

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 09-O-10385-RAH (09-O-12389;
)	09-O-12430; 09-O-12656;
STEPHEN PAUL COLLETTE,)	09-O- 13415; 09-O-13532;
)	09-O-14457)
Member No. 186439,)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

In this default disciplinary matter, respondent **Stephen Paul Collette** is charged with 29 acts of misconduct in seven client matters, which include: (1) failing to maintain client funds in a trust account; (2) misappropriation; (3) failing to promptly notify a client of receipt of client funds; (4) failing to render accounts of client funds; (5) forming a partnership with a non-lawyer; (6) sharing legal fees with a non-lawyer; (7) failing to refund unearned fees; (8) engaging in the unauthorized practice of law in another jurisdiction; (9) charging or collecting illegal fees; (10) failing to perform services competently; and (11) failing to cooperate with the State Bar.

The court finds, by clear and convincing evidence, that respondent is culpable of 15 of the 29 alleged counts of misconduct. In view of respondent’s serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution as specified, *post*.

II. Pertinent Procedural History

On April 9, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent did not file a response.

Respondent's default was entered on June 21, 2010, and respondent was enrolled as an inactive member on June 24, 2010. The matter was submitted for decision on July 12, 2010, following the filing of State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on December 10, 1996, and has since been a member of the State Bar of California.

At all times relevant herein, respondent maintained a client trust checking account with Washington Mutual, designated as account No. xxxxxxx366 (CTA).

At all times relevant herein, respondent maintained a checking account with Washington Mutual, designated as account No. xxxxxxx358 (non-trust account).

A. Peters Matter (Case No. 09-O-10385 – Counts 1-6)

On or about April 25, 2007, Densell and Rosalie Peters (the Peters) employed respondent to represent them in two civil matters (the Peters actions).

On or about April 26, 2007, the Peters issued a check to respondent for \$10,000 to pay for depositions in the Peters actions. On or about April 26, 2007, respondent deposited the \$10,000 in advanced costs into his non-trust account.

Throughout his representation of the Peters, respondent did not conduct any depositions on the Peters' behalf. Thus, respondent was required to maintain the \$10,000 in advanced costs on the Peters' behalf. But, as of on or about April 30, 2007, the balance in respondent's non-trust account was \$4,478.61; and as of on or about June 30, 2007, the balance in respondent's non-trust account was \$367.40.

From in or about May 2007 through in or about August 2007, the Peters paid respondent \$46,000 in advanced attorney fees.

On or about August 28, 2007, the Peters issued a check in the amount of \$5,000 to respondent to hire an investigator in the Peters action. Respondent deposited the \$5,000 into his account.¹

In or about October 2007, at respondent's request, the Peters refinanced their home in order to pay additional attorney fees to respondent. In or about October 2007, the Peters advanced respondent an additional \$128,000 in attorney fees.

On or about November 2, 2007, respondent issued a CTA check for \$5,000 to Knowles & Vacca as a retainer for investigation services in the Peters action. On or about November 8, 2007, Knowles & Vacca sent the results of their investigation to respondent. On or about November 14, 2007, the Peters wrote to respondent, terminating respondent's services, requesting an accounting, and requesting a refund of unearned fees. In the November 14, 2007 letter, the Peters also asked respondent to transfer their client files to their new attorney, Darin R. Dominguez.

¹ As the NDC fails to state whether respondent deposited the \$5,000 into his CTA or his non-trust account, the court will resolve the doubt to the benefit of respondent and assume the funds were deposited in the CTA.

On or about November 14, 2007, respondent provided a check for \$54,684 to the Peters telling them it was a partial refund of the advanced attorney fees. Respondent also represented to the Peters that he would provide them with a final billing and accounting of fees.

To date, respondent has not provided an accounting to the Peters despite their request. Nor has he returned the \$10,000 in advanced costs to the Peters.

On or about December 11, 2007, Knowles & Vacca sent an accounting of their services to respondent with a refund check for \$3,681.36. The Knowles & Vacca refund check included a memo stating “Refund of Retainer Balance — McBain v. Peters.” Respondent received the refund check but did not inform the Peters that he had received \$3,681.36 on their behalf.

