PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 15-O-14755
	)	
GABRIEL CASTELLANOS,	)	DECISION
	)	
A Member of the State Bar, No. 227702.	)	
	)	

Introduction[1]

Respondent Gabriel Castellanos (Respondent) is charged with seven counts of misconduct in a single matter. The charges include three counts of moral turpitude (misrepresentations to a financial institution, to a client, and to the Office of Chief Trial Counsel (OCTC)); failure to inform a client of a significant development; failure to notify a client of receipt of client funds; and improperly settling a professional malpractice claim. OCTC has the burden of proving these charges by clear and convincing evidence.[2] Respondent has stipulated that he committed the alleged misconduct in six of the seven counts. Based on the stipulated facts, testimony and documentary evidence admitted at trial, this court finds clear and convincing evidence that Respondent is culpable of seven counts of misconduct, and based on the facts and

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

[2] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

circumstances, as well as the applicable aggravating and mitigating factors, the court recommends, among other things, that Respondent be suspended from the practice of law for six months.

Significant Procedural History

OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on May 4, 2018. Respondent filed a response to the NDC on May 29, 2018. The parties filed a Stipulation as to Facts, Conclusions of Law and Admission of Documents on September 4, 2018 (Stipulation).

Senior Trial Counsel Charles Calix represented OCTC. Respondent was represented by Edward Lear, Esq. of the Century Law Group. Trial was held on September 11, 2018. OCTC and Respondent each filed a closing brief on September 25, 2018, and the matter was submitted the same day.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 3, 2003, and has been a member of the State Bar of California at all times since that date.

The following findings of fact and conclusions of law are based on the Stipulation and the documentary and testimonial evidence admitted at trial.

Stipulated Facts

On March 14, 2012, attorney Barbara Azimov (Azimov) filed a Petition For Dissolution Of Marriage on behalf of Matthew Rapoport (Matt)[3] in the matter titled *Matthew Rapoport v. Kylie Dang Rapoport*, LASC Case No. LD061921 (*Rapoport v. Rapoport*).

On April 5, 2012, Kylie Dang Rapoport (Kylie) employed Respondent to represent her in the dissolution. Kylie executed a fee agreement to pay advanced attorney's fees of $3,000 with

[3] Kylie Rapoport and Matthew Rapoport are referred to by their middle and first names, respectively, for the sake of clarity; no disrespect is intended.

an hourly rate of $250 per hour. Neither the fee agreement nor any other signed document contained a special power of attorney permitting Respondent to execute documents, including but not limited to checks payable to Kylie, on Kylie's behalf. On April 6, 2012, Kylie paid Respondent advanced attorney's fees of $3,000.

According to Respondent's invoice dated August 21, 2015, between April 7, 2012 and June 3, 2014, Respondent provided 32 hours of legal services totaling $8,000.

On April 11, 2012, Respondent filed a Response to the Dissolution of Marriage on behalf of Kylie in *Rapoport v. Rapoport.*

Between January 22, 2013, and January 31, 2013, Matt, Kylie, Azimov and Respondent signed a Judgment Of Dissolution (Judgment) in *Rapoport v. Rapoport.* The Judgment provided for an equalization payment of $20,000 from Matt to Kylie, payable to Respondent and Kylie "within ninety (90) days of [the] Agreement or by February 28, 2013." Thereafter, the executed Judgment was filed with the superior court.

On February 12, 2013, Respondent received Matt's check dated February 12, 2013, made payable to Kylie and Respondent in the sum of $20,000. Respondent did not notify Kylie about the receipt of the funds.

On February 15, 2013, Respondent deposited the $20,000 check from Matt into his client trust account at Bank of America, account number xxxx-xxxx-4062 (CTA). At the time he deposited the $20,000 into his CTA, Respondent knew that Kylie had not endorsed the check, authorized Respondent to deposit the check without her endorsement, or granted Respondent a power of attorney to allow him to deposit the check with or without her endorsement.

On March 18, 2013, the Court filed a Judgment Of Dissolution, Notice of Entry Of Judgment, and Declaration For Default Of Uncontested Dissolution. On March 18, 2013, the court ordered the Judgment Of Dissolution and the clerk of the court entered the Notice Of Entry

Of Judgment, which were reflected on the docket maintained by the Superior Court of California, County of Los Angeles, on the internet.

On March 25, 2013, Azimov filed and served on Respondent Proof of Service by Mail of, inter alia, the Judgment and the Notice Of Entry Of Judgment. Respondent received the Judgment and Notice Of Entry Of Judgment. Respondent did not notify Kylie that the Judgment had been entered and that her dissolution was final until May 6, 2014.

