

Filed August 13, 2024

STATE BAR COURT OF CALIFORNIA
REVIEW DEPARTMENT

In the Matter of)	SBC-21-O-30658; SBC-22-O-30025
)	(Consolidated)
LINDA DARLENE LUCERO,)	
)	OPINION AND ORDER
State Bar No. 283081.)	
_____)	

This matter emphasizes the importance of honesty in the practice of law. Where multiple instances of misrepresentation and misappropriation occur along with other misconduct, the most serious discipline is appropriate even in cases where an attorney has no prior misconduct.

In her first discipline matter, Linda Darlene Lucero proceeded to trial on a total of 33 counts in this consolidated matter. The 33 counts alleged multiple instances of failure to deposit client funds into a trust account, misappropriation of client funds, failure to turn over client files, failure to perform with competence, and misrepresentations to clients and to the Office of Chief Trial Counsel of the State Bar (OCTC). The hearing judge found Lucero culpable on 32 of the 33 counts, that aggravation outweighed a single mitigation factor, and recommended disbarment.

Lucero disputes the culpability findings on 28 of the 32 counts but concedes culpability as to four. Lucero also challenges the trial itself, asserting it was “unfair” because: (a) the hearing judge did not, sua sponte, provide an accommodation pursuant to the Americans with

Disabilities Act (ADA) and rule 1104 of the State Bar Court Rules of Practice; (b) ex parte communications occurred between the hearing judge and OCTC; and (c) the judge exhibited bias. Lucero also disagrees with the judge's analysis of aggravation and mitigation factors. Lastly, she argues an actual suspension or less is the appropriate discipline in this matter. OCTC agrees with the judge's determinations regarding culpability, aggravation and mitigation factors, and that Lucero's conduct warrants disbarment.

Upon our independent review (Cal. Rules of Court, rule 9.12), we reject Lucero's claims of procedural unfairness and find her culpable on 31 of the 32 counts of misconduct found by the hearing judge. Due to the serious nature and extent of her misconduct and the weight of aggravating factors in relation to mitigation, disbarment is the appropriate sanction to protect the public, the courts, and the legal profession.

I. BACKGROUND

OCTC filed its first Notice of Disciplinary Charges in SBC-21-O-30658 (NDC-1) on September 15, 2021, to which Lucero submitted a response the following month. NDC-1 alleged 36 counts of misconduct relating to multiple client matters. A second NDC was filed by OCTC in SBC-22-O-30025 (NDC-2) on January 27, 2022. NDC-2 alleged nine counts in a single client matter. The two matters were consolidated on February 2. Lucero filed a response to NDC-2 on March 2. OCTC proceeded to trial on 24 counts in NDC-1¹ and all nine counts in NDC-2.

On March 22, 2022, approximately a week prior to trial, OCTC moved to exclude Lucero's trial evidence as a sanction for her failure to comply with her discovery obligations (discovery motion) pursuant to rule 5.69 of the Rules of Procedure of the State Bar. While the motion to exclude Lucero's evidence was pending, a "Partial Stipulation as to Undisputed Facts

¹ Prior to trial, OCTC dismissed counts 21-32 of NDC-1.

and Admission of Documents” (Stipulation) was filed on March 30. Lucero filed a written opposition to OCTC’s motion on April 4. The trial occurred over 11 days between April 6 and May 4. On the first day of trial, the hearing judge heard argument on the discovery motion, and she requested OCTC file supplemental material the following day. On the fifth trial day, the judge orally granted OCTC’s discovery motion, and a written order followed on May 4. Four Lucero exhibits admitted prior to the oral ruling remained part of the record.

Following the conclusion of the trial, Lucero and OCTC submitted closing briefs. The hearing judge took the matter under submission and issued her amended decision and order (decision) on August 17, 2022.² On September 1, Lucero filed a motion for reconsideration pursuant to rule 5.115 of the Rules of Procedure of the State Bar, which OCTC opposed. In her reconsideration motion, Lucero asserted she made a “constructive request for accommodations” during trial when she expressed inability to hear portions of the trial and inability to see documents when not enlarged. Lucero argued the constructive requests were ignored in violation of “the Bar’s policy and in violation of the ADA requirements” Lucero did not identify what accommodations should have been provided. Lucero also challenged the exclusion of her evidence as a discovery violation.³ Finally, in that reconsideration motion, Lucero challenged the judge’s culpability findings on 19 of the 32 counts and conceded culpability to one count. The judge denied the reconsideration motion on October 13, 2022.

² The original opinion and order issued on August 16, 2022. The amended decision removed two, inadvertently blank, pages.

³ Lucero did not seek reconsideration of the May 4, 2022 discovery motion order within the required time period. (Rules Proc. of State Bar, rule 5.115(A).) Instead, Lucero sought reconsideration on September 1, following the hearing judge’s final decision in August 2022.

Lucero's request for review followed and the parties timely filed their respective briefs. For reasons set forth in our orders, this matter was abated from July 26, 2023, to January 31, 2024. Oral argument was held on May 15, and the matter was submitted the same day.

II. NO ERROR IN THE HEARING DEPARTMENT PROCEEDINGS

A. There Was No Failure to Provide a Reasonable Accommodation

The trial in this matter was conducted remotely. (Rules Proc. of State Bar, rule 5.18.) On review, Lucero asserts the trial judge erred in not, sua sponte, providing accommodations, in violation of the ADA and court rules. She asserts that occasionally she had the inability to hear OCTC counsel during the remote proceedings. A State Bar Court proceeding participant with a disability can seek appropriate accommodations. (Cal. Rules of Ct., rule 1.100; State Bar Ct. Rules of Prac., rule 1104.) Accommodation requests can be made orally or in writing. There is a specific Judicial Council form to make such a request. (Cal. Rules of Ct., rule 1.100(c)(1); State Bar Ct. Rules of Prac., rule 1104(b).) Regardless of the format, an accommodation request must include both a statement of the medical condition necessitating the accommodation and a description of the accommodation sought. (Cal. Rules of Ct., rule 1.100(c)(2).) Although the court can waive the requirement, an accommodation request is to be made as far in advance as possible but at least five court days before the need to implement the requested accommodation. (Cal. Rules of Ct., rule 1.100(c)(3).) Accommodations are to "ensure full and equal access to the judicial system." (*Vesco v. Superior Court* (2013) 221 Cal.App.4th 275, 279.)

We find no instance where Lucero made a written or oral request for an accommodation either before or during trial. We find no instance, prior to or during trial, where Lucero

identified a physical or medical issue about her inability to hear.⁴ Lucero concedes on review there were only implied, constructive requests. We find no instance where Lucero made a showing at trial (or on review) that she is a “disabled individual” as that term is defined in the applicable statutes and rules. Nor does she articulate what accommodation was needed.

What the record does show is that Lucero occasionally experienced technical difficulties that had limited and sporadic impact on her ability to hear. Lucero was not the only trial participant to experience transitory technical problems. Interestingly, Lucero often claimed it was OCTC counsel she could not hear during trial. There were times other participants also had difficulty hearing OCTC counsel, which further undercuts Lucero’s contention that it was her disability that was the basis of her inability to hear. During the course of trial, OCTC counsel made adjustments to his microphone or his position, which cured the problem.

Moreover, a full review of the record also shows Lucero frequently claimed to not *understand* questions put to her; not an inability to *hear*. In this regard, the record has numerous instances where the hearing judge attempted to aid Lucero. For example, on the third day of trial the following exchange occurred following a question from OCTC:

LUCERO: I don’t follow your question. I don’t understand what you’re trying to get at -- what you’re trying to ask.

COURT: Just a minute. So you don’t understand the question.

LUCERO: No.

THE COURT: Mr. Karpf, can you reframe the question, please?

⁴ On review, Lucero does not renew the claim raised in her reconsideration motion that she made an implied request for an accommodation regarding her vision. At trial, Lucero mentioned she had vision issues caused by an underlying medical condition, but she wore corrective glasses.

Another example of a similar exchange occurred on the fifth trial day following an OCTC question:

LUCERO: I mean, your Honor, did I misunderstand the question?

COURT: I'm going to let Mr. Karpf restate it. For some reason, I look like I'm not on screen, but I guess I'm having a problem with my camera again. But I'm not going to take -- there I am.

LUCERO: There you are.

COURT: [¶] . . . [¶] Go ahead, Mr. Karpf. Would you restate the question? Apparently there's some confusion about what you're asking.

Finally, Lucero made no accommodation request in the Review Department and stated at oral argument she could hear all participants; the only person she had difficulty hearing was a single OCTC attorney at trial. We find the hearing judge did not fail to provide a required accommodation.

B. Lucero's Claims of Ex Parte Communication and Bias are Unsupported by the Record

On review, Lucero asserts there were ex parte communications between OCTC and the hearing judge and provides three examples. We find each of the three claimed ex parte communications allegations to be speculative, conclusory, and without evidentiary support. First, Lucero contends OCTC counsel's response to a court clerk on the third trial day about OCTC's poor sound quality that "[the judge] said the same thing[;] [i]t sounds like I'm sitting in a wind tunnel," is evidence of a case-related ex parte communication because on other trial days the judge commented she could hear OCTC counsel. This is pure conjecture. Lucero's next assertion of an ex parte conversation involves OCTC counsel opining to Lucero, in a telephone call, that the judge raised the topic of a voluntary settlement conference because the judge

“wanted her to see she did not have a chance.”⁵ At trial, Lucero raised the issue with the judge, who unequivocally denied any ex parte communication with OCTC. Finally, Lucero’s third example of a purported ex parte conversation is premised on the judge’s questions to Lucero about the configuration of her office before there was evidence on that topic. Lucero asserts that the only way the judge would know what questions to ask would be due to ex parte conversations with OCTC. Lucero ignores the fact that OCTC proffered an OCTC investigator’s report that included a description of the interior of her office as a new exhibit during trial. The judge stated on the record she had reviewed the new report before she questioned Lucero on the topic.

Similarly, Lucero’s bias accusations leveled at the hearing judge are without support in the record. At oral argument Lucero claimed the judge called her “absurd.” In fact, Lucero used the term, and the judge simply returned the phrase when addressing Lucero’s factually inaccurate claim that during the trial a phone was not ringing in her office. Lucero also claimed on review the judge improperly instructed a witness (Johnny Murphy) not to answer Lucero’s question about whether he had been incarcerated around the time she purportedly sent a letter terminating her representation.⁶ OCTC also objected, and the judge denied OCTC’s requested finding that Lucero violated Business and Professions Code section 6068, subdivision (f). A 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.) This includes preventing irrelevant lines of questioning. Finally, Lucero’s complaints of

⁵ Lucero’s opening brief gives the incorrect date of April 21, 2022. The settlement topic was raised on April 14, 2022.

⁶ See our discussion of NDC-1, counts 33-36, *post*.

bias due to the judge’s active participation in the proceeding ignores the principle that a judge “has both the discretion and the duty to ask questions of witnesses, provided this is done in an effort to elicit material facts or to clarify confusing or unclear testimony.” (*People v. Cook* (2006) 39 Cal.4th 566, 597.)

