PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed June 28, 2024

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-22-O-30976
	)	
SERGIO VALDOVINOS RAMIREZ,	)	OPINION
	)	
State Bar No. 318157.	)	
	)	

This case is about an attorney's egregious acts of dishonesty that occurred in his practice and continued through his disciplinary trial. Respondent Sergio Valdovinos Ramirez, admitted to practice law in California in 2017, was charged in 2022 with 19 counts of misconduct across five client matters. The Notice of Disciplinary Charges (NDC) included multiple counts of moral turpitude for misappropriation, misrepresentations, and checks drawn against insufficient funds, in violation of Business and Professions Code section 6106.[1] Valdovinos[2] was also charged with failure to deposit client funds into a trust account, failure to return unearned fees, and failure to keep one client apprised of significant case events. (§ 6068, subd. (m); Rules Prof. Conduct, rules 1.15(a), 1.16(e)(2).)

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

[2] During the disciplinary hearing, Valdovinos informed the hearing judge that he should be referred to as Sergio Valdovinos and that his law firm is called the Valdovinos Law Firm. Accordingly, we refer to him as Valdovinos.

Following a trial, the hearing judge found Valdovinos culpable of all counts. The judge further found substantial aggravation due to multiple acts of misconduct, significant harm to clients, lack of candor with the court, lack of remorse, failure to make restitution, and no mitigation. The judge recommended disbarment, $123,115 in restitution, and $5,000 in monetary sanctions.

On review, Valdovinos concedes culpability for three counts of violating rule 1.15(a) of the Rules of Professional Conduct[3] (failure to deposit funds in a client trust account). He does not dispute the hearing judge's findings of culpability regarding three counts of moral turpitude for issuing checks with insufficient funds or challenge most findings concerning aggravating and mitigating circumstances. Valdovinos argues that the judge erred in her other culpability findings due to judicial bias and misconduct and that insufficient evidence exists to support the remaining 13 counts. He seeks a remand and new trial. The Office of Chief Trial Counsel of the State Bar (OCTC) does not seek review and supports the judge's decision.

After an independent review of the record (Cal. Rules of Court, rule 9.12), we find Valdovinos culpable of all 19 counts and agree with the hearing judge's findings regarding aggravation and mitigation, as modified.[4] We also modify the amount of restitution. Valdovinos's claims of judicial bias and misconduct are not supported by the record. We

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[3] All further references to rules are to the current California Rules of Professional Conduct, effective November 1, 2018, unless otherwise noted.

[4] All affirmed culpability findings are established by clear and convincing evidence. Clear and convincing evidence is evidence that shows a high probability that a fact is true. (*In re White* (2020) 9 Cal.5th 455, 467, citing *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090; *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].)

conclude his disbarment is necessary for the protection of the public, the courts, and the legal profession.[5]

I. PROCEDURAL BACKGROUND

OCTC filed the instant NDC on November 10, 2022, and Valdovinos's answer followed on December 1. Shortly before the NDC was filed, in October 2022, Valdovinos informed OCTC that he had cancer. On January 25, 2023, Valdovinos notified the hearing judge that he was undergoing chemotherapy when he sought an extension to submit a settlement conference statement, which was granted. The parties were required to exchange exhibits and file exhibit lists and pre-trial statements by February 21. Valdovinos sought two extensions of time to file his pretrial brief and exhibits, again due to his ongoing chemotherapy treatments that made it difficult for him to comply with the deadlines. The hearing judge granted both extension requests to February 24 and 27, respectively, but also ordered Valdovinos to submit documentation regarding his medical condition by the end of the day on February 27.[6] Valdovinos never filed a pretrial statement or an exhibit list and did not exchange exhibits with OCTC. He also did not submit any medical documentation.

The disciplinary trial was scheduled to begin on March 7, 2023, at 10:00 a.m. Valdovinos had requested an in-person trial; however, Valdovinos did not appear the first day of trial. Instead, he sent an email the morning of trial stating that he could not go forward that day due to his health:

> I've tried my best to be there physically, but my health has not allowed for it to be so. I understand we have five days of trial and am requesting to trail the trial/hearing to commence tomorrow the 8th. *I have all my medical paperwork*

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[5] Any arguments raised on review, but not specifically addressed in this opinion, have been considered and rejected as meritless.

[6] On February 17, 2023, Valdovinos emailed OCTC counsel, stating that he needed to reschedule their "meet and confer" session due to chemotherapy treatment that day.

> *with me, but find it physically impossible to get it over to you, as my current outpatient treatment makes it hard to do so. It is currently happening right now.* After speaking with my medical team, I believe I can physically attend the remainder of the days for trial, while getting treatment in the evenings. At the very least, I would be able to do so remotely, but am confident I can be there a few days in person. *I would love to say this on the record* via calling In, but my voice is currently nonexistent due to the effects of nauseousness. If the court and parties could please consider this request, I would greatly appreciate it and will physically be there on 03/08/23 and provide all parties with my documentation corroborating my representations. Thank you for your understanding[.]

(Exhibit 75, italics added.) OCTC objected to the continuance and the parties then appeared remotely later in the day.

During the remote proceeding, the hearing judge noted Valdovinos failed to provide the previously requested medical documentation, and she granted OCTC's February 28 unopposed motion in limine to exclude Valdovinos's witnesses and exhibits.[7] Upon inquiry by the judge, Valdovinos stated his oncologist, Stephen Chang, was a doctor at City of Hope and a specialist in lung cancer and had been his treating physician since the end of June 2022. Valdovinos confirmed he was receiving chemotherapy treatment at City of Hope in Duarte, California. He promised to provide medical documentation the following day, March 8.

The trial was held on March 8, 9, 10, 21, and 23, 2023. On the morning of March 8, Valdovinos did not submit the required medical documentation, but he informed the judge that he would submit it in a couple of hours and that it would consist of his initial diagnosis, treatments, and his ongoing treatment schedule, as well as contact information of his medical providers. In his opening statement that day, Valdovinos stated that the NDC presented an incomplete picture, because his medical condition was sufficiently severe to prevent him from responding to inquiries by the State Bar of California (State Bar). In the afternoon, when the medical documentation had still not been submitted, Valdovinos informed the judge that the

[7] Valdovinos does not challenge this ruling on review.

documentation was ready and he needed only to provide his written consent to City of Hope, which he would do that evening during his treatment.

The next day, March 9, 2023, the judge inquired of the whereabouts of the medical documentation. Valdovinos responded that he signed the consent form the previous evening, but he had been incorrect in his representation that the paperwork was ready. Instead, his physician advised him that the documentation would be ready 48 hours from the time he signed the consent form. On March 10, Valdovinos continued to assure the judge that his medical documentation was forthcoming, and, in fact, he had a treatment session that evening.

The trial had a break due to a medical issue with Valdovinos's son, for which Valdovinos promptly provided medical documentation, and it resumed on March 21. Valdovinos still had not provided any documentation that he had any medical condition or was receiving treatment, and, during his testimony, Valdovinos acknowledged that he had not signed a consent authorizing release of his medical records to OCTC despite several requests from OCTC. On the final day of trial, an OCTC investigator testified that he conducted a search for a physician with the name Stephen Chang, including other spelling variations of the name, and determined no such physician existed with that name employed at City of Hope. The investigator then spoke with a City of Hope call service representative on March 7, who confirmed there was no physician named Stephen Chang, or with a similarly spelled name, employed by City of Hope, and there was no record of Valdovinos receiving treatment at City of Hope.

The parties filed their closing briefs on April 14, 2023, and the hearing judge issued her decision on July 12. Valdovinos filed a request for review on August 8, pursuant to rule 5.151 of the Rules of Procedure of the State Bar. Valdovinos filed his opening brief on March 1, 2024, and OCTC filed its responsive brief on March 29. Oral argument was heard on April 23, and the matter was submitted the same day.

II. FACTUAL BACKGROUND[8] AND CULPABILTY

Valdovinos was admitted to the practice of law in California on December 7, 2017, and started his solo practice in 2018. From December 2017 until August 2020, Valdovinos's public email address of record with the State Bar was valdovs@tjsl.edu until he reported an email address change to sergio@valdovinosfirm.com on August 25, 2020. At all times relevant to the NDC, Valdovinos had one phone number of record with the State Bar, which is the same number he used to communicate with his clients in the matters at issue in this proceeding.

Valdovinos had three bank accounts with Wells Fargo Bank. First, in September 2018, he opened a personal checking account. Next, on December 18, 2020, he opened a business operating account in the name of "The Valdovinos Firm Corp." The operating account closed in June 2022 due to the account being overdrawn. Finally, on April 23, 2021, Valdovinos opened a client trust account (CTA).

A. Representation of Salvador Mora on a Workers' Compensation Matter

Valdovinos agreed to represent Salvador Mora in a workers' compensation appeal involving a matter that Mora had settled with his former employer, Marriott.[9] On October 20, 2020, Mora's wife signed a retainer agreement on Mora's behalf in which Mora agreed to pay $8,000 for Valdovinos's representation, of which $4,000 had to be paid immediately, and the balance was to be paid at the resolution of the case. Mora and his wife paid $4,000, and later,

[8] The facts 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); *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 typically give great weight to the judge's credibility findings because that judge is best suited to resolve credibility having observed and assessed the witnesses' demeanor and veracity firsthand. (See *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032.) We find the factual and credibility findings are supported by the record.

[9] At trial, Mora was assisted by a certified Spanish language interpreter.

they paid Valdovinos an additional $7,800, which was based on Valdovinos's representation that Mora had to provide Marriott with 10 percent of the amount of the settlement agreement to proceed with the appeal. In total, Mora and his wife paid Valdovinos $11,800 from October 20 to November 10, 2020, consisting of five checks, which Valdovinos retrieved from Mora's home.

The first two payments Valdovinos received consisted of two $2,000 checks on October 20, 2020. Valdovinos immediately cashed one of the checks and then deposited the cash and the remaining check into his checking account, totaling $3,992, on the same day. Also on October 20, Valdovinos made Zelle transfers from his checking account to two individuals, and the next day, he made a $1,500.70 American Express credit card payment. This resulted in the balance of his checking account decreasing to $1,884.63 on October 21. The account balance continued to dwindle over the next few days due to Lyft ride charges, utility payments, and purchases at restaurants and gas stations, until the balance was $120.49 on October 26.

On October 27, 2020, Valdovinos received on Mora's behalf a $4,000 check and a $2,000 check, the latter of which Valdovinos immediately cashed. He then deposited into his checking account both the cash and the remaining check for a combined total deposit of $5,990. Valdovinos promptly made several personal withdrawals—primarily Zelle transfers to individuals and cash withdrawals—such that the balance of his checking account the next day, October 28, was $30.18.

Finally, on November 10, 2020, Valdovinos received the fifth check for $1,800 from Mora's wife, which Valdovinos cashed and then deposited the same day, along with other cash, into his checking account in the amount of $1,913. Once again, Valdovinos made numerous withdrawals, primarily for personal purchases on a trip to Las Vegas, resulting in a balance of $265.26 on November 12, and then a negative account balance on November 13.

Valdovinos had done minimal work[10] on Mora's case. During this time, Mora never met personally with Valdovinos; they communicated mostly by text messages and telephone calls. Soon after Mora retained Valdovinos, Mora texted Valdovinos for updates; however, when Mora asked Valdovinos for documentation related to his case, Mora felt Valdovinos appeared bothered and resentful. When Mora tried to arrange an in-person meeting, Valdovinos would be unable to do so, saying he was in court or was ill.