Between November 14, 2013, and on January 13, 2014, Kylie and Respondent exchanged emails about the status of the dissolution.

- On November 14, 2013, Kylie sent an email that stated, "Just checking in to see if you went to the courthouse to find out what the hold up [sic] is on the divorce documents?"
- On November 20, 2013, Kylie sent an email that inquired, "Are there any updates?"
- On November 20, 2013, Respondent sent an email that stated that the "Clerk also confirmed that it should be any day but no later than 30 days."
- On November 20, 2013, Respondent stated, "FYI, I just received a Judgment submitted around the same time yours was, great news. Clerk also confirmed that it should be any day but no later than 30 days. I;ll [sic]keep you posted."
- On November 20, 2013, Kylie sent an email that stated, "Are there any updates?"
- On January 8, 2014, Respondent stated, "I was in court all afternoon and did speak with the clerks. They promised any day. That usually translates to 30-45 days. We are almost there." Kylie thanked Respondent and stated "crossing my fingers this will be finalized by the beginning of February."

On February 25, 2014, Kylie sent an email to Respondent reminding him to check the status of the divorce when he was at the courthouse. Respondent responded that he "Expected entry of Judgment March 14. We are there."

On February 28, 2014, Azimov withdrew from representation of Matt, which was the last material activity entered on the superior court docket. Respondent received the notice.

On March 27, 2014, Kylie sent an email to Respondent requesting a status report on "when can I expect my divorce to be finalized." Respondent responded that it "should be any day. Fingers crossed."

On April 7, 2014, Kylie sent an email to Respondent thanking him for the update and expressing her frustration by stating, "I don't understand why it has taken so long for this to be finalized. I feel like my case is being forgotten, it's going on 2 years." Respondent responded that he would "be down there this week and handle it personally."

Between April 15, 2014, and May 1, 2014, Kylie and Respondent exchanged emails. Kylie requested a status report on what Respondent learned when he was at the courthouse, and Respondent responded that they needed to meet to discuss the matter.

On May 6, 2014, Respondent and Kylie met at Respondent's office. Respondent told Kylie that her divorce was "finalized," which was the first notification to Kylie that her divorce had been finalized. Respondent then provided Kylie with documents concerning the dissolution.

On August 4, 2014, Kylie sent an email to Respondent stating that she had reviewed the "paperwork and I cannot find a date where it states the 90 day mark in which Matt has to pay me for our settlement. Can you please provide me with this information when you get into work tomorrow?" Respondent initially responded, "Will do." Respondent later responded that he did not return to the office, but stated, "[m]y memory was [that it was] payable by end of this month but will confirm."

On August 26, 2014, Kylie sent an email to Respondent requesting "the date of when Matt was required to pay me out of the amount we agreed on. Please let me know the status of this as soon as possible." Respondent responded that "I did email you back. It is by the end of this week. Will keep you posted and advised."

On September 2, 2014, Kylie sent emails to Respondent requesting a status report on the equalization payment, and inquiring what would happen if Matt "doesn't pay the settlement within the time frame we agreed on? Thank you!" Respondent responded "Sanctions."

On September 7, 2014, Kylie sent an email to Respondent requesting, "Can we please get the ball rolling on Monday?" On September 8, 2014, Respondent responded that "I will get the ball rolling," and on September 15, 2014, he stated, "Should have a court date shortly. On September 16, 2014, Kylie stated, "That's great. Thank you for the update. Is this normal that he doesn't pay the settlement within the timeframe?" Respondent replied, "It happens a lot!" In response, Kylie asked "how can we go about billing Matt for this?" Respondent responded, "We will bill him."

On October 7, 2014, Kylie sent an email to Respondent requesting a status report on the settlement. Respondent responded that "I am in the process of finalizing our motion and getting our court date. I'm on it! Will keep you informed." Kylie responded, "Great thank you!"

On October 27, 2014, and October 28, 2014, Kylie and Respondent exchanged six emails concerning Kylie's request for a status report. (Exhibit 14:40 to 14:45.) Respondent stated "Mark your calendar. Dec. 6, 8:30 am Dept J Van Nuys court for judgment enforcement and payment. I expect payment before court date. Fingers crossed." (Exhibit 14:43.) Kylie responded, "Will I need to be there for the judgment? Also, I wanted to make sure Matt will be charged for additional work you are putting in. What are the penalties he is forced to pay for this delay?" Respondent responded, "You don't have too [sic] but can. Of course he is [sic] plus 10% interest."

