PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed April 30, 2024

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-22-O-30792
	)	
MATTHEW McDONALD OLIVERI,	)	OPINION
	)	
State Bar No. 230486.	)	
	)	

In his second disciplinary matter, Matthew McDonald Oliveri was charged with 16 counts of misconduct arising primarily from his duties as an escrow agent for a loan transaction involving two of his clients. The charges include entering into an improper business transaction with a client, multiple counts of misrepresentations, commingling, failing to render accounting for funds held in a client trust account (CTA), failing to maintain proper CTA records, moral turpitude, and violating the laws of California. The hearing judge found Oliveri culpable of 10 counts and recommended a period of 18 months' actual suspension, continuing until he proves rehabilitation and fitness to practice law.

Oliveri appeals. He challenges many of the hearing judge's factual findings and argues the allegations against him are not supported by the evidence. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we uphold the judge's discipline recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we find Oliveri culpable of multiple acts of wrongdoing, the most serious of which involve moral

turpitude. Given the serious misconduct found, in addition to the aggravating circumstances with no mitigation established, we uphold the hearing judge's disciplinary recommendation of 18 months' actual suspension, continuing until Oliveri proves rehabilitation.

I. RELEVANT PROCEDURAL BACKGROUND

Oliveri was admitted to practice law in California on May 24, 2004. On July 29, 2022, OCTC filed a Notice of Disciplinary Charges (NDC) alleging 16 counts of misconduct. Oliveri filed a response denying all allegations on September 30. A two-day trial was held on December 13 and 14. Posttrial briefing followed, and the hearing judge issued her decision on March 10, 2023. Oliveri filed a request for review on April 7. Oral arguments were heard on February 15, 2024, and the matter was submitted that day.

II. FACTUAL BACKGROUND

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

A. Oliveri's Attorney-Client Relationship with Ly and Events Leading to the Escrow Transaction

The escrow transaction underlying the misconduct here involved Derek Chu, who was Oliveri's client since 2015; Felix Chu,[1] who is Derek's father; and Thau Ly, who was Oliveri's new client. Ly was a widow, and she and her deceased husband had been friends with Felix for several years. The Lys had previously loaned money to the Chus, and there had been no prior issues with the Chus repaying these loans.

[1] We refer to Derek Chu and Felix Chu by their first names to avoid confusion and differentiate them given their shared surname. When referencing Derek and Felix collectively, we refer to them as "the Chus."

On October 16, 2018, Oliveri met with Derek, Felix, Ly, and Ning Ho, Ly's real estate broker, for a lunch meeting in Walnut Creek. Oliveri was not acquainted with Ly before October 2018. During the meeting, Ho translated for Ly, who does not speak English. At the meeting, the Chus informed Oliveri that Ly owned a commercial property in San Francisco (SF property) that she intended to sell, but it was currently occupied by a tenant.[2] Ly wanted Oliveri to draft an agreement to terminate the lease early, so she could sell the property. Oliveri testified that, at the time, he was unaware that Ly and the Chus had prior business engagements, and that the Chus owed Ly for outstanding loans. During the course of the meeting, Ly agreed to loan $500,000 to the Chus with the money for the loan originating from the sale of the SF property. Oliveri testified that Ho suggested that Oliveri serve as escrow agent to the loan transaction between the Chus and Ly. Oliveri agreed and did not charge for his escrow agent services.

Two days after the initial meeting, Ly and Oliveri entered into an attorney-client relationship. The retainer agreement identified the scope of the legal services as Oliveri: (1) representing Ly in negotiations to remove a tenant from the SF property; and (2) acting as an escrow agent for the loan between Ly and the Chus. Oliveri's hourly rate was listed on the retainer agreement as $400 per hour. On review, Oliveri states that on October 19, 2018, he drafted a tenancy termination agreement for Ly, which took one hour of his time. The record reveals that Ly paid Oliveri $400 by check dated October 25, 2018. Oliveri testified that, after the October 2018 meeting, the only contact he had with Ly was a phone call confirming that she had signed all the paperwork for the representation and inquiring whether she had any questions. Oliveri stated that a third party, whom he cannot recall, was also on the phone during his call with Ly and translated for her.

[2] The SF property was held in trust and Ly was a beneficiary of the trust.

B. Oliveri Drafts the Escrow Instructions and a Conflict-of-Interest Waiver

On October 19, 2018, Oliveri drafted joint escrow instructions for the $500,000 loan between Ly and the Chus. The instructions stated that Ly and the Chus were current business associates who had prior dealings with each other over the years and that there were currently "several outstanding loans in existence" between the parties. The instructions explained that Ly would loan $500,000 to the Chus, and the source of the loan funds would be derived from the net proceeds from the sale of the SF property. They further provided that Ly would deposit the $500,000 loan into Oliveri's CTA upon the close of escrow for the SF property. The instructions also stated that the parties agreed to execute a separate promissory note memorializing the loan terms and that Oliveri was not involved in the drafting, negotiation, or execution of the note. Finally, the instructions acknowledged that Oliveri was not a party to the escrow and promissory note, was not representing either party in the escrow or loan agreement, and that his sole role was to collect the loan amount from Ly and distribute it to the Chus or their designee.

The same day Oliveri drafted the joint escrow instructions, he prepared a conflict-of-interest waiver (conflict waiver), which was signed by Ly and Derek, pertaining to their relationship with Oliveri and to the escrow transaction. The conflict waiver, in part, provided:

- Ly and Derek were both clients of Oliveri; Ly retained Oliveri to represent her in a tenancy termination and Derek had been a client since 2015.
- Several outstanding loans existed between Ly and Derek, which did not involve Oliveri.
- Ly agreed to loan Derek $500,000 resulting from her sale of the SF property.
- Ly and Derek agreed to have Oliveri serve as the escrow agent for the $500,000 loan.
- Oliveri was not involved in negotiating or drafting the loan terms; Oliveri did not and would not provide legal advice regarding the loan.
- Oliveri was not a party to the escrow or the promissory note and his sole role was to collect the $500,000 loan amount from Ly and then distribute the funds to Derek or his designee.

- Oliveri would not advise either client regarding the loan or the promissory note, and the parties had the right to consult with independent counsel regarding the conflict waiver.

The conflict waiver did not state that Derek owed Oliveri money due to an outstanding loan. Nor did the conflict waiver indicate that Oliveri had any financial interest in the loan proceeds, or that Oliveri was a designee of Derek for the loan proceeds. However, at the time of the escrow transaction, Derek owed Oliveri more than $200,000.

At the disciplinary trial, Ly testified through an interpreter that she could not read any of the documents. According to Ly, Felix translated everything for her and placed her signature on the documents, which Ly authorized.[3] Ly understood through Felix that she was depositing in Oliveri's CTA $500,000 from the sale of her property so that an attorney could pay the taxes, and then the balance would be returned to her. She did not believe she was loaning the Chus $500,000. It is not evident from the record if she believed Oliveri or a different attorney would pay the taxes, but Ly permitted Felix to handle her money and act on her behalf. There is no evidence in the record that Oliveri was aware of Felix's representations to Ly or of Ly's understanding of the transaction.

