Public Matter

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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No. SBC-23-O-30691
	)	
KEITH DAVID GRIFFIN,	)	DECISION
	)	
State Bar No. 204388.	)	
	)	

This disciplinary matter involves the alleged misconduct of a 20-year veteran of Girardi & Keese LLP, Respondent Keith David Griffin, for misrepresentations made to clients and co-counsel which facilitated the Girardi firm's misappropriation of client settlement funds. The alleged misconduct spanned over about eight months, which included sending out emails and texts obfuscating the true status of the settlement funds and imploring others to give the firm's owner, Thomas Girardi, more time to make payments. Over 20-months past due—the protracted delay occurring during the challenges of a global health pandemic—the settlements were eventually paid-out through co-counsel's insurance carrier.

On review of the evidence, this court concludes that culpability has been established for various acts of moral turpitude—concealment (Counts 4-6) and most of the remaining counts (Counts 1-3, and 7) but dismisses the count of moral turpitude regarding giving false testimony in related contempt proceedings (Count 8). Based on the seriousness of the misconduct while considering the full context including Griffin's lack of venality, and after weighing the factors in mitigation and aggravation with comparison to case law, the court recommends discipline to include a sizable actual suspension period of six months.

Jurisdiction

Griffin has been licensed to practice law in California since his admission to the State Bar of California on December 2, 1999, and was so licensed during the relevant time period of the allegations in this matter.

Procedural History

On June 14, 2023, the Office of Chief Trial Counsel of the State Bar of California (OCTC) brought an eight-count Notice of Disciplinary Charges (NDC) against Griffin, an associate of the law firm of Girardi & Keese LLP (the "Girardi firm"),[1] for misconduct relating to the firm's failure to properly disburse settlement funds, and separately, for giving false testimony relating to the misappropriation of those funds.

In Griffin's response, filed through counsel on July 25, 2023, he denies culpability and disputes the underlying factual allegations. Though conceding that the Girardi firm did not properly distribute funds, Griffin asserts that he was unaware that owner Thomas Girardi had embezzled the funds, and stresses that he (Griffin) did not have signatory authority over the firm's account.

On October 20, 2023, the parties entered a pretrial stipulation to facts ("stipulation"), agreeing to much of the procedural history of the underlying settlements. Trial was held over four consecutive days, starting on October 24, 2023, and the matter submitted for decision on the last day after the conclusion of oral closing arguments on October 27, 2023. (See Rules Proc. of State Bar, rule 5.111(A).) OCTC argues culpability has been shown on all counts and that disbarment is called for. Griffin urges that he had acted reasonably based on the available

[1] During trial, the firm was alternatively referred to as "the firm," "the Girardi firm," or "Girardi Keese." For consistency and clarity, this court will refer to it as "the Girardi firm."

information at the time, but should the court find misconduct, that disbarment is not warranted given the mitigating circumstances.

Burden and Standard of Proof

OCTC bears the burden of proof by clear and convincing evidence, presenting facts that leave no substantial doubt and sufficiently strong to command unhesitating assent of every reasonable mind. (*In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 288, citing *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) This requires proof making the existence of a fact "highly probable" and falls between the "more likely than not" standard of proof by a preponderance of the evidence and the more rigorous standard of proof beyond a reasonable doubt. (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995.)

In determining credibility and weight of the evidence, the court is guided by the rules of evidence in reaching a fair determination of the facts. (See *In the Matter of Cacioppo* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 128, 141.) Any fact may be established by a single credible witness. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 6; see also Evid. Code, §§ 411, 780.) But if there are two reasonable interpretations, the court adopts the inference of lack of misconduct. (See *In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 749.) Within this framework, this court summarizes its findings below.

Findings of Fact

Lawsuit filed against Boeing and association with Edelson firm.

The Girardi firm represented some plaintiffs in a multi-jurisdictional wrongful death lawsuit following an October 2018 plane crash off the coast of Indonesia where all 189 passengers were killed. Family members who were (and are) residing in Indonesia, filed these actions as successors-in-interest and surviving heirs against Boeing, alleging defects in the plane caused the crash.

The Illinois state and federal actions were later consolidated in the United States District Court for the Northern District of Illinois (case No. 18-cv-07686, *In re: Lion Air Flight JT 610 Crash*). The Girardi firm represented about eleven families, including the following four which are the subject of the present matter: Ms. Septiana Damayanti and minors,[2] A.M.Q. and N.I.R. ("Septi and family"); Mr. Bias Ramadhan A.S. Bin Misyadi, Guntur Misyadi, Dzikri Misyadi, and minor H.K.C. ("Bias and family"); Ms. Anice Kasim and minors, Z.A.S., T.A.S., and S.C.S. ("Anice and family"); and Ms. Dian Daniaty Binti Udin Zaenudin and minor, M.B.M. ("Dian and family"). These client family matters would later settle globally following mediation.

A fifth client, also involved in this disciplinary matter, Mr. Multi Rizki ("Multi"),[3] was represented by the Girardi firm in a separately filed lawsuit which did not involve any plaintiff minors (case No. 19-cv-05842). Multi's lawsuit would later settle independently from the client families' cases. (Though the stipulation provides that Multi was the single named plaintiff, he testified here that represented his entire family including his paternal grandfather, mother, and three younger siblings, for the wrongful death of his father.)

A 20-year veteran of the firm, associate attorney Keith Griffin,[4] worked on these matters and represented the clients, along with owner Thomas Girardi and colleague David Lira. Because Boeing was headquartered in Illinois, Griffin reached out to partner, Ari Scharg, of Edelson P.C. ("Edelson firm"), who agreed to the Edelson firm's association as local counsel with a split in attorney's fees. There were at least three mediation sessions involved in the Lion Air matter

[2] The parties agreed to address the clients by their respective gender pronoun and first name. For ease of readership, the pronouns are dropped in later referencing.

[3] These clients were recruited for the Girardi firm by an attorney named Mohamed Eltaher and non-lawyer, George Hatcher, who was not employed by the Girardi firm.

[4] Griffin was a "W-2 employee" of the Girardi firm, from December 1999 through December 4, 2020. He had no signatory authority over the firm's client trust accounts (CTAs) or business accounts. At the Girardi firm's height, Griffin estimated that it employed between 30 to 35 attorneys.

which involved the participation of lawyers from both firms, though Griffin did not attend all of the sessions.

October 2019 global settlement are reached for client families and minors' settlement orders issue.

On October 30, 2019, the court-appointed mediator, Judge Don O'Connell (ret.), facilitated settlement of the Lion Air cases with Boeing, reaching a global settlement in principle for all of the cases—some of which would later fall out of the group. Though structured as a global settlement, damages were separately assessed based on the merits of each case which required each plaintiff to agree to their individual amount in executing a signed release.

Several months later, closing statements were prepared by Hatcher and signed by the four client families, Septi, Bias, Anice, and Dian. The statements itemized the total settlement amount, the amount deducted for attorney's fees, the client's share of the costs to be deducted from settlement, and the net amount due to the client. Following the signing of these closing statements, the clients also signed settlement agreements and releases—around February 12, 2020, by Anice; around February 18, 2020, by Dian; Septi, around February 25, 2020; and Bias signed around March 1, 2020.

The settlement agreements and releases were prepared by Lira and Boeing (represented by counsel from Perkins Coie LLP). They provided that the client families' respective settlement funds were to be funded by Boeing within 30 days of the execution of each release and after approval of the agreements by the court. The agreements also provided that (1) an attorney

funding company would be paid money directly from Boeing;[5] and (2) the remainder of the settlement funds were to be transferred to the Girardi firm's CTA.

The signed settlement agreements were sent to the Edelson firm, and Scharg prepared and filed, a sealed affidavit, outlining a proposed process of distribution for the individual plaintiffs and the legal guardians of minor plaintiffs.[6] The proposals required that the settlement funds be paid to a trust account established by the Girardi firm for the benefit of the client families and that the net proceeds "be sent as soon as practicable via wire transfer to" the client families' respective financial institutions. (Exh. 68, p. 3.) Griffin understood "as soon as practicable" to mean, immediately. The court granted the dismissal and approval of the minor settlements on February 24, 2020, for Anice and family; March 4, 2020, for both families of Septi and Dian, respectively; and for Bias and family, on March 9, 2020.[7]

Timely March 2020 distributions are made by Boeing to Girardi firm.

Between around March 4 and March 30, 2020, Boeing timely wired into the Girardi firm CTA, Torrey Pines Bank (account ending in 5859), the confidential settlement payments for Anice and family (March 4, 2020), Dian and family (March 11, 2020), Bias and family (March 27, 2020), and Septi and family (March 30, 2020). Through emails sent by Perkins Coie, Griffin

[5] This was in payment towards reimbursement of a loan taken out by the Girardi firm, and there had been a lien asserted by California Attorney Lending. Though Griffin did not draft the settlement agreement, he was aware of this condition. But the record here did not establish Griffin's detailed knowledge of when the loan was taken, the amount, or its purpose.

[6] Along with this sealed affidavit, Scharg also prepared and filed (1) Joint Motions for Dismissal of Plaintiffs' Claims with Prejudice and Approval of Minor Settlements; (2) Confidential Declarations in Support of the Parties' Joint Motion for Dismissal of Plaintiffs' Claims with Prejudice and Approval of Minor Settlements; and (3) Orders of Dismissal.

[7] In the Minors' Settlement Orders, the court adopted the proposal outlined in the affidavit by Scharg, specifically, that "the settlement funds shall be distributed to plaintiff [ ], individually and the legal guardian of the minor plaintiff, in accordance with the process identified in plaintiff's counsel sealed affidavit." (Stipulation, ¶ 14.)

was aware of each of these transfers sent to the Girardi firm's CTA, around the time each transfer was made, and Griffin knew the amount of the families' interest in these funds were fixed.

In March of 2020, Griffin followed standard office protocol and prepared distribution memoranda addressed to Girardi, Lira, and Chris Kamon, who was employed in the accounting department of the Girardi firm. Each memorandum noted that respective settlement funds were coming in for Anice and family (memo dated March 4, 2020), Dian and family (memo dated March 11), Septi and family (memo dated March 31), and Bias and family (memo dated March 31), and each memorandum outlined the proposed distributions.[8] The Edelson firm was not copied on either Griffin's memos or on the Boeing wire emails.

But the clients were not paid in accordance with the outlined distributions. There were no legitimate reasons for delay in violation of the court order. Discussed further below, the Covid-19 pandemic created no barriers in distribution.[9] Nor did Thomas Girardi front any valid cause for delay when confronted by Griffin in April and in May 2020.

February 2020 successful mediation of Multi's lawsuit reached, followed by June 2020 distribution.