Mora terminated the relationship in December 2020, because he had requested, but not received, any evidence that Valdovinos had worked on his case. Mora asked Valdovinos to return the case documents Mora had previously provided and the $11,800 in prepaid fees. Mora sent a text message to Valdovinos on December 8, 2020, confirming a scheduled meeting for December 10, so that Valdovinos could return the client file and refund the $11,800,[11] but Valdovinos did not meet with Mora on that date. Instead, Valdovinos mailed the file on December 21, which Mora received on December 26. At the disciplinary trial, Valdovinos produced a copy of an $11,800 check, dated December 19, 2020, but Mora testified he never received it. Valdovinos only had 14 cents in his checking account on that day and never had sufficient funds in the month that followed to cover the amount of the check. When Mora asked Valdovinos about the check, Valdovinos told him he would mail it on December 27, yet the check never arrived.

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[10] Valdovinos admitted to an OCTC investigator that he had reviewed Mora's settlement documents and conducted research, but he had not done "anything substantial on Mr. Mora's case to justify billing him."

[11] This single text message was in Spanish and part of exhibit 10. We rely on this portion of the exhibit because it was translated into English and read into the record by the Spanish language interpreter. We do not consider the remaining Spanish text messages in the exhibit that were not properly translated into English, either orally or in writing. (See Cal Rules of Court, rule 3.1110(g); Evid. Code, § 753.)

Mora filed a complaint against Valdovinos with the State Bar, and Rene DeVeyra, an OCTC investigator, thereafter issued an inquiry letter to Valdovinos. In his May 2021 response, Valdovinos wrote about Mora: "I feel like he deserves a full refund of the amount that was/is in my possession, and I don't feel that I earned any of it," and "I am patiently waiting to get all of the $11,800 over to Mr. Mora as soon as possible. With your help Mr. DeVeyra, I want to be able to do that immediately." The only other communication Mora received from Valdovinos was a text on November 17, 2022, one week after OCTC filed charges in this case, in which Valdovinos asked for Mora's address and offered to meet Mora personally to refund his money. Mora ignored the text because he did not trust Valdovinos and had already submitted his complaint to the State Bar. To date, Valdovinos has not repaid Mora.

1. Count One: Misappropriation in Violation of Section 6106

Count one of the NDC charged intentional or grossly negligent misappropriation when Valdovinos deposited $11,800 from Mora into his checking account and then used the money for personal expenditures. The hearing judge found Valdovinos culpable of this count.

Generally, misappropriation is defined as "[t]he application of another's property or money dishonestly to one's own use." (Black's Law Dict. (11th ed. 2019).) Willful misappropriation of client funds involves moral turpitude and violates section 6106. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 278.) Section 6106 states, "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension."

Valdovinos does not dispute that Mora was his client when he received funds on Mora's behalf totaling $11,800. On review and without providing specifics, Valdovinos argues that OCTC did not prove Mora's money was used "for any purpose other than what [the funds] were

intended for." An examination of Valdovinos's checking account records, as described above, shows that upon receiving Mora's checks, Valdovinos's expenditures had no bearing on Mora's workers' compensation case. Moreover, Valdovinos admitted that he had not earned any fees and that Mora deserved a full refund of the $11,800. We find OCTC has readily met its burden of showing misappropriation and a violation of section 6106 by clear and convincing evidence.

In determining whether misappropriation is intentional or grossly negligent, we examine intent, which can be established by direct or circumstantial evidence. (*Zitny v. State Bar* (1966) 64 Cal.2d 787, 792.) Given the repeated and rapid nature of the misconduct, in which each time Valdovinos deposited Mora's money it vanished within days due to Mora's personal expenditures, we find the misappropriation was clearly intentional. Moreover, Valdovinos repeatedly lied to Mora by promising to return the $11,800, even though this was an impossibility since he regularly had paltry daily balances in his checking account during the relevant time. In any event, we find that Valdovinos's promises to send Mora a check amounted to stalling and were attempts to mislead Mora into believing he had the funds in order to conceal his misappropriation. This conduct is further 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 and concealment of relevant facts is persuasive evidence of lack of honest belief and supports moral turpitude finding].)

2. Count Two: Failure to Deposit Funds into a CTA in Violation of Rule 1.15(a)

OCTC alleged that, between October 20 and November 10, 2020, Valdovinos received on behalf of Mora $11,800 in advanced fees, and Valdovinos did not deposit the funds in an account marked as a client or trust account, in violation of rule 1.15(a). Rule 1.15(a) requires that:

> All funds received or held by a lawyer or law firm for the benefit of a client, or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled "Trust Account" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction.

Valdovinos conceded culpability for this count at trial and on review. Valdovinos did not have a CTA account when he represented Mora, and his concession is supported by the record. We affirm the hearing judge's culpability determination.

We also find, as the hearing judge did, that no further disciplinary weight is warranted. The evidence shows that on the three occasions Valdovinos deposited Mora's funds in his checking account, within hours Valdovinos commenced a personal spending spree that resulted in the near depletion of funds from the account. The proximity in time from each deposit to the rapid and persistent spending of those same funds by Valdovinos evidences a singular intent to misappropriate from the moment Valdovinos deposited the money in his checking account. Thus, the facts underlying culpability for this count clearly also support culpability for count one, such that we do not assign any additional weight. (*In the Matter of Jones* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 873, 890 [no additional disciplinary weight where attorney intentionally deposited client funds in business account and immediately misappropriated those funds]; *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional disciplinary weight for former rule 4-100(A) violation as it was duplicative of moral turpitude violation].)

3. Count Three: Failure to Refund Unearned Fees in Violation of Rule 1.16(e)(2)

OCTC alleged in count three that Valdovinos received $11,800 in advanced fees on Mora's behalf, but he did not perform any legal services and failed to promptly return the funds

upon his termination on November 24, 2020. Rule 1.16(e)(2) provides, in pertinent part, that when termination of representation occurs, "the lawyer promptly shall refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred." At trial, Valdovinos conceded culpability for count three. On review, however, Valdovinos asserts multiple excuses for why he has not returned Mora's funds.

Valdovinos admits he did not return Mora's money but argues that due to the deterioration of the client relationship, there were "safety concerns" to go to Mora's home and return the funds in person. This assertion is conjecture on the part of Valdovinos and not supported by the record. There was no requirement that Valdovinos present the money to Mora in person. And Valdovinos's November 2022 offer to meet Mora in person signifies that Valdovinos, in fact, did not have any safety concerns. To that end, Valdovinos blames Mora for his own failure to return the money, claiming that Mora refused to provide him with his address. But Valdovinos knew where Mora lived because he retrieved Mora and his wife's checks from Mora's home, and Valdovinos has cited no evidence that would lead him to believe that Mora may have moved. Valdovinos also asserts that Mora did not provide him a bank account number to accept a wire transfer. Yet Valdovinos had Mora's bank routing and account numbers from Mora's checks that Valdovinos received. Valdovinos had multiple options at his disposal to return Mora's money if he did not want to meet Mora. Finally, Valdovinos claims that he wants to return the funds to Mora if only OCTC would help him do so. He does not specify the type of support required, but a lawyer does not need OCTC's assistance to return a client's money. We find that this statement is another false assurance by Valdovinos, which cannot insulate him from the consequences of his misconduct. Valdovinos's culpability as to count three is supported by clear and convincing evidence, and we affirm the hearing judge's determination of culpability.

B. Representation of Lisa Mendez in a Personal Injury Matter

On August 19, 2019, while driving her mother's car, Lisa Mendez was in an accident caused by an Uber driver, Arman G., resulting in physical injuries to Mendez and damage to her mother's car. Mendez reached out to Valdovinos to represent her against Arman G. and James River Insurance (James River), which was Uber's insurer, as she had known Valdovinos since high school and trusted him. Valdovinos did not want a retainer agreement. In three separate November 2019 Zelle transactions to Valdovinos's checking account, Mendez paid Valdovinos $1,000 for filing fees and, upon the recommendation of Valdovinos, $3,850 to hire a private investigator. Mendez received chiropractic care beginning in 2019, a $2,000 expense that Valdovinos stated he would pay for out of any settlement funds.

On November 5, 2019, Valdovinos had less than $100 in his checking account. The next day, November 6, Mendez paid Valdovinos $1,000 via a Zelle transfer to Valdovinos's checking account, and Valdovinos made a $2,000 deposit to his account unrelated to Mendez's case. Valdovinos immediately made numerous withdrawals, consisting of payments to individuals, restaurants, a gym, and a gas station. He also made a $1,000 ATM cash withdrawal on November 7, leaving a balance in his checking account of $137.78. Valdovinos testified that he never incurred filing fees, as he never filed a lawsuit on Mendez's behalf.

Valdovinos recommended hiring a private investigator to search for the Uber driver who caused the accident. To that end, Mendez paid Valdovinos in two payments. On November 20, 2019, Mendez issued a Zelle transfer of $2,200 to Valdovinos's checking account, which had a balance of $5.35. Valdovinos then made several Zelle transfers to individuals unrelated to Mendez's case, such that by the end of the day, the checking account balance was $1,310.35. On November 22, Mendez paid Valdovinos another $1,650, and Valdovinos quickly made several personal expenditures to individuals, restaurants, a gas station, and the Bicycle Casino. He also

made several cash withdrawals totaling over $4,850, resulting in a balance of $12.40 on November 25.

Farmers Insurance (Farmers) insured the Uber driver in his individual capacity, but denied coverage because the driver was using the vehicle as a rideshare at the time of the accident, and on April 1, 2020, Farmers closed its file due to inactivity. Valdovinos never notified Farmers that he represented Mendez or that he filed a lawsuit.

Mendez was insured by California Casualty Insurance Company (California Casualty), and she notified California Casualty of the accident on September 30, 2019. California Casualty inspected the vehicle and issued Mendez and the lienholder a $1,652.92 check on November 15, which represented the estimate for the collision damage. Mendez did not cash this check. California Casualty then conducted a further investigation, determined the Uber driver was at fault, and received a subrogation payment from James River, which was accepting liability. California Casualty issued a $500 deductible reimbursement to Mendez on February 26, 2020. On March 17, Mendez contacted California Casualty to advise that she had filed a lawsuit and would not agree to a payment from California Casualty. California Casualty informed her that they were unaware of the lawsuit, requested her attorney's contact information and a letter of representation, and explained to Mendez that California Casualty had a subrogation interest in her lawsuit. California Casualty complied with Mendez's request to stop payment on the check, and it had to return the subrogation payment to James River since Mendez was pursuing litigation in lieu of the payment.

Valdovinos notified California Casualty of his representation of Mendez the next day, March 18, 2020.[12] He then emailed California Casualty on March 24 to advise the claim handler

[12] Valdovinos claimed in the letter that it was the third time he had notified California Casualty that he represented Mendez, but this was not true.

he was gathering documents. After that, California Casualty attempted to contact Valdovinos numerous times by phone and written correspondence, but Valdovinos did not respond.

On March 30, 2021, James River issued a refund, without any explanation, to California Casualty of the reimbursement California Casualty had previously provided to James River representing the collision damage to the vehicle. This prompted the California Casualty claims adjuster to make two phone calls on April 12. First, she spoke with a representative of James River who told her that the case was closed due to no activity or interest from a claimant, and there was no record of an injury or of an attorney representing a claimant. Next, the claims adjuster contacted Valdovinos to ask what California Casualty should do with the collision payment from James River because the check had to be cashed or voided, and they were unaware that any collision settlement had occurred. This was the first contact she was able to have with Valdovinos since March 2020. Valdovinos stated he was having problems obtaining medical records due to the pandemic and he was unaware of any collision coverage payments or issues and would speak with Mendez. California Casualty closed its claim, because it never heard from Valdovinos, and re-issued Mendez the $2,152.92[13] collision payment by sending it to Valdovinos. The check was never cashed and was voided after 180 days.