On December 3, 2014, Kylie sent an email to Respondent stating that she was "crossing her fingers and toes Matt pays the settlement before the 6th, but I highly doubt that. Looking forward to any new updates. Thank you" (Exhibit 14:46.) She followed up that email with

another email stating, "I am most likely be going to the court on Saturday the 6th, what is the address? Thank you." In response, Respondent apologized that the hearing was on January 6, 2015, not Saturday, December 6, 2014, and "I will keep you posted of any developments?? [sic] Hopefully settlement beforehand??[sic]"

On January 7, 2015, Kylie sent an email to Respondent requesting a status report on the hearing. Respondent sent an email to Kylie stating that "The matter is under submission meaning Judge will send decision by mail. No hearing per clerk. So, fingers crossed again. Let me know if you need further explanation and I'll call u." Kylie emailed Respondent requesting that he call her to explain and then requested, "Can you please forward the paperwork that you received from the courthouse? Thank you."

Between January 12, 2015, and on January 20, 2015, Kylie sent emails to Respondent on three occasions requesting Respondent forward the paperwork that he had from the hearing on January 6, 2015, which Respondent agreed to do. When Kylie persisted that she wanted the paperwork from the latest court hearing, Respondent responded, "I was referring to the clerks notice and ruling that will be sent. I will forward that to you immediately and hopefully from there your funds. I will keep my finger on the pulse and check in every week with the clerk. I will also send you your file upon completion so you can have a record of all."

On February 23, 2015, Kylie sent an email to Respondent requesting a status report on the motion. Respondent responded, "I was in Court on Friday and learned that our request for payment and interest was been granted. Minute order should be received shortly. I will forward immediately and keep you advised of payment." (Exhibit 14:62.) Kylie responded, "That's great news! Finally!!! Thank you."

On March 18, 2015, Kylie sent an email to Respondent stating,

> It's been a full month since the payment request has been granted. What is the hold up and when can I expect this all to be done.

> We are going on 4 years, this is the longest divorce I have ever heard of. I am not happy with the delay and lack of attention my case has been receiving. I don't understand why there is a hold up. Matt and I agreed on our terms fairly quickly, but it still took 3.5 years to get it finalized. Please provide all documentation of work that you have done for my records.

Respondent responded, "I will send you all and an update."

On March 23, 2015, Kylie sent an email to Respondent asking when she could receive the update and documentation of the work done. Respondent sent an email stating, "By this week Ms. Kylie, you should have all."

On April 1, 2015, Kylie sent an email to Respondent stating,

> It is now Wednesday and still have not received anything from you. How long does it take to send out documentation of the work you've done on my case? What's happening with my payment??? At this point I am becoming extremely irritated with the broken promises from you, what's happening?? It's been 4 years!!!

On April 2, 2015, Respondent responded, in part:

> Your emails beginning to take a harsh tone. Broken promises? I have done everything I am or was supposed to do diligently. I have resolved your case to your benefit and now insisting on securing payment. Just because one wins a lawsuit for a million dollars doesn't always mean that one can recover that million. That is what we are working on now. At your request, I have sent your file out to be copied. This is a time consuming task. . . . Thereafter, I have to prep a billing statement and forward the same to you. This again is time-consuming, all the while I am working on getting you paid with any enforcement mechanism that I can think of. All is being handled in due course and as promised.

On April 8, 2015, Kylie responded to Respondent's email requesting an explanation as to why he could not provide copies of the work that he had done and speculating that it was to "rack up my bill." Kylie requested proof that Respondent had been diligently working on her case.

On May 4, 2015, Kylie sent an email to Respondent stating, "Since Matt still had not paid me for the settlement what happens next?" Respondent replied, "Time to get you paid by any means necessary. On it!"

On May 12, 2015, Kylie sent an email to Respondent stating that Respondent had not contacted her, and requesting a status report as to "Can you explain how exactly you are 'On it' with my case." Respondent replied that he could not respond because Kylie had cc'd her mother, but would "pursue all collection enforcement mechanisms available."

On Monday, June 5, 2015, Kylie sent an email to Respondent complaining that, "Another month has passed and still no payment. Can you please update me on the progress you have made on my case? Did you file a lien against his property or a garnishment of wages?"

On Friday, June 12, 2015, Kylie sent an email to Respondent that stated she did not receive a response to her email last week and to "Please provide details of the work you have done on getting my settlement since the last court hearing. I need to know what you've done, I don't need to know that you're on it."

On June 17, 2015, Respondent sent an email to Kylie that stated, "I will provide you with a detailed statement and billing for all of the work done both pre and post judgment including collection."