On or about December 12, 2007, respondent deposited the check for \$3,681.36 into his CTA. On or about December 12, 2007, respondent withdrew \$5,108.62 from his CTA, leaving a balance of \$3.61. To date, respondent has not returned the \$3,681.36 in funds to the Peters.

Thereafter, on or about January 30, 2009, the State Bar opened an investigation, case No. 09-0-10385, pursuant to a complaint made against respondent by Densell & Rosalie Peters (the Peters complaint). On or about March 10, 2009, a State Bar investigator wrote respondent regarding the Peters complaint. The investigator’s March 10, 2009 letter requested that respondent respond in writing by March 24, 2009 to specific allegations of misconduct being investigated by the State Bar in the Peters complaint.

The investigator’s March 10, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to him at his State Bar of California membership records address. Respondent received the March 10, 2009 letter.

On or about March 29, 2009, respondent wrote the State Bar investigator acknowledging receipt of the March 10, 2009 letter and asking for an additional two weeks to retain counsel

and provide a written response. On or about March 30, 2009, the State Bar investigator wrote respondent and granted him an extension to April 17, 2009 to provide a written response.

On or about June 19, 2009, the State Bar investigator received a call from an attorney who stated that she would be representing respondent in the Peters matter. On or about August 4, 2009, the State Bar investigator received a letter from the attorney stating that she would not be representing respondent in the Peters matter.

On or about August 5, 2009, a State Bar investigator again wrote respondent asking him to respond in writing by August 14, 2009, to specific allegations of misconduct being investigated by the State Bar in the Peters complaint. The investigator's August 5, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to him at his State Bar of California membership records address. Respondent received the August 5, 2009 letter, but failed to respond.

On or about November 10, 2009, a State Bar investigator wrote respondent regarding his various open investigation matters. In the November 10, 2009 letter, the investigator noted that respondent had failed to respond to numerous State Bar letters and telephone calls. In the November 10, 2009 letter, the State Bar investigator reminded respondent that it was his duty pursuant to Business and Professions Code section 6068, subdivision (i) to respond.

The investigator's November 10, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to him at his State Bar of California membership records address, to another address used by respondent, as well as to respondent's P.O. Box address. Respondent received the November 10, 2009 letter but failed to provide a response.

On or about November 23, 2009, the State Bar investigator visited offices belonging respondent and his business partner. However, the State Bar investigator was not able to speak to respondent.

On or about November 23, 2009, following the visit to respondent's office, the Stag Bar investigator received a telephone call from respondent. During the November 23, 2009 conversation, respondent acknowledged receiving the investigator's letters and told the investigator that he was going to retain counsel and provide responses to the open investigation matters.

To date, respondent has not provided the State Bar with a written response to the allegations in the Peters complaint.

Count 1 Failure to Maintain Client Funds in Trust Account (Rules of Professional Conduct, Rule 4-100(A))²

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith. The rule "absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit."

Respondent deposited the \$10,000 in advanced costs that the Peters had entrusted to him into his non-trust account. By failing to deposit the \$10,000 into a client trust account and thereafter maintain those funds in a client trust account, respondent willfully violated rule 4-100(A).

Count 2: Misappropriation (Bus. & Prof. Code, § 6106)³

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

As set forth, *ante*, respondent was entrusted with \$10,000 to pay for depositions in the Peters actions. Respondent did not conduct any depositions in the Peters actions. Respondent

² References to rules are to the Rules of Professional Conduct, unless otherwise indicated.

³ References to section(s) are to the provisions of the Business and Professions Code, unless otherwise indicated.

deposited the advanced costs in his non-trust account, respondent failed to maintain the funds he had received on his clients' behalf. As of June 30, 2007, the balance in respondent's non-trust account fell to \$367.40. Although the Peters terminated respondent's services on November 14, 2007, respondent has not returned the \$10,000 in advance costs that the Peters had entrusted to him. By misappropriating the Peters' funds, respondent committed an act of moral turpitude in willful violation of section 6106.