The settlement of the lawsuit brought by Multi proceeded on a different track. Immediately after the plane crash, Lion Air had approached the families of the deceased, seeking release of claims against Boeing and all Boeing-related entities. Because Multi had signed that

[8] In Griffin's credible and unimpeached testimony, he had not experienced any issues with a client left unpaid in following office protocol prior to March 2020. What normally occurred was after Griffin's notice of the receipt of settlement funds, his prepared distribution memo was forwarded to the Girardi firm's accounting department. And thereafter, the check would be drafted and one of the firm's assistants would notify the client.

[9] Governor Newsom proclaimed a state of emergency on March 4, 2020, and on March 19, 2020, issued an executive order for residents to stay at home with some exceptions. (Governor's Exec. Order No. N-33-20 (March 19, 2020).) (Rules Proc. of State Bar, rule 5.104(H)(4) [judicial notice].)

release, his settlement had to be renegotiated along with others. A mediation for this second group, involving about seven cases, was successfully held on February 12, 2020. Multi's release was thereafter fully signed on May 19, 2020.

On June 9, 2020, Boeing wired Multi's settlement funds into the Girardi firm's CTA; and like with the client families, Counsel for Boeing emailed Girardi, Lira, and others to notify that the funds have been wired. The following day, Kamon forwarded that email to Griffin and Lira. Griffin was aware of the wire transfer on or near that date. And Griffin knew that Multi's interest in the settlement funds was fixed and undisputed. Griffin also knew that the Girardi firm was required to pay Multi, his portion after receipt of funds into the CTA.

The Edelson firm was not advised of Boeing's June 9, 2020 wire. As discussed, *post*, a series of emails during May and June demonstrated confusion by the Edelson firm regarding the status of these matters and its understanding of the disbursements by Boeing.

Dishonesty committed in communications with clients.

From March to November 2020, the Girardi firm failed to directly answer the multiple client inquiries about the status of their respective settlement funds. No payments were ever wired to Multi at all. And as for the family clients, Anice, Bias, Dian, and Septi, the Girardi firm wired only partial payments on three occasions: May 11, 2020; July 6, 2020; and September 3, 2020. On September 3, the Girardi firm still owed half-a-million dollars to each of the client families and the entirety of Multi's settlement funds.

Griffin was aware that payment to Anice was delayed in violation of court order.

Around March 31, 2020,[10] Anice emailed Griffin and Hatcher,[11] addressing Griffin, "It's been almost a week since you promised me that you'd give me the information I wanted. Up till now, I have not received any information from you. [¶] I hope the execution of the agreement that I have signed can be carried out immediately because it has past [sic] the agreed time. [¶] I hope it's not affected by the corona outbreak, because—once again—I think the execution of this case can be carried out online. [¶] I hope you would convey any information that you have to me." (Exh. 59, p. 3.)

Griffin responded within a day or two, that the office is "currently closed due to the Coronavirus" and that he had "forwarded [her] request for an update to our accounting department and to Mr. Girardi," and ended with the promise that once Griffin gets a response "with a firm date for transmission of funds," Anice would be informed. (*Id*. at p. 2.) This prompted Anice to send an email, apologizing for "asking this several times," but expressing worry about Boeing's financial stability and adding, "if [I] know the fund is already in GK account, [I'll] be more calm." (*Ibid*.) In response, Griffin wrote that "the funds have been received into the firm trust account," and promised that he would let Anice know when the funds are scheduled to be wired. (*Ibid*.)

Griffin omitted the material information that Boeing had transferred Anice's settlement funds on March 4, 2020. And Griffin did not disabuse Anice of the notion that Covid-19 may be

[10] The parties agreed here that there may appear some discrepancies in the time-date stamps of the emails given the time zone differences between California and Jakarta, Indonesia.

[11] By Griffin's account and corroborated by some of the clients, Hatcher was the "go-between," or the primary contact person who would touch base with the clients if information was needed by the Girardi firm.

the cause for delay.[12]

Griffin was made aware of a "$40,000 loan" to Dian.

Around April 2, 2020, Dian sent an email to Griffin, Lira, and Hatcher, asking "Mr. David and Mr. Keith, can you lend me 40,000 dollars? I really need it right away. I have a business, if waiting for liquid [B]oeing money there is still no certainty." (Exh. 101, pp. 1-2.) Around April 6, the Girardi firm wired $40,000 to Dian as a "loan," and Griffin was copied on an email confirming the transfer. Griffin did not respond to Dian's email, nor weigh in on this email chain.

Dian thereafter sent Griffin an email around April 14, mentioning the $40,000 of "loan money" she borrowed from the Girardi firm and stressing that since the accounting department at the Girardi firm had wired the $40,000 loan, there should be no barriers for the firm to wire the settlement funds. (*Id*. at p. 9.) Griffin did not reply to this email either. By May 6, 2020, there was no question that Griffin was aware that the loan was made to Dian, evidenced in an internal email sent by him regarding the Lion Air matter.

Septi organizes the plaintiff-clients and strategizes in getting their settlement funds.

By the beginning of April 2020, aware of the 30-day agreement by Boeing to transfer funds, Septi grew suspicious of the Girardi firm after learning that other plaintiffs had received settlements from Boeing despite challenges from the pandemic. Aware that mobile banking in Indonesia was unaffected, Septi felt that there could be no justification for delay. So, Septi developed a plan to pressure the Girardi firm by organizing the clients to send emails to the attorneys, copying the other plaintiffs. Where one client sent an email, another would follow up on the inquiry.

[12] Testifying here in October 2023, Griffin recognized that by April 1, 2020, the Girardi firm had no valid excuse—including the Covid-19 pandemic—for delaying distribution to Anice as required by the court order.

Confronted by these emails, Griffin wrote an April 14 email to Kamon, Lira, Girardi, and Shirleen Fujimoto, Girardi's secretary: "Each of the four Boeing clients that have been funded have requested that the wire of their net settlement funds be sent asap." (Exh. 109, p. 45.) Griffin related during this trial, that he followed up and spoke with Girardi about paying the clients, but Girardi responded that he had the situation handled and for Griffin to leave it alone, that this was "above [Griffin's] paygrade."

On April 18, 2020, Lira responded to clients Bias, Septi, Dian, and Anice, thanking them for their patience. He claimed that due to the pandemic, the office had been closed since March, resulting in limited staffing. Griffin was not copied in this email, and during his testimony here, denied knowing that Lira was using Covid-19 as an excuse for delayed payment. Group emails followed between April and November 2020, to which Griffin did not respond.

Griffin aware that Thomas Girardi intended to lie to clients about the status of funds.

In May, Griffin continued to remind Girardi that the funds were due to the clients. In a May 4 memo, Griffin wrote to Girardi, "Dear Tom: Lots of messages from Boeing clients over the weekend. Client funds need to be wired[,]" listing the amounts due. (Exh. 30.)

Sometime before May 6, Girardi and Griffin spoke again. In this conversation, Girardi acknowledged that despite the court's explicit order, he would authorize only 50% to be released to the four client families, with the remaining 50% to follow in two weeks. As directed by Girardi, Griffin sent a May 6 email to Kamon, relating to the release of funds in the manner authorized by Girardi.[13]

Around May 11, partial payments were wired to Anice, Bias, Dian, and Septi, respectively. After having received the first wire, on May 12, Dian wrote to Girardi, copying

[13] The email noted the specific amounts due to each of the four client families, and as noted above, acknowledged that a $40,000 "loan" was previously made to Dian. (Exh. 52.) Multi

Griffin, Lira, Hatcher and others, acknowledging receipt of the partial payment and inquiring when will the second half be wired. (Exh. 59, p.1.) Lira forwarded the email to Girardi's secretaries, Kim Cory and Fujimoto. Griffin failed to respond to this May email. Neither did Griffin speak directly to Lira about the clients being paid only half of the settlement.[14]

Around May 13, Cory forwarded to Griffin and/or Lira, letters containing lies that Thomas Girardi had prepared to be sent out to the client families. In the letter addressed to Bias, Girardi wrote, "I got enough of the problem taken care of so we were able to release 50% of the settlement. I feel pretty good about the next payment. There are tax issues etc. I am working very hard." (Exh. 53, p. 2.) Cory sent the letter to Griffin who forwarded it to Lira, with Griffin writing to both: "Kimi[,] Hang on before sending. [¶] David – take a look." (*Id*. at p. 1.)

Griffin knew the letter contained lies and that there were no tax issues; but apart from forwarding the email to Lira, Griffin took no action. Griffin assumed that Lira would handle it by ensuring the letter containing those lies would not be sent out. And Griffin testified during the contempt proceedings that he honestly believed that Thomas Girardi would pay the clients, adding that he "did not believe that there was any way in the world that he would defy a court order and not pay these clients." (Exh. 118 at 119:1-3.) It did not occur to Griffin that Girardi

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was not listed in the distribution memo—his matter had yet to settle with the second group of clients who had already signed the release with Lion Air.

[14] This fact comes from Griffin's testimony on December 8, 2021, the contempt hearing held in the federal district court before Judge Durkin. (Exh. 118 at 100:4-24.) This court admitted the transcripts over Griffin's hearsay and relevancy objections. The transcripts are specifically relevant to this court's assessment of Count 8, allegations of Griffin's false testimony before Judge Durkin, and the other counts. (See generally *Maltaman v. State* Bar (1987) 43 Cal.3d 924, 947 [court independently weighs record in civil hearing underlying basis for disciplinary proceeding].) Separately, the transcripts are admissible over hearsay objection under both the State Bar Act, various provisions of the Evidence Code and under our relaxed hearsay rule. (Bus. & Prof. Code, § 6049.2; Evid. Code, §§ 1220, 1291; rule 5.104(C).)

was cash-strapped given how he flaunted his wealth—that Girardi had enjoyed celebrity status in the legal community and among political circles.

A similar lying letter dated May 13, was prepared for Dian, referencing a "special authorization" from Boeing allowing the Girardi firm to distribute 50% of the settlement and again referencing a phantom "tax issue" that needed to be resolved. (Exh. 54, p. 2.) Cory forwarded the letter to both Griffin and Lira. Griffin had no specific recollection of having read the email and letter, but agreed here during his testimony, that these were lies.

Cory sent a follow-up email on May 14, sent again to both Griffin and Lira, attached with a revised letter to Dian, asking "David: Is this ok?" (Exh. 58, p. 1.) This letter also contained lies, referencing a special authorization for 50% of the funds, but removing the language about tax issues. As with the first letter to Dian, Griffin claimed that he had no recollection of reading this revised letter. Regardless, no action was taken by Griffin.