III. THE RECORD SUPPORTS THIRTY-ONE OF THE CULPABILITY FINDINGS

The facts detailed in this opinion are based on the trial testimony, documentary evidence, and the hearing judge’s factual and credibility findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) We find, except where specifically noted, the hearing judge’s factual and credibility findings are supported by the record. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 638 [deference given to credibility findings absent a specific showing that such findings were erroneous]). We also find that clear and convincing evidence supports all affirmed culpability findings. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind]; (*In re White* (2020) 9 Cal.5th 455, 467 [clear and convincing evidence is evidence that shows a high probability that a fact is true], citing *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090.)

A. Amir Matter

On October 14, 2016, Lucero was retained by Cia Amir (C. Amir) and his siblings, Fashad Amir (F. Amir), and Al Amir Shaidi (A. Shaidi) (collectively the Amirs) to represent them in a medical malpractice case filed against their deceased mother’s physician, entitled *Cia Amir, et al. v. Moussa Faminini, M.D., et al.* (Super. Ct. Los Angeles County, 2016, No. BC612204) (*Faminini* lawsuit). C. Amir was the family’s representative for the litigation,

and he held a power of attorney for the mother's estate. The *Faminini* lawsuit was filed by prior counsel in March 2016 and amended in June. Lucero received the substitution of attorney form which had been signed by prior counsel on October 27, 2016. On November 14, Lucero served a copy of the fully executed substitution form to opposing counsel; however, Lucero did not file the substitution with the court until February 28, 2017. Lucero represented the Amirs at a case-related deposition on January 10, 2017, and had a different attorney appear on her behalf at another deposition two days later.⁷

Defense counsel filed a motion for summary judgement (MSJ) on May 3, 2017. Lucero's opposition was due on July 12. Lucero was aware there was a MSJ pending as she unsuccessfully sought a postponement on May 10. That same month, C. Amir and Lucero exchanged emails about using American Medical Forensic Specialists (AMFS) to provide an expert witness for the case. Lucero told C. Amir AMFS was the entity she liked to use.

Although the Amirs' MSJ opposition was due on July 12, 2017, Lucero waited until June 21 to speak with AMFS about retaining an expert for the MSJ opposition. That same day AMFS sent, and Lucero signed, an Expert Services Agreement (ESA). The ESA required a \$2,500 deposit, which included a \$500 charge for expedited service plus a \$500 non-refundable placement fee. The remaining \$1,500 was a credit towards the expert's services. AMFS also provided Lucero with a form to pay by credit card. AMFS told Lucero it had to receive payment before an expert would be assigned.

On June 23, F. Amir mailed Lucero a \$3,000 check to cover expert witness costs. Lucero received the check on June 29, 2017. Lucero deposited the check into her business account rather than her Client Trust Account (CTA). On July 6, after she received F. Amir's check,

⁷ Lucero paid the court reporter service for the January 2017 deposition costs in May 2018.

Lucero paid the required \$2,500 ESA deposit via a debit/credit card and incurred AMFS's \$75 non-refundable credit card fee. Hence, this left a \$425 balance remaining from the Amir's \$3,000 in pre-paid costs. Lucero did not put that \$425 into her CTA, nor did she ever refund that amount.⁸

On July 7, 2017, AMFS provided Dr. Robert Byers as Lucero's expert. When Lucero contacted Dr. Byers, she gave a false explanation as to why she needed the expedited opinion and declaration. Lucero, even though she had known about the MSJ since May, told Dr. Byers she suffered a heart attack on June 12 and was not aware of the MSJ. Dr. Byers provided a short, one paragraph declaration stating in his expert opinion that Dr. Faminini's treatment fell below the standard of care because he did not conduct yearly breast examinations or refer his patient for mammogram screenings. The MSJ was granted on August 21.

Lucero and C. Amir met in Lucero's office on August 25, 2017, to discuss next steps. Lucero agreed to file a motion for reconsideration and to contact AMFS in order to address the very brief expert declaration. Lucero also stated she would provide C. Amir copies of the MSJ, her opposition, and the Byers declaration (opposition materials). Lucero would thereafter no longer represent the family. C. Amir agreed and a substitution of attorney form was prepared. Five days later, Lucero gave the Amirs a copy of the opposition materials. Lucero again agreed to provide a draft of the reconsideration motion for the Amirs to review but she never did. Lucero failed to file a reconsideration motion. C. Amir filed the *Faminini* lawsuit substitution of attorney form and Lucero was relieved as counsel on September 5, 2017. In late October 2017, C. Amir requested an accounting of the \$3,000 in pre-paid costs but never received one.

⁸ As discussed, *post*, AMFS did not use the entire \$2,500 deposit. AMFS issued Lucero a \$950 refund in July 2018. Lucero cashed the refund check but did not deposit the money into her CTA. Lucero did not return the \$950 credit to the Amirs.

C. Amir filed a complaint with the State Bar of California (State Bar) in April 2018 and OCTC's inquiry letter to Lucero followed on June 12, 2018. OCTC requested, inter alia, an accounting for the Amirs' \$3,000 and details regarding whether the \$3,000 was deposited into a CTA. Lucero submitted a written response on July 31. As to the accounting, she wrote:

Cia Amir forwarded funds in the amount of \$3,000, on June 23, 2017, to hire the medical expert to oppose the MSJ. The funds came late, merely days prior to the date the opposition was due. Because of the time crunch, I paid for the expert fees from my business account. When Mr. Amir's check arrived, I deposited it in my business account for reimbursement instead of my trust account. AMFS charged \$2,575.00 for their fee which included the doctor's fee for reviewing the records. Subsequently, AMFS requested an additional \$750.00, for a total amount of \$3,325.00, which exceeds the amount Mr. Amir paid.⁹

Lucero was in contact with AMFS in early July, weeks before she sent her OCTC response. Following a conversation between AMFS employee Joe Flynn (Flynn) and Lucero, AMFS notified Lucero, via a July 9, 2018 email, that a refund on the Amir matter was forthcoming. Only \$1,550 of the \$2,500 pre-paid amount had been used. Hence, there was a credit and AMFS issued a check to Lucero for \$950 on August 3.¹⁰ Lucero cashed the \$950 check on August 14, 2018, but never notified the Amirs about the refund. In an April 18, 2019 conversation with an OCTC investigator, Lucero stated she would repay C. Amir any funds owed. Lucero did not and has not paid the Amirs the \$950 AMFS refunded or returned the \$425 in excess, fronted costs.

⁹ There was trial testimony and exhibits relating to Lucero's retention of AMFS for a different client, referred to as "the Aluqdah matter." In December 2017, AMFS sought permission to charge an additional \$750 in the Aluqdah matter. That expert was not the same one used in the *Faminini* lawsuit. Lucero testified she confused the two cases.

¹⁰ The parties stipulated the check was issued on August 3, 2018. However, exhibits at trial establish the check was issued on August 9. This difference is immaterial to culpability, and we use the stipulated date.

1. Count One: Misrepresentation to Expert Witness in Violation of Section 6106

Lucero concedes culpability as to count one of NDC-1, which charged a violation of Business and Professions Code section 6106¹¹ stemming from Lucero's false statement to Dr. Byers claiming she had not known about the pending MSJ. Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Acts of moral turpitude include an attorney's concealment as well as affirmative misrepresentations. (Cf. *Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) Lucero's concession is supported by the record, and we affirm the hearing judge's culpability determination for this count.

2. Counts Two and Five: Failure to Deposit \$3,950 in Client Funds into a CTA in Violation of Former Rule 4-100(A)

Lucero is charged in counts two and five of NDC-1 with violations of former rule 4-100(A), which required deposit of client funds into a CTA.¹² Count one charged the failure to deposit the Amirs' \$3,000 check into a CTA and count five charged the failure to deposit the \$950 AMFS refund check into a CTA.

Lucero contends she was not required to deposit the Amirs' \$3,000 check into her CTA as it was reimbursement for the AMFS expert fees and for "deposition costs" incurred by prior counsel. Her contention is factually inconsistent with the record. First, Lucero received the \$3,000 check on June 29, 2017, but did not pay AMFS until July 7. Second, the costs of two

¹¹ All further references to sections are to the Business and Professions Code unless otherwise noted.

¹² All further references to rules are to the current California Rules of Professional Conduct unless otherwise noted; references to former rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018; and references to previous rules are to the California Rules of Professional Conduct that were in effect until September 13, 1992.

depositions were not expenses incurred by prior counsel. The depositions were held in January 2017, after Lucero's November 2016 substitution into the case. Lucero personally attended one of the depositions and had another attorney appear on her behalf at the other. When the court reporter service requested payment in May 2017, Lucero requested a three-month extension and did not pay the court reporter service until a year later in May 2018.¹³ Both the payments to AMFS and the court reporter service were made after Lucero received the Amirs' check, not before. As to the \$950 AMFS refund check, Lucero's argument on review is vague regarding this refund. However, she offers no cogent defense regarding her failure to deposit the funds into her CTA. We affirm culpability for counts two and five of NDC-1.

3. Count Three: Failure to Provide the Amirs an Accounting of Expert Fees in Violation of Former Rule 4-100(B)(3)

Count three of NDC-1 charged Lucero with failing to provide the Amirs with an accounting for the \$3,000 paid as advanced fees, in violation of former rule 4-100(B)(3). That provision required Lucero to:

Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of no less than five years after final appropriate distribution of such funds or properties; and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.

(See *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 850 [respondent culpable of former rule 4-100(B)(3) violation for failure to provide accounting within reasonable time after request].)

¹³ The court reporter service filed a small claims action against Lucero. The court reporter service settled with Lucero for a discounted amount of \$412.50. The initial bill was approximately \$750, without interest and fees.

C. Amir demanded an accounting on more than one occasion. On review, Lucero argues she provided C. Amir an accounting that showed the \$425 balance that remained from the \$3,000 pre-payment. Lucero, contrary to C. Amir's testimony, testified that when C. Amir was in her office, she was in the midst of preparing a handwritten accounting. C. Amir took the document, and she has no record of what was on the handwritten accounting. Lucero's argument is not supported by any additional evidence.

On review, Lucero concedes she made an "inadvertent accounting mistake in failing to account for the \$950 AMFS refund as she did not know that refund belonged to the Amirs' case. Even assuming Lucero was confused as to which client the \$950 AMFS refund check belonged, that does not excuse her failure to provide any accounting to C. Amir as required by rule 4-100(b)(3). The hearing judge's determination that Lucero did not provide an accounting upon request is supported by clear and convincing evidence, and we affirm culpability.

4. Counts Four and Seven: Misappropriation of \$1,375 in Client Funds in Violation of Section 6106

Counts four and seven of NDC-1 allege misappropriation, in violation of section 6106, of the unused portion of the Amirs' \$3,000 advance payment for costs. The hearing judge's culpability findings, that Lucero intentionally misappropriated the \$425 funds remaining after payment to AMFS in July 2017 (count four) and the August 2018 AMFS \$950 refund (count seven), are supported by the evidence.

Willful misappropriation of a client's funds involves moral turpitude and violates section 6106.¹⁴ (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278.)

¹⁴ Section 6106 provides, "[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

“Willful” in this attorney discipline context is defined as purpose or willingness to commit an act or to make an omission. (*In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309.) Willful misappropriation can be either intentional or grossly negligent and Lucero’s intent can be established by direct or circumstantial evidence. (*Zitny v. State Bar* (1966) 64 Cal.2d 787, 792.) An attorney’s dishonesty about mishandling entrusted funds or attempts to conceal their misconduct is evidence of intentional misappropriation. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 588-589 [numerous acts of deceit are evidence of intentional misappropriation; concealment of relevant facts is persuasive evidence of lack of honest belief and supports moral turpitude finding].) An honest, although mistaken or unreasonable belief, can be a defense to both intentional and grossly negligent misappropriation. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9-11 [no moral turpitude found where attorney honestly believed in justifiability of actions].)