Count 3: Misappropriation (§ 6106)

The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

Accordingly, the court finds by clear and convincing evidence that by allowing the balance in his CTA to fall below the \$3,681.36 of entrusted funds to \$3.61 on or about December 12, 2007, respondent misappropriated the entrusted funds and committed an act of moral turpitude in willful violation of section 6106.

Count 4: Failure to Notify Client of Receipt of Client Funds (Rule 4-100(B)(1))

Rule 4-100(B)(1) requires an attorney to notify a client promptly of the receipt of the client's funds. By not informing the Peters that he had received the \$3,681.36 refund check on their behalf, respondent failed to notify a client promptly of the receipt of the client's funds, securities, or other properties in willful violation of rule 4-100(B)(1).

Count 5: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in her possession and render appropriate accounts to the client.

Despite the Peters' November 14, 2007 request for an accounting, respondent did not provide an accounting to the Peters.

By failing to provide an accounting to the Peters of the fees and funds that had come into his possession on their behalf, respondent willfully failed to render appropriate accounts to a client, in willful violation of rule 4-100(B)(3).

Count 6: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By failing to provide the State Bar investigator with a written response to the allegations of misconduct in the Peters complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

B. Forming a Partnership with a Non-Lawyer (Case Nos. 09-O-12389; 09-O-12430; 09-O-12656; 09-O-13415; 09-O-13532; 09-O-14457 – Count 7)

In or about 2008, respondent and non-attorney Jacob Zakaria (Zakaria) entered into a partnership to provide loan modification services through their company - EQ Group, Inc. In or about 2008 and in or about 2009, the EQ Group collected advanced fees from clients in exchange for agreeing to represent the clients in seeking home loan modifications from their lenders. In or about 2008 and in or about 2009, respondent regularly received fees and other revenue from the EQ Group.

Count 7: Forming a Partnership with a Non-Lawyer (Rule 1-310)

Rule 1-310 provides that a member must not form a partnership with a person who is not a lawyer if any of the activities of that partnership consists of the practice of law.

In Count 7, few facts are set forth concerning the activities of the EQ Group and respondent. The NDC alleges that respondent and Zakaria entered into a partnership to provide loan modification services through their company. However, it is not alleged that those loan modification services consisted of the practice of law or that the EQ Group engaged in any activities, which in any way consisted of the practice of law. Therefore, given the paucity of facts alleged in Count 7, regarding the activities of the EQ Group and given that it is not alleged that any of the EQ Group's activities consist of the practice of law, the allegations in Count 7 are insufficient to support a finding by clear and convincing evidence that respondent violated rule 1-310.

Accordingly, count 7 is dismissed with prejudice.

C. Sharing Legal Fees with a Non-Lawyer (Case Nos. 09-O-12389; 09-O-12430; 09-O-12656; 09-O-13415; 09-O-13532; 09-O-14457 – Count 8)

The findings of fact, as set forth in count 7, *ante*, are incorporated by reference as if set forth fully herein.

Count 8: Sharing Legal Fees with a Non-Lawyer (Rule 1-320(A))

Rule 1-320(A) in pertinent part provides that a member must not directly or indirectly share legal fees with a person who is not a lawyer.

As set forth, *ante*, it is alleged that in or about 2008 and in or about 2009, the EQ Group collected advanced fees from clients in exchange for agreeing to represent the clients in seeking home loan modifications from their lenders. The NDC does not allege, however, that the fees advanced by the EQ Group's clients were legal fees. Nor are there any facts alleged in Count 8 to support a finding that respondent shared legal fees with Zakaria, or any other non-attorney.

Accordingly, absent clear and convincing evidence, the court dismisses count 8 with prejudice.

D. McDonald Matter (Case No. 09-O-12389 – Counts 9-12)

The findings of fact, as set forth in count 7, *ante*, are incorporated by reference as if set forth fully herein.

Rory and Janet McDonald are Montana residents. Respondent is not presently admitted to practice law in Montana and never has been admitted to practice law in Montana. The McDonalds believed that respondent and the EQ Group were authorized to practice law in Montana.