Griffin was also made aware of Girardi's preparation of a letter to Septi which also contained lies. In another May 13 email, Cory forwarded to Griffin and Lira, Girardi's letter to Septi, which read, in part: "There are many confidential issues that I am solving. While I agree with two of the plaintiff's lawyers, we will not distribute until they settle because they knew our cases were settling higher than theirs. One of the biggest problem [sic] is that the laws have changed with respect to taxability of wrongful death cases. I am dealing with the head of the IRS to make sure this does not harm us. I need about 30 days. Believe me, I am shooting for less." (Exh. 57, p. 2.) As testified to here, Griffin did nothing about this email containing lies because he "assumed" that Lira had things handled after the first forwarded email.

Then around May 19, 2020, Hatcher sent an email to Thomas Girardi, copying Griffin, Lira, and Girardi's secretaries, writing that both Bias and Dian received letters sent by Girardi which Hatcher felt to be "a little confusing even to me," and that the clients questioned why they

had only received half of their respective settlements. (Exh. 31.) On receipt, Griffin did not circle back to Girardi nor confront him about the lies. Neither did Griffin discuss Hatcher's email with Lira. Nor did Griffin tell the clients that these letters contained lies.

Around June 13, 2020, Lira quit the Girardi firm and informed Griffin about his departure a few days later. Lira told Griffin that he wanted to start a new firm and was tired of dealing with Thomas Girardi—one of the arguments between the two involved the Lion Air clients not being paid. (Exh. 118 at 136:12-23; Evid. Code, § 1250.)

Multi and Bias ask for updates, explicitly referencing former rule 4-100.

A few days before Lira's departure, in an email dated June 11, Multi wrote to Hatcher, Lira, and Griffin, asking for "any updates." Hatcher responded that though he does not handle the transfer of funds, that with Multi already having signed the release, Boeing "[has] 30 days to transfer the money to GK and after that it's on GK to wire you the money[,]" and stated that Griffin and Lira had been copied so they can provide any updates. (Exh. 107, p. 2.) Hatcher added that the Girardi firm had been closed for three months but that "key personnel" have been working but not full time. (*Ibid*.) Griffin did not weigh-in during this email exchange.

Around June 22 and 23, Multi thereafter directly emailed Thomas Girardi and Griffin, separately, inquiring about the settlement funds. Neither responded.

Bias also attempted to get answers from Griffin. In his August 31, 2020 email, Bias directly accused the Girardi firm from breaching its obligation to timely pay the clients. Griffin's September 3 response included assurances that he (Griffin) was confident that Girardi would respond once able; that Girardi had given notice that he was able to release a large wire of funds today; and stressed that "everyone at this law firm is committed to making sure that you get absolutely every dollar that you are entitled to receive." (Exh. 36, p. 2.) The next day, around September 4, Bias pressed again, that Girardi had not gotten back to him and raised questions

why Anice and Septi had received some of the money but that he and Dian had not. Griffin gave no reply. Bias would next hear from Griffin in a November 18 group email, discussed below.

Multi also made attempts to reach Griffin in the months of September and October. Around September 2, 2020, Multi emailed, stating that he heard the Girardi firm had re-opened and asked about the "status of settlement" and when "can it be wired" to him. (Exh. 109, p. 4.) Griffin responded on September 9, stating that he sent Multi's inquiries to both the accounting department and Thomas Girardi, and that he would let Multi know as soon as he has "an estimate[.]" (*Id*. at p. 3.) Multi emailed again on September 11 and 23, and October 1 and 2.

In the October 2 email, Multi asked for any updates and "also I need confirmation, has GK received all the money for my settlement from Boeing?" (*Id.* at p .2.) That same day, Griffin responded, "I am the only one in the office right now. As soon as I hear from Mr. Girardi and the bookkeeper I will advise." [15] (*Ibid*.) Multi requested an update in emails dated October 8, 13, 20 and 26, respectively. On October 13, Griffin responded that he "placed the request for status" and that he will respond immediately "once I have the information on disbursement." (*Id.* at pp. 1-2.) Griffin also responded on October 29, stating that he did not have a "firm answer" and that he had sent the "request again to our accounting department and Mr. Girardi." (*Id.* at p. 1.) On October 30, Multi again emailed Griffin asking "to know the real situation" because he had been made aware that other clients had received their money several months ago, having spoken to Bias and made aware of his partial payment from the Girardi firm. (Exh. 112, p .4.)

By November 2020, Bias and Multi separately emailed Griffin alleging ethical violations by the Girardi firm. On November 6, Multi emailed Griffin, specifically pointing to former rule of Professional Conduct, rule 4-100—the failure to promptly notify of receipt and to promptly

[15] Not impeached by OCTC, Griffin plausibly testified here that in June 2020, when the Girardi firm had received the Boeing funds, he had been made aware of the wire at that time, but come fall 2020 when Multi emailed him, he did not remember the wire having come in.

disburse settlement funds. Multi added that no reasonable explanation has been given for the delay. Griffin responded in his dated November 7 email, stating that he did not have access to the firm's banking information, but that he has personally asked the bookkeeper about whether the funds had been received by the firm, and that he should know by Monday; and that as for disbursements, it was Thomas Girardi who controlled that.

In an email sent on November 9, Multi retorted, "I know that your firm has received the money from Boeing, and somehow you are using my money for something else. For your benefit. That's why you guys keep silent all this time." (Exh. 112, p. 2.) Multi warned that he will notify the State Bar if he does not receive his money by the end of the week.

On November 12 and again on the 16th, speaking for the group of clients, Bias also demanded an explanation and vowed to report the Girardi firm to the State Bar. Writing on November 12, "we as a client demand an explanation where you put our money, an honest answer" (Exh. 39, p. 2) and on the 18th, "we want to know where our settlement money all this time. We need an explanation." (*Id.* at p. 1.)

In addressing Bias, Griffin responded to the group on November 18, 2020, suggesting setting up a group phone call the following week with Thomas Girardi, "the sole owner of the firm" and "the person with whom you need to speak," and adding that Girardi had surgery last week and was currently at home recovering. (*Ibid*.) Griffin testified here that he had suggested this group meeting on the advice of attorney Murray Greenberg[16] but the clients did not respond to the offer.

[16] Griffin met Greenberg during Girardi firm functions and had been aware that Greenberg retired from the State Bar and went into private practice, focusing on professional ethics. Looking back, Griffin acknowledged that following Greenberg's advice was not best practice but Griffin did not elaborate further during his testimony.

Around November 20, Hatcher had a one-on-one meeting with Girardi regarding the settlement funds owed to the clients. Hatcher reported back to Griffin, that he (Hatcher) had a "good feeling" that Girardi would pay what was due by the end of the month. Griffin thereafter advised Girardi that if Girardi did not meet the November 30 deadline, that Griffin would resign from the firm, and prepared a memo with the money owed to the clients (including a 10% interest), writing that "If they do not receive their funds by November 30th, they have indicated they are all filing bar complaints and a criminal complaint with the DA's office. This could not be more serious." (Exh. 118 at 230:22-25.)

Edelson firm inquiries are not fully addressed.

The Girardi firm did not inform the Edelson firm of the client complaints, nor advise in real time, that Boeing had paid out the settlements on those various dates in March for the client families and June 2020 for Multi.

Divergent testimony here regarding February 2020 conversation.

Scharg credibly testified here that he was under the false impression that as of June 2020, no funds had been received by the Girardi firm. This belief was based on a conversation with Griffin in February 2020, where Griffin represented that Boeing would not be wiring any funds until *all* clients had signed their releases. And so, because releases were still being executed with the second group of clients, including Multi and others, the Edelson firm assumed that no funds had come in.[17]

[17] Griffin argues that Scharg's testimony was incredible as Scharg drafted the documents in support of the dismissal of the four client family matters, and Edelson was aware that those cases were dismissed—so, it would follow that Edelson firm should have been aware that Boeing had 30 days to transfer the funds to the Girardi firm per the settlement agreements, and that Scharg would have presumed that Boeing would not violate that order.

First, there is no question that Griffin had *not* advised Scharg the moment the funds came in. Separately, had Scharg indeed known about the transfers at the time they came in, a reasonable attorney would have demanded one's portion of the legal fees which had become fixed—no such demand was made here, rather, the subject of the text exchange focused on

Though Scharg's testimony was credible as to his perspective, the refutation by Griffin was also believable in explaining his view. The February conversation occurred around the time of the second group of clients were entering mediation, which included Multi and about seven other clients, one of whom was considering replacement counsel. Griffin related that it was Lira who was working on these cases and working to get releases signed for this group—supporting Griffin's differing interpretation of an email exchange sent around February 28, 2020.

In that February exchange, Griffin and Scharg discussed a client considering hiring replacement counsel and so Scharg asked, "[s]o I take [client] isn't signing our settlement agreement?" where Griffin responds, "[n]o. She's not. Trying to get Perkins to give us individual offers." (Exh. 1067, p. 10.) Immediately following, Scharg expresses incredulity that the client would want to go with another firm "[e]ven though we got her a bunch of money" and asked, "[a]nd Perkins is not going to release any of the money until all of the settlement agreements are signed?" (*Id*. at p. 11.) Griffin answers, "Correct." (*Ibid*.)

As February moved into March, Scharg continued to follow up in asking whether "the remaining clients" are going to sign the settlement, with Griffin reminding Scharg that "[w]e have the four cases signed and done. You have those. Judge [C]oral has allocated . . . on the other six cases and releases are being prepared for those." (Exh. 1067, p. 12.) Text messages continued through May, discussing mainly the status of those "remaining" releases.

Lira confirms in June 16 phone conversation, the funding of the four settlements.

This confusion was resolved in June when Scharg sent a text on June 16, asking: "Hey Keith – did the Boeing money come in?"—Griffin responded immediately, "Ari. I actually don't

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Scharg's concern about Boeing's financial status and the urgency in securing the releases so that the settlement funds could be wired into the Girardi firm's CTA. Finally, Scharg's belief was corroborated by his colleague, Rafey Balabanian, who emailed around May 15, requesting whether Boeing would be willing to do a partial release of funds if the delay was caused solely by one "poached" client. (Exh. 12, p. 1.)

know. I will find out." (Exh. 86, p. 1.) And less than two hours later, Scharg texts a follow-up: "David Lira just brought me up to speed on his situation. Yikes. Anyways, he said those cases have been funded, so please let me know. Thank you." (*Ibid*.)

Scharg explained here that Lira had a phone conversation with Scharg and Balabanian, where the Edelson firm attorneys learned for the first time, that the four client families' settlements had already been wired to the Girardi firm. And that Lira stated that he was leaving the Girardi firm after a fall-out with Thomas Girardi.