C. Oliveri's Disbursement of the $500,000 Loan

After the SF property sold, Ly authorized the transfer of $500,000 from the title company handling that escrow to Oliveri's CTA. Oliveri received the funds in his CTA on December 24, 2018. Immediately after receiving the funds, Oliveri made the following disbursements:

- On December 24, Oliveri made three transfers from his CTA to his business account in the amounts of $187,000, $20,000, and $90,000 (totaling $297,000). Oliveri testified in his deposition that more than $200,000 of those transfers to his business account was repayment for outstanding loans Derek owed him. Two days later, Oliveri made three payments from his business account to his American Express credit card totaling $206,114.48.

[3] Oliveri was not present when Ly and the Chus signed the documents.

- On December 24, Oliveri issued a check for $90,000 from his business account to Derek with "Staples" written in the memo, which Oliveri testified was Derek's payment for Derek's luxury suites at the Staples Center in Los Angeles.

- On December 26, Oliveri made two separate cash withdrawals from his CTA in the amounts of $46,000 and $30,000. On December 28, Oliveri made two separate cash withdrawals from his CTA in the amounts of $22,450 and $15,000.

- On December 26, Oliveri issued a cashier's check for $20,000 to the Cosmopolitan Hotel and Casino in Las Vegas, which Oliveri testified was at the direction of Derek and a disbursement of the loan.

- On December 26, Oliveri issued a cashier's check for $46,000 to Marianne Bordogna, which Oliveri testified was at the direction of Derek and a disbursement of the loan.

- On December 28, Oliveri issued a cashier's check for $12,950 to Benton Wong, which Oliveri testified was at the direction of Derek and a disbursement of the loan.

Thus, of the $500,000 deposited in Oliveri's CTA, $297,000 was transferred to Oliveri's business account, with $90,000 subsequently provided to Derek for payment for the Staples suites. The four cash withdrawals from Oliveri's CTA on December 26 and 28 totaled $113,450, yet the three cashier's checks issued on Derek's instructions amounted to $78,950, leaving a difference of $34,500, for which Oliveri is unable to account.[4] The record does not show that any of the $500,000 was distributed to Felix or on behalf of Felix, and Oliveri testified, "I cannot recall any payments being made to Felix Chu or on behalf of Felix Chu. And I had very little contact with Felix Chu during that timeframe." In fact, Oliveri testified that he lacked a full accounting of exactly how the $500,000 was ultimately allocated. Of the $500,000 received in his CTA, Oliveri testified only that a total of $375,950 in disbursements was authorized

[4] As with many of the hearing judge's factual findings, Oliveri claims in his brief on review that this fact is "unfounded speculation." However, when asked what happened to the $34,500 during the disciplinary trial, Oliveri was unable to explain how it was disbursed, testifying: "I have no idea. I can guess, but I have no idea as we sit here today."

($297,000 + $78,950).[5] He claims that at one point he maintained a document or spreadsheet managing his CTA funds, but the motherboard of his computer crashed, and his CTA documentation was lost as a result.

Oliveri acknowledges that he did not inform Ly how the loan funds were disbursed, nor did he tell her he distributed $297,000 from the loan proceeds to himself. He maintains that he was not obligated to share this information with Ly. He also asserts that it made sense for him to disburse money directly to himself for debts Derek owed him. Oliveri concedes that in hindsight he should have issued one check for the entire $500,000 to the Chus and let them distribute the funds.

D. Additional CTA Transactions

Unrelated to the escrow transaction, Oliveri's banking records revealed that on December 7, 2018, he transferred $125,000 from his business account into his CTA. In 2019, Oliveri also made transfers from his business account to his CTA for $40,000 on February 6, and $3,000 on February 11. During the disciplinary trial, he testified that the payments could be client payments made to him by credit card. He claims that it was his practice to place funds into his business account and then transfer them into his CTA because he does not like to link his CTA to credit card payments. He also testified that if a client writes a check to "Oliveri LLP" instead of to his CTA, Comerica Bank requires that the funds be deposited into his business account; accordingly, he transfers those funds to the CTA after first depositing them in his business account.

[5] The hearing judge miscalculated the total disbursements as $465,950. This appears to be due to counting the $90,000 check to Derek from Oliveri's business account *in addition* to the $297,000 CTA disbursement, when the $90,000 check was actually derived from the $297,000 transfer. This does not affect the outcome of the case.

On February 26 and 27, 2019, Oliveri's wife made three deposits into his CTA in the amounts of $70,876, $29,124, and $22,029. On March 4, Oliveri used his CTA to make a $147,239.81 American Express credit card payment. On March 22, $14,000 was deposited into his CTA from Kabbage, a lending company that provided Oliveri with a business loan. Oliveri claims that, due to issues with his business checking account, he had to deposit the Kabbage loan into his CTA. Shortly after receiving the loan, Oliveri began issuing monthly loan payments to Kabbage from his CTA. On April 22 and May 22, he used his CTA to issue two payments to Kabbage, each for $3,278.34.

E. Superior Court Litigation

Ly v. Chus[6]

As discussed *ante*, Ly and the Chus had outstanding loans and business dealings prior to the $500,000 escrow transaction involving Oliveri. The Chus had been repaying Ly for the prior loans, but in 2019, Ly began to receive checks with insufficient funds from the Chus, and in May 2019, the payments on the prior loans stopped. Once Ly was unable to reach Felix, she hired an attorney, John Chow. On October 24, 2019, Ly, represented by Chow, filed a lawsuit in San Francisco Superior Court against the Chus claiming she had been defrauded by them. She sought to recover $1,625,000, which included multiple sums of money Ly had entrusted to them, and not just money she had loaned them. One of the allegations stated that Felix or Derek "processed" $500,000 in December 2018, but it had been deposited in Oliveri's trust account. Oliveri acknowledged in his brief that he represented Felix in the beginning of the litigation, and he testified that he saw the complaint when it was filed.

[6] *Thau Bich Ly v. Felix Chu and Derek Chu, et al.* (Super. Ct. S.F. County, No. CGC-19-580268).

Ly v. Oliveri[7]

Because Oliveri had not provided an accounting to Ly of the loan disbursements, Ly could not have known whether any of the $500,000 had been distributed. Chow testified that the only document Ly had concerning the $500,000 was a Disbursement of Proceeds documenting Ly's wire transfer from Fidelity National Title Company to Oliveri's CTA. On November 16, 2019, Chow wrote to Oliveri informing him that he represented Ly in the lawsuit against the Chus and demanded that Oliveri return the $500,000 by November 22, and he accused Oliveri of unidentified ethical violations. Oliveri responded on November 18, claiming that Chow's "allegations" against him were not accurate because he was not "not a part of any business dealings between the Chus and Ms. Ly[,]" with the exception of transferring the loaned funds into his trust account.

On December 10, 2019, Chow sent a follow-up letter to Oliveri again requesting the $500,000 be returned and seeking a copy of: (1) the retainer agreement between Ly and Oliveri; (2) any payments Ly made to Oliveri; and (3) the firm's statement regarding the legal services Oliveri performed on behalf of Ly. Oliveri and Chow exchanged a few additional letters and emails at the end of December with Chow repeatedly asking Oliveri for information. On February 21, 2020, Chow sent a final follow-up letter to Oliveri again seeking the return of the $500,000 to Ly and the above documentation.

On November 24, 2020, Ly filed a complaint in the San Francisco County Superior Court against Oliveri alleging several causes of action, including breach of fiduciary duty, conversion, and unjust enrichment based on the $500,000 escrow transaction. Chow testified that he had to pursue the recovery of the $500,000 in court against Oliveri, because the only documentation he

[7] *Thau Bich Ly and Tieu Family Trust v. Matthew McDonald Oliveri, et al.* (Super. Ct. S.F. County, No. CGC-20-587957).

had was the wire transfer of funds into Oliveri's account, and Oliveri was being evasive with him and not providing any documentation or information concerning his representation of Ly or the $500,000.