Meanwhile, Valdovinos and Mendez were communicating by telephone and text messages. Valdovinos told Mendez that he had filed the lawsuit, but due to the pandemic, there was a court backlog, and her case would not go to trial until the summer of 2021. Valdovinos never provided Mendez with a case number or any court documents. By March 17, 2021, Valdovinos informed Mendez he was in the process of settling the lawsuit she believed he had filed on her behalf. By March 29, Valdovinos had informed Mendez that her case had settled.

[13] This appears to represent the amount of the collision damage plus Mendez's deductible.

On April 15, 2021, Valdovinos met with Mendez at her parents' home and presented a settlement agreement for the case he never filed. He explained the settlement terms and Mendez signed the agreement, believing she would be receiving $175,000. Valdovinos never provided Mendez with a copy of this settlement agreement. On May 1, Valdovinos texted Mendez that he believed the settlement check had arrived, then on May 24, he informed her that the check would be arriving in a couple of days. Subsequently, Valdovinos issued Mendez four checks between May and July 2021.

Valdovinos met with Mendez and gave her the first check on May 29, 2021. The check was issued from his CTA in the amount of $173,000—the purported settlement amount less $2,000 in chiropractic costs—and post-dated to June 8. The memo notation of the check read, "Arman G[.] case." Valdovinos explained the check could not be cashed until June 8 because of paperwork issues with the opposing side. It appears from the record that Mendez provided the check to an out-of-state branch of Bank of America prior to June 8, but her bank was holding the check. It further appears from a review of the CTA records that Valdovinos stopped payment of the check on June 2, so the check could not be cashed. On June 10, Valdovinos wrote a second check to Mendez in the amount of $183,000 from his operating account. Valdovinos told Mendez the extra $10,000 was due to the opposing side agreeing to her demand for additional funds due to the previous delay. Valdovinos only had $9.21 in his operating account on June 10. Mendez attempted to deposit the check into her account, but it was declined due to insufficient funds. A third check to Mendez for $183,000 followed on June 24, once again drawn from Valdovinos's operating account. He only had $24.63 in the account that day, and it decreased to $6.53 the following day. Predictably, the check did not clear. In fact, from June 10 through the end of the month, the highest daily balance in Valdovinos's operating account was $65.21, and by June 30, he had a negative account balance.

Valdovinos next promised to provide Mendez with a cashier's check, but he did not do so. Instead, on July 20, Valdovinos wrote a fourth check to Mendez for $186,660[14] from his CTA, with a memo notation, "Settlement," yet he never had more than a few cents in the account the entire month of July. Mendez went to a Wells Fargo Bank branch to cash this most recent check but was told there was not enough money in the CTA to cover it. During this same time, Valdovinos claimed to have attempted to wire transfer Mendez her settlement funds, but this was not true. He provided Mendez with false reference numbers, alternatively claimed his bank never initiated transfers, and offered multiple reasons—a family member's death, a car accident, exposure to COVID, and work commitments—as to why he could not accomplish the task of giving her the settlement funds. He did, however, wire Mendez $500 at one point to leave the impression that the prior wire transfer errors were caused by the banks. This is the only money Mendez ever received from Valdovinos. On July 26, 2021, Mendez filed a complaint with the State Bar against Valdovinos.

The statute of limitations ran on Mendez's claims on August 19, 2021. Valdovinos never informed Mendez of this fact, and he never filed a lawsuit to preserve her rights. Valdovinos disputes several facts, which we address.

1. Valdovinos's Evidentiary Objections

On review, Valdovinos argues that his text messages with Mendez (exhibit 27) should not have been admitted over his objection due to a lack of foundation because the "texts were falsified." Valdovinos did not object to the admission of exhibit 27 at trial. Even if he had objected, a judge has broad discretion to admit or exclude evidence. (*In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 499.) Evidentiary rulings are generally

[14] The additional money was to compensate Mendez for bank fees and chiropractic services.

reviewed under an abuse of discretion standard. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695.) An abuse of discretion only occurs when a hearing judge has "exceeded the bounds of reason, all of the circumstances before it being considered." (*H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368.) Having reviewed the exhibit and the proceedings, we find the judge did not abuse her discretion. The text messages were authenticated by Mendez and were sent to Valdovinos's telephone number of record. The content of several text messages was corroborated by other documentary evidence such as his bank records.

To the extent Valdovinos challenges the hearing judge's finding that Mendez's testimony was credible and his testimony was not credible, we detect no error in the judge's credibility determinations and adopt them. (See *In the Matter of Bach*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 638 [deference given to hearing judge's credibility-based findings unless specific showing that such were made in error].)

2. Count Four: Misrepresentation in Violation of Section 6106

Count four of the NDC alleges Valdovinos violated section 6106 by making four separate misrepresentations. First, in April 2021, Valdovinos told Mendez her case settled for $175,000 when no settlement agreement had been reached. Second, on April 15, he gave Mendez the fabricated settlement documents to sign when no case had been filed or settlement had been obtained. Third, on May 1, Valdovinos sent a text message to Mendez that he had a settlement check, which was not true. Finally, on June 7, Valdovinos texted Mendez that she would receive an additional $10,000 from the insurance carrier representing attorney fees, which again was not true.

Section 6106 is violated by an attorney's 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].) An attorney's communications to clients that are vague, misleading, and contain "half-truths" and "false statements" support a moral turpitude finding for misrepresentation. (*In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 213; *In the Matter of Wells*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 910 [moral turpitude includes affirmative misrepresentations].)

Regarding the first two allegations, Valdovinos claims on review that he did not inform Mendez that the case had settled for $175,000; rather, he informed her that the figure was what similar cases had received after trial and that Mendez was fixated on this amount. He also denied meeting her to sign settlement papers,[15] and instead asserted that he met with Mendez to discuss case strategy and information obtained by the private investigator. But the text messages provide clear and convincing evidence that he told Mendez he had settled the case and arranged to come to her home to sign the settlement documents. Subsequent text messages show that Mendez understood the original settlement amount was $175,000. Furthermore, Mendez's testimony corroborating the text messages was credible.

As to the third allegation, there is a text message from Valdovinos to Mendez on May 1 in which he states that he "believes that the check is in." A few days later, Mendez texts Valdovinos her bank account information to receive a wire transfer of the funds. This, combined with Mendez's testimony, shows that Mendez understood the settlement check had arrived, even

[15] Valdovinos implies that Mendez's testimony cannot be trusted on this point because she did not provide a copy of the settlement agreement she signed. However, Valdovinos never gave her a copy of the agreement.

though Valdovinos told her several weeks later, on May 24, that the check would now be arriving that coming Wednesday. Further, the perception that her settlement check had arrived was reinforced on May 29, when Valdovinos gave Mendez a check from his CTA in the amount of $173,000. Then, on June 7, Valdovinos texted Mendez that she would be receiving an additional $10,000, which is the subject of the fourth allegation in support of the charge. In addition to the text, there is a check from Valdovinos in the amount of $183,000 that was returned for insufficient funds. We find these allegations of misrepresentation are clearly and convincingly supported by the evidence.

Valdovinos went to great lengths to give Mendez the false impression that he was making progress on her case and to hide the fact that he had not filed a lawsuit on her behalf, which is evidence that the misrepresentations were intentional. Accordingly, we affirm the hearing judge's determination of culpability and find Valdovinos culpable of moral turpitude in violation of section 6106.

3. Count Five: Issuance of Non-Sufficient Funds (NSF) Checks in Violation of Section 6106

OCTC alleges in count five that Valdovinos issued to Mendez three NSF checks dated June 14, June 24, and July 20, 2021, which violated section 6106.[16] Valdovinos gave no testimony regarding any of these checks, and he does not address this count on review. Consequently, Valdovinos has waived any factual challenge to this count. (Rules Proc. of State Bar, rule 5.152(C).) The operating and CTA account records establish Valdovinos never maintained balances in the accounts that were close to covering the amount of the checks, nor was he in receipt of settlement funds for Mendez. The first two checks were rejected for

[16] The NDC states the check for $183,000 was issued on June 14. The date on the check is June 10, 2021; it was retuned for insufficient funds on June 15.

insufficient funds, and the final check was not cashed due to Wells Fargo Bank informing Mendez that the check would not clear due to insufficient funds. The entire scenario was a complete fiction created by Valdovinos to stall and conceal from Mendez that there was no lawsuit filed or settlement, and it supports a finding of an intentional violation of section 6106. (Cf. *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 169 [gross negligence in mishandling entrusted funds resulting in issuance of NSF checks supports moral turpitude].) We affirm the hearing judge's culpability determination, including that Valdovinos acted intentionally in his violation of section 6106.

4. Counts Six and Nine: Misappropriation in Violation of Section 6106 and Failure to Deposit Funds into a CTA in Violation of Rule 1.15(a)

We first address count nine, in which OCTC charged Valdovinos with a violation of rule 1.15(a) for failing to deposit Mendez's funds in a CTA. Valdovinos conceded culpability for this count at trial and on review. Valdovinos did not have a CTA account when he began his representation of Mendez, and he did not deposit the $4,850 Mendez paid in advanced costs and fees into a CTA. His violation of rule 1.15(a) is supported by the record, and we affirm the culpability determination made by the hearing judge. We discuss the weight assigned to this count, *post*.

Count six alleges Valdovinos failed to deposit $4,850 that he received from Mendez as filing fees and the cost to hire a private investigator into his CTA, and he intentionally or through gross negligence misappropriated those funds between November 6 and 25, 2019. The hearing judge found Valdovinos culpable for intentional misappropriation, and we agree.

During his disciplinary trial, Valdovinos testified that Mendez understood that the money she gave him was spent on hiring a private investigator, and he refunded Mendez the remaining unused balance of $500 via a wire transfer. Mendez's testimony and the record show that the

first $1,000 Mendez transferred to Valdovinos was for filing fees. However, since Valdovinos never filed a lawsuit, there were no filing fees. He nevertheless spent the money on other expenses, which were not authorized, and, therefore, misappropriated the filing fees. Knowingly converting client funds for an attorney's own purpose violates section 6106. (*In the Matter of Song*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 278.)

In considering Valdovinos's claim that he spent the remaining money to hire a private investigator, as authorized, and no misappropriation occurred, we find guidance in case law that holds: "The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. [Citations.]" (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474 [considering misappropriation under previous rule 8-101].) The attorney then has the opportunity to produce evidence to rebut the inference. (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 26 [in discussing requirement in previous rule 8-101 to manage entrusted funds, once inference of misappropriation is drawn, "the burden then shifts to the respondent to show that the office procedures she had in place were adequate."].)

We recognize that in *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618, we held that when an inference of misappropriation is found due to the trust account balance dipping below the amount of entrusted funds held, the "burden then shifts to the respondent to show that misappropriation did not occur. [Citation.])" We clarify this to mean that the respondent has the burden of producing evidence to undermine the inference of misappropriation. Unless specifically stated otherwise in a statute or the Rules of Professional

Conduct,[17] the burden of proving the attorney engaged in the misconduct at issue—in this case, misappropriation—always remains with OCTC. (Rules Proc. of State Bar, rule 5.103; *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 206 ["fundamental requirement that OCTC prove each element of a charged violation by clear and convincing evidence"], citing *Golden v. State Bar* (1931) 213 Cal. 237, 247.)