Lucero makes no argument on review about her failure to remit the \$950 AMFS refund to the Amirs as it relates to count seven. To the extent she has the same rationale as argued in defense of count six, *post*, the argument is not persuasive. As to the \$425 owed as overpayment for the July 2017 AMFS deposit, Lucero’s argument that she used those funds to reimburse herself for court reporter costs is counterfactual for the reasons detailed in our discussion of count two, *ante*. We affirm culpability for counts four and seven of NDC-1.

5. Count Six: Failure to Notify the Amirs of AMFS Refund in Violation of Former Rule 4-100(B)(1)

Count six of NDC-1 alleges that Lucero violated former rule 4-100(B)(1) when she failed to inform the Amirs of the \$950 AMFS refund she received in August 2019. Former rule 4-100(B)(1) required an attorney to notify a client promptly of the receipt of the client's

funds, securities, or other properties. Lucero argues she did not willfully violate the rule because she “learned that the \$950 check belonged to the Amir matter *during* trial.”

Trial in this matter occurred over 11 days in April and May 2022. Lucero received \$3,000 from the Amirs on June 29, 2017. She paid a total of \$2,575 to AMFS on July 6. At some point following OCTC’s June 2018 inquiry letter about the Amirs’ complaint, Lucero spoke with AMFS employee Flynn. As a result of that conversation, AMFS notified Lucero via a July 9, 2018 email that a refund on the Amir matter was forthcoming. She cashed the AMFS check on August 14, 2018. More than a year later, Flynn sent Lucero a confirming email on September 12, 2019, noting the check had been cashed. Although the check was issued by AMFS’s parent company (KEAIS Records Service), the subject line on the email was “C55625: Amir matter.” Even if Lucero was confused when she cashed the check in 2018, the “Amir” name in the subject line of the AMFS September 2019 email was sufficient to end any confusion. Lucero’s trial testimony, that she did not notice the attachments to Flynn’s email and was confused about the content of the email, is not credible. The slightest amount of attention to the September 2019 email about the 2018 check Lucero cashed, would have cleared up any confusion. Moreover, Lucero corresponded with OCTC regarding an Amir accounting in July 2018. We affirm culpability on this count.

6. Count Eight: Misrepresentations to OCTC in Violation of Section 6106¹⁵

The final count against Lucero arising from her representation of the Amirs involves multiple misrepresentations to OCTC in violation of section 6106. The hearing judge found Lucero culpable for the following misrepresentations made on July 31, 2018 to OCTC as

¹⁵ The hearing judge did not find culpability as to subparagraphs (d)-(f) of count eight and OCTC does not challenge that finding. Upon our review of the record, we do not overturn the hearing judge’s determination. We only address the charged statements that form the basis of the culpability finding.

charged in count eight of NDC-1: (a) Lucero advanced her own funds to AMFS before receiving the \$3,000 check from the Amirs; (b) Lucero paid AMFS a total of \$3,325 for expert services on the Amir matter; and (c) AMFS had requested an additional \$750 in expert fees on the Amir matter at a later date. We agree and affirm.

As detailed *ante*, Lucero did not advance funds to AMFS. When AMFS was paid on July 6, 2017, Lucero had already received the Amirs' \$3,000 check the week prior. Lucero did not pay AMFS a total of \$3,325. The \$2,500 deposit was the only amount AMFS ever requested for the *Faminini* lawsuit, and the only amount Lucero ever paid to AMFS on behalf of the Amirs. Lucero argues she simply made an unintentional mistake to OCTC when she added an additional \$750 she paid to AMFS in another case to her calculation about the Amir case. This is inconsistent with the timeline of her representation. Rather, it appears to be an incorrect re-creation of the facts. Lucero's representation of the Amirs in the *Faminini* lawsuit ended when the MSJ was granted on August 21, 2017. She was relieved as counsel on September 5. It was four months later, in December 2017, that AMFS sought authorization to charge an additional \$750 in Lucero's other case. Moreover, Lucero learned there was a \$950 AMFS refund pending in the Amir matter three weeks *before* her July 31, 2018 written statement to OCTC.

B. Johansen Matter¹⁶

In April 2018, Edward Johansen (E. Johansen) suffered an adverse medical event at a local hospital, which left him blind and with short-term memory loss. He was released from the same hospital approximately five weeks later. E. Johansen's daughter, Lisa Johansen (Johansen), had a power of attorney (POA), which granted her authority to act on her father's

¹⁶ Count 12 of NDC-1 was dismissed with prejudice and OCTC does not address that count in its brief. Based upon our independent review of the record, we affirm the dismissal of count 12 with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

behalf. She wanted to pursue a malpractice claim against the hospital. Johansen searched for an attorney and found Lucero online, noted Lucero handled medical malpractice matters, and thought the proximity of Lucero's office to her own workplace would be a benefit. Johansen spoke with both Lucero and an assistant on a couple of occasions and met with Lucero, by herself, once. Then, on August 16, 2018, Johansen brought her parents to meet with Lucero. In addition to bringing a copy of the POA, Johansen brought some hospital discharge documents. On August 16, Lucero and Johansen signed a retainer agreement to represent E. Johansen in a medical malpractice action against the hospital. Lucero gave the Johansens general information about the process before filing a lawsuit and mentioned she would seek a filing fee waiver from the court. There was little discussion about the post-filing process and there was no discussion that costs, such as expert witness fees, would need to be provided by the Johansens. At that same August 16 meeting, Johansen signed a document for the release of medical records and a document in support of obtaining a filing fee waiver. During the course of the representation, Lucero never tried to collect or otherwise demand funds for expenses.

Lucero had Johansen's residence address and her personal email address, which did not change. Johansen had both Lucero's office and cell phone numbers. Johansen testified that after the retainer agreement was signed, she received a "welcome" letter sent to E. Johansen at her residence address. The only other correspondence Johansen received from Lucero was a Christmas card a year or two later. Johansen was the one who had to initiate contact with Lucero. This was primarily through email, text messages, and voicemail. Johansen recalled the two communicated occasionally between August and December 2018, and their exchanges were cordial and never "heated."

On August 30, 2018, Lucero sent the hospital an “intent to sue” letter with citation to Code of Civil Procedure section 364 (intent to sue letter).¹⁷ Then, on September 25, Lucero sent the hospital signed documentation authorizing the release of E. Johansen’s medical records to her and a \$15 check as a deposit against any charges for the medical records (records fees). However, the signed release Lucero submitted to the hospital was not the form Johansen signed in Lucero’s office. Neither the signature on the line for the patient or authorized representative belonged to either of the Johansens.

On October 3, 2018, Lucero sent a status letter, addressed to E. Johansen in care of Johansen. The letter advised the “intent to sue” notice had been sent to the hospital and it was not yet time to file a lawsuit. The letter, however, did not mention Lucero’s September 25 records request. On October 19, Lucero’s office sent a follow-up email to the hospital about the outstanding Johansen records request. Thereafter, the hospital sent Lucero a records fees invoice on November 13, which Lucero paid by a check dated December 12.

Lucero claimed to have sent four additional letters addressed to E. Johansen in care of Johansen on October 16, October 30, and two dated December 3, 2018. Johansen did not receive any of the four letters. As to the two letters dated December 3, exhibit 84 and exhibit 85, they each state Lucero was terminating her representation of E. Johansen. Exhibit 84 claimed to recount a “heated” telephone call about advancing costs and that Lucero would not continue with the representation. Johansen testified the “heated” conversation never happened. The other December 3 letter, exhibit 85, gave no reason for Lucero’s withdrawal from the E. Johansen

¹⁷ The time period to file a professional negligence action against a health care provider is “three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.” (Code Civ. Proc., § 340.5.) A plaintiff cannot file such an action against a health care provider unless the plaintiff has given that health care provider 90 days’ notice “of the intention to commence the action.” (Code Civ. Proc., § 364, subd. (a).)

matter but advised, “In your father’s case the statute of limitations arises before March 31, 2018, and a lawsuit MUST be filed with the court before that date.”¹⁸ The only December 3 entry in Lucero’s handwritten case file notes¹⁹ was an entry documenting there had been no response from the hospital and a lawsuit had to be filed “ASAP.” The notes do not mention a December “heated” conversation, or her termination of the E. Johansen representation. Nor do the notes reference the October 16, October 30, or December 3, 2018, letters. These four letters were not sent via certified mail or other method to verify receipt. Lucero did not send copies of the letters to Johansen’s email address.²⁰ Nor did Lucero have digital copies (in either native or pdf format attached to an email) to establish when the letters were created. Lucero testified, that during OCTC’s investigation, she had “her computer guy” look for the letters themselves and any emails the letters were attached to, with no results.

Johansen tried multiple times to reach Lucero in early 2019 because she had additional medical records from a current treating physician to give Lucero. She also frequently tried to obtain a court case number. Johansen sent an email to Lucero on June 5, 2019, and expressed concern over the lack of contact. Lucero responded the next day:

I don’t understand why you have not been able to reach me. I have been in the office every day and did not get any message that you called. In any event I do apologize.

¹⁸ The hearing judge construed exhibit 85 as stating the expired statute of limitations was Lucero’s articulated reason for withdrawing. Lucero, in exhibit 85, provided advice about the statute of limitations. The March 31, 2018 statute of limitations date in the letter appears to be a typographical error as E. Johansen’s injury did not occur until April 2018.

¹⁹ The file note entries were made by Lucero and an assistant; some entries were out of chronological order.

²⁰ The hearing judge’s determination, that Lucero was not credible when she testified that she sent the letters to Johansen via email, is supported by the record. Other than Lucero’s hard copies of the letters themselves, no documentary evidence corroborates her testimony. Johansen testified she never received hard copies of the letters or copies via email.

I would appreciate receiving any additional medical records you have. I will be mailing out status letters for all clients next week.

Again, thank you for giving me the honor of assisting you with this matter.

As detailed *post*, the statute of limitations had run on E. Johansen's case months earlier, in April 2019.²¹ Lucero did not remind Johansen she no longer handled the case. There were some telephonic contacts between the two after this email exchange where Johansen tried to obtain information but all she got were excuses regarding Lucero's inability to access the case file. Then, on October 8, 2019, Lucero left a voicemail message for Johansen. After she identified herself as "your attorney" Lucero said: "But give me a call, alright, and I don't think everything's been copied for you either. Um, we – give me a call so I can tell you what came in." Johansen received this message but did not understand it. Lucero then met with Johansen in October or November 2019, and Lucero assured her there was still time to file a lawsuit and that the court had not yet approved a filing fee waiver. At this meeting, Lucero gave Johansen another copy of the retainer agreement and a few other papers, and Lucero said that was all she had. Johansen never received the entire file or any medical records from Lucero.

On January 6, 2020,²² January 22, and April 10, Johansen, through attorney Marc Karlin, made written demands for the file. Karlin's letters were sent via certified mail with copies of the January 6 and April 10 letters sent to Lucero via email. Karlin spoke with Lucero on January 28, and Lucero claimed she had no record of E. Johansen as a client. Lucero did not turn over the E. Johansen file.