The Montana statute 37-61-201 definition of the practice of law includes the following: “Any person who shall hold himself out or advertise as an attorney or counselor ... or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney at law in the practice of his profession for the purpose of parts 1 through 3 of this chapter shall be deemed practicing law.”

In or about December 2008, Rory McDonald (Rory) received a solicitation in the mail from Home Savings of America marketing a “Fixed Rate Conversion Program” and suggesting that Rory’s new monthly mortgage payment could be as low as \$729.14 a month.

In or about December 2008, in response to the solicitation, Rory called Home Savings of America and spoke to Marcus Marion (Marion), who referred Rory and Janet McDonald (the McDonalds) to the EQ Group for a loan modification.

In or about January 2009, the following occurred: (1) the McDonalds hired respondent and the EQ Group in connection with negotiating and obtaining a home mortgage loan modification; (2) respondent and the EQ Group agreed to negotiate and obtain a loan modification on behalf of the McDonalds; (3) respondent sent a letter to the McDonalds acknowledging representation of the McDonalds and enclosed a retainer agreement and other documentation for their review; (4) the McDonalds paid respondent and the EQ Group \$3,200

in advanced fees pursuant to the retainer agreement, which provided that the EQ Group would refund all advanced fees if the McDonalds did not receive a loan modification from their lender; and (5) the McDonalds paid respondent an additional \$300 in advanced fees to draft a RESPA letter on their behalf.

On or about January 7, 2009, respondent wrote the McDonalds requesting \$300 in attorney fees to analyze the McDonalds loan documents and draft a letter outlining any truth in lending violations by their lender — Countrywide Home Loans. In or about January 2009, the McDonalds advanced respondent the additional \$300 in attorney fees.

On or about March 17, 2009, respondent wrote Countrywide a Qualified Written Request letter under Section 6 of the Real Estate Settlement Procedures Act (RESPA letter), asking for documents pertaining to the McDonalds' mortgage. On or about March 20, 2009, Countrywide received the RESPA letter.

On or about April 14, 2009, the EQ Group sent an Authorization to Represent to Countrywide, authorizing various non-attorneys employed by the EQ Group to negotiate the McDonalds' home mortgage loan. Thereafter, respondent and the EQ Group did not take any further steps to negotiate and obtain a home mortgage loan modification on the McDonalds' behalf.

On or about April 26, 2009, Janet McDonald (Janet) contacted Zakaria via email requesting a full refund from the EQ Group. On or about April 26, 2009, Zakaria responded to Janet's email contending that the EQ Group had put a lot of work into the McDonalds' file.

On or about April 29, 2009, attorney Martin J. Elison (Elison) wrote respondent on the McDonalds' behalf. In his April 29, 2009 letter to respondent, Elison requested a full refund of fees paid by the McDonalds. In addition, Elison asked respondent how he could represent homeowners in Montana without ever meeting the client or having a license to practice in

Montana. On or about April 29, 2009, Elison mailed the letter to respondent at the address previously provided by respondent. Respondent received the April 29, 2009 letter, but failed to respond and failed to provide a refund.

On or about May 12, 2009, the State Bar opened an investigation, case no. 09-0-12389, pursuant to a complaint made against respondent by attorney Martin J. Elison on behalf of his clients, Rory and Janet McDonald (the McDonald complaint).

On or about August 6, 2009, a State Bar investigator wrote respondent regarding the McDonald complaint. The investigator's August 6, 2009 letter requested that respondent respond in writing by August 20, 2009, to specific allegations of misconduct being investigated by the State Bar in the McDonald complaint.

The investigator's August 6, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address. Respondent received the August 6, 2009 letter, but failed to provide a response.

On or about November 10, 2009, the State Bar investigator wrote respondent regarding respondent's various open investigation matters. In the November 10, 2009 letter, the investigator noted that respondent had failed to respond to numerous State Bar letters. In the November 10, 2009 letter, the State Bar investigator reminded respondent that it was his duty pursuant to Business and Professions Code section 6068, subdivision (i) to respond.

The investigator's November 10, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address, to an alternate office address used by respondent, as well as to respondent's P.O. Box address. Respondent received the November 10, 2009 letter but failed to provide a response.