On June 28, 2015, Kylie sent an email to Respondent that stated "

> It's been a week and I am still waiting for the detailed statement and billing as promised. What is the hold up? Did you ever receive the collection from Matt? I want a hard date as to the completion of this case or I will be forced to file a grievance against you. You have failed to provide me with detailed information regarding my case, all you have said at this point is, "you're on it."
>
> I will be calling you tomorrow if I do not hear from you. This has dragged on for way too long and I am extremely dissatisfied with the job you have done on my case.

On June 29, 2015, Respondent sent an email to Kylie that stated, in part, that "It is within your right to file a grievance should you feel the need to. I stand by my work." and would provide the accounting and funds by the "due date" of Friday, July, 17, 2015. Kylie sent an email in response stating that "On February 23rd you said, 'Our request for payment and interest

was granted. Minute order should be received shortly.' What is your definition of shortly? It has been 4 months and still nothing." Respondent responded, "You have requested a date and I have given you July 17." Kylie acknowledged Respondent's email stating that she would have it by July 17, 2015.

On Friday, July 17, 2015 and on Monday, July 20, 2015, Kylie sent emails to Respondent requesting a status report on the settlement, because he promised to have everything to her by July 17, 2015. Respondent sent an email to Kylie that stated that he had been "out of the office ill," but would complete it that week. Kylie sent an email in response that stated that she had called his office on July 17, 2015, and "your secretary said I just missed you."

On Friday, July 23, 2015, Kylie sent an additional email to Respondent complaining about his failure to resolve the matter and accusing Respondent of "stalling because you have neglected my case from the beginning." Respondent responded that she "will have all shortly." Kylie responded, " you are being vague with your answers. What exactly do you mean when you say 'you will have all shortly?'"

On August 17, 2015, Kylie sent an email to Respondent expressing her frustration that it was "one month past the hard date you gave me to have all in my hands." Kylie also complained that, "On October 7th you filed a motion and had a hearing with the judge on January 7th, why is it taking 7 months for you to get my money?" Respondent responded, "I understand that you have called my office today several times. All will be handled this week. No further delay." Kylie responded that she also requested the itemized bill that she had "asked for several times," which Respondent agreed to produce. Respondent responded, "Will do."

On Friday, August 21, 2015 at approximately 10:14 a.m., Kylie sent an email to Respondent stating that she was looking forward to getting "all" today as promised on August 17, 2015.

On August 21, 2015 at approximately 6:16 p.m. and Monday, August 24, 2015 at approximately 4:23 p.m., Kylie sent two emails to Respondent expressing her frustration with Respondent's failure to release the funds. Kylie sent a third email confirming that Respondent had the correct address.

In late August 2015, Kylie received an accounting from Respondent dated August 21, 2015. The accounting lists only three activities after February 11, 2013: (1) on June 3, 2014, a client meeting lasting 0.6 hours; (2) between October 2014 and January 2015, preparation, meet and confer at no charge; and (3) miscellaneous correspondence with client via email or telephone at no charge. The total amount of the bill was $8,000, but Respondent noted that Kylie only owed $5,000 because she had provided Respondent with a $3,000 advanced fee.

On August 25, 2015, Kylie and Respondent exchanged emails with Kylie emailing Respondent the comment, "[w]hat a joke this has become." Respondent sent Kylie an email stating that he was "going to finish [his] job without arguing or being cussed at or disrespected. [He did] not want to do the same to [Kylie] or be tempted as [their] conversations and emails have gotten heated."

On August 25, 2015 at approximately 8:38 a.m., Kylie sent an email to Respondent in response to his email about "being cussed at or disrespected" that stated,

> What do you expect when you have given me THREE hard dates and have failed to deliver every single time?
>
> > Do you want me to be the soft spoken Kylie that you met 3.5 year ago? You have been given [sic] me the run around and I won't allow you to waste any more of my time. When you started following through with your promises then I will relax. One bad word over the phone is not being cursed at. And how exactly did I disrespect you? By simply stating hard facts that it took you TWO years to get my divorce finalized, and that we are going on 3.5 years to get my settlement . . . those are called facts.

On August 31, 2015, Kylie received Respondent's CTA check number 1514 in the amount of $15,000 representing her share of the equalization payment and an accounting was

also included. On November 13, 2015, Kylie negotiated Respondent's CTA check. The $15,000 equalization payment had remained in Respondent's CTA from the time Respondent deposited those funds into his CTA on February 15, 2013, until he paid Kylie on November 13, 2015.

On August 31, 2015, Kylie sent an email to Respondent requesting he provide the date the money was received from her ex-husband. Respondent responded that, "All was processed within the last 45 days. It did take me some time to finalize your billing statement because of my trial schedule. Do not email me or call me again with rude or harassing messages. If you continue any contact with me or my office I will pursue all of my rights under the law including a restraining order."