On December l, 2020, Oliveri wrote to Chow claiming there was no proper basis for the lawsuit and that the complaint was improperly served. Oliveri explained in his letter that he was hired by Ly to assist with a tenancy termination and to serve as escrow agent for a loan between Ly and the Chus. He stated that he received a copy of a promissory note signed by Ly prior to making the loan disbursements, although in fact, Ly had never signed the promissory note. Oliveri also claimed that he "disbursed the $500,000 to Mr. Felix Chu and Mr. Derek Chu" and that he "did not receive any 'benefit' from [the] relationship."

On October 4, 2021, Oliveri filed a demurrer to Ly's first amended complaint and attached several exhibits—including the December 1, 2020 letter to Chow—to support his position. The superior court held a hearing on the demurrer on January 20, 2022. At the hearing, the court expressed its understanding that the $500,000 had been disbursed to the Chus, stating, "The only thing I see here is, an escrow was opened; The promissory note apparently was deposited; So was the $500,000; It was then disbursed to the Chus." Oliveri did not correct the record or disclose how the funds were disbursed, nor did he disclose that he personally received a significant portion of the funds.

Oliveri had never provided Chow with a copy of the promissory note. After the hearing on the demurrer, and one day before Chow filed a second amended complaint, Oliveri sent Chow the promissory note by regular mail on January 27, 2022.

On February 8, 2022, the court sustained Oliveri's demurrer. The court relied on Oliveri's exhibits when it concluded that any allegation that Oliveri breached his fiduciary duties, converted funds, or was unjustly enriched, was inconsistent with the submitted exhibits,

"which show that [Oliveri] was instructed to and did disburse the $500,000 to the Chus." The court relied on Oliveri's December l, 2020 letter to Chow stating that he disbursed the $500,000 to Felix and Derek Chu. The court also relied on a January 13, 2021 sworn declaration from Derek—stating the same—which Oliveri later provided to OCTC. In March 2022, the superior court sustained, without leave to amend, Oliveri's demurrer to Ly's second amended complaint, again relying on the same exhibits and arguments submitted in the prior demurrer. Chow was not aware that Oliveri had paid himself any of the funds until much later, when he received a copy of the NDC.

F. OCTC's Investigation

On April 19, 2020, Ly filed a State Bar complaint against Oliveri. On October 2, an OCTC investigator sent Oliveri an investigative inquiry letter requesting a response to Ly's allegation that Oliveri had misappropriated the $500,000. The investigator requested that Oliveri produce evidence pertaining to his legal representation with Ly, documentation of loan disbursements to himself and others, his CTA records and written ledger, and other related documents. Oliveri provided an initial written response to OCTC's letter on October 14, 2020, asserting that the information OCTC had was not accurate. On December 8, he provided an additional response, explaining that he met Ly in October 2018 and was retained to represent her in the termination of a tenancy, and he served as an escrow agent for the loan between Ly and the Chus. He also stated that after escrow closed and he received the loan funds into his CTA, he "then disbursed the $500,000 to Mr. Felix Chu and Mr. Derek Chu, and I closed my activities in that escrow transaction."[8] He informed OCTC that he believed Ly was the victim of a Ponzi

[8] Oliveri provided a second written response and corresponding documentation to OCTC on December 30, 2020, asserting the same position.

scheme being run by the Chus, and he did not understand exactly what OCTC wanted as it pertained to him regarding its investigation.

On October 7, 2020, shortly after starting its investigation, OCTC subpoenaed Oliveri's CTA and business account records. On December 28, Oliveri filed a motion to quash the subpoenas in the Hearing Department. In his motion, he explained his version of the events leading up to the escrow transaction. Specifically, he stated, "At some point in December 2018, I was provided a copy of the [p]romissory [n]ote signed by Ms. Ly, Mr. Felix Chu and Mr. Derek Chu." He also stated that after receiving the loan proceeds into his CTA, he "then disbursed the $500,000 to Mr. Felix Chu and Mr. Derek Chu, and I closed my activities in that escrow transaction." A hearing judge denied the motion to quash on January 26, 2021.

As referenced *post*, on January 13, 2021, Derek signed a declaration under penalty of perjury in support of Oliveri's motion to quash; however, it was not timely provided in order to be considered by the hearing judge. Instead, Oliveri later provided Derek's declaration to OCTC. In the declaration, which was drafted on Oliveri's letterhead and formatted as a pleading, Derek stated that Ly hired Oliveri to draft and negotiate a tenancy termination, and that the parties met in October 2018 to discuss Oliveri serving as an escrow agent for the loan between Ly and Derek. Derek averred that he signed the escrow instructions, promissory note, and conflict waiver, and he confirmed that in December 2018, the $500,000 loan was disbursed to him.

III. CULPABILITY

Rule 5.152(C) of the Rules of Procedure of the State Bar provides that disputed factual issues on review must be raised by an appellant in the opening brief; factual errors not raised on review are waived. As indicated *ante*, Oliveri disputes numerous factual findings made by the hearing judge and contests culpability on that basis. However, Oliveri did not establish in the

record any support for his challenges to the factual findings. OCTC relies on *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 to assert that we may treat Oliveri's arguments as waived. To the extent that Oliveri failed to fully develop his legal arguments on review, this court has no obligation to do so for him. (*Ibid*. [when appellant fails to support position with reasoned argument and citation to authority, the point is waived]; see also *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 366, fn. 2 [assertions without analysis or argument are not properly raised].)

Our duty is to independently review the record from which we "may make findings, conclusions, or a decision or recommendation different from those of the hearing judge." (Rules Proc. of State Bar, rule 5.155(A).) With respect to the counts alleged, OCTC must prove culpability by clear and convincing evidence. Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) As discussed below, we affirm the judge's factual findings and culpability determinations unless indicated otherwise.[9]

[9] Upon OCTC's motion during the disciplinary trial, the hearing judge dismissed counts 14 and 15 (failure to perform with competence) and count 16 (failure to inform client of significant developments) with prejudice. OCTC also does not contest the judge's dismissal of count one (improper business transaction with client), count eight (failure to maintain complete CTA records), and count nine (failure to support the laws). We have reviewed the record and affirm the judge's dismissal of these counts with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

A. Count Two: Rule 1.8.1 (Improper Business Transaction with Client/Pecuniary Interests Adverse to a Client)

In count two, Oliveri was charged with a violation rule 1.8.1 of the Rules of Professional Conduct.[10] Rule 1.8.1 prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless specific requirements are satisfied. As it pertains to the transaction or acquisition, rule 1.8.1 requires that: (a) the terms be fair and reasonable to the client and the terms and the lawyer's role be fully disclosed in writing to the client in a manner reasonably understood by the client; (b) the client is either represented by independent counsel or advised in writing to seek counsel and given an opportunity to do so; and (c) the lawyer receive the client's informed written consent to the terms.

The hearing judge found Oliveri culpable under count two by concluding that he acquired an ownership, possessory, and pecuniary interest adverse to Ly in violation of rule 1.8.1 when he acquired an interest in the $500,000 on December 24, 2018. The judge reasoned that once the funds were deposited into Oliveri's CTA and he transferred $297,000 to his business account for personal use, he lost impartiality as an escrow agent. We do not find sufficient evidence to establish culpability under rule 1.8.1, as discussed below.