²¹ Johansen testified her father's injury, caused by the hospital, occurred on April 4, 2018, following his admission date of April 1.

²² The record supports that the letter was created and sent on January 6, 2020, and the January 6, 2019 date on the letter itself was a typographical error.

Karlin, who had experience handling medical malpractice matters, testified that the August 30, 2018 “intent to sue” letter Lucero sent to the hospital did not extend the statute of limitations an additional 90 days to July 2019. Karlin explained if the injury date was April 1, 2018, the statute of limitations ran on April 1, 2019. No lawsuit was timely filed on behalf of E. Johansen and the statute had run by the time Johansen retained Karlin.

On June 8, 2020, OCTC sent an inquiry letter to Lucero about the E. Johansen matter and her reply followed on July 14, 2020. Lucero’s July 14 reply included the following statements: (a) she never met E. Johansen or any other family member other than Johansen; (b) Johansen did not provide a copy of the POA that authorized her to act on her father’s behalf; (c) Karlin’s firm was retained before the statute of limitations ran and therefore that firm had the responsibility to “protect the applicable statute of limitations”; (d) she received a January 6, 2019 letter from Karlin when hospitalized and that she called Karlin from the hospital in January 2019; (e) she did not hear from Karlin’s office following the January 2019 letter until January 22, 2020; and (f) she “dropped this matter on December 3, 2018.”

1. Count Nine: Failure to Perform with Competence in Violation of Rule 1.1

Count nine of NDC-1 alleged that Lucero failed to perform with competence in violation of rule 1.1 due to Lucero’s failure to do any work on the E. Johansen matter, including timely filing an action, after she mailed the hospital the intent to sue letter and requested medical records. Rule 1.1(a) states: “A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.” Competence is defined as “the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service.” (Rule 1.1(b).)

Lucero argues she is not culpable as her December 3, 2018 correspondence (referred to as a “drop letter”) established she withdrew before the one-year statute of limitations expired in

April 2019 and that Code of Civil Procedure section 1013 provides a presumption that the December 3, 2018 letter was mailed. As OCTC correctly points out, it is Evidence Code section 641 that provides the presumption that an item “correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.” However, the presumption is rebutted by Johansen’s testimony that she did not receive the October or December letters. (See *Wolstoncroft v. County of Yolo* (2021) 68 Cal. App. 5th 327, 350.) Moreover, the record does not support Lucero’s contention she withdrew on December 3. Lucero communicated with Johansen after December 3, yet never mentioned that she no longer handled the case. Her case file notes do not have an entry that Lucero ended the relationship. Moreover, Lucero was not able to produce any additional digital or other evidence during the investigation to support her claim she terminated the relationship. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935 fn. 13 [unexplained failure to corroborate testimony with evidence that could be produced is strong indication testimony is not credible].) The totality of the record supports the finding Lucero did not mail the October 16, 30, or the December 2018 letters to Johansen. Lucero did not do any work on the Johansen matter after the October 19, 2018 email to the hospital about the medical record request. Lucero failed to timely file a case against the hospital. Second, even if the record supported Lucero’s claimed withdrawal prior to the expiration of the limitations period expiring, that is not a defense to the rule 1.1 charge as she failed to take steps to ensure Johansen’s rights were protected. We affirm culpability for this count.

2. Count Ten: Failure to Properly Withdraw from the E. Johansen Matter in Violation of Rule 1.16(d)

Rule 1.16(d) provides that “a lawyer shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client,

such as giving the client sufficient notice to permit the client to retain other counsel,” and any applicable actions delineated in rule 1.16(e). Count 10 of NDC-1 charged Lucero with a violation of rule 1.16(d) through her constructive termination of the Johansen representation. (*In the Matter of Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852, 863 [failure to act in a case can result in improper constructive termination in violation of former rule 3-700(A)(2)].) The record supports the conclusion that Lucero did not send either of the two December 3, 2018 letters to Johansen. Instead, Lucero simply ceased any activity after issuing a December 12, 2018 check for the hospital records, thereby constructively terminating her representation of E. Johansen. She failed to timely file a malpractice action, which prejudiced her client. Culpability is affirmed for this count.

3. Count Eleven: Failure to Release the Johansen File in Violation of Rule 1.16(e)

Count 11 of NDC-1 alleges that Lucero failed to promptly release the Johansen file following Johansen’s October 2019 request and requests made on her behalf by Karlin on January 6, 2020, and April 10, 2020, which violated rule 1.16(e)(1). Rule 1.16(e)(1) provides, in part, that upon the termination of a representation, “the lawyer promptly shall release to the client, at the request of the client, all client materials and property.”

“A client’s file, absent uncommunicated attorney work product, is the property of the client and must be surrendered to the client promptly upon request once the representation has been terminated. [Citation.]” (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 855.) Lucero constructively terminated her relationship in the E. Johansen matter as she did nothing after issuing the records fee payment to the hospital on December 12, 2018. Lucero stipulated that she never turned over the file to Karlin. Lucero is bound by that stipulation. (Rules Proc. of State Bar, rule 5.54.) Moreover, Johansen credibly testified that she

never received a complete file. The record supports the hearing judge’s assessment that Lucero’s trial testimony, that she provided the file to Karlin in January 2019, is simply untrue. (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 638; *In the Matter of Smart* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 713, 722 [adverse credibility determination supported by record and hearing judge in better position “to assess the nature and quality of witness’s testimony”].)²³ Culpability was established by clear and convincing evidence.

4. Count Thirteen: Misrepresentations to OCTC in Violation of Section 6106

Count 13 of NDC-1 charged Lucero with six false and misleading statements contained in her July 14, 2020 response letter to OCTC, in violation of section 6106. Those false and misleading statements are summarized as follows:

- That she never met E. Johansen or anyone else besides Johansen;
- That she never received a copy of Johansen’s POA documents for E. Johansen or his insurance information from Johansen;
- That Karlin’s law firm was retained by E. Johansen prior to the running of the April 1, 2019 statute of limitations, and it was that firm which had a duty to protect the applicable statute of limitations and Karlin failed to do so;
- That she received a letter from Karlin in or around January 6, 2019, requesting E. Johansen’s client file. She received the letter while in the hospital and called Karlin from the hospital after her assistant brought her the letter;
- That Lucero did not hear from Karlin’s office for over a year until she received his January 22, 2020 correspondence following up on E. Johansen’s case file; and
- That Lucero “dropped [the E. Johansen case] on December 3, 2018.”

These statements are not true.

²³ We address, *post*, whether there is clear and convincing evidence Lucero gave false testimony under the aggravating factor for lack of candor. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282) [analytical differences for believability (credibility) and falsity (candor)].)

Johansen’s detailed description of the meeting at Lucero’s office and of Lucero’s office space, supports the allegation Lucero did, in fact, meet with the three Johansens on August 16, 2018. Lucero had told Johansen what items to bring to the August 16, 2018 meeting. The hearing judge concluded Johansen credibly testified she gave a copy of the POA to Lucero.²⁴ Johansen understood the need to provide the POA as she had given copies to other entities, including a bank, in handling her father’s affairs. In addition, Lucero’s own actions of giving the hospital notice of the intent to sue and requesting and paying for E. Johansen’s medical records establish she acted with the authority the POA provided.

The record also supports a finding Lucero did not send either December 3, 2018 letters terminating the relationship. Her own actions, such as the June 6, 2019 reply email to Johansen and the October 8, 2019 voicemail message where she identified herself as “your attorney” undercut her claim. Lucero’s own file notes do not even record she terminated the relationship or sent the December 3 letters.

Finally, Lucero’s July 14, 2020 assertion she made to OCTC (and repeated at trial) that she received Karlin’s January 6, 2020 file demand letter in January 2019 is not supported by the record. As detailed *ante*, Karlin’s letter had a typographical error as to the date. The record supports the hearing judge’s finding the letter was, in fact, sent on January 6, 2020, not in 2019. Hence, Lucero’s narrative she received Karlin’s letter while hospitalized and had a telephone conversation with Karlin from her hospital room in January 2019 are not true. Karlin only had contact with Lucero in 2020. The statute of limitations had already run before Johansen sought Karlin’s assistance. The record supports the judge’s adverse credibility finding and conclusion

²⁴ We find no basis in the record to disturb the hearing judge’s credibility assessments. (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 638.)

that Lucero's 2019 narrative was created to obfuscate Lucero's own responsibility. Culpability as to this count is affirmed.

C. Oren Matter

Lucero concedes culpability for count 14 of NDC-1, which alleged a failure to return unearned fees in violation of former rule 3-700(D)(2).²⁵ Lucero received a check for \$6,755 from her client Efraim Oren, a mortgage broker, for advanced fees on May 21, 2018. After several weeks of receiving little information, Oren emailed Lucero on June 26. He stated he no longer needed her representation and requested a refund of the advanced fees. Lucero did not issue a refund. On August 13, Oren filed a fee arbitration petition with the Los Angeles County Bar Association. The same day the matter was set for a hearing, Lucero and Oren entered into a settlement agreement. The two agreed that \$5,090 would be payment in full and repayment was to be made in scheduled installments. Lucero failed to make the required payments. Oren then filed a small claims court matter to collect a refund of the fees and Lucero again entered into a settlement agreement with Oren. On October 7, 2019, Lucero agreed to pay \$7,467.92 by January 1, 2020. She did not honor that agreement. Oren then filed a complaint with the State Bar in June 2020, and an OCTC inquiry letter followed on September 3. On October 8, Lucero informed OCTC she had repaid Oren, but she had not. Lucero finally paid Oren \$7,467.92 on November 9. The record supports the culpability finding. Refund of prepaid fees in November 2020, when the representation ended in June 2018, was not "prompt." She also failed to honor two settlement agreements regarding the fee refund.

²⁵ Former rule 3-700(D)(2) requires an attorney to "promptly refund any part of a fee paid in advance that has not been earned."

D. Aviles Matter

Lucero was retained by Jose Aviles on November 10, 2017, to represent Aviles in two matters.²⁶ The first matter was a potential medical malpractice case against a doctor regarding a 2016 surgery on Aviles's hand (malpractice matter). The underlying hand injury was work related, but, at the time he met Lucero, he had not received any compensation for that underlying work injury. The second matter was a personal injury case caused by an on-the-job assault that occurred days before his first meeting with Lucero (PI matter). At their first meeting, Lucero instructed Aviles to send all information to her employee, M.C.²⁷ On November 16, 2017, Lucero sent Aviles two confirmation letters—one for each matter. Aviles returned to Lucero's office about a week after their initial meeting to turn over additional documents and an audio recording where his assailant admitted the assault. Aviles thereafter exchanged numerous emails between November 2017 and June 2018 with M.C.²⁸ Aviles went to Lucero's office about once a month and also frequently called her office.

For the PI matter, Lucero referred Aviles to United Spine Care (Spine Care) for a medical intake appointment regarding injuries caused by the assault. Aviles went to Spine Care on November 13, 2017, three days after his first meeting with Lucero. That same day, Spine Care sent, and Lucero signed, a medical lien form regarding Aviles. Spine Care also sent Lucero its

²⁶ Aviles testified at trial with the assistance of a Spanish language interpreter.

²⁷ Lucero also used M.C. to translate for her Spanish language speaking clients.