Balabanian followed up by phoning Griffin around the end of June. In that conversation, Griffin disclosed information about the half payments to the clients but stressed that the Edelson firm would need to pursue Thomas Girardi who had access to the finances. Balabanian memorialized the representations made by Lira and Griffin in a letter dated July 10, 2020, sent to Thomas Girardi and Lira (at his new business address) and copying Griffin. The Edelson firm demanded answers to four pointed questions: whether the settlements had been funded; where the funds were being kept; the amounts paid and/or owed to the clients; and the basis for withholding funds. Griffin did not respond to this letter, and Lira's response (where Griffin was not copied) did not directly answer the questions. Balabanian thereafter reached out to Griffin, asking whether Girardi would respond to the July letter.

From July to September 2020, Balabanian was trying to reach Thomas Girardi by phone through Griffin acting as the liaison who would remind Girardi to call and pass along messages between the two. Around July 20, Balabanian had a conversation with Girardi (who sounded ill and not in good health) and Girardi represented that he would take care of things. In a second longer conversation in July, Girardi sounded better and mentioned delays in getting settlement agreements and that he was dealing with a tax issue with aviation cases.[18] Girardi asked for a few

[18] Girardi's statements are not taken for truth of the matter asserted.

days to figure things out. Six days after this conversation, Balabanian texted Griffin, saying "Tom's putting us in an untenable position and I can't hold things off any longer." (Exh. 21, p. 6.) By this, Balabanian was referring to reporting Girardi to the federal district court on the allegations of the clients having not yet been paid.

But on July 27, Balabanian advised Griffin that he would hold off reporting Girardi to the court and that it was "fine as long as he keeps his promise" to pay the clients by Monday. (*Id.* at p. 7.) Girardi did not meet the August 3 deadline, and Balabanian could not reach Girardi by phone.

Griffin suggests that Girardi's behavior was excused by health issues.

Rather than going to the court, Balabanian continued communicating with Griffin. In their August exchange, Griffin urged Balabanian to give Girardi more time. Griffin related that Girardi was getting older, that he was very ill; that the firm was going through a lot of changes with attorneys leaving; and that it was not an easy conversation to discuss the possibility of Girardi retiring from the firm. Griffin stressed that Girardi was not avoiding Balabanian, but that he was aging and slowing down. Griffin made assurances that the Girardi firm was doing everything it could to ensure the clients would be paid. But Griffin did not disclose that the clients had been making complaints to the Girardi firm for months.

On August 24, Balabanian spoke again with Thomas Girardi who admitted that the clients had not been paid but represented that everything will be wrapped up that week and mentioned (vaguely) that something had happened with the releases and that this has never happened before. Balabanian texted Griffin, summarizing his phone call with Girardi and adding that if Girardi does not take care of it (referring to getting the clients paid), that Balabanian would have to file something with the court. Griffin responded, "Thanks for the update Rafey. Sorry you are in this spot man." (Exh. 21, p. 10.) A week later, on August 30, Balabanian texted

again to ask Griffin if "it" was done, to which Griffin responded, "I think he has the funds together to wire most to clients. Let me update you tomorrow." (Exh. 21 at p. 11.)

Griffin was aware that September disbursements were from attorney's fees from another settlement.

As of September 3, 2020, the Girardi firm's CTA balance was $239,396.25. The Girardi firm still owed half-a-million to each of the client families and Multi was still owed the entire portion of his settlement. Now having "growing concerns" about the clients not having been paid (in Griffin's words), Griffin again spoke with Girardi in early September—though not sharing those concerns with either the clients or the Edelson firm. In this conversation, Girardi agreed to release more funds to the client families, coming from attorney fees from an unrelated employment case handled by Griffin. Around September 3, additional partial payments were made to the four families—with Griffin's knowledge about the source but without advising the clients.

That same day, September 3, Griffin texted Balabanian that Girardi had "sent a wire out this morning to them for about half their collective balance. I think the clients are fine for now. He is trying to get the rest out by next week." (Exh. 21, p. 12.) Balabanian responded that Girardi had been giving him the run around and wanted proof of the representations, otherwise, the Edelson firm would have no other choice than to file a motion for accounting. Then on September 22, Balabanian texted that "we're out of time[,]" and that the motion would be filed that week. (*Id*. at p. 16.)

But after Balabanian discussed the matter of partial payments with founder and CEO of the Edelson firm, Jay Edelson, the firm agreed to hold off a little longer to see whether Girardi would make good on the remaining funds.

Edelson delayed reporting of Girardi to the federal court.

Around September 30, Girardi lied to Balabanian—representing in their phone call, that he had gotten the clients paid and it was done but asked for more time to pay the attorney's fees to the Edelson firm. (Griffin did *not* echo this lie to the Edelson firm nor does the record demonstrate that Griffin was made aware of the substance of this conversation.) But within a week later, Balabanian saw an alarming social media post relating to allegations that the Girardi firm was being sued by co-counsel.

Balabanian shared that post with Griffin, who responded on October 6, claiming ignorance of the matter but promised to try to get information. Balabanian texted back, wondering if other suits were coming and expressed that the Edelson firm could step forward as well, but that he would rather "move on" and was "cognizant that you [Griffin] was with [Balabanian] the whole time, which is why I've been cool. Does he [Thomas Girardi] know how lucky he is to have you?" (Exh. 21, p. 24.) During this time, Balabanian was still under the impression that the clients had been fully paid, including Multi, and that it was only attorney's fees that were outstanding. Griffin responded, "Thanks bro. Appreciate it. Finishing up an email to you with the figures on fee breakdown on the Boeing cases." (*Ibid*.)

On November 11, 2020, Balabanian reached out to Griffin, inquiring about the Edelson firm's attorney's fees. Griffin texted Balabanian that there were "positive developments" and would get back to Balabanian in a couple of days, as Girardi was recovering from eye surgery. (*Id*. at p. 26.) On November 17, Griffin reported that as an update to Balabanian, he (Griffin) was trying to set up a call between Girardi and the Boeing clients, to which Balabanian responded with confusion because he had thought the clients had already been fully paid.[19]

[19] In this exchange, Balabanian asked "I'm not following? Which clients and what for?" (Exh. 19, p. 3.) Griffin responded: "The Boeing Lion Air clients want to speak with him

On December 2, 2020, the Edelson firm brought its motion, alerting the federal district court in the Lion Air case about the failure to make full payment to the client families.

On December 4, 2020, Griffin resigned from the Girardi firm.[20] At that time, the balance of Girardi firm's CTA totaled only $14,384.85.

Contempt proceedings conclude without holding Griffin in contempt.

On December 14, 2020, the district court found Thomas Girardi and the Girardi firm in civil contempt and entered a two-million-dollar judgment against them. In response to the contempt motion, Girardi had admitted that the firm had not paid the families the full settlement amounts, and that the firm did not have the funds to do so.

The district court held separate proceedings in December of 2021, to decide whether to hold Griffin and Lira, individually, in contempt. Griffin testified on December 8 and 9, 2021. During the court's inquiry into Multi's matter, Judge Durkin asked how many emails Griffin had exchanged with Multi, and Griffin responded, "I would say three or four e-mails," which led the court to ask whether the email communications were held in the binders of joint documents shared by all the parties. (Exh. 119 at 180:4-22.) The parties acknowledged that they did not have possession of the communications because they were not provided by the Girardi firm.

The court then asked Griffin to recount what he could remember about the nature of the email exchange to which Griffin outlined that Multi asked about the funds, that Griffin acknowledged the settlement had been funded by Boeing, and that Griffin directed Thomas Girardi to send Multi the money. (*Id.* at pp. 183-184.) And that it was either Multi or another

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[Girardi] about the balance of their funds that he needs to pay them." (*Ibid*.) Balabanian responds, "Oh, okay. I thought he had finally paid them and only owed us fees." (*Ibid*.)

[20] Griffin sincerely explained during his trial testimony, that he had not resigned earlier because whether right or wrong then, it felt like the right thing to do was to stay at the firm—to continue to earn money for the firm to pay the clients from attorney's fees and to continue to apply pressure on Thomas Girardi to pay the clients.

client who referenced reporting Girardi to the district attorney's office, and that Multi was clearly upset. (Exh. 119 at 183:24-184:2.) Griffin then testified as follows:

> [Court:] Were any of your answers lulling in the sense you told him "Don't worry, it's on the way"?
>
> [Griffin:] No. No. I was direct with him. He asked if the money had come in. I told him it did. He asked when it would be wired, and I told him as soon as Girardi approved it, and I did not lull him.
>
> [Court:] All right. Did you prepare a cover memo, as you did for the other four, breaking out the settlement amount, the amount for fees and, in bold, the part that says we should wire X amount of money to Multi Rizki?
>
> [Griffin:] I don't know if I did that initially because I didn't know the funds were coming in. I mean, normally, you know, I would get an e-mail when they were coming in. So because these were coming from Mr. Lira's settlement, I didn't know they were coming to Girardi Keese. So I don't recall if I prepared one of those – those memos that I would typically prepare.

(Exh. 119 at 184:5-20.)

In his testimony here, Griffin swore that he told the truth as he knew it then—that he did not have a projection date for the wiring of funds to Multi but that he forwarded the inquiries to the accounting department. But Griffin acknowledged he did not state to Multi, that his funds had come in, in June; nor did Griffin share his growing concerns with Multi about the Girardi firm's misappropriation.

After a three-day hearing, the federal district court declined to take further action against Griffin (or Lira), individually, deeming the issues moot in light of the full payments made to the clients by the Edelson firm's insurance carrier—that agreement made sometime following the December 2021 evidentiary hearing. (Exh. 115, p. 1.)

Conclusions of Law

On consideration of the factual findings, this court applies the law below, concluding that OCTC has met its burden of proof in demonstrating by clear and convincing evidence, that Griffin is culpable of various acts of moral turpitude in concealing material facts from the client families and Multi (Counts 4 and 5) and in failing to notify Multi of the receipt of settlement funds (Count 1), and concealing from the Edelson firm the true status of the settlements in the four client matters and in Multi's case (Count 6).

The failure to properly ensure that the clients were paid their settlements also supports a finding of culpability for failing to act with reasonable diligence and with competence (Counts 2 and 3), and Griffin's acts of concealment aided the Girardi firm in the continued commission of violating section 6103 of the State Bar Act where the district court's order required distribution as soon as practicable (Count 7). But this court does not find that Griffin committed perjury in the civil contempt hearing (Count 8).

Concealment from Clients, Counts 4 and 5, Bus. & Prof. Code, § 6106

Here, Counts Four and Five allege that Griffin intentionally concealed or omitted material information he was aware of and which he knew as being sought by the clients, thereby committed acts of moral turpitude, dishonesty, or corruption in violation of section 6106 of the State Bar Act, codified in the Business and Professions Code. Section 6106 is violated in an attorney's acts of concealment to the client, the courts, or opposing counsel, when accompanied by an intent to mislead (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315), or where an attorney acts with gross negligence in creating a false impression (*In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15).