During the investigation into this matter, Respondent sent OCTC a letter dated March 16, 2016. Respondent stated the following.

- Respondent advised Kylie that he had received the funds from Matt and, upon receipt of the funds, was "met with an immediate demand to issue her a check immediately";
- Kylie barraged his office with harassing and threatening telephone calls and emails;
- Kylie refused to sign the check and having no options and power of attorney, Respondent deposited the check;
- Respondent informed Kylie that the funds would have to be held in trust "until the Judgment was approved and final," which was delayed because the file and/or Judgment had been "sent Downtown to be scanned per the pilot Judgment program";
- Respondent regularly advised Kylie about his "efforts to obtain a copy of her Judgment from archives";
- Respondent denied failing to tell Kylie that the Judgment had been entered between on its entry on March 18, 2013 and on May 6, 2014;
- Respondent denied telling Kylie on May 6, 2014, that Matt had until August 14, 2014 to pay the $20,000 settlement;
- Respondent denied that he told Kylie that he had appeared for a hearing on a motion to compel Matt to pay the $20,000 settlement; and

- Respondent instructed his office staff to advise Kylie by phone and email that her conduct was inappropriate and he would file a restraining order against her to calm her down.

OCTC received Respondent's March 16, 2016 letter.

In August 2016, Kylie initiated a fee arbitration with Respondent.

On April 8, 2017, Respondent and Kylie resolved their fee arbitration. Respondent entered into a "Mutual Release and Settlement Agreement" with Kylie to resolve their "dispute regarding the contractual agreement for Legal services" that "will settle and resolve all disputes between the parties" in exchange for a payment of $6,000 to Kylie from Respondent. The agreement did not inform Kylie that she could seek the advice of an independent lawyer regarding the agreement.

In another letter to OCTC dated August 8, 2017, Respondent stated the following.

- Respondent advised Kylie that he had received the funds from Matt "the next or following day of the receipt of the funds" and was "met with an immediate demand to issue her a check immediately";

- Kylie barraged his office with harassing and threatening telephone calls and emails;

- Kylie refused to sign the check and having no options and power of attorney, Respondent deposited the check;

- Respondent informed Kylie that the funds would have to be held in trust "until the Judgment was approved and final," which was delayed because the file and/or Judgment had been "sent Downtown to be scanned per the pilot Judgment program"; and

- Respondent regularly advised Kylie about his "efforts to obtain a copy of her Judgment from archives."

Although Respondent's CTA Ledger for Kylie's dissolution matter indicated that he withdrew his attorney's fee of $5,000 on August 21, 2015, Respondent had not withdrawn those funds. In response to OCTC's questions concerning when he withdrew the funds, Respondent

stated that after reviewing the records, he realized that he had not withdrawn any of the disputed $5,000 and held the funds in his CTA pending resolution of his fee dispute.

Respondent's letters to OCTC contained numerous false statements. Respondent falsely stated that: 1) he could not obtain a conformed copy of the judgment from the superior court because it "had been sent to Downtown archives to be scanned per the pilot Judgment program" and no copies were available; 2) he, his staff and his attorney service were informed by the superior court that no hard or conformed copy of the judgment was available; 3) he, his staff and his attorney service unsuccessfully attempted to obtain a conformed copy of the Judgment from the superior court. A conformed copy of the Judgment was always available from the superior court.

Stipulated Culpability

Respondent admits the truth of the facts comprising the stipulation and admits culpability for the following counts of misconduct.

Count One - Rule 4-100(B)(1) [Failure To Notify Client of Receipt of Client Funds]

Rule 4-100(B)(1) provides that an attorney shall promptly notify a client of the receipt of the client's funds, securities or other properties. Here, Respondent failed to notify Kylie of his receipt of funds on her behalf when he received them on February 15, 2013. He did not notify her that he received the equalization funds until August 25, 2015 – well over two years after he received them. By failing to notify Kylie about the receipt of her funds for more than two and a half years, Respondent willfully violated rule 4-100(B)(1).

Count Two - Section 6106 [Moral Turpitude- Misrepresentation to Financial Institution]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

On February 12, 2013, Respondent received, on behalf of Kylie, a check from Matt as an equalization payment in their dissolution of marriage payable to Respondent and Kylie in the sum of 20,000. Shortly thereafter, Respondent deposited the check for $20,000 into his CTA. At the time he deposited the check for $20,000 into his CTA, Respondent knew that Kylie had not endorsed the check, Kylie had not authorized Respondent to deposit the check without her endorsement, nor granted Respondent a power of attorney to allow him to deposit the check with or without her endorsement. By depositing the $20,000 check into his CTA without Kylie's authorization or endorsement, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Count Three - Rule 4-100(B)(4) [Failure To Promptly Pay/Deliver Client Funds])

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney's possession which the client is entitled to receive.