While serving as escrow agent, Oliveri owed a fiduciary duty to both Ly and Derek. (*Harmon v. Western Title Insurance Co*. (1989) 211 Cal.App.3d 1122, 1127 [escrow agent is fiduciary to all parties to an escrow].) He also had duties to the parties considering the nature of his attorney-client relationship with each of them individually. As stated *ante*, Oliveri drafted a

[10] All further references to rules are to the Rules of Professional Conduct, effective November 1, 2018, unless otherwise noted. In the rules as published, defined terms are denoted with asterisks. For ease of readability, we omit these asterisks when quoting the rules herein. Rule 1.15 was amended, effective January 1, 2023. In this opinion, references to rule 1.15 are to the version of the rule in effect from November 1, 2018, until January 1, 2023.

conflicts waiver that both Ly and Derek signed that reiterated certain language from the escrow instructions including, in part, that Oliveri was not involved in the drafting, negotiation, or execution of the promissory note; was not a party to the escrow or note; and would not provide legal advice regarding the loan transaction. On review, Oliveri maintains there is no evidence that he ever obtained an "ownership, possessory, and pecuniary interest adverse to Ly" at any time. OCTC disputes his argument by claiming that Oliveri took an ownership interest in the loan when he paid himself $297,000, and thus became a party to the escrow transaction.

We agree with the hearing judge that there is not sufficient evidence in the record to support a conclusion that Oliveri was designated as an interested party to the loan transaction at the time the escrow was created. We note the existence of an outstanding debt between Oliveri and Derek, which pre-existed the escrow transaction, but Oliveri was not obligated to disclose this debt to Ly simply by virtue of him serving as an escrow agent. If Derek had designated Oliveri as an interested party to the transaction and this interest was known to Oliveri at the time of the escrow, then Oliveri would have been required to disclose those details to Ly, because as her attorney he had a duty to maintain fair and reasonable dealings that were fully known and understood by Ly. (See *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 314; see also *Hunniecutt v. State Bar* (1988) 44 Ca1.3d 362, 372-373.) However, OCTC has not proven such and our review of the record does not clearly and convincingly show that Oliveri intended to have a financial interest in the loan at the time of the escrow transaction. Reasonable doubts resulting from the evidence are resolved in favor of the respondent. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794.)

Turning to the matter of Oliveri paying himself $297,000, Oliveri testified that Derek authorized him to take more than $200,000 from the loan as payment for the debt Derek owed him; thus, Oliveri was a designee of Derek. As explained, almost $207,000 was directed to

Oliveri's credit card payment, and the remaining $90,000 was issued to Derek. Oliveri testified that the $90,000 was part of the loan Derek received and represented Derek's payment of an installment on luxury suites at the Staples Center. The record does not establish that Oliveri could then use those particular suites or that he obtained some other benefit or that he used the $90,000 for his own benefit. In any event, while Oliveri's conduct of paying himself directly from the $500,000 was questionable, especially considering his role as an escrow agent and attorney, it does not necessarily create the presumption that Oliveri acquired an interest adverse to Ly.

A comment to rule 1.8.1 provides that an attorney has an "other pecuniary interest adverse to a client" within the meaning of the rule when the attorney possesses a legal right to significantly impair or prejudice the client's rights or interests without court action. (See rule 1.8.1, comment 1; see also *Fletcher v. Davis* (2004) 33 Cal.4th 61, 67.) OCTC has not presented any legal authority to establish how Derek's outstanding debt to Oliveri created a pecuniary interest adverse to Ly in the escrow transaction that would significantly impair or prejudice her rights or interests. Under rule 1.8.1, fairness and reasonableness are measured at the time of the transaction. (See rule 1.8.1, com. 3.) When the escrow was formed, Oliveri was not a party to the transaction, and there is no evidence that the manner in which the loan was ultimately disbursed impaired Ly's legal rights to the promissory note or impeded her recourse as it relates to the loan. Therefore, we do not find that the more than $200,000 Oliveri paid himself to satisfy Derek's debt was adverse to Ly for the purposes of the escrow transaction.[11]

[11] We are mindful that Ly believed the $500,000 transaction was not a loan, but rather, a method of ensuring her taxes would be paid. Thus, Oliveri paying himself from the loan amount could be viewed as adverse to Ly's interests. However, rule 1.8.1 requires that an attorney's adverse interest be acquired knowingly, and there is insufficient evidence that Oliveri knew either that Ly did not believe she had made a loan or that she believed the money was to be used to pay taxes with the balance to be returned to her.

To be clear, nothing in the record suggests that Oliveri disclosed to Ly his authorization to use the loan funds for his personal benefit once he transferred in excess of $200,000 into his business account, which he should have done. (See *Contini v. Western Title Ins. Co*. (1974) 40 Cal.App.3d 536, 547 [escrow holder has fiduciary duty to communicate to principal knowledge acquired in course of agency regarding material facts which might affect principal's decision to pending transaction], superseded by statute on other grounds [see *Southland Title Corp. v. Superior Court* (1991) 231 Cal.App.3rd 530, 535].) Ly was entitled to an accounting and escrow statement that fully disclosed the disbursement of the funds, which Oliveri failed to provide and which we discuss in our culpability analysis under counts seven and ten. However, based on the record before us and the allegations charged under count two, there is insufficient evidence to support a finding that Oliveri obtained a pecuniary interest adverse to Ly in the escrow transaction that would have significantly impaired her interests. (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 749 [appropriate to resolve reasonable doubts in favor of respondent and reject contrary finding as unsupported by clear and convincing evidence]; see also *Aronin v. State Bar* (1990) 52 Cal.3d 276, 289 [culpability determination must not be debatable].) Accordingly, we do not find that Oliveri's conduct violated rule 1.8.1, and we dismiss count two with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. at p. 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

B. Counts Seven and Ten: Rule 1.15(d)(4) and Business and Professions Code, Section 6068, Subdivision (a)[12] (Failure to Render Accounting of CTA Funds)

Count seven alleges that Oliveri violated rule 1.15(d)(4) by failing to render any accounting to Ly regarding the disbursement of the $500,000 loan held in his CTA on her behalf. Similarly, he was charged in count 10 with violating section 6068, subdivision (a), because he failed to provide a statement of the escrow account to Ly, pursuant to California Code of Regulations, title 10, section 1741.3.[13] The hearing judge found Oliveri culpable under both counts but viewed them as a single offense, and therefore, assigned no additional weight in determining discipline.[14]

We adopt the hearing judge's finding that Oliveri violated rule 1.15(d)(4) and section 6068, subdivision (a), by failing to provide Ly with an accounting of the loan proceeds after disbursement began on December 24, 2018. An accounting was particularly important considering Oliveri's fiduciary duty as an escrow agent and the significant amount of money involved in the transaction. (See *Harmon v. Western Title Insurance Co*., *supra*, 211 Cal.App.3d at p.1127; *Clark v. State Bar* (1952) 39 Cal.2d 161, 174 [purpose of keeping proper records is to have proof of honesty and fair dealing of attorneys and is part of duty to clients].)

Oliveri claims he was not required to provide Ly with an accounting. He testified that an accounting was never requested, and one was not provided because the joint escrow instructions did not obligate him to do so. Oliveri misunderstands the requirements of a proper accounting

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[12] All further references to sections are to the Business and Professions Code unless otherwise noted.