This is consistent with the common law duty of the fiduciary to render "a full and fair disclosure to the beneficiary of all facts which materially affect [the client's] rights and

interests," so where there is a duty to disclose, "the disclosure must be full and complete, and any material concealment or misrepresentation will amount to fraud." (*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 189-190, internal citations omitted [discussion of statute of limitations in attorney malpractice claim]. See also *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680-681 [duty to communicate lies under common law and professional rules].)

But ordinary negligence is insufficient to show a section 6106 violation. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241.) The distinction between simple negligence and gross negligence is that of degree, the latter reflecting "the lack of any care or an extreme departure from what a reasonably careful person would do in the same situation to prevent harm to oneself or to others[,]" which can be committed proactively or by the failure to act. (CACI No. 425. See also Rules Prof. Conduct, rule 1.0.1(h)[21] [reasonableness defined by objective standard of the reasonably prudent and competent lawyer].)

Count Four—Misleading Client Families

Count Four is predicated on: (a) Griffin's responses to Anice's multiple inquiries made between March and April 2020, asking about her settlement funds and his failure to be forthright in advising her that her settlement was fully funded on March 4, 2020; (b) Griffin's failure to advise Dian that her settlement was fully funded when she asked the Girardi firm for a $40,000 loan and was given that loan around April 6, 2020; (c) Griffin's communications with Bias and Dian, who were inquiring about the status of their settlements funds—i.e., despite knowing that around May 14, 2020, Thomas Girardi sent letters to Bias and Dian containing false statements that the Girardi firm had "special authorization to distribute 50%" of the settlement funds to the

[21] Unless otherwise specified, further references to rules are to the California Rules of Professional Conduct.

client families and that the firm was "able to release 50% of the settlement[,]" Respondent intentionally failed to inform Bias and Dian that such statements were false throughout the course of his communications with them; (d) that around September 3, 2020, in response to an email inquiry from Bias[22] about the status of his settlement funds, Griffin wrote that he got notice from Girardi that "he was able to release a large wire of funds today," but Griffin failed to disclose that those funds came from attorney's fees earned in an unrelated employment matter and that the client families' settlement funds had been misappropriated; and (e) that around November 18, 2020, in response to Bias's inquiries regarding the status of his settlement funds, rather than advising Bias that his funds had been misappropriated, and that the September 3 partial payment was funded by another matter, Griffin intentionally concealed such information by simply writing to Bias that Girardi, "the sole owner" was the person Bias needed to speak with.

Here, the court finds culpability under subparts (b) through (e), based upon the timing of known information that: (1) Griffin was aware that each of the family clients' respective settlement payments were fully funded by the end of March 2020; (2) Griffin knew that Dian requested a "loan" in April; (3) around April 14, Girardi immediately shut-down Griffin when confronted about the settlement funds; (4) around May 4, Griffin was aware that Girardi was authorizing a 50% partial payment of the settlement funds in violation of the court order; (5) that around May 13, Griffin knew Girardi planned on lying to at least one client about the 50% release of funds; (6) that around May 19, Griffin knew that at least two clients received letters containing false information from Girardi; and (7) that by September 2020, Griffin knew that the

[22] Count Four, subpart (d) in the NDC erroneously stated that the September 3, 2020 email was from Septiana. On October 26, 2023, OCTC orally moved, unopposed, to amend the NDC to conform to proof. The motion was granted, and the name "Septiana" was replaced with "Bias."

partial disbursements to the client families were coming from an unrelated employment suit, having directed the accounting department to follow Girardi's instructions.

Regarding these known facts and turning to the set of allegations regarding Dian's request for a loan around April 4, subpart (b), Dian had emailed Griffin and Lira requesting a $40,000 loan because of the "uncertainty" of when the Girardi firm would receive the "liquid [B]oeing money." A reasonable attorney would understand that Dian was under the false impression that the Boeing funds had yet to wire the settlement funds. Rather than clarifying, Griffin sat silent. This, despite an awareness that the Girardi firm already had Dian's settlement funds in its CTA; being copied in the email "advancing" the loan; and being copied in the email confirming the $40,000 transfer to Dian. Nor did Griffin respond to Dian's April 14 email, in which she mentions that she borrowed from the firm $40,000 as "loan money." Even assuming Griffin was inattentive to these emails, he was certainly aware of the loan by May 6, evidenced by the internal memo he prepared. So, at a minimum, Griffin was grossly negligent in failing to correct Dian of her unawareness.

Turning to subpart (c), by the end of May 2020, Griffin already had at least two conversations with Girardi where Girardi made clear, that he had no intention of immediately issuing payment. A reasonable attorney is now aware that Girardi knowingly violated the court's orders and was determined to continue doing so. Griffin was also aware that Girardi drafted a letter containing lies about special authorization for partial payments—abdicating to Lira to handle it without any follow through. And thereafter, Griffin was notified that two clients were left confused about letters sent by Girardi authorizing partial payments. Under these circumstances, a reasonable attorney would have concluded that his clients were being misled by Thomas Girardi. So, in answering by silence to Hatcher's May 19 email involving Bias and

Dian, Griffin acted, at a minimum, with gross negligence in failing to disabuse the clients of the lies perpetuated by Girardi.[23]

As to the allegations surrounding Griffin's communications with Bias, subparts (d) and (e), they involve the concealment of misappropriation in the face of Bias's inquiries about the status of settlement funds. By September 3, 2020, a reasonable attorney would have concluded that the Boeing settlement funds had been misappropriated because Girardi authorized partial payment to the clients based on a "large wire of funds" which Griffin knew came from an employment matter he had worked on. (See *Baca v. State Bar* (1990) 52 Cal.3d 294, 304 [misappropriation is an attorney's failure to use entrusted funds for the purpose for which they were entrusted].)

Where Bias demanded to know the truth about whether the funds had been misappropriated and pointing to the ethical rules, Griffin's response that he did not know was a "half-truth." (See *Grove*, *supra*, 63 Cal.3d at p. 314 [the law makes no distinction among concealment, half-truth, or false statement of fact].) Griffin chose not to disclose what he knew at the time, that the Girardi firm no longer held the settlement funds or that the partial payments were funded by another matter. Under the circumstances, the court concludes that the concealment was intentional, the goal to provide the Girardi firm more time to come up with missing funds to pay the clients the amounts due.[24] Hence, section 6106 was violated in these two instances under subpart (d).

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[23] In finding so, the court separately rejects Griffin's defense that he did not pay much attention to Hatcher's email, or its attachments. The willful decision not to ask the pertinent questions is tantamount to having actual knowledge for the purposes of culpability. (See, e.g., *In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348 [finding of moral turpitude by committing unauthorized practice of law where attorney was willfully ignored evidence of his ineligibility].) A reasonable attorney would have done more to investigate in honoring his fiduciary obligations to guard the clients' financial interests.

[24] The court disagrees with Griffin that any finding of intent would be based on speculation. Intent is almost never proven by direct evidence. (See generally *In the Matter of*

But as to the remaining allegations under subpart (a), this court agrees with Griffin, that culpability has not been proven surrounding the March and April 2020 communications to Anice—before a reasonable attorney would have developed any suspicions of malfeasance. Griffin here followed the same office protocol that had worked for 20 years. It was customary practice that in closing out his matters, Griffin prepared a distribution memo which triggered accounting to disburse the settlement checks and the designated staff member would contact the client. And the record failed to show an awareness by Griffin that this system was not working prior to the Lion Air matter.

So, around March 31, 2020, when Anice emailed Griffin and Hatcher, addressing Griffin, about the status of her matter and concerns about the pandemic, Griffin's response was reasonable. He informed her that the office was currently closed (not shown to be a lie here) and that the request had been forwarded to accounting. And when responding to Anice's follow-up email, Griffin also reasonably answered in confirming that the Girardi firm had received the settlement funds. Given what Griffin knew at the time—before his April 14 confrontation with Thomas Girardi—there lacks sufficient proof that Griffin intentionally misled Anice or acted with gross negligence in their communications.

In sum, most of the allegations under Count Four has been proven by clear and convincing evidence. Griffin committed multiple acts of moral turpitude in misleading the client families of the true status of their settlement funds, some committed intentionally and others by gross negligence, at a minimum.

Respondent H, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 241 [the hearing judge placed in position to determine issues of intent, state of mind, good faith and reasonable beliefs and actions].) But the court does agree with Griffin, that OCTC *failed* to prove that Griffin shared Thomas Girardi's *intent to steal* from the clients.

Count Five—Misleading Multi

Count 5 alleges that Griffin concealed or omitted material information during his communications with Multi from around June to November 2020. Specifically, by stating to Multi in his repeated requests for updates, that Griffin would pass along the updates received by the accounting department rather than being upfront about the June 9 wire from Boeing. OCTC points to emails sent around September 9, and October 2, 13, and 19, respectively, where Griffin gave the same reply—that Multi's requests were being forwarded to the accounting department and to Thomas Girardi, who had control over the funds.

Here, the court agrees with OCTC that Griffin acted with gross negligence, at a minimum. Griffin had been made aware that around June 10, 2020, Boeing had wired Multi's settlement funds to the Girardi firm. Thereafter, Multi first receives a misleading statement in June 2020 about the pandemic made by Hatcher, of which Griffin should have been aware. After Multi's June 11 email sent to Hatcher, Griffin, and Lira, asking for "any updates," Hatcher's response starts with the truthful statement that Boeing had 30 days to transfer the money to the Girardi firm from the date on which Multi had signed the release, and that upon Girardi's receipt, a wire would be sent to Multi. Hatcher then ends the email with a misleading statement: "For your information, [the Girardi firm] office has been closed for 3 months, however, key personnel have been working but not full time." Though Griffin knew the pandemic was not the cause of any delay, he failed to clarify. Nor did Griffin directly answer the request for an update by stating that funds had already been received.

Critically, Griffin was aware that Hatcher, the primary source of information, did not inform Multi that his settlement funds had been received from Boeing. So, unlike the doubt surrounding the Anice allegations, subpart (a) of Count Four, it cannot be said that Griffin acted reasonably in relying on standard protocol for relaying information. And this was more than

mere negligence. By June 2020, Griffin had already had the April 14 confrontation with Girardi involving the client families and was aware of the false statements Girardi sent to some of the clients in May 2020.