Similarly, here, we find that when Valdovinos violated his professional obligation by failing to properly deposit Mendez's entrusted funds into a CTA at the outset, there is an inference he misappropriated the funds. Valdovinos could then present credible evidence sufficient to undermine the inference that the funds were not utilized as authorized. Valdovinos presented no credible evidence that he used Mendez's funds to hire a private investigator, and we find his assertions that he did to be self-serving and lacking meaningful detail. He was unable to recall the full name of the investigator he claimed to have hired and offered little information as to the results of any investigation. Mendez also did not receive proof that Valdovinos hired a private investigator notwithstanding her repeated requests for information pertaining to her case. Valdovinos never identified any expenditure that represented a payment for investigative services, even though detailed banking account records were received into evidence, nor did he allege that any of the cash withdrawals that he made were used to pay an investigator. A review of his banking records, described above, indicates his withdrawals were for personal expenses. And given the rapid pace of withdrawals that followed the deposits of Mendez's funds, we find Valdovinos's misappropriation was intentional.

[17] See, e.g., rule 1.15(f), stating there is a rebuttable presumption affecting the burden of proving a violation of rule 1.15(d)(7).

As a final matter, we find that the $500 Valdovinos wire transfer to Mendez was part of a ruse to try and convince Mendez that the reasons the purported previous wire transfers of her settlement funds never appeared were because of banking errors. The fact that Valdovinos ultimately returned this small amount of money is not a defense because returning misappropriated funds does not erase the original misappropriation. (*In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541, 544.) It also created the false impression that he had her funds and is further evidence that Valdovinos's misappropriation was intentional. (*In the Matter of Davis*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 588-589.)

Turning back to count nine and the violation of rule 1.15(a), we affirm the hearing judge's finding that no additional weight should be afforded to this count. The bank records show that as soon as Valdovinos deposited Mendez's money in his checking account, he immediately began a series of personal withdrawals that practically depleted the account. Thus, Valdovinos acted with a singular intent of misappropriating Mendez's money when he deposited her money in his account. Because the facts underlying culpability for this count clearly also support culpability for misappropriation in count six, we do not assign any additional weight. (*In the Matter of Jones*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 890; *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

5. Count Seven: Failure to Perform with Diligence in Violation of Rule 1.3(a)

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." Valdovinos was charged in count seven with four separate violations of rule 1.3(a) because he did not follow up with California Casualty regarding the property damage claim to Mendez's car; he failed to send a letter of representation and failed to file a bodily injury claim on behalf of Mendez with the

at-fault insurance carrier, James River; he failed to send a demand letter to the insurance carrier for the at-fault driver; and he failed to file a lawsuit to preserve Mendez's claim prior to it being time-barred on August 19, 2021.

The evidence clearly and convincingly supports each allegation, and Valdovinos mostly does not dispute it.[18] Instead, Valdovinos insists that Mendez delayed seeking treatment for her injuries, which defeated any attempt by him to file a lawsuit, because such a lawsuit would have been frivolous. He submitted no legal authority for this position, and we are not persuaded. Valdovinos also contends that Mendez never wanted to file a lawsuit against any of the insurance companies; she wanted to resolve the matter with the Uber driver directly out of court. This assertion was disputed by Mendez's credible testimony. Additionally, his claim is directly contradicted by the numerous text messages in which Valdovinos represented that Mendez had court dates and the case had settled, and by the multiple NSF checks Valdovinos issued, some of which included memo notations referencing the case or a settlement. We agree with the hearing judge that Valdovinos's failures were a violation of rule 1.3(a), and he is culpable of this count.

6. Count Eight: Failure to Inform Mendez of Significant Case Developments in Violation of Section 6068, subdivision (m)

Section 6068, subdivision (m), requires attorneys, in pertinent part, "to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." OCTC charged Valdovinos in count eight with violating section 6068, subdivision (m), when he failed to tell Mendez the statute of limitations for her

[18] The one factual allegation in this count that Valdovinos disputes is that he did not follow up with California Casualty. He claims he sent a letter of representation and followed up with the property damage claim as evidenced by the check California Casualty sent. This check, however, was sent in November 2019, long before Valdovinos notified the insurer that he represented Mendez. It was re-sent by California Casualty in 2021, not due to Valdovinos's efforts, but solely because James River closed the case file due to inactivity.

personal injury claim expired on August 19, 2021, thus barring Mendez from pursuing damages. We agree with the hearing judge that Mendez's credible testimony and the numerous text messages with Valdovinos established that he did not inform her that her claim had expired. Moreover, Mendez would have no reason to be concerned about a statute of limitations, because Valdovinos had represented to her that he had already filed a lawsuit and was settling the case. We find, as the judge did, that Valdovinos willfully violated section 6068, subdivision (m).

C. Representation of Jesus Morales Bucio in an Employment Discrimination Matter

In June 2019, Valdovinos was hired by Jesus Morales Bucio to represent him in an Equal Employment Opportunity Commission (EEOC) complaint against Bucio's former employer, BTX Global. Valdovinos was a family friend of the Bucios, and Bucio's brother referred Bucio to Valdovinos to represent him. Valdovinos and Bucio attended one EEOC mediation session, but they did not resolve the matter. The EEOC issued a right to sue letter on September 17, 2019, and Valdovinos agreed to represent Bucio for free in the civil lawsuit so long as Bucio paid the filing fee. Bucio testified that in December 2019 or January 2020, he paid Valdovinos $550 in filing fees, and Valdovinos informed him he filed a federal civil action on his behalf and provided him with a case number. When Bucio looked up the case number and discovered it was not his case, he repeatedly asked Valdovinos for the correct case number to no avail.

Later, Valdovinos told Bucio he needed $7,000 to cover an injunction bond. On September 10, 2021, Bucio wired $4,000 to Valdovinos's business operating account, noting that it was for the injunction bond, and he transferred the remaining $3,000 to Valdovinos's operating account on October 8. Soon thereafter, Valdovinos represented to Bucio that the case had settled for $45,000, and then told Bucio that he was able to increase the settlement amount to $58,000.

In fact, Valdovinos had never filed a lawsuit on Bucio's behalf and, thus, no settlement in fact existed.

In October 2021, Valdovinos told Bucio he had received the settlement funds, but since the check was issued to Valdovinos, he needed to first deposit the funds and then write Bucio a check. On November 8, Valdovinos issued from his checking account a check for $58,000 to Bucio that represented the settlement amount. Bucio deposited the check that same day, and it was denied for insufficient funds, because Valdovinos held a negative balance in his checking account. On November 26, Valdovinos issued Bucio another check from his CTA in the amount of $63,000, representing the settlement amount and $5,000 of the injunction bond. Once again, when Bucio deposited the check on November 26, it could not clear, because, during the entire month of November, Valdovinos's CTA balance never came close to $63,000, and for the majority of the month, there was a negative account balance. Moreover, Valdovinos had four other checks drawn on his CTA throughout the month, totaling $50,200, with each returned for insufficient funds.

On December 3, 2021, Valdovinos and Bucio met in person, and they each signed a document, prepared by Valdovinos, that acknowledged Valdovinos held $63,000 for Bucio and that the funds would be turned over to Bucio within 24 hours. The document also referenced an unidentified State Bar investigator. Valdovinos had told Bucio that he was working with a State Bar investigator named "Rossun" regarding Bucio's matter. The next day, December 4, Valdovinos emailed Bucio from his email address of record with the State Bar. Valdovinos advised Bucio of the following:

> I will be providing you an accounting of the entire BTX/Morales court documents, settlement agreement that fell through, copy of the court settlement check and 58k in cash from the settlement and 5k from the injunction. We will be doing this alongside a zoom call from Bar investigator Rossun. In the event that he may not show up or reschedule, we will have a notarized document so we can

> submit and he can evaluate at a later time. Let me know if you have any questions or concerns.

Valdovinos never gave Bucio the $63,000. Instead, he sent four wire transfers from his operating account totaling $17,500 to Bucio between December 9 and 20, 2021. Valdovinos promised to pay the balance of $45,500 by December 23, which was memorialized in a December 22 document on Valdovinos's law firm letterhead and emailed to Bucio. Valdovinos further explained:

> Based on the letter of inquiry by the California State Bar, the due date to deliver the funds and the court documents was December 19th, 2021. However, as a friend of the court, the Bar has extended the deadline to the 23rd of December 2021 and no day later than that, as Mr. Valdovinos has been assisting the Court and the client [*sic*] Probono. Attorney Valdovinos will immediately submit these documents to the Bar investigator and provide me the settlement no later than the time specified above irrespective of any outstanding friend of the Court duties.

The document was purportedly signed by "Rosson." However, in December 2021, there was no investigator assigned to Bucio's complaint, because Bucio did not file a State Bar complaint until January 7, 2022. OCTC Investigator DeVeyra was assigned to the Bucio investigation almost a month after this document was sent. Valdovinos never sent Bucio the $45,500 and did not respond to Bucio's request for his case files, settlement documentation, and accounting of time spent on the case.

1. Count 10: Misrepresentation in Violation of Section 6106

OCTC charged Valdovinos in count 10 with intentionally, or by gross negligence, making the following four misrepresentations to Bucio about his case, in violation of section 6106: (a) on or around December 23, 2019, Valdovinos told Bucio that he filed a case in federal district court and gave Bucio a false case number; (b) in or around October 2021, Valdovinos falsely told Bucio he settled his case for $58,000; (c) on or around December 3, 2021, Valdovinos gave Bucio a document signed by Valdovinos, stating he held $63,000 in cash

belonging to Bucio and he would release the money within 24 hours; and (d) on or around December 22, 2021, Valdovinos told Bucio that he was working with a State Bar investigator, named Rosson, regarding the Bucio matter and gave Bucio a document he signed that also had a falsified signature of the investigator.

The hearing judge found Valdovinos culpable of making each of the misrepresentations, and we likewise find that OCTC proved each misrepresentation by clear and convincing evidence. Valdovinos's assertions at trial and on review—that he never told Bucio he had filed a lawsuit or received settlement funds—is belied by the contemporaneous documents promising to pay Bucio, the NSF checks issued to Bucio, the December 4, 2021 email referring to court documents and a court settlement, and Bucio's credible testimony. Although Valdovinos refused to admit he sent the December 4 email and denied creating and signing the December 22 document, he is not credible, as the hearing judge found, and we find no error in that determination. (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032.) Moreover, Valdovinos would not explain why he issued the NSF checks if he had never informed Bucio that his case settled.

As alleged by OCTC, we find all these misrepresentations were intentionally made in violation of section 6106. The first misrepresentation was made as a pretense that Valdovinos had followed through on his promise to file a lawsuit if Bucio was not successful before the EEOC. The second and third misrepresentations of a fake settlement and a promise to pay Bucio appear to be an effort to appease Bucio in response to Bucio's multiple attempts to obtain his case number and other information about the case. The final misrepresentation that a State Bar investigator had knowledge about the money due Bucio, along with the document containing the falsified signature, was apparently made to leave Bucio with the erroneous impression that the

State Bar knew of and approved of Valdovinos's purported attempts to convey funds to Bucio and to discourage Bucio from filing a complaint with the State Bar.

2. Count 11: Issuance of Two NSF Checks in Violation of Section 6106

In count 11, OCTC alleged Valdovinos violated section 6106 when he issued to Bucio the November 8, 2021 check from his checking account in the amount of $58,000, and the November 26, 2021 check from his CTA in the amount of $63,000, knowing there were insufficient funds in the accounts to pay for the checks.