[13] California Code of Regulations, title 10, section 1741.3 provides, in part, that upon completion of an escrow transaction an escrow agent shall render to each principal to the escrow transaction a statement of his account in writing.

[14] The hearing judge inadvertently identified the incorrect section of the California Code of Regulations under count 10.

and his ethical obligations under the rules. Rule 1.15(d)(4) provides that a lawyer shall "promptly account in writing to the client or other person for whom the lawyer holds funds or property." Oliveri failed to satisfy the rule's requirement that he promptly render to Ly a written account of the loan funds that he held.

And contrary to his contention, he was required to render an accounting whether or not Ly requested one.[15] (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.) Even if the escrow instructions did not specify that Oliveri would account to Ly in the manner specified under the rules, he is still culpable because attorneys cannot contract away their ethical duties. (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 639-640.) We, therefore, find Oliveri culpable under counts seven and ten but assign no additional weight in discipline for finding a second violation. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight in discipline when culpability is based on same facts underlying culpability for misconduct in related counts].)

C. Counts Twelve and Thirteen: Rule 1.15(c) (Commingling)

In count 12, OCTC alleged Oliveri violated rule 1.15(c) by depositing or commingling personal funds into his CTA on seven separate occasions, as indicated in the facts above, between December 7, 2018, and March 22, 2019. In count 13, OCTC alleged Oliveri violated rule 1.15(c) by issuing three payments for personal expenses from his CTA on March 4, 2019 ($147,239.81), April 22, 2019 ($3,278.34), and May 22, 2019 ($3,278.34). The hearing judge found Oliveri culpable of commingling as charged in both counts. We agree.

[15] In fact, Ly specifically alleged in her second amended complaint that Oliveri had breached his fiduciary duty by not providing an accounting of the disbursements of the $500,000 from Oliveri's CTA or at the close of escrow. At a minimum, this can reasonably be viewed as a request for an accounting.

With limited exceptions, rule 1.15(c) prohibits attorneys from depositing or otherwise commingling funds belonging to them or their law firm with funds held in a trust account. We find clear and convincing evidence, as shown from the CTA records, establishes that Oliveri violated rule 1.15(c) as charged in counts 12 and 13. According to Oliveri, he is not culpable under either count because no client was harmed by any conduct pertaining to his CTA. However, a commingling violation can occur even when no client funds are in the CTA. (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 876.) An "attorney commingles funds or fails to deposit or manage the funds in the manner designated by the rule, even if no person is injured." (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976 [referring to then Rules Prof. Conduct, rule 8-101(A), later becoming former rule 4-100(A) and current rule 1.15(c)].)

Oliveri violated rule 1.15(c) when $304,029 of his personal and business funds were deposited into his CTA between December 7, 2018, and March 22, 2019 (count 12). As the Supreme Court has instructed: "The rule absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.) His claim that the transactions could have been client credit card payments, because his credit card processing was linked to his business account, is not persuasive. There is no evidence in the record to support this assertion, and Oliveri's business account records do not show corresponding transactions or corresponding client payments. Oliveri's misuse of his CTA as an operating account was, therefore, in violation of the rule.

As it relates to his payment of personal and business expenses under count 13, which totaled $153,796.49, Oliveri is also culpable of violating rule 1.15(c). For instance, during his deposition with OCTC, he admitted to depositing a $14,000 Kabbage loan into his CTA. Oliveri claimed he had to deposit the loan into the CTA due to issues with his business checking

account. Oliveri later testified, during the disciplinary trial, that the Kabbage loan was related to a business transaction for a loan involving him and a client. He stated that because the loan partially contained client funds, it was deposited into his CTA. The hearing judge rejected Oliveri's contradictory testimony as lacking merit because he did not present any evidence to corroborate or support his claim that the transaction was related to a client loan. We adopt the judge's finding and note that the evidence does not show that the Kabbage loan was ever transferred to his business account, as Oliveri claimed. Further, Oliveri used his CTA to make monthly loan payments to Kabbage on two separate occasions. And Oliveri's $147,239.81 payment to American Express for personal expenses was also in violation of the rule. By depositing personal funds into a CTA and paying personal expenses from it, Oliveri willfully violated the express language of rule 1.15(c) and the Supreme Court's clear declaration of how the rule applies. Accordingly, his misuse of his CTA establishes culpability under counts 12 and 13.

D. Counts Three, Four, Five and Six: Section 6106 (Misrepresentations to OCTC, the State Bar Court, Ly's Attorney, and the Superior Court)

Section 6106 can be violated by material omissions or misrepresentations of material facts. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315 [moral turpitude includes concealment as well as affirmative misrepresentations with no distinction drawn between "concealment, half-truth, and false statement of fact"]; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes affirmative misrepresentations].) It has long been established such dishonesty includes an attorney's false or misleading statements. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855; *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 124; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 184.)

1. Misrepresentations to OCTC (Count Three) and the State Bar Court (Count Four)

In count three, OCTC alleged Oliveri made material misrepresentations in his written responses to OCTC on December 8 and 30, 2020. Specifically, the NDC alleges Oliveri submitted to OCTC on January 27, 2021, Derek's unsworn declaration, stating that "the $500,000 loan was disbursed to [Derek]," knowing it contained a misrepresentation, when only $90,000 was disbursed to Derek, $78,950 was disbursed to third parties at Derek's direction, and Oliveri kept over $200,000 for himself. In count four, OCTC alleged Oliveri repeated the material misrepresentation to the State Bar Court in his December 28, 2020 motion to quash, which he signed under penalty of perjury, that he disbursed the entire $500,000 to Felix and Derek. The hearing judge found Oliveri culpable under both counts as charged. She concluded that Oliveri's statements that he disbursed the entire funds to Felix and Derek were specious, and that Oliveri's statements were false and deceptive. We agree.

On review, Oliveri repeatedly claims there is no evidence to support the hearing judge's findings because he disbursed the funds according to the direction of the Chus, and that the Chus were not complaining witnesses; therefore, the judge's findings were "unfounded speculation." Oliveri's conclusory assertions are not supported by the record, and we find his contentions unpersuasive and disingenuous.

Oliveri's statements to OCTC and the State Bar Court that the $500,000 was disbursed to the Chus were clearly dishonest. We have previously found an attorney's statements that were vague, misleading, and contained "half-truths, and false statements" supported a moral turpitude finding for misrepresentation. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 213.) That same analysis applies here to the statements Oliveri made to OCTC and the State Bar Court. (See *Grove v. State Bar*, *supra*, 63 Cal.2d at p. 315 [no distinction between "concealment, half-truth, and false statement of fact"].)

Oliveri's misrepresentations were material because it is apparent he was attempting to avoid attorney disciplinary consequences when making them to OCTC and the State Bar Court. Oliveri's claim that the full $500,000 was distributed to the Chus is consequential because it was made pursuant to OCTC's investigation based on Ly's complaint alleging that he mishandled the escrow funds. Oliveri then made the same misrepresentation to the State Bar Court to support his motion to quash OCTC's subpoenas of his bank records. The CTA records reveal how much of the loan proceeds were disbursed, and they do not support Oliveri's claim. Initially, Oliveri paid himself $297,000, of which $90,000 was subsequently paid to Derek, and finally, he distributed multiple payments to third parties at Derek's direction, totaling $78,950.[16] Yet, Oliveri attempted to conceal the material facts regarding the actual loan disbursements. (*Mosesian v. State Bar* (1972) 8 Cal.3d 60, 66 [attorney required to render complete and candid disclosures and never seek to mislead the court].) This conduct constitutes moral turpitude and warrants discipline. (*Bach v. State Bar*, *supra*, 43 Cal.3d at p. 855.) Thus, we affirm culpability under counts three and four.