Thereafter, in the months of September and October—Lira having now quit the law firm and Hatcher having no additional information—Griffin failed to be direct with Multi in his repeated inquiries. When Multi asked for an update in his October 2 email, and pointedly asked for confirmation that the Girardi firm had received his settlement funds from Boeing, Griffin vaguely wrote that he was the only one in the office and would follow up with Thomas Girardi and accounting. Griffin's evasive responses to Multi's inquiries continued into November 2020. What Griffin failed to disclose was that Girardi had been engaged in a months-long resistance to paying the client families. Failing to disclose this material information, Griffin acted at a minimum, with gross negligence, in violation of section 6106.[25]

Failure to Notify Clients of Receipt of Funds, Count 1, Rule 1.15(d)(1)

Alternative to the charging in Counts 4 and 5, OCTC alleges as Count 1, a willful violation of rule 1.15(d)(1), which provides that a lawyer shall promptly notify[26] a client or other person of the receipt of funds, securities, or other property in which the lawyer knows or reasonably should know the client or other person has an interest. (See *In the Matter of Taggart*

[25] Noted above, Griffin's testimony was plausible that when Multi emailed him, he did not have perfect recall of the June 2020 wire; nonetheless, under the totality of the circumstances, Griffin's series of responses were evasive and omitted material information by gross negligence. Separately, the court is unpersuaded by Griffin's argument that Multi's emails simply asked the "perfunctory question" of when Multi would receive his money and that Griffin appropriately forwarded the emails to accounting and Girardi, who controlled the release. Again, it was Griffin who had personal responsibility to communicate the material and true facts—particularly where Lira had left the firm and Hatcher provided misleading information.

[26] Effective January 1, 2023, the rule was amended to read, in part, that "absent good cause," the client must be notified *no later than 14 days* of the receipt of funds the lawyer knows or reasonably should know the client has an interest.

(Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 309 [willfulness is the general purpose or willingness to commit the act or to make an omission].)

Here, the NDC alleges that Griffin was aware that Anice and family had an interest in funds received around March 4, 2020, by the Girardi firm; was aware of March 11, 2020 funds received on behalf of Dian and family; and also knew that funds were received around June 9, 2020, on behalf of Multi and family. So, in failing to promptly notify clients (i) Anice and family; (ii) Dian and family; or (iii) Multi and family, of the Girardi firm's receipt of their respective settlement funds, Griffin is alleged to have violated the rule.

Despite the court's finding relating to misrepresentation of the status of client funds to the families under Count 4, the court does not find that culpability has been proven relating to Anice and family, or Dian and family. But the court does conclude that culpability has been established for Multi and family—though no additional weight is accorded because it is subsumed by Count 5. (See *In the Matter of Moriarty* (Review Dept. 2017) 5 Cal. State Bar Ct. Rptr. 511, 520 [no additional weight in determining discipline where same misconduct underlies two violations].)

Discussed above in finding no culpability regarding misrepresentation with Anice relating to the early email exchange about the status of funds, Griffin reasonably relied on a system that had worked. Because OCTC identified no past issues in following these protocols, the court does not find a willful violation by Griffin under subparts (i) or (ii), as charged.[27] (Contra, *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 522 [attorney held responsible for mismanagement where staff habitually missed deadlines].)

[27] Relating to the lack of notification to Dian, the NDC does not specifically raise that Griffin failed to "promptly notify" Dian around the time of the April 4 loan request. Though this should have prompted Griffin to clarify to Dian, that her settlements had already come in, this misconduct is more properly charged as concealment which this court has found culpability above.

But with regards to the settlement funds with Multi, the court finds Count 1 has been established under subpart (iii). Because of what Griffin had learned by June, it was unreasonable for Griffin to stay silent. Hence, the court finds culpability under Count 1, of Griffin's violation of rule 1.15(d)(1) in willfully failing to promptly notify Multi of the June 9 receipt of funds.

Concealment from the Edelson Firm, Count 6, Bus. & Prof. Code, § 6106

Count Six involves allegations of concealment from co-counsel, the Edelson firm. Though no fiduciary duty is recognized between attorneys as co-counsel under common law (*Saunders v. Weissburg & Aronson* (1999) 74 Cal.App.4th 869, 973-74), misleading another is subject to attorney discipline as it strikes at the fundamental rules of ethics—common honesty. (See *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 845 [attorney's misrepresentations to third parties constituted moral turpitude in violation of section 6106]; cf. *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 [considering attorney's misleading statements to the court and opposing counsel in determining the appropriate level of discipline].)

Here, the NDC alleges as acts of moral turpitude under section 6106, that Griffin intentionally or by gross negligence, concealed or omitted material information regarding the status of payments to the client families between March and November 2020; in March through June correspondence, failing to disclose that though the settlements for the client families were fully funded by March 30, 2020, only partial payments were made; between May and November 2020, sending text messages and other correspondence where Griffin assured the Edelson firm that Thomas Girardi was "working on" paying the client families their respective settlement funds, rather than disclosing that Girardi had sent letters around May 14 to Bias and Dian letters containing lies about the settlement funds; and that between September and November 2020, Griffin concealed that the partial payments made to the client families came from an unrelated

employment matter and that the Girardi firm no longer had the respective client families' settlement funds to issue their entitled payments.

As with the charges relating not concealment to the clients, the focus is on what was known or knowable at the time of action. Here, Griffin knew, or should have known, the Edelson firm was not informed in real time of the receipt of the client families' settlement funds in March or the receipt of Multi's in June 2020. Despite this, Griffin answered obtusely (possibly innocently) in the earliest exchanges in March but grew to being intentionally misleading by late summer into fall.

Looking at the first grouping of emails, March through June 2020, Scharg repeatedly asked questions about the status of the cases, the focus being the releases. As discussed in the findings above, the testimony surrounding these exchanges were divergent. Though Scharg's testimony was credible, Griffin's explanation was believable in explaining why he narrowly answered the questions. Hence, for this set of communications, this court does not find Griffin's responses to be misleading by omission.

But moving to the August communication, Griffin implored Balabanian to give Thomas Girardi more time, stressing that Girardi was recovering from medical issues, and stating, "I know he [Girardi] is working on this." Though these statements were not proven to be false (i.e., that Girardi did not have eye surgery and that Griffin knew the falsity of that representation), Griffin also knew that Girardi had no valid reason to delay payments. Again, the Edelson firm was not told of receipt of the settlement funds by Boeing in real time. So, by vaguely describing that Girardi was "working on this," without including the material facts—that the clients were being issued partial payments in violation of the court order—Griffin concealed the true circumstances. Hence, this court concludes this was intentional concealment. (See, e.g., *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 213 [finding letters assuring

clients that attorney was working on their matters was intentionally crafted to conceal failure to perform].)

Further intentional obfuscation was made in September when Griffin advised Edelson firm of the September 3, 2020 partial payments, holding back information about the source of the funding. Griffin assured Balabarian, "I think the clients are fine for now[,]" without disclosing the history of client demands and multiple email chains or Girardi's misleading statement of a 50% special authorization. In these omissions, Griffin was seeking more time for the Girardi firm to find a source to pay the clients their settlements and the Edelson firm for its attorney's fees. In sum, the material and intentional omissions made in August and September serve as a bases for culpability under Count Six.

Competence and Reasonable Diligence, Counts 2 and 3, Rules 1.1(a), 1.3(a)

Count 2 charges a violation of rule 1.1(a), which provides that a lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence. Competence in any legal service means to apply the learning and skill, and mental, emotional, and physical ability reasonably necessary for the performance of such services. (Rule 1.1(b).) Count 3 alleges a violation of rule 1.3(a), which states that a lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client. "Reasonable diligence" means that a lawyer acts with "commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer." (Rule 1.3(b).) Reasonableness is measured on an objective standard, in relation to the conduct of a reasonably prudent and competent lawyer. (Rule 1.0.1(h).)

Here, the same factual allegations underly the two counts, that Griffin willfully failed to take appropriate actions to ensure the firm complied with the Minors' Settlement Orders, or to

ensure the funds be properly maintained and disbursed to the client families and Multi by: (a) failing to timely advise the federal district court, the Edelson firm, and the client families that Boeing had fully funded the settlements; that the Girardi firm failed to conform to its ethical duties; and that the funds were misappropriated; and (b) failing to notify the Edelson firm and Multi, that his settlement was fully funded around June 9, 2020; that the Girardi firm was required to wire the funds promptly to Multi; that the Girardi firm failed to pay Multi the funds due to him; that the Girardi firm was not acting in conformity with its ethical duties; and that the firm had misappropriated the monies.

In defense, Griffin argues that his performance did not fall below the standard of care[28] and that OCTC is charging him for failing to do more than what he was required to do, stressing that newly enacted rule 8.3 did not exist at the time.[29] The court disagrees.

Though he was placed in a difficult situation—a subordinate salaried attorney without authority to disburse funds—Griffin nonetheless had 20 years of experience as an attorney. He knew that as a fiduciary, he was entrusted to protect his clients' best interests; and as an officer of the court, he shared responsibility in ensuring compliance with the court's order. In this regard, rule 8.3 is not a sea change. And under the challenging circumstances here, Griffin failed to meet his professional obligations. (See *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, 178-179 [duty to safeguard client's interest extended beyond

[28] The court granted OCTC's motion to exclude Griffin's proffered expert on the standard of care. (See October 24, 2023 Minute Order, filed on October 25.)

[29] Effective August 1, 2023, rule 8.3, provides, in part, that a "lawyer shall, without undue delay, inform the State Bar, or a tribunal . . . when the lawyer knows of credible evidence that another lawyer has committed a criminal act or has engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation of misappropriation of funds . . . that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

sending out judgment]; *In the Matter of Moriarty*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 523 [obedience to court orders is intrinsic to the necessary respect due to the judicial system].)

But the court does acknowledge that at the start, Griffin acted in accordance with what a reasonable attorney in his situation may have done. When he realized from Anice's April 1 email that she did not know the firm had received her settlement funds, he timely informed her that they had been received. Griffin thereafter alerted Girardi that the clients wanted their settlement funds wired immediately. Around mid-April, Griffin confronted Girardi about paying the clients, but was told to stay out of the situation. Despite this pushback, Griffin continued to remind Girardi to pay the clients. Then on May 4, 2020, Griffin pressed Girardi in a written memo that the funds needed to be wired to the clients.

Though these early efforts may have been reasonable, Griffin should have been alarmed after his May discussion with Girardi who then agreed to the partial release of funds which violated the Minors' Settlement Orders. By May 6, Griffin was also aware that the Girardi firm had advanced $40,000 as a "loan" to Dian in April. More alarms should have gone off around mid-May when Griffin saw Girardi's draft letters to some of the clients which contained lies. Instead of directly and proactively confronting the situation, Griffin forwarded the email to Lira without following up. A few days later, Griffin was made aware that at least one of the letters had gone out. And by mid-June, the person Griffin believed to be in a better position to fix the situation—Lira—had quit the Girardi firm. Under these circumstances, Griffin's abdication breached his fiduciary duties. (Cf. *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 411-412 [rejection of defense that attorney reasonably relied on law partner to properly administer trust funds].)