On or about November 23, 2009, the State Bar investigator visited the offices belonging to respondent and EQ Group. The State Bar investigator was able to speak to Zakaria, but not to respondent.

On or about November 23, 2009, following the visit to respondent's office, the State Bar investigator received a telephone call from respondent. During the November 23, 2009 conversation, respondent acknowledged receiving the investigator's letters and told the investigator that he was going to retain counsel and provide responses to the open investigation matters.

To date, respondent has not provided the State Bar with a written response to the allegations in the McDonald complaint.

Count 9: Failure to Return Unearned Fees (Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

In paragraph 70 of the NDC it is alleged that the McDonalds paid the EQ Group \$3,200 in advance fees. But, it is not alleged that the \$3,200 in fees advanced to the EQ Group were in exchange for any legal services. In paragraph 71 of the NDC it further is alleged that on or about January 7, 2009, respondent requested \$300 in "attorney fees" to analyze the McDonald loan documents and to draft a letter outlining any truth in lending violations by their lender. On April 26, 2009, Janet McDonald contacted Zakaria requesting a full refund from the EQ Group. Thereafter, on or about April 29, 2009, attorney Ellison wrote respondent on the McDonalds' behalf, requesting a full refund of fees paid by the McDonalds. Ellison mailed the letter to respondent, who received it on April 29, 2009. But, respondent did not provide a refund.

In his January 7, 2009 letter to the McDonalds, by requesting \$300 in attorney fees to analyze the McDonalds loan documents and draft a letter outlining any truth and lending violations by the lender, respondent was holding himself out as an attorney and acknowledging that he would be performing legal services on behalf of the McDonalds. Thus, not only was respondent acting as a partner in the EQ Group negotiating loan modifications, a service which might not necessarily require the services of a lawyer, but, he was also performing in a dual capacity by performing legal services. Where an attorney occupies a dual capacity, performing services that might otherwise be performed by a layman, the services he renders in the dual capacity all involve the practice of law, and the attorney must conform to the Rules of Professional Conduct in the provision of all of them. (*Layton v. State Bar* (1990) 50 Cal.3d 889, 904.)

By failing to refund any portion of the \$3,500 advance fees (\$300 of which were received as attorney fees) respondent failed to promptly refund any part of an unearned advanced fee, in willful violation of rule 3-700(D)(2).

Count 10: Unauthorized Practice of Law in another Jurisdiction (Rule 1-300(B))

Rule 1-300(B) provides that a member must not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

Respondent, who was never licensed to practice law in Montana, held himself out as an attorney licensed to practice law in Montana and practiced law in that jurisdiction, as defined by Montana statute 37-61-201. By writing to the McDonalds on or about January 7, 2009, to request \$300 in attorney fees to analyze their loan documents and draft a letter outlining any truth in lending violations by their lender, respondent held himself out as an attorney. Under Montana statute 37-61-201, “[a]ny person who shall hold himself out or advertise as an attorney. . . shall be deemed practicing law.”

Accordingly, the court finds by clear and convincing evidence that respondent willfully violated rule 1-300(B) by practicing law in a jurisdiction where to do so would be in violation of regulations of the profession.

Count 11: Illegal Fee (Rule 4-200(A))

Rule 4-200(A) prohibits an attorney from entering into an illegal or unconscionable fee agreement or charging or collecting an illegal or unconscionable fee.

Respondent accepted a fee which he was prohibited by law from accepting when he charged and collected a fee for legal services, i.e., the \$300 in attorney fees from the McDonalds in Montana, a jurisdiction in which he was not licensed to practice law. By so doing, respondent entered into an agreement for, charged, or collected an illegal fee in willful violation of rule 4-200(A).

Count 12: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide the State Bar investigator with a written response to the allegations of misconduct in the McDonald complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

E. Alexander Matter (Case No. 09-O-12430 – Counts 13-15)

The findings of fact, as set forth in count 7, *ante*, are incorporated herein by reference as if set forth fully herein.