2. Misrepresentations to Attorney Chow (Count Five) and the Superior Court (Count Six)

In count five, OCTC charged Oliveri with misrepresenting and omitting material facts when communicating with Chow between November 16, 2019, and through the time the NDC was filed on July 29, 2022. OCTC specifically alleged that Oliveri's conflict waiver and the joint escrow instructions were false by stating that Oliveri's "sole role" was that of an escrow agent and that he was "not a party" to the escrow. OCTC also alleged that Oliveri engaged in false or misleading conduct when he omitted the following facts: Oliveri disbursed, at most, $34,500 in cash to Derek; no loan funds were disbursed to Felix; Derek authorized Oliveri to use

[16] As previously discussed, at least $34,500 of the loan is unaccounted.

at least $200,000 for his personal benefit; Oliveri disbursed at least $344,973.06 directly to his checking account; a significant and substantial portion was used for Oliveri's own benefit and to pay his credit card debt; and Oliveri distributed funds to third parties at the direction of Derek. Additionally, OCTC charged Oliveri with intentionally omitting the fact that Ly had not signed the promissory note in his communications with Chow between January 21 through 28, 2022. And OCTC charged Oliveri with making misrepresentations to the San Francisco County Superior Court in count six based on the same facts alleged in count five, except for the allegation of omitting that Ly had not signed the promissory note.

The hearing judge found Oliveri culpable under both counts; however, she rejected OCTC's argument that the conflict waiver and escrow instructions were false and misleading in that they stated Oliveri's "sole role" in the escrow was that of escrow agent. OCTC does not challenge the judge's findings and requests that we affirm culpability.

As to count five, Oliveri repeatedly asserts in his brief that there is no evidence to support the hearing judge's findings. We disagree. On December 1, 2020, when Oliveri responded to Chow's letter regarding the $500,000 deposited in his trust account, he stated that he disbursed the funds to the Chus and did not receive any benefit from the transaction aside from his small legal fee regarding Ly's tenancy matter. As discussed above, this statement was not true, because Oliveri never disclosed that he dispersed any of the loan proceeds to himself or at Derek's direction and based on a debt Derek owed him. Nor did he disclose the exact manner in which the funds were distributed and to whom. The hearing judge correctly determined that these were material misrepresentations, creating a false impression that he received no benefit from the loan. (See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 178 [creating false impressions and concealing material information violates § 6106].)

We also find that Oliveri did not provide Chow with the complete facts regarding the escrow transaction—including stating that the promissory note was signed by Ly when it was not. Oliveri was required to provide truthful information to Ly's attorney about the precise nature and disbursement of funds to which he was entrusted as an escrow agent. (See *Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 56 [attorneys have a duty to be honest with other attorneys and the court].)

Regarding count six, although Oliveri did not provide any legal authority to support his position, and his argument is not entirely clear to us, he appears to contest culpability by stating that the superior court did not find any viable cause of action against him because he "complied with the fully executed documents, the promissory note, and his legal obligations."

Section 6106 expressly states that moral turpitude includes acts of dishonesty, and case law is well established that moral turpitude includes an attorney's false or misleading statements to a court or tribunal. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786.) When Oliveri filed his demurrer to Ly's first amended complaint in the superior court, he included the December 1, 2020 letter written to Chow. Again, Oliveri never disclosed to the superior court that he distributed a portion of the funds to himself or for his benefit, nor did he disclose the exact manner in which the funds were distributed and to whom.

Oliveri claims, without citing to the record, that a superior court judge commented during the demurrer hearings that it did not matter how the Chus spent the money they borrowed from Ly. And he asserts that his failure to correct the record in superior court "assumes an obligation on [him] that the Superior Court found not to exist." A superior court judge commenting that it was not relevant how the Chus spent their borrowed money does not mean that Oliveri had no obligation to be truthful to the court regarding how *he* disbursed the funds. Oliveri's

misrepresentations to the superior court were material because the court relied on Oliveri's December 1, 2020 letter when sustaining his demurrer.

Oliveri contends the superior court did not rely on his letter and was focused on the complaint and amended complaint. This assertion lacks merit. In fact, during the demurrer hearing the court reiterated its understanding that the funds were distributed to the Chus, then the escrow closed, but Oliveri failed to correct the court—which demonstrates moral turpitude. (See *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174 [concealment of material fact misleads judge just as effectively as false statement].) By failing to bring to the court's attention the accurate and true manner of the loan disbursement—including the payment to himself and third parties at Derek's direction, Oliveri created a path to avoid culpability for his misleading statements and to support the position advanced in his demurrer. Oliveri's omission of these relevant facts created a false narrative.

For these reasons, we find that his misrepresentation and omission were both material and intentional because he sought to secure an advantage by not unequivocally disclosing the full nature of the loan disbursement, which constitutes moral turpitude and violates section 6106. (*Grove v. State Bar*, *supra*, 63 Cal.2d at p. 315 [moral turpitude includes concealment as well as affirmative misrepresentations with no distinction to be drawn between "concealment, half-truth, and false statement of fact"].) Accordingly, we affirm the hearing judge's culpability findings under counts five and six.

E. Count Eleven: Section 6106 (Moral Turpitude)

Under count 11, OCTC charged Oliveri with committing moral turpitude in violation of section 6106 based upon the entire course of his actions pertaining to his duties as an escrow agent and his subsequent dishonesty with Chow, OCTC, the superior court, and the State Bar Court. The hearing judge found him culpable by concluding that Oliveri's multiple acts of

intentional deceit were contrary to honesty and involved moral turpitude. The judge determined that the facts establishing moral turpitude under count 11 were based on the same facts used to prove culpability in counts two through six and therefore did not assign any additional disciplinary weight.

Some allegations in count 11 pertain to matters where we did not find Oliveri culpable. Other allegations—such as Oliveri seeking sanctions against Ly and Chow in superior court and not rendering an accounting to Ly when Oliveri received a discovery request from Chow or when Chow filed a motion to compel—were not developed by OCTC and fail for lack of proof. We also find the allegation that Oliveri failed to provide Chow a copy of the promissory note until February 2022 to be lacking proof, because the record demonstrates that Oliveri sent the promissory note on January 27, 2022.

But Oliveri's repeated acts of not providing Ly an accounting, notwithstanding her multiple demands in various forums for Oliveri to return the money she deposited in his trust account, go beyond simple negligence and breached the fiduciary duty Oliveri, as an escrow agent, owed Ly. (See *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 80 [as escrow agent attorney owes parties to escrow high duty of honesty and obedience to fiduciary duty].) And our Supreme Court has found, "Gross carelessness and negligence constitute violations of the oath of an attorney to faithfully discharge his duties to the best of his knowledge and ability, and involve moral turpitude as they breach the fiduciary relationship owed to clients." (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475.)

However, we do not consider as moral turpitude the multiple failures to provide an accounting standing alone. Oliveri's multiple misrepresentations to Chow, the superior court, the State Bar, and the State Bar Court, coupled with his repeated failure to provide an accounting to Ly of the escrow, reveal a troubling pattern of evasiveness and dishonesty and supports our

finding of moral turpitude for this count. As OCTC posited in oral argument, this was a case where the cover-up was worse than the underlying misconduct. Accordingly, we find Oliveri culpable under count 11. We do not assign additional disciplinary weight under this count where culpability was based on the same facts as the prior counts where we found culpability. (*In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127 [no dismissal of duplicative charge but no weight assigned to charge to determine discipline].)