Further, despite having doubts about the ethics of Thomas Girardi—rather than being fully transparent with his clients, Griffin's responses to the clients became more elusive. He

either avoided response or stated that their inquiries were being forwarded to the accounting department and Girardi. And into the fall, August 2020, Griffin implored Balabanian from the Edelson firm to delay reporting the Girardi firm, claiming that Girardi was "working on this."

Though Griffin's continued personal urging may have ultimately worked in prompting Girardi to make the September partial payments, Griffin was also aware that the funding came from an unrelated employment case. If Griffin had any reasonable questions about misappropriation before this time, they were answered by the September 3 conversation. And despite this confirmation, Griffin attempted to persuade the Edelson firm to further delay filing a motion with the federal court.

From September to early November, Griffin continued to avoid directly answering client requests for updates. While aware of the continuing harm in the months-long delay—during the time of the Covid pandemics—Griffin failed to right the course. He did not need signature authority to report to the court the misappropriation nor did the lack of authority excuse him from telling the clients the truth about the status of the settlement funds.

On these facts, though more appropriately charged under rule 1.3(a),[30] reasonable diligence, the court finds a violation under both Counts Two and Three for Griffin's repeated failures to act in the best interest of his clients. (See *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509, 554 [acts of omission may support finding of incompetent

[30] The focus of rule 1.1(a) is on incompetent performance of a task required by a reasonably skilled attorney, while 1.3(a) speaks to the diligence of that attorney. Here, OCTC has not charged Griffin for incompetent performance in settling the underlying matters, but rather his incompetence in completing the mission of getting the clients paid—which is more in line with rule 1.3(a). Nonetheless, Griffin also failed to communicate the true facts regarding the settlement funds which case law recognizes may rise to the failure to perform. (See e.g., *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 680, citing *Kapelus v. State Bar* (1987) 44 Cal. 3d. 179, 187 and *Lister v. State Bar* (1990) 51 Cal.3d 1117, 1124, 1126 [where the attorney fails to communicate material facts resulting in prejudice to a client's interests, the court has recognized that the attorney is culpable of the failure to perform].)

performance].) But duplicative weight is not accorded because each count relies on the same misconduct.

Aiding the Commission of Another to Commit a Violation, Count 7, rule 8.4(a)

Count Seven alleges a violation of rule 8.4(a), prohibiting an attorney from knowingly assisting[31] another to commit an ethical rule or provision of the State Bar Act. Here, Griffin is charged with knowingly assisting Girardi, Lira, and the Girardi firm in violating the Minors' Settlement Orders (in violation of section 6103 of the Business and Professions Code)[32] to distribute the funds to the clients as soon as practicable, by (i) failing to advise the court of noncompliance with the Minors' Settlement Orders; (ii) actively misrepresenting and assisting Girardi in the concealment of settlement funds through correspondence to the client families, post March 2020; and (iii) concealing from the Edelson firm in May 2020, that the settlement funds had been fully funded around March 30, 2020, that the settlement funds were being withheld from the clients, that the firm was making misrepresentations to the families regarding the settlement funds, and that the firm had misappropriated the settlement funds.

As concluded above with the moral turpitude counts, the court has found that Griffin made knowing and material omissions to the clients and to the Edelson firm. And there is no doubt that Griffin was aware of the finality of the orders. He further knew that Girardi had violated the order in early April and that by mid-April, Girardi made clear that he did not care about the court orders. So, by acting willfully in omitting material facts from both the clients and

[31] "Knowingly" means actual knowledge of the fact in question which can be inferred from the circumstances. (Rule 1.0.1 (f).)

[32] Section 6103 prohibits the willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession which the attorney ought in good faith to do or forbear. A violation of section 6103 is shown when despite being aware of a final binding court order, the attorney takes no action in response to the order or knowingly chooses to violate it. (*In the Matter of Collins* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 551, 557.)

the Edelson firm, Griffin facilitated Girardi's delay in paying the clients their due settlement funds, hence, allowing Girardi's continued violation of section 6103.

In finding culpability, the court rejects Griffin's focused argument that he did not have signatory authority of the CTA—or the argument that he acted with the best intentions in trying to urge Girardi to pay the clients and other acts (trying to arrange phone calls between Girardi and the clients, trying to arrange phone calls between Girardi and the Edelson firm, and sending internal memos to Girardi and the accounting department). Though Griffin made some efforts to try to convince Girardi to do the right thing—and this court has no doubt that Griffin had hoped Girardi would pay the clients—Griffin also concealed material facts which allowed Girardi to extend the delays in payment.

Hence, Count Seven has been proven by clear and convincing evidence but no additional weight is warranted given that the misconduct alleged in this count is duplicative of the underlying allegations under Counts Two, Three, Four, Five, and Six.

False Testimony, Count Eight, Bus. & Prof. § 6106

As to the final count, Count Eight, this court finds reasonable doubt and dismisses this count with prejudice. Count Eight alleges the commission of act of moral turpitude by giving false testimony intentionally knowing it to be false or alternatively, acting with gross negligence. Specifically, OCTC charges that during the evidentiary hearing held on December 9, 2021, Griffin provided false testimony before Judge Durkin, in answering to the court's question: "Were any of your answers lulling in the sense you told [Multi Rizki] 'Don't worry, it's on the way'?"— by testifying: "No, No. I was direct with him. He asked if the money had come in. I told him it did. He asked when it would be wired, and I told him as soon as Girardi approved it, and I did not lull him."

OCTC asserts Griffin's answer that he was "direct" with Multi and that he "did not lull" Multi were false statements because Griffin had not told Multi about the funding of his settlement by Boeing and had not answered the question of when the Girardi firm would wire his funds. And that the evidence shows that Griffin knew his testimony was false because: (i) Griffin knew that Multi's settlement funds were received around June 9, 2020; (ii) between June and November 2020, Multi sent emails to respondent asking whether the funds were received by the Girardi firm; (iii) Griffin's email responses during this time period and up until November 11, 2020, concealed information that the funds were received; and (iv) Griffin knew that the Girardi firm had misappropriated the settlement funds and could not pay Multi and the client families' settlement funds.

Here, Griffin's answer was truthful in that he did not tell Multi that his money is on the way. His testimony that he told Multi that the money would be wired as soon as Girardi approved it, was not proven to be false as Griffin understood it. And, though Griffin's testimony that he told Multi that the money had come in was inaccurate, the court concludes there is reasonable doubt as to whether Griffin had made that statement knowingly or even with gross negligence. Notably, Griffin had quit the Girardi firm by the time of his testimony, and no one had copies of the emails in preparation for, or during, the hearing. Further, Multi's matter was largely handled by Lira, and Griffin was not tasked to do the internal distribution memo. So, when questioned by the district court—largely eliciting Griffin's opinion whether his responses to Multi could be viewed as misleading that the funds were being wired—Griffin was relying on his memory of emails exchanged with one of his several clients from over a year ago.

Hence, because the inaccurate portion of Griffin's testimony may reasonably be on account of the failure of memory or the product of the inability to review relevant documents, Count Eight is dismissed with prejudice.

Having now found the bases for discipline, the court next addresses its findings in aggravation and mitigation.

Aggravation and Mitigation

OCTC has the burden of proving aggravating circumstances by clear and convincing evidence (std. 1.5),[33] while Griffin carries that burden of proving mitigation (std. 1.6).

Aggravation

Multiple Acts of Wrongdoing (Std. 1.5(b))—substantial weight

After discounting the duplicative counts, Griffin's misconduct includes repeated acts of concealment of material information from several clients; repeated omissions of material information from co-counsel; and the failure to perform with competence and diligence to protect the interests of his clients. The court agrees with OCTC that substantial weight should be given for the multiple acts. Each ethical violation was committed through a series of acts of omission or misrepresentation over the course of many months. (See *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279 [aggravation for multiple acts not limited to counts pleaded, significant aggravation accorded to 65 improper CTA violations though culpable of only one count of moral turpitude-misappropriation].)

Harm to Victims and Victim Vulnerability (Std. 1.5(j), (n))—substantial weight

Agreeing with OCTC, not only are some of the victims the minor children of the decedents, but by virtue of the geographic distance, the clients were also at a disadvantage to communicate with the Girardi firm. And Griffin was aware of this. The clients had no ability to personally investigate whether Covid-19 effectively shut-down the firm and instead, relied on the imperfect system of communication set up by the Girardi firm using Hatcher as the go-between.

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

The misconduct further resulted in a protracted delay in payment of the settlement funds during challenging times for the clients. So, substantial weight is warranted for vulnerability and harm suffered by the clients.[34] (See *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 413 [significant harm for six-month delay in distributing $5,618 medical malpractice settlement].)

Significant Harm to Administration of Justice (Std. 1.5(j))—substantial weight

Griffin's acts of concealment also placed a burden on the Edelson firm to prepare the pleadings and the district court to hold multiple hearings to determine why the court orders were not followed. For this, substantial weight in aggravation is assigned for significant harm to the administration of justice. (See *Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 792 [harm found where the attorneys' actions "threatened the efficient administration of justice and improperly burdened" the court and the opposing party].)

Mitigation

Extraordinary Good character (Std. 1.6(f))—substantial weight

Mitigation is recognized for "extraordinary good character" if demonstrated by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct. And serious consideration is given to the opinion of attorneys due to their strong interest in maintaining the honest administration of justice. (See *In the Matter of Brown* (Review

[34] In finding the clients were harmed, axiomatically, the court rejects Griffin's argument of lack of harm in mitigation under standard 1.6(c). Whether the clients were eventually funded through Edelson's insurance policy with interest, sometime after December of 2021, is of no moment to the over 20-month denial in funds.

Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [discussion of showing of moral character in reinstatement proceeding].)

Here, fifteen members of the community provided their respective letters of support. Many are fellow attorneys who are familiar with Griffin's work ethic, competency, and dedication to clients. Others are decades-old friends who regard him as a solid community member and dedicated father. Several have received Griffin's legal counsel in the past and view him as both loyal and dedicated. And despite the allegations, universally opine that the misconduct is inconsistent with Griffin's history as a forthright and talented lawyer. On consideration, substantial mitigative weight is accorded.