Valdovinos did not offer any defense at trial regarding these checks, and he does not address this count on review. He has, therefore, waived any factual challenge to this count. (Rules Proc. of State Bar, rule 5.152(C).) Valdovinos knew no settlement funds pertaining to Bucio's case existed. The banking records from his CTA and checking account show Valdovinos had woefully insufficient funds and could not cover the amounts of the checks. And by the time Valdovinos issued the $63,000 NSF check, he had already bounced four checks from his CTA that month; in fact, no check had successfully been issued from his CTA in November. Thus, Valdovinos knew that issuing a check from this account would be a doomed endeavor. We affirm the hearing judge's culpability determination for this count. We note that the judge did not expressly find whether Valdovinos acted intentionally or with gross negligence. Given the facts of before us, including his concurrent, proven track record of bouncing checks, we conclude that Valdovinos acted intentionally.[19]

[19] Valdovinos appears to argue in his brief that since Bucio was reimbursed, there was no harm. That his client suffered no loss does not excuse Valdovinos's misconduct. (See *Bradpiece v. State Bar* (1974) 10 Cal.3d 742, 748.)

3. Count 12: Failure to Deposit $7,000 into a CTA in Violation of Rule 1.15(a)

OCTC alleged Valdovinos violated rule 1.15(a) when, in June 2019, he did not deposit the $7,000 in advanced costs that Bucio gave him into an account labeled a trust account or client funds account, or words of similar import. Valdovinos concedes culpability for this count on review. Valdovinos did not have a CTA or other account designated for client funds when he accepted $7,000 from Bucio in June 2019. His concession that he violated rule 1.15(a) is supported by the record, and we affirm the hearing judge's culpability determination for this count.

D. Representation of Osvaldo Buenrostro Hernandez in an Appeal from an Order of Deportation

On July 31, 2021, Valdovinos was retained by Osvaldo Buenrostro Hernandez who paid an initial $6,000 in cash to file a motion to reopen an immigration appeal at the Board of Immigration Appeals (BIA) and file a complaint against his prior immigration attorney based out of Connecticut. The two entered into a retainer agreement around August 2, in which Buenrostro had agreed to pay Valdovinos $6,000 in cash, with the balance of Valdovinos's $12,000 fee due in monthly installments. Buenrostro's immigration case had previously been dismissed and he was subject to deportation in early September 2021. One reason Buenrostro's appeal was previously denied was due to lack of ties to his community.

On August 2, 2021, Valdovinos sought and received an additional $2,500 in cash from Buenrostro to retain an expert witness. On August 9, Buenrostro paid another $10,000 in cash so that Valdovinos could initiate the lawsuit against Buenrostro's prior immigration attorney. Following these payments, Valdovinos met Buenrostro on August 11, and the two signed a document acknowledging that Valdovinos had received Buenrostro's money. Pursuant to the document, Valdovinos stated that he was holding $10,000 for 14 days, and he would return the

money to Buenrostro after that time, and $2,500 would be used to pay for a psychologist as an expert witness. Valdovinos did not deposit any of Buenrostro's $18,500 into his CTA even though that account had been opened for months. Furthermore, Valdovinos did not return the $10,000 to Buenrostro on August 25, and Valdovinos offered no evidence that he retained an expert witness.

In addition to the $18,500 in advanced costs and fees, Valdovinos instructed Buenrostro to give him cash so Valdovinos could donate the funds to a charity in order to establish Buenrostro had ties to the community. Buenrostro testified that Valdovinos accompanied him to his bank on August 11, 2021, where Buenrostro withdrew $5,000 in cash and gave it to Valdovinos to donate to a charity, which Valdovinos disputes. Although Buenrostro asked for a receipt for the charitable contribution, Valdovinos never provided it. Buenrostro testified that Valdovinos took an additional $3,000 in cash from Buenrostro on August 28 to fund a community charity event of a backpack giveaway, which never occurred.[20]

On September 1, 2021, Valdovinos notified Buenrostro that the amount of his immigration bail bond increased, and he needed to pay $20,000. Buenrostro was only able to give Valdovinos $6,000 in cash. By this point, Valdovinos had taken a total of $32,500 in cash from Buenrostro. On September 2, Valdovinos represented Buenrostro at the BIA hearing, resulting in Buenrostro's deportation being delayed by six months.

The relationship with Valdovinos deteriorated, and Buenrostro requested that his money be returned. Valdovinos issued two NSF checks from his CTA to Buenrostro. The first, dated September 20, 2021, was for $6,000 when there was only $0.53 in his CTA. The check was returned due to insufficient funds on September 22. The second check was made out to

[20] Valdovinos testified that the $3,000 was not for a community event but was an additional retainer.

Buenrostro but given to his sister. It was dated October 6, in the amount of $19,000, with "refund" written in the memo line. Valdovinos only had $10.53 in his CTA when this check was written. The check was returned for insufficient funds on December 21.

After these failed attempts to issue a refund, Valdovinos sent a text message to Buenrostro on December 4, 2021. In that text, Valdovinos said the two would be meeting with a State Bar investigator with the surname of Rossun on December 16.[21] The text message mentioned facts specific to Buenrostro's case—a $19,000 refund would be forthcoming as well as certificates reflecting $5,000 in charitable donations, contact information for the psychologist that was paid $2,500 (who would refund Buenrostro that amount),[22] and documents pertaining to the Connecticut State Bar. This is a total of $21,500 (plus a certificate or receipt of $5,000) that Valdovinos assured Buenrostro he would receive. Buenrostro did not meet with Valdovinos as he no longer trusted him. Valdovinos did not return the client files even though he knew where Buenrostro lived, and his address had not changed. At the time of Valdovinos's disciplinary trial, Buenrostro still faced deportation and had to retain another attorney.

1. Counts 13 and 16: Misappropriation in Violation of Section 6106 and Failure to Deposit Funds into a CTA in Violation of Rule 1.15(a)

We consider first the charge in count 16 that Valdovinos failed to deposit $32,500 into his CTA, in violation of rule 1.15(a). Valdovinos received all funds from Buenrostro in cash, but a review of the CTA records shows that Valdovinos did not make any cash deposits into his CTA in August and September 2021. The only deposit made into his CTA was a $900 transfer from

[21] Although there is no investigator named Rossun or Rosson, Valdovinos testified that he had previously spoken to an investigator named "Rosen" when there was a complaint filed against his former law firm.

[22] In his brief on review, Valdovinos claims the $2,500 for the expert witness was "held by [t]he Respondent" and that he has tried to return it to Buenrostro.

his business operating account on August 23, and later in September, he transferred $75 from his two other accounts.

In defense of this count, Valdovinos argues that OCTC did not offer a signed retainer agreement into evidence, and the signed retainer agreement with Buenrostro authorized him to keep the money in his operating account. At the center of this defense is an unsigned copy of the retainer agreement that was admitted into evidence over Valdovinos's objection a trial. Buenrostro testified he gave the unsigned copy to OCTC, but he also had a signed copy at home. Buenrostro believed the two documents were similar, but not the same. Valdovinos stipulated to the admissibility of the unsigned copy, but when it was presented at trial, he objected, stating that the signed agreement contained the scope of work as a "motion to reopen with BIA, motion for stay, and the 212(h) waiver." He subsequently testified that Buenrostro agreed in the signed document that Valdovinos could deposit his money in a non-CTA account.[23]

An exception to the requirement in rule 1.15(a) that all funds received by the lawyer for the benefit of the client must be deposited in a CTA is contained in rule 1.15(b).[24] The rule permits a lawyer to deposit in an operating account a flat fee paid in advance for legal services,

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[23] We have considered Valdovinos's implied argument that the unsigned agreement should not have been admitted. Given that the hearing judge informed the parties that their stipulations to the exhibits would not be considered stipulations to their admissibility, Valdovinos objected to the admission of the unsigned document, and Buenrostro testified he had a similar, but not identical, signed agreement at home, we find that the judge erred by admitting the unsigned agreement into evidence. (See *In the Matter of Aulakh*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 695 [abuse of discretion standard used to review evidentiary rulings].) Our conclusion about count 16 does not rely on the contents of the unsigned agreement. Thus, Valdovinos has not shown he was prejudiced as a result of the judge's ruling, and we find the error was harmless. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [absent actual prejudice, party not entitled to relief from evidentiary ruling].)

[24] There is another exception, not applicable here, that allows, with the written consent of the client, an attorney to deposit entrusted funds in a trust account "in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction." (Rule 1.15(a).)

so long as certain disclosures are made to the client in writing and, if the flat fee exceeds $1,000, that the agreement and disclosures be set forth in writing and signed by the client. (See Rule 1.15(b).) Valdovinos's operating account records show that on the dates Buenrostro gave Valdovinos money—July 31, August 2, 9, 11, and 28, and September 1—Valdovinos made two cash deposits into his operating account totaling only $3,400 ($2,000 on August 2, and $1,400 on August 11).[25] Only the $16,000 Buenrostro paid on July 31 and August 9 were for legal services and could potentially be subject to rule 1.15(b). Because Valdovinos never demonstrated he satisfied the requirements of rule 1.15(b), and the majority of the $16,000 was *not* deposited into his operating account, we find Valdovinos is not entitled to the benefit of the doubt pertaining to his use of the $16,000 in legal fees, and his defense in unavailing. (Cf. *Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794 [reasonable doubts are resolved in favor of attorney accused of misconduct].) We find, as the hearing judge did, that Valdovinos is culpable of count 16. We discuss the weight assigned to this count, *post*.

OCTC charged Valdovinos in count 13 with moral turpitude in violation of section 6106, alleging that between July 31, 2021, and approximately September 1, 2021, Valdovinos received and misappropriated $32,500 in advanced fees and costs that Buenrostro had entrusted to him by failing to deposit the funds in his CTA and spending them for his personal use. Because the funds were provided to Valdovinos in cash, the bank records are not particularly helpful in determining whether Valdovinos used Buenrostro's money as authorized.

At the outset, we must resolve Buenrostro's testimony with Valdovinos's trial testimony and claim on review that Buenrostro did not give him $32,500, but rather, gave him

[25] On August 3, 2021, Valdovinos made two other cash deposits in his operating account, totaling $600. Those were the only other cash deposits he made in his operating account in August and September 2021.

approximately $16,000 for legal services and $2,500 to retain an expert, totaling at most, $19,000. The hearing judge did not make a specific credibility finding on this point, but her findings of culpability for intentionally misappropriating $32,500 indicate that she did not credit Valdovinos's testimony. A witness who has been found to not be credible on one issue may also be found to not be credible on other matters. (*In re Marriage of Oliverez* (2019) 33 Cal.App.5th 298, 320 ['"[T]he trier of fact may disregard all of the testimony of a party, whether contradicted or uncontradicted, if it determines that he testified falsely as to some matters covered by his testimony [citations]"'].) We agree that Valdovinos was not credible on this point, and we credit Buenrostro's testimony, which is supported by his bank records showing cash withdrawals. (Evid. Code, § 411 ["Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact"].)

Valdovinos also testified he gave Buenrostro a full accounting and that he earned the fees he charged Buenrostro. Valdovinos did not provide any evidence of an accounting, did not articulate the amount of time he spent on the matter, and he gave no testimony as to his hourly rate. His purported payment of $2,500 to a psychologist as an expert witness is premised on nothing more than Valdovinos's uncorroborated testimony, in which he could not identify the expert by name. This is all information readily within his possession, yet he did not produce it, thus indicating that his testimony is not credible.[26] (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, fn. 13.)