IV. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence under standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.[17] Oliveri has the same burden to prove mitigation under standard 1.6.

A. Aggravation

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

Oliveri has one prior record of discipline.[18] The NDC regarding Oliveri's prior misconduct was filed in February 2019. On October 17, 2019, he stipulated to a public reproval for violations of section 6068, subdivision (a), for his failure to provide a proper accounting as required by Probate Code section 16062, subdivision (a), and former rule 3-300 for his failure to make proper disclosures and obtain written consent from his client when brokering a vehicle sale between his client and Oliveri's wife. His prior discipline was aggravated by multiple acts of misconduct and mitigated by 15 years of a discipline-free record, good character, cooperation,

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

[18] We take judicial notice of Oliveri's prior disciplinary case, case no. SBC-19-O-30072. (Rules Proc. of State Bar, rule 5.104(H)(2)(b).)

and community service. The hearing judge found Oliveri's prior record of misconduct aggravating and assigned moderate weight under standard 1.5(a).

Although not entirely clear from his brief, Oliveri appears to argue that his prior discipline should not be given any aggravating weight. He claims that no client was harmed and that his client "in fact benefitted financially from the financial transaction[.]" Prior discipline is a proper factor in aggravation when discipline is imposed. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) In *Sklar*, this court emphasized that "the rationale for considering prior discipline as having an aggravating impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms [citation]." (*Id*. at p. 619.)

OCTC points out that a similarity exists between Oliveri's prior discipline and this matter—he failed to render a proper accounting with a client in both cases. This commonality would typically render his prior record more serious. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444 [similarities between prior and current misconduct render previous discipline more serious, as they indicate prior discipline did not rehabilitate].) This is not so here, because the misconduct in this current matter started in December 2018 when he failed to provide an accounting. This was before his prior discipline was imposed, indicating that he did not have "an opportunity to appreciate or heed the import of the earlier discipline." (*In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263, 269.)

Problematic for Oliveri is that after he was publicly reproved in October 2019, he almost immediately began making misrepresentations to Chow and the superior court. This continued well into 2020 and even 2021, with misrepresentations to OCTC and the State Bar Court. This is far more serious misconduct involving moral turpitude, and it occurred on the heels of his prior

discipline. Thus, we find moderate weight in aggravation is appropriate notwithstanding that some of his other misconduct occurred before his first discipline was issued.

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

The hearing judge found that Oliveri committed multiple acts of misconduct by committing five counts involving moral turpitude, 10 separate acts of commingling, in addition to the other misconduct which consisted of CTA violations and an adverse pecuniary interest to a client. The judge assigned substantial weight in aggravation to this circumstance. Even though we reversed count two, we agree with the judge's assignment of weight to this circumstance.

As described *ante*, Oliveri's misconduct of more than two years involved numerous bad acts consisting of moral turpitude involving misrepresentations to third parties, OCTC, and the State Bar, in addition to the other misconduct. Accordingly, we affirm the judge's finding of substantial weight in aggravation under this circumstance. (*In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [multiple acts in aggravation for one count of moral turpitude where attorney made 11 misrepresentations over an 18-month period]; see also *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [repeated similar acts of misconduct considered serious aggravation].)

3. Indifference (Std. 1.5(k))

Standard 1.5(k) provides that indifference toward rectification or atonement for the consequences of misconduct is an aggravating circumstance. The hearing judge assigned compelling weight in aggravation due to Oliveri's lack of recognition of wrongdoing. Oliveri claims that he has not shown indifference because he admitted on numerous occasions during these disciplinary proceedings that "he could have handled the disbursement phase better and with better record keeping." He has yet to make any statement expressing an understanding of the misrepresentations he made to Chow, OCTC, and the State Bar Court.

Throughout these proceedings, Oliveri has attempted to avoid responsibility—his testimony was often self-serving and contrary to the evidence. While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) The record shows that Oliveri does not have an understanding of his misconduct and has failed to accept responsibility for any wrongdoing. For example, as the hearing judge found, Oliveri refuses to admit any wrongdoing with respect to the commingling violations despite the clear and convincing evidence supporting those counts. An attorney who fails to accept responsibility for his actions and instead seeks to shift responsibility to others demonstrates indifference and lack of remorse. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.)

On review, he reiterates that he did nothing wrong as it pertains to the accounting of the escrow funds. He minimizes the seriousness of his actions by failing to acknowledge the extent of the fiduciary duty he owed to Ly regarding the escrow transaction. It is troubling that Oliveri maintains his position even though his prior discipline involved the same or similar violation as in this case—failure to render an accounting to a client. Oliveri has not expressed any recognition that he has twice engaged in the same misconduct. Moreover, he continued with even more egregious misconduct in his multiple misrepresentations, and to this day, he denies culpability, bemoaning the hearing judge's findings as "unfounded speculation" and without evidence. His complete lack of insight indicates an inability to conform his conduct to ethical norms which is cause for concern that he will repeat his misdeeds. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380.)

We agree with the hearing judge's findings of fact regarding Oliveri's indifference, but we do not agree with the assignment of compelling weight, as that weight is reserved for situations in

which the evidence supporting the circumstance is overwhelming. (See, e.g., *In the Matter of Respondent BB* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 835, 846-847 ["totality of the wide-ranging and extensive character evidence respondent presented from over 40 people" is compelling evidence in mitigation for extraordinary good character].) Accordingly, we assign substantial aggravation for Oliveri's indifference.

B. No Mitigation for Cooperation (Std. 1.6(e))

The hearing judge found Oliveri submitted no evidence or argument of mitigation, and consequently, she did not credit him with any. Indeed, a review of Oliveri's closing brief after his disciplinary trial shows that he argued only against the consideration of aggravating circumstances.

On review, Oliveri states that he admitted numerous times throughout these proceedings that "he could have handled the disbursement phase better and with better record keeping." He claims that just because he disagreed with OCTC's case does not mean he did not show mitigation when "he testified and cooperated with OCTC." To the extent Oliveri is now requesting that he should receive mitigation pursuant to standard 1.6(e), providing for spontaneous candor and cooperation with the State Bar, Oliveri deserves no such mitigation. He did not stipulate to facts or culpability in this proceeding, and therefore, his purported cooperation contributed nothing to shortening the trial or eliminating issues. His testimony merely fulfilled his "legal and ethical duty" to participate in the disciplinary process, and mitigation is not warranted. (*Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627, fn. 2; § 6068, subd. (i).)

V. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to

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

We first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.11 applies as it specifically deals with acts of moral turpitude.[19] The hearing judge recommended discipline that included an 18-month actual suspension along with the requirement that Oliveri satisfy standard 1.2(c)(1),[20] given the aggravating circumstances and the seriousness of his misconduct. OCTC agrees with this analysis and urges us to affirm the judge's recommendation, whereas Oliveri seeks dismissal. In reaching her recommendation, the judge relied on two cases: *Rodgers v. State Bar*, *supra*, 48 Cal.3d 300 and *In the Matter of Hertz* (Review. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.