In or about July 2008, the following occurred: (1)Antoinette Alexander (Alexander) received a call from her former real estate broker, David Morris (Morris) of Western Savings, asking if she was interested in a modification of her existing mortgage; (2) Morris referred Alexander to respondent and the EQ Group for loan modification services; and (3) Alexander

met with respondent and agreed to hire the EQ Group in connection with negotiating and obtaining a home mortgage loan modification.

On or about July 28, 2008, Alexander signed the retainer agreement with the EQ Group. Pursuant to the retainer agreement, the EQ Group would refund all advanced fees if Alexander did not receive a loan modification.

On or about August 13, 2008, Alexander paid the EQ Group \$4,000 in advanced fees.

On or about August 18, 2008, respondent wrote Wachovia a RESPA letter requesting documents pertaining to Alexander's home mortgage. Thereafter, respondent and the EQ Group did not take any further steps to negotiate and obtain a home mortgage loan modification on Alexander's behalf.

In or about September 2008, Alexander called respondent on several occasions and left messages regarding the status of her loan modification. Respondent received Alexander's messages but failed to respond to her calls.

In or about September 2008, Alexander informed Morris that she had been unable to reach respondent. Subsequently, Morris was able to talk to Steven Feighner of the EQ Group. In or about September 2008, Feighner admitted that Alexander's file had been lost.

On or about December 3, 2008, Alexander resubmitted her paperwork to the EQ Group.

Thereafter, respondent did not provide any legal services of value to Alexander in connection with negotiating and obtaining a home loan modification on her behalf.

In or about January 2009, Alexander again made several unsuccessful attempts to contact respondent regarding her loan modification. Thereafter, Alexander left several messages for respondent requesting a full refund of the \$4,000 paid to the EQ Group.

In or about February 2009, Alexander received a refund check from the EQ Group for \$1,000.

In or about June 2009, Morris paid Alexander an additional \$2,500.

To date, Alexander has not received the remaining \$500 in fees that she paid to the EQ Group.

On or about May 13, 2009, the State Bar opened an investigation, case no. 09-0-12430, pursuant to a complaint made against respondent by Antoinette Alexander (the Alexander complaint).

On or about September 11, 2009, a State Bar investigator wrote respondent regarding the Alexander complaint. The investigator's September 11, 2009 letter requested that respondent respond in writing by September 20, 2009, to specific allegations of misconduct being investigated by the State Bar in the Alexander complaint.

The investigator's September 11, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address. Respondent received the September 11, 2009 letter, but failed to provide a response.

On or about November 10, 2009, the State Bar investigator wrote respondent regarding respondent's various open investigation matters. In the November 10, 2009 letter, the investigator noted that respondent had failed to respond to numerous State Bar letters. In the November 10, 2009 letter, the State Bar investigator reminded respondent that it was his duty pursuant to Business and Professions Code section 6068(i) to respond.

The investigator's November 10, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address, to an alternate office address used by respondent, as well as respondent's P.O. Box address. Respondent received the November 10, 2009 letter, but failed to provide a response.

On or about November 23, 2009, the State Bar investigator visited the offices belonging to respondent and EQ Group. The State Bar investigator was able to speak to Zakaria, but not to respondent.

On or about November 23, 2009, following the visit to respondent's office, the State Bar investigator received a telephone call from respondent. During the November 23, 2009 conversation, respondent acknowledged receiving the investigator's letters and told the investigator that he was going to retain counsel and provide responses to the open investigation matters.

To date, respondent has not provided the State Bar with a written response to the allegations in the Alexander complaint.

Count 13: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

The NDC charges that by not performing any legal services of value to Alexander, including not negotiating and obtaining a home mortgage modification on her behalf, respondent failed to perform legal services with competence.

However, the NDC fails to allege that the services EQ and/or respondent agreed to provide to Alexander consisted of the practice of law. No facts are provided regarding the retainer agreement that Alexander entered into with the EQ Group. Moreover, no facts are alleged, which indicate that Alexander was aware that respondent is an attorney or that she had any expectation that respondent would be performing legal services.