The most specific information Valdovinos presented of the work he performed was that he reviewed up to 1,000 pages of material for the case, filed a motion with the BIA, and attended

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[26] We are mindful that the hearing judge sanctioned Valdovinos, thus, preventing him from presenting exhibits at trial. The sanction was issued because of Valdovinos's continued failure to submit pre-trial exhibits despite the judge twice granting an extension of time to do so.

a BIA hearing with Buenrostro, resulting in the immigration judge extending Buenrostro's deportation date by six months, which was corroborated by Buenrostro. All of this work occurred in August and early September in advance of the September 4 BIA hearing. Valdovinos also testified that he subsequently filed a so-called *Lozada* complaint against the previous attorney in Connecticut, although he did not state when this occurred or how many hours it entailed. Buenrostro, however, appears to have disputed Valdovinos's claim that he filed anything with respect to the Connecticut attorney.

We resolve the matter as we did in count six. When Valdovinos violated rule 1.15(a) by failing to deposit the $32,500 in his CTA, it created an inference that he misappropriated client-entrusted funds.[27] Valdovinos could rebut the inference with credible evidence showing that the entrusted funds were, in fact, utilized as authorized. (See *In the Matter of Respondent F*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 26.) As we discuss, he has largely failed to do so.

There was evidence that Valdovinos reviewed numerous documents, prepared a motion, and attended a hearing, thereby achieving a measure of success by having the deportation hearing delayed. We accept this testimony as the motion submission and hearing attendance were corroborated by Buenrostro. (See CACI No. 107 [witness can be found to testify truthfully on some things and not others].) Yet this work, as well as the *Lozada* complaint, assuming without finding that it was filed, cannot alone account for the full use of the $32,500, particularly when Valdovinos failed to describe his hours, fee, and activities with any meaningful detail. (See, e.g., *Taylor v. County of Los Angeles* (2020) 50 Cal.App.5th 205 [no reliable quantification of working hours, delayed and contradictory claims, and failure to provide records undercuts claim of attorney fees].) This conclusion is further supported by the fact that Valdovinos assured

[27] Accordingly, we reject OCTC's assertion on review that a misappropriation occurred as soon as Valdovinos failed to deposit Buenrostro's cash in his trust account.

Buenrostro via text that he could have up to $21,500 returned to him along with a $5,000 charity receipt, and he subsequently attempted to refund $25,000 to Buenrostro. We find that Valdovinos would not have taken these actions had he earned the entirety of Buenrostro's money he held or utilized it for its authorized purposes. Valdovinos's checks issued from his CTA were returned for insufficient funds and his operating account daily balance never exceeded $3,992.86 from July 31 through the end of the year, demonstrating that he no longer held the entrusted funds. Accordingly, we conclude that Valdovinos misappropriated Buenrostro's funds in violation of section 6106, but unlike the hearing judge, we find Valdovinos misappropriated $26,500 ($19,000 [fees] plus $2,500 [expert] plus $5,000 [purported charity donation]) of the $32,500 he collected, because it is undisputed that Valdovinos performed some work on the case through the BIA hearing date.

We also find that Valdovinos acted intentionally. His misappropriation was accompanied by lies that the funds would be used for a charitable contribution and to hire an expert witness. The fact that he wrote checks when he knew he had insufficient funds, as discussed *post*, was an act of deceit to mislead Buenrostro into believing Valdovinos continued to hold his funds. (See *In the Matter of Davis*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 588-589.) His misappropriation appears to be, in part, motivated by his financial shortcomings. A review of the Bicycle Casino exchange chips log shows that during the relevant period of July 31 through December 22, 2021, Valdovinos purchased $60,400 of chips and cashed out $42,500, leaving him with a deficit of $17,900. In his operating account, Valdovinos had a negative balance on July 31. Although there were several times that his operating account had a balance of a few thousand dollars, particularly in December, the most the account ever held was $9,464.84 on October 13, which was reduced to $28.39 the following day. And his personal checking account balances during

the relevant time were generally limited to a few hundred dollars. The most that account held was approximately $6,000 on November 26.

Returning to count 16, the hearing judge determined that no additional weight should be assigned because the facts of count 16 underlie the misappropriation count. The fact that Valdovinos rebutted the inference supporting a conclusion that $6,000 had been misappropriated demonstrates that Valdovinos initially had an intent to violate rule 1.15(a) that was separate from the misappropriation, thus, potentially calling for independent weight to be assigned to this count. OCTC does not seek such weight, and we find, given that most of the funds at issue were in fact misappropriated, that the facts of count 16 are largely the same as part of the facts underlying count 13, and we assign no additional weight to count 16. (*In the Matter of Jones*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 890; *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

2. Count 14: Issuance of Two NSF Checks in Violation of Section 6106

Valdovinos did not testify regarding count 14, which alleged he violated section 6106 when he, intentionally or through gross negligence, issued the two NSF checks to Buenrostro, totaling $25,000, that represented a refund of his money. Valdovinos does not challenge the hearing judge's culpability determination on review, and he has, therefore, waived any factual challenge to count 14. (Rules Proc. of State Bar, rule 5.152(C).) Clear and convincing evidence through Buenrostro's testimony and the CTA records support the hearing judge's culpability finding. The judge did not make a finding of whether Valdovinos acted intentionally, but the record shows that he did, especially since he never deposited any of Buenrostro's funds in the CTA, which is the account he used to issue the two NSF checks. His intentional violation of section 6106 constitutes moral turpitude.

3. Count 15: Misrepresentation in Violation of Section 6106

OCTC charged Valdovinos in count 15 of making a misrepresentation, constituting moral turpitude, in violation of section 6106 when he sent a December 2021 text message to Buenrostro stating that he was working with a State Bar investigator who was assigned to Buenrostro's matter. The hearing judge found Valdovinos intentionally made the statement and found him culpable of violating section 6106.

On review, Valdovinos argues that he did not and would not make such a statement. In light of his text message, he is simply not credible. There was no State Bar investigator involved in the return of Buenrostro's money in December 2021. To the extent Valdovinos challenges the admission of the text message, the hearing judge did not err in admitting the exhibit over Valdovinos's objection. Buenrostro provided sufficient foundation for the text message, and the judge's ruling was within her broad discretion to admit or exclude evidence. (*In the Matter of Farrell, supra*, 1 Cal. State Bar Ct. Rptr. at p. 499.)

We find, as we did in count 10, that Valdovinos intentionally misrepresented that a State Bar investigator was involved to leave the false impression that the State Bar was aware of the Buenrostro matter, which would discourage Buenrostro from filing a complaint against Valdovinos, and that it approved of Valdovinos's bogus attempts to return Buenrostro's money.

E. Representation of Janet Mitchell Funded by Jolynn Vega and Robert Torres

Jolynn Vega and Robert Torres were paid caretakers for Janet Mitchell. Mitchell, who lived alone and was bedridden, was the subject of a conservatorship petition brought by Mitchell's adopted son, John, and according to Vega, Mitchell wanted to contest the conservatorship. Vega retained Valdovinos to represent Mitchell, who was 91 years old at the time. Valdovinos provided a fee agreement that Vega and Mitchell signed on June 16, 2022.

The fee agreement required a $10,000 retainer with $5,000 due at the time of signing and the balance due in $400 monthly installments.

On June 16, 2022, Vega wired to Valdovinos's CTA $4,500 in attorney fees and sent to his checking account $500 for costs, such as obtaining court-related records. That same day, Valdovinos transferred $4,500 from his CTA into his checking account, leaving a negative balance in his CTA.

On June 27, 2022, Vega transferred a $465 filing fee to Valdovinos via Zelle so that Valdovinos could file a court form,[28] which appears to be a substitution of attorney form Valdovinos filed on behalf of Mitchell on June 30. This is the only pleading Valdovinos filed in the Mitchell action. Meanwhile, on June 22, John died, and a new petition for appointment of probate conservator was filed on July 11 by Danielle Brinkman. On July 12, the court scheduled an ex parte hearing to be held on July 19.[29]

Meanwhile, Valdovinos informed Vega he needed more money for two bonds. In six transactions between June 23 and July 12, Valdovinos received a combined total of $68,500 for these bonds from Vega and Torres. First, on June 24, Vega wired $5,000 to Valdovinos's CTA, based on his written representation that the money was for an injunction bond and that Valdovinos would return the funds to Vega no later than June 28. That same day, Valdovinos immediately transferred $4,900 from his CTA to his checking account, withdrew $4,000 in cash, and made a debit purchase at Hustler Casino in the amount of $825.95, leaving his checking account with a balance of $117.67 by the end of June 24. Valdovinos never returned the $5,000 to Vega.

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[28] It is not clear from the record which of Valdovinos's accounts received these funds.

[29] Vega testified Valdovinos never obtained the court records.

Valdovinos received the following sums for the purpose of obtaining a surety bond. First, on June 28, 2022, Vega wired to Valdovinos's CTA $13,000, and Valdovinos immediately went to the Commerce Casino where he made an ATM withdrawal from his checking account of $1,004.99 and a debit purchase of $874.28. On June 29, Torres wired $23,000 to Valdovinos's CTA. That same day, Valdovinos transferred $2,950 from his CTA to his checking account and made a $19,000 cash withdrawal from the CTA, leaving his CTA with an account balance of $13,030.37 by the end of the day. The Commerce Casino log admitted at trial is not completely legible, but it appears that from June 28 through July 1, Valdovinos made three purchases of chips at the Commerce Casino totaling $24,000.

Then, on July 7, 2022, Torres wired $5,500 to Valdovinos's CTA. Valdovinos then transferred $5,500 out of his CTA and into his personal checking account, which had a negative balance the day before. Valdovinos went to the Commerce Casino on July 7, and he spent over $3,200 and withdrew $2,004.99 from an ATM located there. On July 8 and 9, he bought chips at the Commerce Casino in the amounts of $5,350 and $9,000, respectively.

Subsequently, Vega transferred $15,000 to Valdovinos's CTA on July 11, 2022. On July 10, Valdovinos had a negative account balance in his CTA. Upon receipt of Vega's money on July 11, Valdovinos transferred $14,950 from his CTA to his checking account. This resulted in a CTA balance of $0.37. From his checking account, Valdovinos then made withdrawals of over $10,500 via ATMs located at Commerce Casino. On July 12, Vega transferred to Valdovinos's CTA $7,000, and Valdovinos immediately made a $6,800 cash withdrawal, again leaving a balance of $0.37. That same day, Valdovinos went to the Commerce Casino and bought $5,500 worth of chips. Valdovinos told Vega and Torres that all funds attributed to the surety bond would be returned to them, except for $7,000, which represented a fee charged by the bond issuer, but Valdovinos never returned any money to Vega or Torres. Moreover,

Valdovinos never obtained a surety bond, and the docket in the Mitchell conservatorship action confirms that the only surety bond filed was by Brinkman on July 21, following the court's appointment of Brinkman as the temporary conservator.

Meanwhile, Vega was under the belief that the case was proceeding. In a June 23, 2022 email, Valdovinos told Vega there was an ex parte hearing set for June 27. Valdovinos called Vega on June 27 and told her that the result of the ex parte hearing was that she was appointed as Mitchell's temporary conservator. However, no hearing was held that day, nor had one been scheduled. Next, around July 15, Valdovinos informed Vega and Mitchell separately that he appeared in the case, spoke to the judge, and the judge wanted to speak with Mitchell directly. Vega later spoke with Mitchell, who told Vega that she met with Valdovinos and another individual, but it was not the judge. In fact, there had been no court hearings in the case between Valdovinos's June 27 contact with Vega and July 15. Vega texted Valdovinos two days later asking why the court docket was not updated with the meeting with Mitchell and requested a copy of the file.