²⁸ Exhibit 111 consists of 52 pages of emails, with attachments, between Aviles and M.C. The emails are in the Spanish language and not accompanied by a written translation. Hence, the hearing judge erred when she admitted the entirety of exhibit 111. (Cal. Rules of Court, rule 3.1110(g).) Due to the absence of a corresponding written translation for the exhibit's foreign language content, we rely solely on trial testimony about the content of the exhibit or the content read into the record by the Spanish language interpreter. (Evid. Code, § 753.)

February 2018 examination report. Aviles incurred \$7,605 in Spine Care treatment charges that have not been paid.

On December 20, 2017, a Spine Care chiropractor referred Aviles to California Back and Pain Specialists (CBPS). Lucero was copied on that referral and Aviles believed Lucero approved the referral to CBPS. CBPS treated Aviles in December 2017 and January 2018. One CBPS invoice reflects approximately \$8,350 in medical charges with Lucero as the “payer” and as Aviles’s primary insurance provider. In addition, Aviles sent copies, via email, of his assault-related medical bills to Lucero’s employee, M.C. Aviles was also seen by Nova Surgical Institute (Nova) in January 2018 and incurred a \$7,595 charge. Aviles testified that he brought the Nova bill to Lucero and Lucero told him not to worry. Spine Center tried to collect from Lucero, but she informed Spine Center she no longer represented Aviles.

Lucero did not file any lawsuit for Aviles’s PI matter and Aviles’s medical expenses went unpaid. He does not have the ability to pay these medical bills.

Turning to Aviles’s malpractice matter, Lucero had Aviles come to her office on October 9, 2018. Lucero referred Aviles to Wax & Wax, a firm that specialized in worker’s compensation, for the hand injury underlying the malpractice matter. She would continue to represent Aviles on the PI and malpractice matters. Soon thereafter, Aviles was represented by the firm of Wax & Wax in regard to his 2016 injury to his hand. That firm did not represent Aviles on any other work injury matter. Lucero did not file any lawsuit for the malpractice matter.

OCTC sent multiple letters to Lucero regarding her representation of Aviles. In her response dated October 19, 2020, Lucero wrote, “I do not represent Jose Aviles.” Lucero then described that she met Aviles “sometime” in 2018. Because Aviles had a worker’s compensation claim, she referred Aviles to Wax and Wax the same day she met Aviles. In

written responses to OCTC dated February 11 and March 16, 2021, Lucero stated she never represented Aviles. In the March 16 letter Lucero also stated, inter alia, the Aviles confirmation letters were sent in error, and she only met him once. In a written response dated June 21, Lucero stated, “I do not represent Mr. Aviles. I referred him to a worker’s compensation attorney.” Lucero testified she never did any work on Aviles’s PI or medical malpractice case as she never represented him.

1. Counts Fifteen and Sixteen: Failure to Perform with Competence in Violation of Former Rule 3-110(A)

Counts 15 and 16 of NDC-1 charged Lucero with violations of former rule 3-110(A), which provides an attorney “shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.” Failure to take action to accomplish the purpose of the representation is a failure to perform competently. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979.) The hearing judge found culpability as charged in NDC-1 counts 15 and 16 for Lucero’s failure to perform any work on Aviles’s malpractice and PI matters. We affirm.

Lucero was retained to represent Aviles on both matters as she acknowledged in the two separate “welcome” letters. She did not work on either case even though Aviles was in frequent contact with her and her office staff. She referred Aviles to Spine Care and signed the attorney liens. Lucero received reports from Spine Care. Lucero referred Aviles to Wax and Wax for his 2016 hand injury in October 2018. The referral was not for the PI matter based on the 2017 workplace assault.

We interpret Lucero’s assertions that the two “welcome letters” to Aviles were sent in error by her staff as argument that she did not have the required mental state to violate former rule 3-110(A). First, as noted by the hearing judge, Lucero’s attempt to shift the blame to her staff is not credible in light of the evidence in the record. Lucero stipulated she sent the letters

with no mention of staff error. (*Inniss v. State Bar* (1978) 20 Cal.3d. 552, 555 [stipulated facts may not be contradicted].) Moreover, Lucero has a concurrent duty to reasonably supervise her staff. This includes the fiduciary responsibility to maintain adequate law office management, train staff on procedures, and supervise staff in order to ensure office procedures are followed. (Rule 5.3 [responsibilities regarding nonlawyer assistant]; *In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627, 634 [former rule 3-110(A) includes duty to supervise non-attorney staff]; *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 522.). Finally, if Lucero did not take on the representation of Aviles, there was no need to refer him to Spine Care. Lucero signed the Spine Care medical lien paperwork just days after she first met Aviles and days before she issued the two November 2017 welcome letters.²⁹ Next, Lucero’s “mistake” argument is unsupported by corroborating evidence. For example, Lucero’s “welcome letter” for the malpractice matter specifically named the physician who allegedly committed malpractice. Lucero met again with Aviles in October 2018, almost a year after their initial meeting, to refer him to worker’s compensation counsel for the underlying hand injury. These facts establish there was no mistake; Lucero represented Aviles in his PI and medical malpractice matters.

2. Counts Seventeen and Eighteen: Failure to Properly Withdraw in Violation of Former Rule 3-700(A)(2)

The record supports culpability for counts 17 and 18 of NDC-1. Those two counts allege Lucero failed to properly withdraw from the medical malpractice matter (count 17) and the PI matter (count 18) in violation of former rule 3-700(A)(2). Former rule 3-700(A)(2) provides that an attorney shall not withdraw from employment until the attorney “has taken reasonable steps to

²⁹ Lucero testified at trial and asserted in her pre-trial statement she signed the lien document by mistake. This testimony is inconsistent with her stipulation. She is bound by her stipulation. (Rules Proc. of State Bar, rule 5.54.)

avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.”

Lucero agreed to represent Aviles in the medical malpractice matter and the PI matter. As detailed *ante*, Lucero simply abandoned Aviles. She took no steps to preserve his claims. Aviles was prejudiced by Lucero’s actions as she did nothing to pursue an action and preserve his litigation rights and he is left with outstanding medical bills. The hearing judge’s culpability determination is supported by the record. (*In the Matter of Shkolnikov, supra*, 5 Cal. State Bar Ct. Rptr. at p. 863.)

3. Counts Nineteen and Twenty: Misrepresentations to OCTC in Violation of Section 6106

OCTC alleged in count 19 of NDC-1 that Lucero’s four statements on (a) October 19, 2020 (“I do not represent Jose Aviles.”); (b) February 11 and March 16, 2021 (“I never represented Aviles.”); and (c) June 21, 2021 (“I do not represent Mr. Aviles”) were false and misleading and constituted moral turpitude in violation of section 6106. The hearing judge construed the statement made on October 19, 2020, and repeated on June 21, 2021, as using the present tense and, therefore, not false at the time the statements were made. OCTC does not challenge that determination. While a generous interpretation of the two statements, we do not reverse the judge’s conclusion. However, the judge’s culpability finding of misrepresentation for Lucero’s February 11 and March 16, 2021 statements that she never represented Aviles is supported by clear and convincing evidence.

Turning next to count 20 of NDC-1, it charged Lucero’s statements in her March 16, 2021 letter to OCTC, that the Aviles confirmation letters were sent in error, she only met Aviles once, and did not accept his cases but referred him to Wax and Wax, were false and misleading

statements in violation of section 6106. There is no other evidence in the record, other than Lucero's testimony, that staff error may have caused the "welcome" letters to be sent by mistake. The hearing judge found Aviles's testimony—that he went to Lucero's office multiple times—credible. His testimony is clear and convincing evidence Lucero accepted Aviles's matters and met with him more than once. The record also shows Aviles continued to send information directly to Lucero's staff via email between November 2017 and April 2018, and provided the audio-recorded admission of his assailant to support the PI matter. We affirm the judge's determination that Lucero is culpable for a willful violation of section 6106 by these misrepresentations.

E. Murphy Matter

Johnny Murphy had a tooth extraction performed by a dentist on November 13, 2018. Murphy developed an infection at the extraction site and the dentist referred Murphy to the hospital on November 17. Murphy's infection warranted a multi-day hospital stay at LAC+USC hospital. Murphy thereafter met Lucero in March 2019 as he wanted to pursue a medical malpractice action against the dentist. At the meeting, Murphy provided Lucero with (a) the dental practice's hospital referral form dated November 17, 2018; (b) a November 17, 2018 antibiotic prescription issued by the dental practice; and (c) an original copy of his November 21, 2018 hospital discharge instructions. Lucero thereafter mailed Murphy a letter, dated March 21, 2019, that thanked Murphy for the opportunity to represent him. The letter instructed Murphy not to discuss the matter with anyone and to keep her office updated with any changes in contact information. Lucero's letterhead listed a telephone number of (818) 649-7848 (7848 number), her then number of record with the State Bar. At trial, Lucero testified she completed work on Murphy's case, such as sending an "intent to sue" letter to the dental practice. However, she had no supporting records.

A few months later, Murphy asked for his original documents back as he had no other copies. Lucero returned his original documents on May 21, 2019. Lucero claimed to have mailed a letter terminating her representation of Murphy, but does not have a copy. Lucero does not recall when she mailed the letter and Murphy testified he did not receive it.³⁰

Murphy attempted to contact Lucero numerous times between January and February 2020 and again between October 2020 and June 2021. One number Murphy tried to reach Lucero at was slightly different than the 7848 number—(818) 649-7849 (7849 number). Murphy re-dialed the 7849 number from a prior incoming call he received from Lucero. The 7849 number belonged to a functioning landline telephone inside Lucero's office space.³¹

In October 2020, Lucero responded to Murphy's text inquiry asking whether he should respond to a telephone call from the treating dentist. Lucero told Murphy not to respond and requested Murphy call her on Tuesday, October 27, 2020. Murphy called Lucero's office on October 27, and left a message. He then texted Lucero. Lucero responded she would be in the office the next day.

On June 4, 2021, Murphy sent a certified letter requesting Lucero provide him with a copy of his case file. Lucero called Murphy from her cell phone on June 5, 2021, and had a conversation that lasted seven minutes. Lucero and Murphy exchanged text messages the following day. During the course of this exchange, Lucero told Murphy she terminated her

³⁰ In her pre-trial statement, Lucero asserted she sent the letter on May 14, 2019.

³¹ At an April 28, 2022 OCTC site visit to Lucero's office, the building manager confirmed the 649 telephone number prefix was assigned to offices in the building where Lucero rented space. At trial, the OCTC investigator testified that during the April site visit, he stood outside Lucero's office. Due to a window into the office, he had plain view of a worktable with a telephone inside her space. The OCTC investigator dialed the 7849 number twice and a light on the phone activated each time. He further testified he heard the telephone ring the second time he dialed the 7849 number. In addition to preparing a report, the OCTC investigator made a short video recording of the phone inside Lucero's office as he dialed the 7849 number.

representation via a letter sent soon after the March 21, 2019 “welcome” letter. Murphy never received a termination letter. The June 6, 2021 text message was the first time Murphy learned Lucero terminated her representation.³²

Murphy complained to the State Bar and OCTC issued inquiry and follow-up letters to Lucero on June 18, July 6, September 8, and September 23, 2021. Lucero viewed each of these on her “My State Bar Profile” but did not respond to any of the letters. The two September OCTC letters requested electronic copies of the Murphy termination letter. Lucero did not provide copies. OCTC warned Lucero that failure to respond could result in additional misconduct pursuant to section 6068, subdivision (i).