On February 12, 2013, Respondent received, on behalf of Kylie, a check from Matt as equalization payment in their dissolution of marriage payable to Respondent and the client in the sum of $20,000. On February 15, 2013, Respondent deposited the check for $20,000 into his CTA. Of this sum, Kylie was entitled to the sum of approximately $20,000. Between November 20, 2013 and August 25, 2015, Kylie repeatedly requested that Respondent collect the $20,000 equalization payment from her ex-husband and disburse it to her. On August 31, 2015, over two years after his receipt of the equalization payment, Respondent disbursed about $15,000 to Kylie, and on April 8, 2017, Respondent disbursed the remaining $5,000 to her.

By failing to pay all client funds to his client following his client's requests for those funds for over four years, Respondent willfully violated rule 4-100(B)(4).

Count Four - Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Here, Respondent failed to keep his client reasonably informed of significant developments by failing to inform the client between March 18, 2013 and May 6, 2014, that the Court ordered a Judgment of Dissolution on March 18, 2013, or that the court terminated her marital status on March 18, 2013. By doing so, Respondent willfully violated section 6068, subdivision (m).

Count Five - Section 6106 [Moral Turpitude- Misrepresentation to Client]

Between November 2013 and September 2015, Respondent made numerous misrepresentations to Kylie about the matter in which he had agreed to provide legal services. Respondent misrepresented that: 1) the court did not enter the Judgment of Dissolution until on May 6, 2014, which Respondent knew was false because the court entered it on March 18, 2013; 2) Matt had not paid the equalization payment of $20,000, which Respondent knew was false because Matt made the payment on February 12, 2013; 3) Respondent had filed a motion to enforce the judgment to compel Matt to pay the equalization payment of $20,000, he attended a hearing on the motion, the motion was "under submission," and the court granted the motion. Respondent knew that all of these statements were false because he did not file a motion, no hearing had been held, the court had no motion to compel to consider, and Matt had made the payment on February 12, 2013. Respondent made the following additional misrepresentations to Kylie between November 2013 and September 2015: 1) Respondent would be able to collect his attorney's fees for his efforts to collect the equalization payment from Matt and Matt would have to pay a penalty of 10% interest due to his failure to timely pay the equalization payment, which Respondent knew was false because Matt made the payment on February 12, 2013; and (2)

Respondent performed diligently but Matt's failure to pay the equalization payment frustrated Respondent's work, which Respondent knew was false because Matt made the payment on February 12, 2013 and the court ordered the judgment of dissolution on March 18, 2013.

By making these misrepresentations to his client, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Count Six - Section 6106 [Moral Turpitude- Misrepresentation to OCTC]

In a letter dated March 16, 2016, Respondent made multiple misrepresentations to OCTC. Respondent's March 16, 2016 misrepresentations included but were not limited to the following statements: 1) on February 15, 2013, Respondent deposited a $20,000 equalization payment from Matt into his CTA without Kylies's signature because she refused to sign the check, which was false because his client never refused to sign the instrument; 2) Respondent notified his client about his receipt of the $20,000 equalization payment from Matt "the next or following day," which was false because he did not inform his client that he had received the check until August 2015; and 3) Respondent told Kylie that he could not disburse the funds "until the Judgment was approved and final," which was false because the docket stated that the judgment had been "Filed and Entered on 2013-03-18." By intentionally making misrepresentations to OCTC, Respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Respondent did not stipulate to his culpability in Count Seven. The court finds the following regarding the final count.

Count Seven - Rule 3-400(B) [Limiting Liability to A Client]

Rule 3-400(B) provides that an attorney shall not "settle a claim or potential claim for the member's liability to the client for the member's professional malpractice, unless the client is

informed in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and is given a reasonable opportunity to seek that advice." OCTC charged Respondent with entering into a settlement with Kylie without advising Kylie that she could seek the advice of an attorney regarding the settlement. In his response, Respondent admits that "on April 6, 2017, Respondent settled a claim or potential claim by a client, Kylie Dang Rapoport, for Respondent's liability for professional malpractice, namely arising from Respondent's representation of the client in a dissolution of marriage matter . . . ."

Respondent stipulated that he entered into a Mutual Release and Settlement Agreement with Kylie to resolve the dispute but "the agreement did not inform Kylie that she could seek the advice of an independent lawyer regarding the agreement." Respondent contends that after Kylie initiated the fee arbitration before the Los Angeles County Bar Association (LACBA), he believed she was represented by counsel. When the parties sought to resolve the dispute, LACBA asked Respondent to draft a settlement agreement, and Respondent believed Kylie had independent counsel review the agreement.