Absence of record of prior discipline (Std. 1.6(a))—substantial weight

The standards also provide mitigation for the "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur." Griffin was admitted to practice law in California in December 1999, and has no prior record of discipline. And OCTC has not pointed to any misconduct since leaving the Girardi firm at the end of 2020. Given the unique circumstances surrounding Griffin's misconduct, the court does not find that his misconduct is likely to reoccur. So, Griffin's more than 20 years of discipline-free practice is accorded substantial weight in mitigation. (*Boehme v. State Bar* (1988) 47 Cal.3d 448 [22 years of practice without prior discipline was important mitigating circumstance despite attorney's intentional misappropriation and lack of candor to court]; *Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)

Pre-trial Stipulation (Std. 1.6(e))—moderate weight

Griffin entered a pretrial stipulation to facts and to the authenticity and admission of most documents. Moderate weight is recognized for this cooperation. (Contra, *In the Matter of*

Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [extensive weight in mitigation given to those who admit culpability and facts].) But the court does not adopt Griffin's argument that his cooperation during the investigation stage entitles him to cooperation credit. (See Bus. & Prof. Code, § 6068, subd. (i) [attorney has a duty to cooperate].)

Good Faith (Std. 1.6(b))—not found

The court rejects Griffin's argument of good faith arguing that he was unaware of any client not getting paid nor that he was aware that Girardi was stealing funds. Good faith requires the showing of an honest belief that was objectively reasonable. (See *In re Silverton* (2005) 36 Cal.4th 81, 93.) Here, Griffin knew that the CTA was being misused by early September 2020. And as early as April when he first spoke with Girardi, Griffin knew there was no legitimate reasons to delay payments. This evidence of willful ignorance does not support good faith.

Having now resolved all required findings, the court discusses the standards and decisional law, below, in making its recommendation of discipline to include an actual suspension period of six months.

Discussion

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.1.)

In determining the level of discipline, the court looks to both the standards and decisional law for guidance. Standard 1.7 calls for the court to adopt the most severe sanction where there are multiple acts of misconduct addressed in different sanctions. Here, the most serious charges involve culpability for the acts of concealment to the clients and the Edelson firm, violative of section 6106 of the Business and Professions Code. And under standard 2.11, the range of

discipline for an act of moral turpitude is from actual suspension to disbarment. Discretion within that range is dependent on the individual facts and circumstances of a particular matter, considering: the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim; the impact on the administration of justice; and the extent to which the misconduct was related to the practice of law. (Std. 2.11.)

When meting discipline within the range called for under the standards, the court looks to decisional law to consider proportionality of the recommended discipline in relation to other cases. (*In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 160, citing *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310.) This approach serves the goal of promoting consistent and fair application of disciplinary matters. (See *Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In re Silverton* (2005) 36 Cal.4th 81, 91.)

Discipline to include an actual suspension of six months is the most appropriate.

Here, while there lacks case law squarely patterning the facts of this case, OCTC urges disbarment guided by the intentional misappropriation cases involving moral turpitude.[35] In opposition, Griffin urges that disbarment would be inequitable because Griffin did not share Girardi's intent to steal nor profit from the misappropriation.

Agreeing generally with Griffin, OCTC has not proven that he conspired with Thomas Girardi to steal client funds, nor that Griffin acted with venality. Though some of Griffin's acts of concealment were intentional, this court has no doubt that Griffin wanted the clients to be fully and timely paid. But it was the manner and approach taken by Griffin that was ineffectual and misguided, breaching his fiduciary duties. In this regard, the intentional misappropriation

[35] The standard for misappropriation, standard 2.1, provides a range from the highest at disbarment for intentional or dishonest misappropriation to the lowest of suspension or reproval where it does not involve either intentional misconduct or gross negligence. The midrange is actual suspension for grossly negligent misappropriation.

cases cited by OCTC are inapt—where standard 2.1(a) *presumes* disbarment where a significant amount of funds were involved, unless the accused attorney shows *compelling mitigation* to justify a lesser sanction. (*In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, and *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511.)

Hence, when tasked to consider proportionality, the court looks for guidance in the cases where the gravamen is the attorney's misrepresentation to clients—those matters involving discipline within the range of 30-days to a six-month period of actual suspension. On the low end is the California Supreme Court's 1989 decision in *Gold* v. *State Bar* (1989) 49 Cal.3d 908, where the attorney was found culpable in two client matters of misconduct that involved intentionally misrepresenting the status of a case to the client, failing to perform services competently, and improperly withdrawing from employment.

Gold misrepresented to the client that the case was settled when in fact, the case had been dismissed. Gold gave the client a fabricated letter containing a distribution authorization, which the client signed. Gold then paid the client out of his own pocket without revealing the source of funding. The Court imposed 30-days' actual suspension on consideration of Gold's 25 years of discipline-free practice. And on determination that Gold's misrepresentation was not motivated by a desire to personally enrich himself, but rather, "by a desire to make [his client] whole." (*Gold*, at p. 96.) No aggravation was found.

Also considered, the Court's 1983 decision of *Wren v. State Bar* (1983) 34 Cal.3d 81 where a 45-day suspension was imposed. There, Wren was found culpable in one client matter of knowingly misrepresenting the status of the case to his client, failing to perform with competence, failing to communicate, and submitting misleading testimony during the disciplinary proceeding. Wren lied in informing the client that a trial date had been set when, in fact, a lawsuit was never filed. Wren eventually returned the client's files and attorney's fees and

costs, which the client had paid in advance. The Court mentioned Wren's 22 years of discipline-free practice, which presumably, was given significant weight in mitigation. Aggravation was not discussed.

In comparison, Griffin's misconduct was much more serious than in *Gold* or *Wren*. Griffin's misrepresentations were ongoing and made to multiple clients as well as to co-counsel. And his actions facilitated the Girardi firm's continued violation of court orders. Further, Griffin's concealment of material facts prevented his vulnerable clients, during the pandemic, from discovering sooner that their money had been misappropriated by the Girardi firm. Because Griffin has substantial aggravating factors absent in the *Gold* and *Wren* matters, greater discipline is called for.

Though not completely analogous, more comparable is the 2021 opinion of the Review Department in, *In the Matter of Shkolnikov* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 852, involving a recommendation of actual suspension of six months for misconduct found in two client matters. Shkolnikov's misconduct consisted of his intentional misrepresentation to his client, failure to perform with competence, failure to inform client of significant developments (no additional weight given), and his improper withdrawal of employment. Two years after the case was dismissed with prejudice for failure to prosecute, Shkolnikov lied to his client that he had settled her case and was working on tracking down the settlement money from the defendant in her case. For the next nine months, Shkolnikov continued the charade of working on her case, sending text message updates lying about his progress.

Similarly, Griffin here misled his clients into believing that there were legitimate reasons for the firm's failure to disburse the full amount of the settlement funds. He failed to inform Dian that her money was in the CTA when she obtained a loan of $40,000 from the Girardi firm. He did not disabuse Dian or Bias from Girardi's lies that the firm had received special authorization

to disburse only half of the settlement funds. And, even after realizing around early September 2020, that the client funds had been misappropriated, Griffin continued to hide that fact from his clients for the next three months.

Despite differences—Shkolnikov's misconduct spanning several years compared to Griffin's wrongdoing over the course of seven months, and Shkolnikov's misrepresentation was done to cover his own mistakes while Griffin's concealment by omission of material information was meant to hide a superior's misconduct—there is substantially more aggravation here. Notably, even though Shkolnikov made numerous misrepresentations to his client over the course of several months, he was charged with only making one such false statement, thus, limited weight accorded for multiple acts.

The allegations here were not so limited, resulting in several findings of moral turpitude by concealment and substantial aggravation for Griffin's multiple acts of wrongdoing. Further, while the violations in *Shkolnikov* involved two client matters, the misrepresentation charge pertained to only one client whereas Griffin's misrepresentations were made to multiple clients as well as to co-counsel. As to the mitigation, Shkolnikov had more mitigative factors which included pro bono work and extreme emotional difficulties, but less weight was recognized there as to cooperation and good character.

On balance and despite the distinctions, recommending discipline on par with *Shkolnikov*—a period of six-months of actual suspension with appropriate conditions on probation—would adequately account for the magnitude of the misconduct here. This recommendation is within the range called for under standard 2.11, based on the surrounding circumstances, the substantial aggravation—client harm and harm to the administration of justice, and commission while in the practice of law—while recognizing the unusualness of the circumstances, the absence of venality by Griffin, and Griffin's remorse and motivation to make

his clients whole. (See generally *Doyle v. State Bar* (1982) 32 Cal.3d 12, 24 [there is no fixed formula in imposing discipline but arrived at after balancing all relevant factors]; *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 318 [disbarment is not always necessary where a lesser sanction achieves the goal of protecting the public].)

Monetary Sanctions are Required.

The rule on monetary sanctions provides a guideline of "up to $2,500" where the recommendation is for discipline involving an actual period of suspension, taking into account all the facts and circumstances. (Rules Proc. of State Bar, rule 5.137(E)(2); § 6086.13.) And on a finding of good cause such as financial hardship, the court has discretion to waive, or allow payments in installments, but the burden lies with the respondent by a preponderance of the evidence. (Rules Proc. of State Bar, rule 5.137(E)(4).)

On review of the facts and circumstances, that the misconduct involved intentional acts amounting to moral turpitude which resulted in significant harm to vulnerable clients, would suggest an amount towards the upper range of $2,500. But the court has also reviewed Griffin's sealed financial declaration. So, in exercising its discretion, the court recommends a sanction in the amount of $1,250 on balance of the aggravating and mitigating factors and on Griffin's financial ability to pay.[36]

Recommendations

It is recommended that Keith David Griffin, State Bar Number 204388, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that he be placed on probation for one year with the following conditions:

1. **Actual Suspension.** Griffin must be suspended from the practice of law for the first six months of the period of his probation.

[36] This finding is made without prejudice to Griffin in bringing a future motion for relief under rule 5.138 of the Rules of Procedure of the State Bar.

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

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

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

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

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

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

8. **Quarterly and Final Reports**.

   a. **Deadlines for Reports.** Griffin must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Griffin must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

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

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

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

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

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

11. Proof of Compliance with Rule 9.20 Obligation. Griffin is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that he comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c), as recommended below. Such proof must include: the names and addresses of all individuals and entities to whom Griffin sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by his with the State Bar Court. he is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

Multistate Professional Responsibility Examination

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

California Rules of Court, Rule 9.20

It is further recommended that Griffin be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the date the Supreme Court order imposing discipline in this matter is filed.[37] (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45 [the operative date for

[37] Griffin 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).)

identification of clients being represented in pending matters and others to be notified is the filing date of the Supreme Court order imposing discipline].) Failure to do so may result in disbarment or suspension.

Monetary Sanctions

It is further recommended that Griffin be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $1,250 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status, unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

Costs

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

Dated: January 19, 2024

Phong Wang

PHONG WANG
Judge of the State Bar Court