1. Count Thirty-Three: Failure to Perform with Competence in Violation of Rule 1.1

Count 33 of NDC-1 alleges that Lucero willfully failed to perform with competence in violation of rule 1.1 by failing to do any work on Murphy’s matter following her acceptance of the case and her “welcome” letter of March 21, 2019. Lucero’s claim that she notified Murphy via a May 2019 “drop letter” that she no longer represented him is unsupported by the record. For example, in October 2020, Lucero gave Murphy specific instructions not to speak to the treating dentist. She then requested that Murphy call her. This is conduct consistent with representing Murphy at the time. Moreover, there is no documentary evidence that supports Lucero’s version of events. The hearing judge’s culpability finding is supported by clear and convincing evidence.

³² At trial, Lucero rationalized the termination was partly based on the fact Murphy provided an incorrect year for his injury date (2017 versus 2018). This is not credible as the documents Murphy provided at their first meeting clearly reflect the actual date of injury.

2. Count Thirty-Four: Failure to Respond to Murphy's Inquiries in Violation of Section 6068(m)

Count 34 of NDC-1 charged that Lucero failed to respond “promptly to at least 18 telephonic reasonable status inquiries” made by Murphy between October 2020 and June 2021, in violation of section 6068, subdivision (m). That provision requires attorneys “[t]o respond promptly 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.” Murphy’s testimony and his telephone records establish he made numerous calls to Lucero’s office, and he received no response. In October 2020, Lucero advised Murphy not to communicate with the treating dentist and instructed Murphy to call her on October 27, 2020. Murphy both left a message at Lucero’s office on October 27, 2020, and texted her. He did not hear from Lucero again until after he sent a certified letter in June 2021 demanding a copy of his file.

On review, Lucero again refers to the inapplicable “mailbox rule” in support of her argument that she did, in fact, withdraw from the representation in a letter. Even if the rule applied, the presumption, which would be afforded to Lucero by Evidence Code section 641, was rebutted by Murphy’s testimony that he did not receive any such letter. (*Wolstoncroft, supra*, 68 Cal.App. 5th at p. 350.) As to Lucero’s argument that her cross-examination of Murphy was unduly limited, we find no abuse of discretion. (*In the Matter of Farrell, supra*, 1 Cal. State Bar Ct. Rptr. at p. 499; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241.) The hearing judge did not inappropriately restrict or limit any testimony Lucero attempted to elicit on cross-examination. We affirm culpability for count 34.

3. Count Thirty-Five: Failure to Properly Withdraw in Violation of Rule 1.16(d)

Based on the facts detailed *ante*, there is clear and convincing evidence that Lucero did not send Murphy a May 2019 “drop letter.” Lucero did not otherwise communicate to Murphy that she no longer represented him until June 2021, two years later. Lucero failed to properly withdraw from the representation in violation of rule 1.16(d). (*In the Matter of Shkolnikov, supra*, 5 Cal State Bar Ct. Rptr. at p. 863.) We affirm the hearing judge’s culpability finding as to count 35 of NDC-1.

4. Count Thirty-Six: Failure to Cooperate with OCTC in Violation of Section 6068(i)

Lucero had a statutory obligation to cooperate in OCTC’s investigation into her conduct in the Murphy matter. (§ 6068, subd. (i).) Lucero’s failure to do so is charged as count 36 in NDC-1. The record is clear she did not cooperate. OCTC sent an inquiry letter regarding the Murphy matter on June 18, 2021. Lucero reviewed that letter on her “My State Bar Profile,” but never responded. OCTC sent a follow-up letter on July 6, 2021, which Lucero reviewed on her “My State Bar Profile,” but, again, she never responded. We find unpersuasive Lucero’s justification for the violation—that she and/or her husband were “unexpectedly ill and hospitalized” during an unspecified period of time. Lucero’s trial testimony was vague, ambiguous, and circular as to her hospitalizations.³³ Lucero could not recall a particular date in June or July 2021 where her health was the reason why she failed to respond to the June and July 2021 letters. Culpability as to count 36 of NDC-1 is supported by clear and convincing evidence, and, therefore, we affirm culpability.

³³ Lucero stated first that her husband’s hospitalization and health were reasons for failure to respond, she then conceded he was fine during the July-September 2021 time period.

F. Ruiz Matter

On May 17, 2018, Lucero, pursuant to a written agreement, undertook the representation of Linda Ruiz in a dental malpractice action against Value Dental Center (VDC) and the national discount retailer where VDC was located (dental malpractice matter). The same day the retainer agreement was signed, Ruiz paid Lucero a total of \$6,600, comprised of a \$5,000 flat fee and \$1,600 in advanced court fees and costs.³⁴ Lucero agreed to conduct discovery, take the treating dentist's deposition, and file a lawsuit. The agreement contained a clause that granted Lucero power of attorney "to execute all complaints, claims, contracts, checks, settlements, compromises, dismissals, drafts, deposits and orders, as [Ruiz] would . . . herself." Lucero sent a confirming letter acknowledging the representation on June 12, 2018. Lucero did not deposit the \$1,600 allocated for court fees and costs into her CTA.

Lucero sent the dental practice an "intent to sue letter" on June 5, 2018. Then, Lucero wrote to Ruiz on August 9, 2018, and advised she had issued the intent to sue letter and the time to file a lawsuit had not yet arisen. Ruiz testified she did not receive the letter. On August 28, 2018, counsel for VDC, Ashley Fickel, called Lucero. The two discussed the case, Lucero outlined Ruiz's damages, and Lucero set an approximate settlement value at \$70,000. Fickel's contemporaneous internal email does not mention he requested a formal settlement demand. Fickel testified he recalled that he requested "some sort of monetary demand" as it was his practice at the time to get a general idea of the dollar amount at issue when first reaching out to opposing counsel. Lucero never sent a letter to inform Ruiz about the conversation with opposing counsel. In fact, she never wrote to Ruiz again about the dental malpractice matter after August 2018.

³⁴ That same day, Lucero also agreed to represent Ruiz and her husband in a matter regarding a prior attorney. Lucero was paid an additional \$1,000 for this task by separate check.

Lucero submitted a medical records request to the entity that held VDC's records, Richmond Health Information Management Service Center (RHIMSC), to obtain Ruiz's records. The request was comprised of two forms. First, an "Authorization to Release Information" form to be signed by the patient. Although a signature purporting to be Ruiz's was on the authorization form, Lucero signed the form, not Ruiz. In addition, Lucero signed her name to this same release form next to the Ruiz signature and on the line for "patient/patient's authorized representative." "Attorney" was handwritten on the line to identify the relationship of the authorized representative to the patient. The second form was a "[RHIMSC] Release of Information" signed only by Lucero.

On May 13, 2019, Lucero filed an action on behalf of Ruiz entitled *Linda Ruiz v. Value Dental Centers, et al.* (Super. Ct. Los Angeles County, 2019, No. 19STCV16543) (*VDC* lawsuit). Lucero paid another entity to electronically file the case at a cost of \$463.01. A final status conference (FSC) and trial date were set for October 26, 2020, and November 9, 2020, respectively. Lucero did not advise Ruiz of these dates. Lucero never tried to serve the named defendants.³⁵ Nor did she check the California Secretary of State's website to ascertain VDC's registered agent for service of process. Ruiz tried to contact Lucero on several occasions and by several means, as Ruiz detailed in her July 2, 2019 letter to Lucero. Lucero received the letter, which was sent by certified mail.

On October 13, 2020, the court issued a minute order in the *VDC* lawsuit that vacated both the FSC and the trial date, as no proof of service of the summons and complaint had been filed. The court set an Order to Show Cause (OSC) hearing regarding dismissal for June 11, 2021. Further, the order stated that if no proof of service was filed by June 11, the *VDC* lawsuit

³⁵ By January 2020, VDC closed the practice where Ruiz had been treated.

would be dismissed. Lucero received the October 13, 2020 minute order. She did not advise Ruiz of this development.

Ruiz filed a complaint with the State Bar. OCTC sent an inquiry letter to Lucero on January 5, 2021. Lucero responded on February 11. In the response, Lucero acknowledged the complaint had not been served and gave an outline of what was covered by Ruiz's initial \$6,600 payment. Lucero stated that \$1,000 of that amount was for the second matter for which she was hired. OCTC sent a second letter on March 3, 2021, that asked for, inter alia, additional information about the \$6,600 provided for the malpractice matter and the \$1,000 provided for the other matter. While Lucero responded to the March 3 letter, she did not address the \$1,000 received for the other Ruiz matter.

Even though her representation of Ruiz was under investigation by OCTC at the time, Lucero did not attend the June 11, 2021 OSC hearing. The *VDC* lawsuit was dismissed without prejudice and Lucero received a copy of the order. Lucero did not tell Ruiz about the dismissal. On November 16, Lucero orally advised OCTC she was going to file a motion to reopen the Ruiz matter. On December 1, Lucero orally advised OCTC she had drafted a motion and would file it as soon as possible. As of the time of the Hearing Department trial, the motion to reopen the *VDC* lawsuit had not been filed. Lucero did not refund Ruiz any portion of the \$5,000 in prepaid fees or the \$1,136.99 balance remaining of the \$1,600 prepaid for costs and court fees.

NDC-2 charged Lucero with failure to perform with diligence and competence in violation of rules 1.1 and 1.3 (counts one and two, respectively); improper withdrawal from representation in violation of rule 1.16(d) (count three); failure to deposit \$1,600 into her CTA in violation of former rule 4-100(A) (count four); failure to respond to Ruiz's reasonable inquiries and keep Ruiz apprised of significant developments in violation of section 6068, subdivision (m) (counts five and six); failure to refund unearned fees in violation of

rule 1.16(e)(2) (count seven); and misappropriation and dishonesty in violation of section 6106 (counts eight and nine). The hearing judge found Lucero culpable on all counts. Except for count nine, we find that determination supported by the record as discussed below.

1. Counts One and Two: Failure to Perform with Competence and Diligence in Violation of Rules 1.1 and 1.3

Counts one and two of NDC-2, charging violations of rules 1.1 and 1.3,³⁶ are based upon the same set of facts: Lucero's failure to provide VDC with a formal settlement demand; her failure to (or attempt to) effectuate service of the summons and complaint in the *VDC* lawsuit; her failure to respond to or attend the OSC hearing in the *VDC* lawsuit; and her failure to file a motion or take other action to set aside the dismissal of the *VDC* lawsuit. The hearing judge found culpability on both counts.

As to Lucero's failure to make a formal settlement demand, we do not find there was clear and convincing evidence Lucero was requested to do so. Lucero's conversation with Fickel was short and general in nature with no record he made a precise demand. However, as to the remaining items, the evidence is overwhelming. Lucero concedes on review she was negligent in failing to attend the OSC hearing. She concedes she was negligent in her failure to file a motion to reopen the *VDC* lawsuit. We further find the record supports, by clear and convincing evidence, she was neither competent nor diligent in her failure to attempt service of the summons and complaint. Although VDC closed its location where Ruiz was treated, that did not close all avenues for service. Lucero did not even check the California Secretary of State's website to ascertain who was VDC's registered agent for service of process. (*In the Matter of Kaplan*

³⁶ Rule 1.3(a) states: "A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client." Rule 1.3(b) provides the definition of "reasonable diligence" as acting "with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer."