Respondent's contention lacks credibility. Whether he thought Kylie had independent counsel review the agreement or not, Respondent still had an obligation to include the language required by rule 3-400(B) in the agreement which settled Kylie's claim against him. By failing to include the required language, Respondent willfully violated rule 3-400(B).

Aggravation and Mitigation[4]

This court assigns the weight to each of these factors as set forth below.

Aggravation

OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5)

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

Multiple Acts (Std. 1.5(b).)

Respondent is culpable of seven ethical violations. Those violations comprised numerous acts of misconduct including intentional dishonesty over a protracted period of time. The court assigns significant aggravation to Respondent's multiple acts.

Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent has acknowledged that by greatly delaying the equalization payment to Kylie, Kylie was significantly harmed, and this further damaged her relationship with Matt. This client harm is a significant aggravating factor.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6)

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

Respondent practiced law for nine years without a prior record of discipline before he engaged in the current misconduct. Respondent is afforded moderate mitigating weight for his lack of a prior record. (See, e.g., *In the Matter of Riley* (Review Dept.1994) 3 Cal. State Bar Ct. Rptr. 91, 116 [mitigation credit for nine years of discipline-free practice before misconduct began].)

Extreme Emotional Difficulties (Std. 1.6(d).)

Respondent suffered extreme emotional problems before and during the time of his misconduct. Respondent's father was diagnosed with cancer in February 2013, he encountered challenges as his father's primary caregiver, and great effort and care was required to address the medical issues involving the June 2012 birth of his daughter with Down syndrome after he and his wife suffered the emotional disappointment of several miscarriages. Respondent's emotional difficulties and family problems were directly related to his misconduct, leading him to neglect

his professional responsibilities. (See *In the Matter of Spaith* (1990) 3 Cal. State Bar Ct. Rptr. 511 [marital problems and similar difficulties can be mitigating if they are extreme and are directly responsible for the misconduct].)

Respondent began treating with Dr. Thomas Albers who is a psychologist. Dr. Albers testified that Respondent had a high level of stress based on his family circumstances. Dr. Albers stated that Respondent is remorseful for his misconduct and recognized his mistakes and poor judgment, which caused him to seek treatment. Respondent is executing a treatment plan developed by Dr. Albers and has been given tools to deal with stressful situations. Although Respondent's rehabilitation is incomplete, the court affords Respondent moderate mitigation for his emotional difficulties and family problems. (See, e.g., *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560.)

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

By entering into a stipulation, Respondent has acknowledged his misconduct and is entitled to mitigation for his recognition of wrongdoing and for saving the OCTC significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].) The court affords significant mitigation for Respondent's cooperation.

Good Moral Character (Std. 1.6(f).)

Respondent offered good character evidence from four individuals that included a judge, an attorney, former client and a marriage and family therapist. Serious consideration is given to the testimony of attorneys because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct.

Rptr. 309, 319.) Los Angeles Superior Court Judge Steven P. Sanora testified that Respondent is a man of integrity, ethical and always professional. Judge Sanora has appointed Respondent to represent indigent clients in numerous cases and Respondent has never declined a case. The attorney described Respondent as a reputable and responsible attorney. He testified that Respondent took over an attorney's practice after the attorney fell ill. Respondent dedicated himself to assisting the ill attorney's clients. Respondent's former client stated that Respondent provided diligent, honest and relentless representation. Finally, the marriage family therapist stated that Respondent was "acting out of character" when he engaged in the misconduct in this matter.

While it is clear that Respondent's witnesses think highly of him, Respondent's good character evidence is only entitled to slight weight. Respondent's good character evidence is not from "a wide range of references in the legal and general communities." (Std. 1.6(e).) Thus, the court assigns minimal weight in mitigation. (*In the Matter of Riordan, supra*, 5 Cal. State Bar Ct. Rptr. at p. 50 [testimony of four character witnesses afforded diminished weight in mitigation]; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys warranted limited mitigation because not broad range of references].)

Level of Discipline

OCTC argues that the appropriate level of discipline for Respondent's misconduct is an 18-month actual suspension. Respondent maintains that his misconduct warrants a period of stayed suspension. As discussed below, this court finds that the appropriate level of discipline is a six-month actual suspension.

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

maintain high professional standards for attorneys. (Std. 1.1.) The discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].) Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. And, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.7(a).)