On July 19, 2022, Vega went to the courthouse where the Mitchell conservatorship was pending to look at the court's file. She learned Valdovinos had taken no action and had made no appearances in the case since his June 30 notice of appearance was filed. That same day, Vega asked Valdovinos to refund the money she gave him. She made this request several times, but he did not return the money and informed her that he had cancer.

In sum, Vega paid Valdovinos $45,465, and Torres paid Valdovinos $28,500, for a total amount of $73,965. Valdovinos disputes many of the facts in this matter, as discussed *post*.

1. Counts 17 and 19: Misappropriation in Violation of Section 6106 and Failure to Maintain Funds into a CTA in Violation of Rule 1.15(a)

OCTC charged Valdovinos in count 17 with intentionally misappropriating $73,965 paid to him on Mitchell's behalf as advanced costs and fees in violation of section 6106. The record overwhelmingly supports a finding that Vega and Torres paid this sum to Valdovinos to represent Mitchell. Between June 16 and July 19, 2022, CTA records show funds in the account were transferred out almost as quickly as funds were deposited. Although he had done no work on the case, incurred no costs, and did not obtain any bonds, Valdovinos's CTA balance on July 29 was 37 cents.

Because Valdovinos's CTA balance immediately and repeatedly dropped below the amounts Vega and Torres had deposited in Valdovinos's CTA, there is an inference to support a conclusion that a misappropriation occurred. (See *Giovanazzi v. State Bar*, *supra*, 28 Cal.3d at p. 474.) An attorney can rebut the inference by presenting evidence they were entitled to withdraw the funds for an authorized purpose. (See *In the Matter of Respondent F, supra,* 2 Cal. State Bar Ct. Rptr. at p. 26.)

Valdovinos offered rebuttal testimony. He testified that Vega authorized him to transfer $73,000 to an operating account to use the money immediately for the bond. Once he obtained the court documents between June 16 and 27, in which allegations were made in John's petition that Vega and Torres had stolen $300,000 from Mitchell, he confronted Vega, who provided him with documents on or around June 20 that disputed the allegations.

Valdovinos determined that he needed to speak with Mitchell to understand if she wished to allow Vega to become the conservator. He claimed he tried to meet with Mitchell on June 27, but it could not be arranged until July 19. At that time, Mitchell told Valdovinos that she did not want Vega or Torres to become her conservator. He immediately informed Vega he would not

petition the court to have her become the conservator. Vega became upset but agreed to meet Valdovinos on July 21, so he could return the court documents and the money to Vega, but Vega did not show up for the meeting. Valdovinos further testified that the conservatorship matter had not concluded and the $73,965 was being held in an operating account as contested funds, there was an ongoing investigation to determine whether Vega held the funds on Mitchell's behalf or they were actually Vega's funds, and he planned on releasing the funds when the probate court issued an order clarifying the owner of the funds. We are not persuaded by Valdovinos's testimony.

Recall that the $4,500 Valdovinos received in attorney fees on June 16 was withdrawn from Valdovinos's CTA the same day, leaving a negative balance. Valdovinos did not present evidence that he performed $4,500 worth of work on the Mitchell case as of the date he withdrew the funds to successfully rebut the inference of misappropriation. He also received $500 for costs, but he did not show he incurred those costs, and he provided no court records to Vega despite his promise to do so.

We now turn to the $68,500 he received, beginning June 23, to obtain the bonds, and that he claims was being held in an operating account. First, the banking records do not show a transfer of $68,500 from his CTA to an operating account. His operating account closed on June 3, 2022. Rather, Valdovinos made piecemeal transfers from his CTA to his personal checking account, totaling $56,455 from June 23 through July, accompanied by immediate and numerous personal and cash withdrawals, often through debit purchases and ATM withdrawals at the Commerce Casino and Hustler Casino. He also made cash withdrawals from his CTA at Wells Fargo branches in the amount of $43,300 during the relevant time. By July 26, his checking account had a negative balance, and as of July 29, his CTA held a grand total of 37

cents. There is simply no evidence that the funds were transferred into another operating account by any means.

Second, what makes Valdovinos's rebuttal particularly remarkable is that he began accepting the funds for the surety bond on June 28 *after* he claims he was already aware that there were allegations of theft by Vega. Valdovinos repeatedly requested funds from Vega and Torres that he knew from the outset were contested, showing that he was aware he would not be able to use the money for any surety bond immediately. There was no reason to transfer those funds into another account as he alleged. We find Valdovinos has not shown he was entitled to remove any portion of the $73,965 Vega and Torres paid to him, and he has failed to rebut the inference that he misappropriated their funds. We conclude he did not earn the funds, incur costs of $965, or retain the money for a surety or injunction bond. Instead, Valdovinos exhibited a pattern of receiving funds from Vega and Torres, then soon after transferring them to his personal checking account, withdrawing large sums of cash, and purchasing tens of thousands of dollars of gambling chips.[30] The evidence shows Valdovinos's misappropriation was intentional and constitutes moral turpitude.

In count 19, OCTC charged Valdovinos with failure to maintain in his CTA the $73,965 paid on Mitchell's behalf in advanced costs and fees, in violation of rule 1.15(a), and the hearing judge found him culpable. On review, Valdovinos does not contest this finding; he has, therefore, waived any factual challenge to count 19. (Rules Proc. of State Bar, rule 5.152(C).). The CTA records demonstrate by clear and convincing evidence that while Valdovinos deposited

[30] Valdovinos did not agree he made or authorized the Commerce Casino withdrawals and purchases. He claimed to not recall having a Commerce Casino player's card or going to the casino frequently, and believed his last visit to that casino was in 2021. This testimony is not credible and is contradicted by Commerce Casino records and the testimony of the custodian of records.

funds in his CTA, he quickly removed them from his CTA for unauthorized purposes, often transferring them into his personal checking account. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976 [rule is violated when attorney fails to deposit and maintain funds in manner designated by rule].)[31] As the facts of this count are part of the same facts in count 17, we assign no additional weight to count 19. (*In the Matter of Jones*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 890; *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

2. Count 18: Misrepresentation in Violation of Section 6106

In count 18, OCTC charged Valdovinos with making certain misrepresentations, intentionally or through gross negligence, that constitute moral turpitude in violation of section 6106. First, Valdovinos falsely stated to Vega that he had appeared on behalf of Mitchell at a June 27, 2022 ex parte hearing and that she was appointed Mitchell's temporary conservator as a result of the hearing. Second, Valdovinos falsely told Vega that he appeared at a July 15, 2022 hearing where he spoke with the judge who requested to speak to Mitchell, and on the same day, he and the judge met with Mitchell. The hearing judge found Valdovinos culpable of violating section 6106, as alleged.

In our review of the record, we find that OCTC did not prove that Valdovinos misrepresented that he appeared at a June 27, 2022 ex parte hearing, because Vega testified that Valdovinos informed her that no such hearing occurred. However, Valdovinos did inform Vega

[31] We recognize that *Guzzetta* considered the entirety of previous rule 8-101 in finding that the rule applied to both depositing and maintaining client funds, which included provisions pertaining to comingling funds and other account management issues. Here, OCTC alleged a failure to maintain funds in violation only of rule 1.15(a), which does not address the intricacies of trust account management and does not explicitly require that client funds be maintained. Nevertheless, we believe OCTC properly charged a violation of rule 1.15(a), since the section applies to funds and property "held" by a lawyer, and it is axiomatic that if funds are to be deposited in a trust account, they are similarly required to be properly maintained in the account. This is consistent with how we have previously interpreted this issue. (See *In the Matter of Song*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 277-278 [discussing former rule 4-100(A)].)

that the judge had made her the temporary conservator for Mitchell in a June 27 ruling, and this was clearly false. Although Valdovinos disputes making this representation to Vega, as well as the remaining two statements in the charge, we find his version of events to not be credible. (See *In re Marriage of Oliverez*, *supra*, 33 Cal.App.5th at p. 320). No court ruling occurred in the Mitchell matter on June 27, no court hearing transpired on July 15, and Mitchell did not meet with a judge when Valdovinos visited her in July 2022. We find the three misrepresentations Valdovinos made were done intentionally to convey the false impression that he was performing work on the case. Thus, we find Valdovinos committed moral turpitude in violation of section 6106.

III. RESPONDENT'S CLAIMS OF JUDICIAL MISCONDUCT AND JUDICIAL BIAS ARE NOT SUPPORTED BY THE RECORD

Valdovinos argues on review that the hearing judge was biased against him, deprived him of the right to confront witnesses in limiting his cross examination, and erred in the admission of evidence. We have conducted a careful review of the record and find the claims of judicial bias and misconduct are not supported by the facts. Valdovinos stated evidentiary objections on the record, but he challenged few specific rulings on review. 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*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 499.) This includes preventing irrelevant lines of questing and denying irrelevant exhibits. Further, a judge can ask questions of witnesses. "A trial court has both the discretion and the duty to ask questions of witnesses, provided this is done in an effort to elicit material facts or to clarify confusing or unclear testimony." (*People v. Cook* (2006) 39 Cal.4th 566, 597.)

Valdovinos also claims the hearing judge embarrassed him when she asked him whether his gambling addiction would be raised in mitigation. That the judge would assume Valdovinos had a gambling addiction is not entirely unreasonable, given that in a two-year period, from February 2021 through February 2023, he spent $886,535 in gambling chips from the Bicycle Casino and the Commerce Casino. Moreover, upon our review of the record, we determine that this question was not meant to embarrass Valdovinos but was intended to ascertain if he was pursuing a particular type of mitigation pursuant to standard 1.6(d).[32] Gambling habits can create financial problems, which in turn, may potentially be a mitigating factor. (See *Amante v. State Bar* (1990) 50 Cal.3d 247, 254 ["financial difficulties and related personal pressures may be considered in mitigation"].)

IV. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) Valdovinos has the same burden to prove mitigation. (Std. 1.6.). On review, neither Valdovinos or OCTC challenge any aggravation or mitigation finding. We find OCTC met its burden of proof on all aggravating factors and Valdovinos did not meet his burden of proof for 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 assessed substantial weight to this aggravating circumstance. We affirm as there are numerous acts of misconduct across 19 counts in five different matters. (*In the Matter of Bach*, *supra*,

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

1 Cal. State Bar Ct. Rptr. at pp. 646-647 [three instances of misconduct considered multiple acts].)

2. Significant Harm to Clients, the Public, or the Administration of Justice (Std. 1.5(j))

"Significant harm to the client, the public, or the administration of justice" is an aggravating factor. (Std. 1.5(j).) Mora testified he and his family struggled to get the money to pay Valdovinos, and he felt hopeless and "played." The experience adversely affected his opinions about attorneys. Mendez testified she was "shattered" and emotionally and mentally harmed by Valdovinos leading her on for years. She left her job believing her settlement funds would be forthcoming, and the stress of the experience negatively impacted her relationships. The statute of limitations for her claim has passed, foreclosing any potential avenue of financial recovery. Bucio testified that he lost sleep over the events, as he considered Valdovinos to be like family, and Valdovinos's representation of Bucio caused a wedge between Bucio and his brother. The experience left Bucio with a negative opinion about lawyers. Vega said Valdovinos took her entire life savings, and her home went into foreclosure. She was terminated from her employment with Mitchell and has had difficulty getting a new job. We find the record clearly supports the substantial weight in aggravation the hearing judge assigned to this circumstance.