(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].) The hearing judge was correct to find culpability as to counts one and two of NDC-2, and we affirm.

For purposes of disciplinary weight, the hearing judge treated these two counts as a single matter as they were based on identical conduct. OCTC did not object to this approach, and we agree. (*In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [as violations of §§ 6068, subd. (d), and 6106 were based on the same conduct, no additional weight assigned for discipline purposes]; *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional disciplinary weight for a violation of former rule 4-100(A) as it was duplicative of moral turpitude violation]; *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 221 [violations of §§ 6068, subd. (d), 6106, and previous rule 5-200(B) based on same facts treated as a single violation]; *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little, if any, purpose served by duplicative allegations of misconduct].)

2. Count Three: Improper Withdrawal from Employment in Violation of Rule 1.16(d)

Lucero concedes culpability for improper withdrawal, in violation of rule 1.16(d), as charged in count three of NDC-2. The record supports the finding that, following the filing of the *VDC* lawsuit in May 2019, Lucero constructively withdrew. She completed no action on Ruiz's behalf after that date. Her inaction caused the dismissal of the lawsuit and precluded Ruiz from obtaining any recovery. Lucero withdrew without taking reasonable steps to avoid reasonably foreseeable prejudice in willful violation of rule 1.16(d).

3. Count Four: Failure to Deposit \$1,600 into a CTA in Violation of Former Rule 4-100(A)

Lucero received \$1,600 designated for litigation costs and fees on May 17, 2018. Former rule 4-100(A) required Lucero to deposit those funds into a CTA. She did not do so. Lucero

argues she needed easy access to the \$1,600, and that a CTA did not provide a method to pay the *VDC* lawsuit filing fee. However, the \$463.01 filing fee cost was not incurred until May 13, 2019—almost a full year after she received the money. Moreover, there is no explanation as to why the remaining \$1,136.99 balance was not held in a CTA. We affirm culpability for a violation of rule 4-100(A), as charged in count four of NDC-2, as supported by the record.

4. Counts Five and Six: Failure to Respond to Client Inquiries and to Inform Client of Significant Developments in Violation of Section 6068(m)

Count five of NDC-2 charged Lucero with not responding to Ruiz’s attempts to contact her in violation of section 6068, subdivision (m). We find the record supports the culpability finding. Lucero did not respond to Ruiz’s reasonable and repeated attempts to contact her.

NDC-2 also charged a violation of section 6068, subdivision (m), in count six alleging Lucero did not inform Ruiz of the following significant events: (a) *VDC* counsel called on August 28, 2018, and requested a formal settlement demand; (b) on October 24, 2018, Lucero signed Ruiz’s name to a medical records authorization form without authorization or consent; (c) no attempts were made to serve the *VDC* lawsuit between May 13, 2019 and June 11, 2021; (d) that Lucero would no longer perform legal services after the filing of the *VDC* lawsuit; (e) that the court issued an OSC on October 13, 2020, with a hearing set for June 11, 2021, due to the failure to serve the complaint and that the *VDC* lawsuit was, in fact, dismissed on that ground and Lucero did not respond to the OSC or appear at the hearing; and (f) that Lucero would not take any action to set aside the *VDC* lawsuit dismissal.

We affirm the hearing judge's culpability determination as to count five and count six, subparagraphs (B)-(F), of NDC-2.³⁷ Each of these events was significant. The judge determined Ruiz credibly testified she did not get any updates as to the items detailed above. We do not find it is credible, or consistent with the record, that Lucero told her client about the OSC, the dismissal, and the failure to file a motion to reopen the *VDC* lawsuit.

5. Count Seven: Failure to Return Unearned Fees in Violation of Rule 1.16(e)(2)

Count seven of NDC-2 charges Lucero with violating rule 1.16(e)(2) by her failure to return any part of the \$5,000 that Ruiz prepaid as fees. Lucero did not propound discovery or take any depositions. She requested medical records and filed a complaint that contained mostly "boilerplate" language. However, the unserved, and ultimately dismissed, complaint provided no value to Ruiz. On review, Lucero, states she is "remorseful and takes responsibility," but her actions were not intentional.

Rule 1.16(e)(2) provides, in pertinent part, that an attorney must "refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred." This provision does not apply to retainer fees paid in order to ensure the attorney is available to the client, which is not applicable here. The Ruiz retainer agreement sets forth Lucero's hourly rate at \$200 per hour and that the \$5,000 prepayment covered filing of a lawsuit, propounding discovery and related motion practice, and taking the deposition of the treating dentist. Lucero did not accomplish all the goals set forth in the agreement; hence, she did not earn the flat fee. Moreover, as the case was dismissed, Ruiz received nothing of value in exchange for the \$5,000 flat fee. We find culpability for a violation of rule 1.16(e)(2) under this count.

³⁷ We do not find culpability as to count six, subparagraph (a), the failure to make a formal settlement demand, based on the same facts detailed in our discussion of counts one and two of NDC-2.

6. Count Eight: Misappropriation of \$1,136.99 of Client Funds in Violation of Section 6106

Count eight of NDC-2 charged Lucero with misappropriation of the balance of Ruiz's prepaid case costs and fees. The hearing judge found the misappropriation intentional. We agree that the totality of the circumstances support a finding of willful and intentional misappropriation of client funds. (*In the Matter of Taggart, supra*, 4 Cal. State Bar Ct. Rptr. at p. 309 [definition of "willful"]; (*Zitny v. State Bar, supra*, 64 Cal.2d at p.792 [intent established by direct or circumstantial evidence].) Lucero has not returned the money to Ruiz.

Lucero asserts she was simply negligent and misread and misunderstood the CTA rules. She asserts her conduct was not intentional. While an honest, mistaken or unreasonable belief is a defense to a misappropriation charge (*In the Matter of Klein, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 9-11), we find this defense unsupported in the record. On review, Lucero does not articulate what exactly she misunderstood, so the vow she makes in her opening brief to never repeat the mistake rings hollow. If she actually made a mistake and simply had the money in the wrong account, the money would have been repaid. We do not find Lucero had an honest, though unreasonable belief, that she could keep and spend Ruiz's \$1,600 in an operating account. We affirm culpability for this count.

7. Count Nine: Dishonesty in Signing Ruiz's Name in Violation of Section 6106

Lucero's signing of Ruiz's name to the "Authorization to Release Information" submitted to RHIMSC, was charged in count nine of NDC-2 as an act of dishonesty in violation of section 6106. Lucero does not dispute that it is not Ruiz's signature on the form. Lucero argues that the retainer agreement permitted her to sign the form on Ruiz's behalf. Lucero further argues there was no harm to Ruiz, which is true. However, Lucero submitted a document she knew contained a forged signature. Lucero never requested permission or gave Ruiz after-the-

fact notice. We find the retainer agreement permitted Lucero to sign as Ruiz's representative, as she did on the separate RHIMSC Release of Information form. However, the retainer agreement did not permit Lucero to sign the authorization form as Ruiz.

Lucero's error was signing the authorization form using Ruiz's name without clarifying that she was signing in a representative capacity under a power of attorney. This misconduct was, at best, negligent and Ruiz did not suffer any prejudice for Lucero's improper act. We therefore find that Lucero was not culpable of moral turpitude and we dismiss count nine with prejudice. (*In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

IV. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence (std. 1.5),³⁸ and Lucero has the same burden to prove those factors in mitigation (std. 1.6). The hearing judge found five factors in aggravation and one factor in mitigation. We agree with the hearing judge's assessments. Lucero testified as to mitigation factors and argues on review that additional mitigation factors apply.³⁹ We do not find, as detailed *ante*, that clear and convincing evidence supports Lucero's request for additional mitigation.

A. Aggravation

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

"Multiple acts of wrongdoing" is an aggravating factor. (Std. 1.5(b).) The hearing judge assigned substantial aggravating weight for Lucero's multiple acts of wrongdoing in six client matters. We agree substantial weight is appropriate as Lucero was found culpable of multiple

³⁸ All references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

³⁹ On review, Lucero does not address any of the aggravation findings.

counts of misconduct, including two instances of misappropriation of client funds and several misrepresentations to OCTC. (*In the Matter of Valinoti, supra*, 4 Cal. State Bar Ct. Rptr. at p. 555 [repeated similar acts of misconduct considered serious aggravation]; *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 317.)

2. Significant Harm (Std. 1.5(j))

Significant harm to clients, the public, or the administration of justice is an aggravating factor. (Std. 1.5(j).) The hearing judge found that this factor was entitled to substantial weight in aggravation, and OCTC agrees. We find clear and convincing evidence the Amirs, the Johansens, Aviles, Murphy, and Ruiz all suffered significant harm. The manner in which Lucero handled these client matters caused cases to be dismissed or causes of action to be barred by the statute of limitations. Multiple clients testified as to the emotional and financial harm Lucero caused. We agree that Lucero caused significant harm to several clients and substantial weight to this factor is warranted. (*In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. 269; *In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p. 646.)

3. Indifference (Std. 1.5(k))

“Indifference toward rectification or atonement for the consequences of the misconduct” is an aggravating factor. (Std. 1.5(k).) The hearing judge gave substantial weight to this aggravating factor, and we affirm. Lucero frequently stated she is “remorseful” but has not returned client funds. She blames her clients, her staff, and other attorneys for her failures. Lucero’s claims of remorse are unpersuasive when compared to her conduct. We do not require (or desire) false penitence. We do require, however, Lucero to fully acknowledge her culpability and genuinely accept responsibility. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) That has not occurred.

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

“[L]ack of candor and cooperation to the victims of the misconduct or to the State Bar during disciplinary investigations or proceedings” is an aggravating factor. (Std. 1.5(l).) The hearing judge assigned substantial weight in aggravation for this factor. 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.)

Aggravation for lack of candor is supported by clear and convincing evidence and warrants substantial weight in aggravation. At almost every turn, whether with clients, experts, OCTC, or at trial in the State Bar Court, Lucero obfuscated, dissembled, contradicted her own pleadings, or was outright untruthful under oath. Lucero’s testimony was consistently not candid, or believable, as established by a substantial amount of conflicting and contradictory evidence in the record. Both the hearing judge and OCTC detailed numerous instances of Lucero’s untruthfulness that are supported by the record. For example, Lucero lied to OCTC in October 2020 when she said she repaid Oren. In actuality, she did not repay him until November 2020. Lucero was untruthful when she denied the 7849 number belonged to her office as well. The documentary and testimonial evidence showed the statement was false. (*In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. at p. 282.)

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

“Failure to make restitution” is another aggravating factor the hearing judge applied to this matter. (Std. 1.5(m).) Lucero owes in excess of \$3,000 in the Aviles and Ruiz matters. She has not repaid these clients in spite of her concession of error and the passage of time. She has owed the Amirs since 2018, and owed Ruiz since 2019. Years have passed without repayment. Accordingly, we find substantial weight in aggravation for this factor.