In *Rodgers*, the attorney received a two-year actual suspension for commingling funds and advising his client, a conservator, to have the conservatee make a loan to Rodgers's former

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[19] Standard 2.11 provides, "Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction 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." An analysis under standard 1.8(a) (effect of prior discipline) is not required because standard 1.7(a) is being applied.

[20] Standard l.2(c)(1) provides, in pertinent part, that an actual suspension for two years or more requires proof of rehabilitation, fitness to practice, and present learning and ability in the general law before a lawyer may be relieved of the actual suspension. These requirements may be imposed in "other appropriate cases as well." (*Ibid.*)

client which the former client then used to repay Rodgers's for a debt owed to him. The attorney's misconduct was aggravated by multiple acts, client harm, indifference, and lack of candor. His misconduct was mitigated by 20 years of discipline-free practice.

In *Hertz*, the court recommended a two-year actual suspension, along with a recommendation that the attorney not be reinstated until he proved his rehabilitation, fitness, and present learning and ability to practice law under former standard 1.4(c)(ii) (now standard 1.2(c)(1)). The attorney was found culpable of trust account violations under former rule 8-101 and of deceiving a superior court judge related to trust account violations, thus violating section 6106, section 6068, subdivision (d), and former rule 7-105(1). In aggravation, the attorney's misconduct included the following factors: multiple acts, bad faith, dishonesty, a persistent refusal to account for trust funds, significant harm to his client who incurred considerable attorney fees and had to file a separate lawsuit to get recompense, harm to the administration of justice, lack of candor, and a pattern of engaging in "prolonged deceit" over a five-year period for nine misrepresentations to the superior court, the Court of Appeal, a State Bar investigator, and the opposing counsel and her client. The attorney's conduct was mitigated by significant good character evidence and substantial pro bono and community service.

We find guidance from both *Rodgers* and *Hertz,* which both imposed two-year actual suspensions, as the cases are similar to Oliveri's record of misconduct and provide us with a point of reference for an appropriate discipline range. We agree with the hearing judge that the extent of the misconduct in *Rodgers* is greater than Oliveri's because Rodgers caused significant harm to his client, which was not established in this case. Oliveri's misconduct is also not as aggravated as the attorney in *Hertz*, where the attorney engaged in a five-year pattern of deceit, bad faith, and significant harm. Although Oliveri's misconduct involved multiple ethical violations, including his misuse of his CTA over several months, the gravamen of his case

centers around moral turpitude based on his repeated dishonesty to the courts, Chow, and OCTC. Oliveri's misconduct is aggravated by his indifference and his prior record of discipline with no showing of mitigation.

Oliveri's multiple instances of dishonesty occurred in the practice of law, which is of great concern. Honesty is fundamental to 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.) His indifference to his ethical obligations also demonstrates that a substantial period of discipline in this case is necessary. Thus, given the nature of the misconduct, we affirm the hearing judge's recommendation of an 18-month actual suspension, and that Oliveri be required to prove his rehabilitation, fitness, and present learning and ability to practice law in a State Bar Court proceeding pursuant to standard 1.2(c)(1) before being relieved of his actual suspension. This requirement will impress upon him the seriousness of his actions, and it will protect the public, the courts, and the legal profession by providing him the opportunity to prove that he has gained insight into his misconduct before he returns to the practice of law.

VI. RECOMMENDATIONS

We recommend that Matthew McDonald Oliveri, State Bar Number 230486, be suspended from the practice of law for three years, that execution of the suspension be stayed, and that he be placed on probation for three years with the following conditions:

1. Actual Suspension, Continuing Until Rehabilitation. Matthew McDonald Oliveri must be suspended from the practice of law for a minimum of the first 18 months of his probation and until Oliveri provides proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions. Oliveri must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation.

3. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Oliveri must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to his compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Oliveri's first quarterly report.

4. Complete E-Learning Course Reviewing Rules and Statutes on Professional Conduct. Within 90 days after the effective date of the Supreme Court order imposing discipline in this matter, Oliveri must complete the e-learning course entitled "California Rules of Professional Conduct and State Bar Act Overview." Oliveri must provide a declaration, under penalty of perjury, attesting to Oliveri's compliance with this requirement, to the Office of Probation no later than the deadline for Oliveri's next quarterly report due immediately after course completion.

5. Maintain Valid Official State Bar Record Address and Other Required Contact Information. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Oliveri must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has his current office address, email address, and telephone number. If he does not maintain an office, he must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Oliveri must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.

6. Meet and Cooperate with Office of Probation. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Oliveri must schedule a meeting with his assigned Probation Case Coordinator to discuss the terms and conditions of his discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Oliveri may meet with the Probation Case Coordinator in person or by telephone. During the probation period, Oliveri must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

7. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court. During Oliveri's probation period, the State Bar Court retains jurisdiction over him to address issues concerning compliance with probation conditions. During this period, Oliveri must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to his official State Bar record address, as provided above. Subject to the assertion of applicable privileges, Oliveri must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

8. Quarterly and Final Reports.

a. **Deadlines for Reports.** Oliveri must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the

period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Oliveri must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

b. **Contents of Reports.** Oliveri must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether he has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. **Proof of Compliance.** Oliveri is directed to maintain proof of compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of actual suspension has ended, whichever is longer. Oliveri is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

9. State Bar Ethics School. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Oliveri must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he will not receive MCLE credit for attending this session. If he provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Oliveri will nonetheless receive credit for such evidence toward his duty to comply with this condition.

10. Commencement of Probation/Compliance with Probation Conditions. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Oliveri has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

11. Proof of Compliance with Rule 9.20 Obligation. Oliveri is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he comply with the requirements of California Rules of Court, rule 9.20 (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Oliveri sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of

non-delivery; and a copy of the completed compliance affidavit filed by him with the State Bar Court. He is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

VII. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Matthew McDonald Oliveri be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Oliveri provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, he will nonetheless receive credit for such evidence toward his duty to comply with this requirement.

VIII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Matthew McDonald Oliveri 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.[21] (*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].) Failure to do so may result in disbarment or suspension.

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

IX. MONETARY SANCTIONS

The hearing judge recommended that Oliveri pay $2,500 in monetary sanctions. OCTC asks that we affirm the judge's recommendation. On review, Oliveri argues that monetary sanctions should not be imposed. Rule 5.137(E)(1) of the Rules of Procedure of the State Bar provides, in part, that this Court shall make recommendations to the Supreme Court regarding monetary sanctions in any disciplinary proceeding resulting in an actual suspension. The guidelines recommend a sanction of up to $2,500 for discipline including an actual suspension, depending upon the facts and circumstances of the particular case. (Rule 5.137(E)(2).)

Oliveri has committed serious misconduct, which involves moral turpitude for multiple instances of dishonesty, improper accounting, and commingling violations. His culpability, in addition to his indifference, does not demonstrate that a downward departure from the guidelines is appropriate in this case. Finally, Oliveri has not proffered any evidence to suggest financial hardship or an inability to pay the monetary sanctions.

Accordingly, we recommend that Matthew McDonald Oliveri be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $2,500 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. 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[22]

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.

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.

[22] In his brief on review, Oliveri argues against the imposition of disciplinary costs in this case. As this court held in *In the Matter of Langfus* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 161, 168, "No provision is made for challenging the cost award prior to the Supreme Court's order." The statutory scheme allows Oliveri to seek relief "*after* authorization for costs is included in a State Bar Court order of public reproval or a Supreme Court order of suspension or disbarment." (*Ibid*.) Therefore, Oliveri may seek relief from an order that imposes costs.