Although it is alleged that respondent wrote a RESPA letter to Wachovia requesting documents pertaining to Alexander's home mortgage, there is no evidence to show that making the request involved providing a legal service. Nor are there any allegations in the NDC to demonstrate that respondent was performing in a dual capacity, i.e., performing legal services in addition to services that might be performed by a layman, i.e., a non-lawyer.

Thus, the allegations in Count 13 are insufficient to support a finding by clear and convincing evidence that respondent failed to perform legal services with competence.

Accordingly, Count 13 is dismissed with prejudice.

Count 14: Failure to Return Unearned Fees (Rule 3-700(D)(2))

The NDC charges that by not refunding \$500 of the \$4,000 fee, which Alexander had paid to the EQ Group in connection with negotiating and obtaining a home mortgage loan modification, respondent failed to promptly return an unearned attorney fee.

Because no facts are alleged in the NDC to show that: (1) the EQ Group or respondent represented to Alexander that respondent would perform legal services related to negotiating and obtaining the loan modifications; (2) respondent had been retained to perform legal services for Alexander; (3) respondent provided any legal services for Alexander (i.e., worked in a dual capacity); and/or (4) any part of the \$4,000 fee advanced to the EQ Group fee was an attorney fee paid for legal services, the allegations in Count 14 are insufficient to support a finding by clear and convincing evidence that respondent violated rule 3-700(D)(2).

Accordingly, Count 14 is dismissed with prejudice.

Count 15: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide the State Bar investigator with a written response to the allegations of misconduct in the Alexander complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

F. Dardashti Matter (Case No. 09-O-12656 – Counts 16-19)

The findings of fact, as set forth in count 7, *ante*, are incorporated by reference as if set forth fully herein.

In or about September 2008, Behzad Dardashti (Dardashti) spoke to Nina Gabay (Gabay), Loan Modification Coordinator for Unique Mortgage, about obtaining loan modifications on Dardashti's four rental properties.

In or about September 2008, Gabay referred Dardashti to EQ Group for loan modification services.

On or about September 17, 2008, respondent and Dardashti entered into four retainer agreements, which provided that the EQ Group would negotiate and obtain home mortgage loan modifications on Dardashti's four rental properties. Pursuant to the retainer agreements, the EQ Group would refund all advanced fees to Dardashti, if he did not receive loan modifications from his lenders.

On or about September 17, 2008, Dardashti issued four checks totaling \$18,500 to the EQ Group as advanced fees for the four loan modifications. From the \$18,500 in fees, Unique Mortgage received \$10,500 as payment for referring Dardashti to the EQ Group.

On or about December 23, 2008, the EQ Group submitted an Authorization to Represent to CitiMortgage authorizing several non-attorney employees of EQ Group to negotiate Dardashti's home mortgage loan.

On or about December 23, 2008, Kathy Chang (Chang) of EQ Group submitted a loan modification request to CitiMortgage on Dardashti's behalf. However, the loan modification request did not include Dardashti's financial information.

On or about February 18, 2009, Jordan Martin submitted documentation to Countrywide requesting loan modifications on three of the Dardashti rental properties. Thereafter, respondent and EQ Group did not take any further steps to negotiate and obtain home mortgage loan modifications on Dardashti's behalf.

Respondent did not provide any legal services of value to Dardashti in connection with negotiating and obtaining home loan modifications on Dardashti's behalf.

In or about early 2009, Dardashti contacted both the EQ Group and Unique Mortgage requesting a refund of the fees paid to the EQ Group.

On or about March 2, 2009, Gadi Ben Lavi, Executive Director of Unique Mortgage, emailed Dardashti informing him that the EQ Group was working on refunding the fees on two of Dardashti's files, and they were working on solutions for the other two files.

On or about March 20, 2009, Zakaria of the EQ Group sent an email to both Dardashti and to Steven Feighner (Feighner), an EQ Group employee. In the March 20, 2009 email, Zakaria told Feighner to contact "Gadi and Yair" of Unique Mortgage and instruct them to refund the \$10,500 to Dardashti by the end of the week.