B. Mitigation

1. Absence of Prior Discipline (Std. 1.6(a))

Lucero argues she should receive significant mitigation in light of her 10 years of practice without discipline. Standard 1.6(a) provides that “absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur” is a mitigating factor. Lucero was admitted to the bar in June 2012. By July 2017, Lucero made a misrepresentation to her retained expert for the Amirs in the *Faminini* lawsuit. The hearing judge did not give any weight to this factor due to the short period of time between admission and the misconduct, plus the lack of evidence that Lucero would not commit misconduct again. OCTC concurs.

Lucero has not established by clear and convincing evidence that standard 1.6(a) applies. Her misconduct started in 2017, long before the NDCs were filed. (*In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 810 [five years of discipline free practice an insufficient amount of time for mitigation pursuant to standard 1.6(a)].) Lucero simply was not held to account until now. Furthermore, there is an absence of any evidence that the misrepresentations, misappropriations, failure to perform with competence, and mishandling of client files will not reoccur. Finally, we must consider the seriousness of the current misconduct in evaluating this factor in mitigation. Given the multiple instances of moral turpitude, including client abandonment, dishonesty, and misappropriation, we find that the palliative effect of a few years without discipline being imposed is dramatically minimized when it is compared to the gravity of the misconduct. Hence, no mitigation is warranted under this standard.

**2. Extreme Emotional Difficulties or Physical or Mental Disabilities
(Std 1.6(d))**

Extreme emotional difficulties or physical or mental disabilities suffered by the attorney at the time of the misconduct may qualify for mitigation. (Std 1.6(d).) While Lucero does not refer to this standard on review, we construe her arguments regarding her own health and “unavoidable family hardships” as a request for mitigation under this standard. The hearing judge did not assign any mitigation due to Lucero’s arguments at the close of trial regarding her own health. Specifically, during the trial, Lucero made numerous statements about her own health and hospitalizations but could never provide specific dates or documentation (such as discharge paperwork given to her by a treating hospital). The same holds true on review.

In order to receive mitigation for extreme emotional difficulties, Lucero must establish “(1) [she] suffered from them at the time of misconduct, (2) expert testimony established them as directly responsible for the attorney's misconduct, and (3) ‘they no longer pose a risk that the attorney will commit future misconduct.’” (*In the Matter of Braun* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 738, 748, quoting *In the Matter of Amponsah* (Review Dept. 2019) 5 Cal. State Bar Ct. Rptr. 646, 654.) No mitigation is warranted under this standard.

3. Spontaneous Cooperation (Std. 1.6(e))

“Spontaneous . . . cooperation displayed to the victims of the misconduct or the State Bar” is a mitigating factor. (Std. 1.6(e).) The hearing judge assigned moderate weight in mitigation for this factor based on the easily provable facts in the Stipulation. Lucero does not address this factor on review, and OCTC does not challenge the assessment. While generous, considering the number of times at trial Lucero attempted to walk away from various factual stipulations or claimed she did not recall she stipulated to certain facts, we do not find the judge’s findings were inappropriate. We accord moderate weight to this factor.

4. Extraordinary Good Character (Std. 1.6(f)) and Pro Bono Work

“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 factor. (Std. 1.6(f).) An attorney’s pro bono work can also be a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) On review, Lucero seeks mitigation for good character and pro bono work. Due to the discovery sanction precluding evidence other than Lucero’s testimony, there is no testimonial evidence nor are there character letters in the record.⁴⁰ Before us is only Lucero’s testimony of her good character, which is contradicted by the moral turpitude findings. Moreover, her testimony regarding her pro bono work was vague. Therefore, we decline to find mitigation for these factors.

5. Restitution Without Threat of Proceedings (Std. 1.6(j))

Lucero infers, incorrectly, she should receive mitigation for Oren’s repayment. However, standard 1.6(j) only applies where “restitution was made without the threat or force of administrative, disciplinary, civil or criminal proceedings.” Oren had to go to fee arbitration, small claims court, and then to the State Bar to get his money returned. Lucero reneged on two settlement agreements with Oren and then lied to OCTC when she claimed to have repaid Oren’s

⁴⁰ Lucero complains that the hearing judge’s discovery sanction precluding evidence hampered her ability to present mitigation evidence. The standard of review applied to our review of procedural rulings is abuse of discretion or error of law. (*In the Matter of Respondent L* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 454, 461.) Hence, we assess whether the judge exceeded the “bounds of reason,” given all the circumstances before the court. (See *In the Matter of Geyer* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 74, 78.) The same standard is used to review discovery sanctions. (*In the Matter of Torres* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 19, 23-24.) Lucero willfully failed to comply with mandated discovery production. (*Id.* at p. 23.) Some of Lucero’s excuses for noncompliance, including her health and hospitalizations, appear fabricated. For example, she had no copies of hospital discharge paperwork for her own hospitalizations. The hearing judge did not abuse her discretion; the preclusion of evidence was a proportional and appropriate sanction considering Lucero’s failure to comply with her discovery obligations.

funds. Therefore, we assign no mitigation credit under this standard. (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709.)

V. DISCIPLINE

We begin our disciplinary analysis by acknowledging that our role is not to punish but to recommend professional discipline. (*In re Brown* (1995) 12 Cal.4th 205, 217 [aim of attorney discipline is not punishment or retribution; it is imposed to protect the public, to promote confidence in the legal system, and to maintain high professional standards]; std. 1.1.). In determining the appropriate discipline, we follow the standards whenever possible and balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266-267, fn. 11.)

Next, we identify which standard presents the most severe sanction for the misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) 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.)

Lucero's conduct involved two instances of intentional misappropriation of client funds in the Amir and Ruiz matters. Those are the most serious acts of misconduct. Standard 2.1(a) and its presumed sanction of disbarment applies to this case as it involves "intentional or dishonest misappropriation." While the dollar amount involved is not large, it is not an "insignificantly small amount."⁴¹ As detailed *post*, standard 2.11 also presumes disbarment or

⁴¹ Suspension is appropriate in those instances where the "amount misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate." (Std. 2.1(a).) Neither exception applies here. Nor does this case involve misappropriation by gross negligence, where the presumed sanction is actual suspension. (Std. 2.1(b).)

actual suspension for acts of moral turpitude. Lucero's conceded misrepresentation to the medical expert in the Amir case and culpability in other client matters for misrepresentations to OCTC places this matter within standard 2.11.

The record supports the hearing judge's analysis and her ultimate conclusion of disbarment. 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 very serious 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.) "Petitioner's misappropriation of client funds alone constitutes a serious ethical and moral violation, breaches the high duty of loyalty that attorneys owe their clients, and puts in peril the public confidence in the practice of law." (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 565.) Our Supreme Court has long held that, absent compelling mitigating circumstances, misappropriation of client trust funds by an attorney warrants disbarment. (*In re Basinger* (1988) 45 Cal.3d 1348, 1358; *In re Vaughn* (1985) 38 Cal.3d 614, 618-619; *In re Abbott* (1977) 19 Cal.3d 249, 253-254.)

We also consider whether any reason exists to depart from the discipline in standard 2.1(a). Disbarment is not mandatory in every case of attorney misappropriation. (See, 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 resulting in 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].) Yet, we must articulate clear reasons for deviating from the standard's presumption of disbarment. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [clear

reasons required for departure from standards].) Here, we find no reasons to deviate from the presumed sanction of disbarment. Disbarment pursuant to standard 2.1 is also supported by relevant case law. (See *Chang v. State Bar* (1989) 49 Cal.3d 114 [where attorney misappropriated \$7,898.44, disbarment warranted because risk of further professional misconduct sufficiently high].) Finally, aggravating factors predominate with very little in mitigation. While overall the aggravation is substantial, we especially note three clients lost the ability to pursue actions due to Lucero's misconduct and there were numerous examples of poor to nonexistent record keeping. This combination establishes disbarment is needed for the protection of the public and the legal profession.

Even if there were no culpability findings for intentional misappropriation, disbarment would still be permitted and appropriate under standard 2.11. Standard 2.11 provides for disbarment, or actual suspension, for acts of "moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact." Whether disbarment or actual suspension is warranted "depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the practice of law." Lucero is culpable of multiple misrepresentations to OCTC regarding the Amir, Johansen, Oren, and Aviles matters. She conceded culpability for her misrepresentation to the expert witness in the Amir matter. Lucero lied to OCTC during its investigation when she claimed to have repaid Oren's funds. These acts of moral turpitude are serious misconduct. (Cf. *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610, 630 [respondent disbarred pursuant to standard 2.11 with no prior record of discipline due to extent of home loan modification scheme and "egregious aggravation"].)

Although Lucero has not been disciplined before and the amount misappropriated is not large, she engaged in acts of dishonesty and deceit in multiple client matters and has not repaid the Amirs or Ruiz. As established in three counts, Lucero made false statements to OCTC in the course of its investigations. She also lacked candor during the course of the trial. Finally, Lucero consistently claimed at trial and on review she simply made mistakes—not owning up to fault of her own. However, the record is clear her culpability is premised on significantly more than just human error.

Lucero’s abandonment of her clients caused serious harm. This also warrants disbarment. “Client neglect is serious misconduct that constitutes a breach of the fiduciary duty owed by an attorney to the client and, accordingly, warrants substantial discipline. [Citations.]” (*Stanley v. State Bar, supra*, 50 Cal.3d at p. 566 [disbarment found for misappropriation of over \$20,000 and abandonment of 20 clients surrounded by instances of moral turpitude].) Nothing in the record demonstrates Lucero has learned from her serious misconduct. Therefore, we believe she is unable to conform to her professional responsibilities and will commit further ethical and performance violations.

Lucero’s serious and multiple acts of misconduct, sustained over several years and across five client matters warrant stern discipline. She is culpable for multiple counts involving moral turpitude and abandonment of clients. Therefore, we find disbarment appropriate here.

VI. RECOMMENDATIONS

We recommend that Linda Darlene Lucero, State Bar Number 283081, be disbarred from the practice of law in California and that her name be stricken from the roll of attorneys.

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Linda Darlene Lucero be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in (a) and (c) of that rule within 30

and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.⁴² (*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].)

VIII. RESTITUTION

Lucero must make restitution (and furnish satisfactory proof of such restitution to the Office of Case Management and Supervision) to each of the following payees or such other recipient as may be designated by the Office of Case Management and Supervision 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:

1. Fashad Amir in the amount of \$950 plus 10 percent interest per year from August 14, 2018, and \$425 plus 10 percent interest from July 6, 2017; and
2. Linda Ruiz in the amount of \$6,136.99 plus 10 percent interest per year from May 14, 2019.

IX. MONETARY SANCTIONS

We further recommend that Linda Darlene Lucero 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 sanction amount is warranted as Lucero's conduct was sustained over several

⁴² Lucero is required to file a rule 9.20(c) affidavit even if she 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).)

years and in five client matters. She is culpable of six counts involving moral turpitude in four client matters, including two counts of intentional misappropriation. Her failures to competently represent her clients resulted in dismissed cases and time-barred causes of actions. Lucero was consistently untruthful with OCTC during the investigative stage and she continued her mendacity during trial. Finally, she has not repaid the Amirs or Ruiz the monies owed them. 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.

X. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of applying for reinstatement or return to active status.

XI. INVOLUNTARY INACTIVE ENROLLMENT

The hearing judge's order that Linda Darlene Lucero be transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective August 20, 2022, will remain in effect pending the consideration and decision of the Supreme Court on this recommendation.

HONN, P. J.

WE CONCUR:

McGILL, J.

STOVITZ, J.*

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