3. Indifference Toward Rectification or Atonement for the Consequences of the Misconduct/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 applied substantial weight in aggravation for this factor. The record is devoid of Valdovinos showing any remorse for his conduct across five separate matters despite the clear harm he has inflicted on others. Substantial weight is appropriate under the facts of this case.

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

"Lack 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).) This standard includes an attorney's untruthful testimony before the State Bar Court when supported by express findings. (*In the Matter of Jimenez* (Review Dept. 2022) 5 Cal. State Bar Ct. Rptr. 965, 980-81; *In the Matter of Caplin* (Review Dept. 2020) 5 Cal. State Bar Ct. Rptr. 768, 777.) The hearing judge found substantial weight as to lack of candor.

Valdovinos's trial testimony was consistently not believable due to the significant amount of contradictory documentary and testimonial evidence in the record. As the hearing judge correctly noted, Valdovinos lied about the most easily verifiable facts. More egregiously, there is clear and convincing evidence that Valdovinos made purposeful misrepresentations to the Hearing Department and to OCTC about receiving chemotherapy treatment and having related complications in his successful efforts to not comply with court-imposed deadlines. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-792 [deception to State Bar may be more serious than substantive conduct investigated]; *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282.) In this regard, he doubled down on his misrepresentations each day of the trial, providing the judge and OCTC with a false name of a physician and dishonestly claiming he had signed an authorization to release his medical records, which he repeatedly asserted were forthcoming.

Valdovinos insisted during oral argument that he did not lack candor; rather, he was simply reluctant to present medical evidence due to privacy concerns. However, it was Valdovinos who raised the issue of his purported medical condition, specifically expressed a desire to note on the record that his medical struggles prevented him from appearing at the first day of trial, did not object to the admission of his communications to the court detailing his

chemotherapy treatment, and repeatedly assured the hearing judge that medical documentation would be forthcoming. The simple truth is that Valdovinos repeatedly lied. He was not seeking treatment for cancer at City of Hope, and he had no intention of producing documents to support his claims because they did not exist.

As to lack of cooperation with OCTC, the hearing judge found that Valdovinos's failure to respond to discovery, meet and confer, submit exhibits, and submit a pretrial statement was not proof of lack of cooperation. She determined that, with respect to Valdovinos not responding to the State Bar's letter of inquiry during the investigation phase, aggravation was not warranted because OCTC chose not to charge Valdovinos with a violation. (See § 6068, subd. (i) [duty of attorney to cooperate and participate in investigation and proceedings against him or her].)

Although OCTC does not challenge this determination on review, we conclude that Valdovinos's lack of cooperation contributes to the weight afforded this aggravating circumstance. Preliminarily, we find that an attorney's failure to cooperate may be grounds to charge a violation of section 6068, subdivision (i), or it may provide a basis for aggravation for misconduct of which an attorney has been found culpable. OCTC has the same burden of proof whether it charges an attorney with failure to cooperate or seeks aggravation for lack of cooperation.

Turning to the specific acts comprising Valdovinos's lack of cooperation, we note that his failure to cooperate with OCTC was not limited to simply one instance of failing to be nonresponsive. Valdovinos did not respond to inquiry letters in the Mendez, Bucio, or Buenrostro investigations. As to the Vega/Torres complaint, Valdovinos never provided any formal response but engaged in brief phone calls with the assigned OCTC investigator. His lack of cooperation continued during the disciplinary proceedings when he did not respond to discovery, exchange exhibits, stipulate to any facts, and only stipulated to the admissibility of

about half of OCTCs exhibits. He repeatedly failed to meet and confer with OCTC. His excuse for not complying with OCTC's investigation and not submitting exhibits or a pretrial statement was illness due to his mythical chemotherapy treatment.

Valdovinos's three concessions of violating rule 1.15(a) and his decision on review to not challenge three section 6106 counts or most of the findings regarding aggravation and mitigation do not lessen the weight of aggravation warranted under standard 1.5(l). In determining the appropriate weight for Valdovinos's lack of candor and cooperation, it is difficult to imagine more pervasive dishonesty than what Valdovinos exhibited and persisted in during these disciplinary proceedings. We do not take lightly our decision to increase the weight from substantial to compelling weight for this aggravating circumstance given the exceptional circumstances of his untruthful statements to OCTC and the hearing judge, along with his repeated failures to cooperate with OCTC.

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

The hearing judge assigned substantial weight in aggravation because Valdovinos had not paid the $123,115 collectively owed to Mora, Mendez, Buenrostro, Vega, and Torres. We agree with the judge's determination, although we find the total amount of restitution owed is $116,615. (See *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, 445 [significant aggravation for failure to repay over $10,000].)

6. High Level of Vulnerability of the Victim (Std. 1.5(n))

A "high level of vulnerability of the victim" is a basis for aggravation under standard 1.5(n). The hearing judge determined that none of Valdovinos's five clients fell within this standard. In particular, the judge found that, while Mitchell was 91 years old and Buenrostro was an immigrant, OCTC did not clearly and convincingly establish how these facts rendered

them highly vulnerable clients. OCTC does not challenge this finding on review. We affirm the judge's conclusion that no weight should be granted to this factor.

B. Mitigation

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

Mitigation is available where no prior record of discipline exists over many years of practice, combined with present misconduct that is not likely to recur. (Std. 1.6(a).) The hearing judge determined no mitigation was warranted and we agree. Valdovinos's first acts of misconduct in this case occurred in 2019, when he had been licensed for about two years, and the misconduct continued for several years. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 66 [no mitigation where respondent only had five years of discipline-free practice]; *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 664 [practicing less than seven years is not significant mitigation].)

2. Pro Bono Work and Community Service

An attorney's pro bono work and community service can be a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) This includes having pro bono clients or working with underrepresented or marginalized groups to increase their access to the justice system. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work].) The hearing judge found Valdovinos did not meet his burden of proof as to this factor and assigned no weight.

Valdovinos testified that from 2014 through 2017 (prior to his admission to the bar), he worked with the American Bar Association Immigration Justice project. He claims he handled 15 to 16 pro bono immigration cases while at his prior firm, from December 2017 to September 2018. When he first opened his practice and he had no clients, Valdovinos testified he went to various local churches to volunteer his services. From 2019 through 2020, Valdovinos estimated

he had worked 75 to 100 hours pro bono for an unspecified number of clients, and that he had completed 400-500 total hours for "hundreds and hundreds of clients" up to 2022. He also stated he acted as a volunteer interpreter as a "friend of the court" in immigration matters when attending court for paid matters.

We agree with the hearing judge and find Valdovinos's uncorroborated testimony was not credible as to the extent of his pro bono activities since December 2017. (*In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little weight given to pro bono activities where attorney testified but evidence fails to demonstrate level of involvement].)

V. DISCIPLINE

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

In the first step, we determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a).) In this case, there are two applicable standards that call for a presumed sanction of disbarment. Valdovinos is culpable of four counts of intentional misappropriation. Therefore, standard 2.1(a) and its presumed sanction of disbarment applies.[33]

[33] A presumed sanction of actual suspension, pursuant to standard 2.1(a), does not apply, because the amount Valdovinos misappropriated is not "insignificantly small" and there are no "sufficiently compelling mitigating circumstances [that] clearly predominate." (Std. 2.1(a).)

Disbarment for intentional misappropriation is also supported by case law. (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511 [disbarment for intentional misappropriation of nearly $40,000 in single client matter]; *In the Matter of Blum* (Review Dept. 2002) 3 Cal. State Bar Ct. Rptr. 170 [disbarment for intentional misappropriation of $55,000 where attorney removed funds from trust account].)

Similarly, standard 2.11 presumes disbarment or actual suspension 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." Valdovinos engaged in multiple acts of dishonesty in his law practice, including issuing NSF checks and repeatedly lying to his clients. Moreover, he lied to the State Bar Court and feigned he was undergoing chemotherapy treatment to justify his failure to comply with multiple deadlines. OCTC has shown Valdovinos's misconduct was widespread, covering multiple client matters, and he significantly harmed his clients. Thus, disbarment under standard 2.11 is again the presumed sanction.

Next, standard 1.7(c) instructs us to consider whether there are mitigating circumstances that, in balance with aggravating circumstances, demonstrate that a lesser sanction is appropriate. Under the facts of this case, we find no reason to deviate from the presumed sanction of disbarment. Valdovinos did not show there were *any* mitigating circumstances in this case that could temper the numerous factors in aggravation. Importantly, there is nothing in the record to illustrate Valdovinos learned from his misconduct and would not engage in such misconduct again; instead, Valdovinos never showed remorse or accepted responsibility. (Cf. *Bradpiece*, *supra*, 10 Cal.3d at p. 748 [attorney's display of candor, cooperation, and remorse during

disciplinary proceedings, willingness to rehabilitate himself, and payment of prompt restitution support suspension instead of disbarment for misappropriation].)

Misappropriating a client's money "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.) Here, Valdovinos's misappropriation of client funds was unrelenting. Often, as soon as he received entrusted funds, he would deplete his bank accounts and use the entrusted funds for his own purposes, which included gambling. This misconduct was exacerbated by the additional dishonesty in which he engaged. Valdovinos lied to his clients to stall the discovery of his misappropriation and his failure to follow through on work he had assured clients he had performed. A key part of this cover-up was to issue numerous checks with insufficient funds to several clients, again breaching the fundamental rule of ethics, which is honesty. (*Bambic v. State Bar* (1985) 40 Cal.3d 314, 324.)

We close with some particularly relevant guidance from the Supreme Court: "The records here disclose an unrelenting indifference to the obligations of an attorney by deliberately . . . diverting his clients' funds to his own uses and purposes. . . . An attorney who is shown to have embarked on a course of conduct during which such breaches become commonplace is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 614-615.) Valdovinos is not fit to continue to practice law, and his disbarment is clearly warranted to protect the public, the courts, and the legal profession.

VI. RECOMMENDATIONS

We recommend that Sergio Valdovinos Ramirez, State Bar Number 318157, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

VII. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Valdovinos 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.[34] (*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. MONETARY SANCTIONS

The hearing judge imposed $5,000 in monetary sanctions in this matter. (Rules Proc. of State Bar, rule 5.137.) We have examined the totality of the facts and circumstances in this matter and found culpability in each of the 19 charged counts, including intentional misappropriation in excess of $100,000 and other acts of moral turpitude. On review, OCTC does not seek more than the maximum monetary sanction, and we conclude there is no basis in the record to deviate from the presumed maximum monetary sanction of $5,000 under rule 5.137(E)(2) of the Rules of Procedure of the State Bar. We recommend that Valdovinos 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. 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,

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[34] Valdovinos 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).)

unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

IX. RESTITUTION

Valdovinos 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. To Salvador Mora in the amount of $11,800 plus 10 percent interest per year from November 10, 2020;
2. To Lisa Mendez in the amount of $4,350 plus 10 percent interest per year from November 22, 2019;
3. To Osvaldo Buenrostro Hernandez in the amount of $26,500 plus 10 percent interest per year from September 1, 2021;
4. To Jolynn Vega in the amount of $45,465 plus 10 percent interest per year from July 12, 2022; and
5. To Robert Torres in the amount of $28,500 plus 10 percent interest per year from July 12, 2022.

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 reinstatement or return to active status.

XI. INVOLUNTARY INACTIVE ENROLLMENT

The hearing judge's order that Valdovinos be transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective July 15, 2023, will remain in effect pending the consideration and decision of the Supreme Court on this recommendation.

RIBAS, J.

WE CONCUR:

HONN, P. J.

McGILL, J.