The gravamen of this case involves moral turpitude arising from Respondent's intentional dishonesty and knowingly false representations regarding the handling of Kylie's marriage dissolution and equalization payment. Standard 2.11 provides that, "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty . . . intentional or grossly negligent misrepresentation or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law." Clearly, Respondent's misrepresentations to Kylie and OCTC were intentional, Kylie was misled about her equalization payment for over two years, and Respondent's misconduct was directly related to the practice of law because he made false reports to Kylie and OCTC about Kylie's marital dissolution and equalization payment.

An appropriate sanction should fall within the range the applicable standard provides unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline. (Std. 1.7.)

Respondent's request for a stayed suspension is unsupported. After considering the aggravating factors and Respondent's mitigation evidence, there is no reason to deviate from the standards. Given the broad range of discipline the standard suggests, the court examines decisional law to assist with determining the appropriate discipline level.

The court considers *Levin v. State Bar* (1989) 47 Cal.3d 1140, and *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166. Although the misconduct in these two cases are distinguishable from the current matter, the court finds them instructive in that they involve making intentional misrepresentations. In *Levin*, the Supreme Court imposed a six-month actual suspension for an attorney's misconduct in two client matters. The misconduct included repeated dishonesty, communicating with a represented party, settling a lawsuit without client permission, forging a client's signature on a release, and mishandling the client's settlement funds. The attorney's wrongdoing was aggravated by attempts to conceal dishonest acts and multiple acts of wrongdoing, but tempered by 18 years of discipline-free practice, a delay in the disciplinary proceedings, no additional complaints since the State Bar began its investigation, and candor and cooperation. In *Chesnut*, an attorney received a six-month actual suspension after he falsely claimed to two state courts (California and Texas) that he had personally served a summons and complaint on the adverse party in a divorce proceeding. The attorney's misconduct was aggravated by his lack of candor during his hearing and a prior disciplinary record.

Respondent's wrongdoing is just as serious as the misconduct in *Levin* and *Chesnut*. His dishonesty and misrepresentations were repeated and protracted, which caused significant harm to his client, Kylie. Kylie was deprived of $20,000 in funds for over two years, and her relationship with her ex-husband was further damaged. Although the attorney in *Chestnut* had a prior record as an aggravating factor, the attorney made two misrepresentations, whereas

Respondent continually misrepresented the status of Kylie's equalization payment to cover his failure to timely pay her. Respondent's misconduct was compounded by the intentional false representations Respondent made during OCTC's investigation into the current matter. On balance, *Levin* and *Chestnut* are comparable to Respondent's misconduct. As the Supreme Court emphasized in *Levin*, "no aspect of [Respondent's] conduct is more reprehensible than his acts of dishonesty. These acts manifest an abiding disregard of the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice." (*Levin*, *supra*, 47 Cal.3d at p. 1147, 255 Cal.Rptr. 422, 767 P.2d 689, internal quotation marks omitted.) Accordingly, to protect the public and the courts and to maintain the integrity of the legal profession, the court recommends that Respondent be actually suspended for six months.

RECOMMENDATIONS

Discipline – Actual Suspension

It is recommended that Gabriel Castellanos, State Bar Number 227702, be suspended from the practice of law for two years, that execution of that suspension be stayed, and that Respondent be placed on probation for two years with the following conditions.

Conditions of Probation

Actual Suspension

Respondent must be suspended from the practice of law for the first six months of the period of Respondent's probation.

Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent 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 Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's 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, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent 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.

State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

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

Quarterly and Final Reports

a. Deadlines for Reports. Respondent 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, Respondent must submit a final report no earlier than ten (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. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent 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. Respondent is directed to maintain proof of Respondent's 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 Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

State Bar Ethics School

Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent 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 Respondent will not receive MCLE credit for attending this session. If Respondent 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, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

Proof of Compliance with Rule 9.20 Obligations

For a minimum of one year after the effective date of discipline, Respondent is directed to maintain proof of Respondent's compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include the names and addresses of all individuals and entities to which notification was sent pursuant to rule 9.20; copies of the notification letter sent to each such intended recipient; the original receipt and tracking information provided by the postal authority for each such notification; and the originals of all returned receipts and notifications of non-delivery. Respondent is required to present such proof upon request by the Office of Chief Trial Counsel, the Office of Probation, and/or the State Bar Court.

Commencement of Probation

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 Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Gabriel Castellanos be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter, or during the period of his suspension, whichever is longer and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c)

of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[5] Failure to do so may result in disbarment or suspension.

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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: December 20, 2018

YVETTE D. ROLAND
Judge of the State Bar Court

[5] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed 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).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 21, 2018, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 21, 2018.

Angela Carpenter
Court Specialist
State Bar Court