shortly after receiving the entrusted funds, Kieler immediately began misappropriating them by improperly funneling the vast majority of the money to Lewis or using the money for Lewis's benefit, along with taking at least $6,155 for his own personal use. His overall misconduct is rife with dishonesty, which goes directly to his fitness to practice law, and his misrepresentations continued through the disciplinary investigation and trial, which is of serious concern. When an attorney makes a misrepresentation, it "diminishes the public's confidence in the integrity of the legal profession." (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157.)

Our discipline analysis is guided by *Chang v. State Bar* (1989) 49 Cal.3d 114 and *Kaplan v. State Bar* (1991) 52 Cal.3d 1067. In *Chang*, the attorney was disbarred because he misappropriated $7,900 in client funds, failed to provide an accounting, and made misrepresentations to his client and the State Bar. Chang also lacked remorse, committed serious misconduct, and failed to pay restitution. Although Chang misappropriated less than Kieler and had a 12-year discipline-free record, both attorneys demonstrated indifference and were dishonest, which gives reason to doubt whether Kieler could conform his conduct to ethical standards. In *Kaplan*, the Supreme Court imposed disbarment where an attorney intentionally misappropriated $29,000 from his law firm during an eight-month period and was dishonest about it. Notably, Kaplan established more compelling mitigation than Kieler with 11 years of discipline-free practice, 16 good character witnesses, and psychiatric evidence regarding his emotional state and family pressures.

We find additional guidance in other cases involving misappropriation where disbarment was imposed and the attorney's misconduct involved dishonesty. (See *Weber v. State* Bar (1988) 47 Cal.3d 492 [disbarment where attorney with 13 years of discipline-free practice misappropriated over $24,000 and attempted to conceal the theft, displayed contempt for State Bar proceeding, and lack of remorse]; *In the Matter of Spaith*, (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [disbarment for misappropriating approximately $40,000, intentionally misleading client about funds, despite mitigation, including emotional problems, repayment of money, 15 years of discipline-free practice, strong character evidence, and candor and cooperation with State Bar].)

Honesty is absolutely fundamental in the practice of law; without it, "the profession is worse than valueless in the place it holds in the administration of justice." (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.) Kieler's professional misconduct, including misappropriation and

multiple misrepresentations, along with his substantial aggravation compared to his limited mitigation, demonstrates he is unfit to practice law. Accordingly, a disbarment recommendation is appropriate and necessary to protect the public, the courts, and the legal profession.

VI. RECOMMENDATIONS

We recommend that Tyler Timothy Kieler, State Bar Number 257591, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

We further recommend that Tyler Timothy Kieler make restitution in the amount of $65,000, plus 10 percent interest per year from November 18, 2016, to UPD Holding Corporation, or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund, to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5). Reimbursement to the Fund is enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Kieler must furnish satisfactory proof of restitution to the State Bar's Office of Probation in Los Angeles.

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Tyler Timothy Kieler 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 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [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 imposing discipline].)[21] Failure to do so may result in disbarment or suspension.

VIII. MONETARY SANCTIONS

We further recommend that Tyler Timothy Kieler be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. The guidelines suggest monetary sanctions of up to $5,000 for disbarment. Kieler engaged in serious misconduct, including intentional misappropriation of $65,000 and multiple misrepresentations, and his misconduct was aggravated by multiple acts, his lack of candor, and indifference. After considering the facts and circumstances of the case, we determine that a $5,000 sanction is appropriate because his misconduct violated the fundamental requirements of an attorney—honesty and the duty to carefully maintain funds in trust as a fiduciary. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected

[21] Kieler is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for 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).)

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.

X. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Tyler Timothy Kieler be involuntarily enrolled as an inactive attorney of the State Bar pursuant to section 6007, subdivision (c)(4), effective March 11, 2022, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

McGILL, J.

WE CONCUR:

HONN, P. J.

RIBAS, J.