On or about March 31, 2009, Feighner sent an email to Gadi Ben Lavi and Yair Harpaz of Unique Mortgage regarding the refund of Dardashti's fees. Gadi Ben Lavi and Yair Harpaz are not attorneys. In the March 31, 2009 email, Feighner told Lavi and Harpaz the following:

"Per the affiliate contract between Unique Mortgage and EQ Group Inc. any proceeds paid on these files are due back to our mutual client. *'In the event that EQ is unable to obtain a modification or other acceptable outcome for the Client, EQ and Unique will immediately refund all amounts received for that Client file.'* Unique was paid \$10,500 on this client file. Please return these funds to EQ Group within 3 business days."

To date, Dardashti has not received a refund of any portion of the \$18,500 in advanced fees paid to the EQ Group.

On or about May 26, 2009, the State Bar opened an investigation, case no. 09-0-12656, pursuant to a complaint made against respondent by Behzad Dardashti (the Dardashti complaint).

On or about August 4, 2009, a State Bar investigator wrote respondent regarding the Dardashti complaint. The investigator's August 4, 2009 letter requested that respondent respond in writing by August 24, 2009, to specific allegations of misconduct being investigated by the State Bar in the Dardashti complaint.

The investigator's August 4, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address. Respondent received the August 4, 2009 letter, but failed to provide a response.

On or about August 24, 2009, a State Bar investigator again wrote respondent regarding the Dardashti complaint. The investigator's August 24, 2009 letter noted that respondent had failed to respond in writing to the investigator's August 4, 2009 letter and enclosed a copy of the investigator's previous letter to respondent.

The investigator's August 24, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address. Respondent received the August 24, 2009 letter, but failed to provide a response.

On or about November 10, 2009, the State Bar investigator wrote respondent regarding respondent's various open investigation matters. In the November 10, 2009 letter, the investigator noted that respondent had failed to respond to numerous State Bar letters. In the November 10, 2009 letter, the State Bar investigator reminded respondent that it was his duty pursuant to Business and Professions Code section 6068, subdivision (i) to respond.

The investigator's November 10, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address, to an alternate office address used by respondent as well as respondent's P.O. Box address. Respondent received the November 10, 2009 letter, but failed to provide a response.

On or about November 23, 2009, the State Bar investigator visited the offices belonging to respondent and the EQ Group. The State Bar investigator was able to speak to Zakaria, but not respondent.

On or about November 23, 2009, following the visit to respondent's office, the State Bar investigator received a telephone call from respondent. During the November 23, 2009 conversation, respondent acknowledged receiving the investigator's letters and told the investigator that he was going to retain counsel and provide responses to the open investigation matters.

To date, respondent has not provided the State Bar with a written response to the allegations in the Dardashti complaint.

Count 16: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

The NDC charges that by not performing any legal services of value to Dardashti, including not negotiating and obtaining a home mortgage modification on his behalf, respondent failed to perform legal services with competence.

It is alleged that Dardashti and respondent entered into four retainer agreements which provided that the EQ Group would negotiate and obtain home mortgage loan modifications on Dardashti's four rental properties. However the NDC does not allege, nor is it apparent, that negotiating and obtaining loan modifications necessarily involve the performance of legal services. There are no allegations in the NDC which show that the services provided to Dardashti by the EQ Group and/or respondent consisted of or could be construed as legal services. Nor does the NDC contain allegations that respondent agreed to perform legal services, was retained to perform legal services, or performed any legal services.

Moreover, the allegations in the NDC do not demonstrate that respondent was performing in a dual capacity i.e., performing legal services in the capacity of a lawyer, as well as services that might be performed by a layman.

Thus, the allegations in Count 16 are insufficient to support a finding by clear and convincing evidence that respondent failed to perform legal services with competence.

Accordingly, Count 16 is dismissed with prejudice.

Count 17: Failure to Return Unearned Fees (Rule 3-700(D)(2))

The NDC charges that by not refunding the \$18,500 fee that Dardashti paid to the EQ Group in connection with negotiating and obtaining home mortgage loan modifications, respondent failed to promptly return an unearned attorney fee.

Because no facts are alleged in the NDC which show that: (1) the EQ Group or respondent represented to Dardashti that the EQ Group or respondent would perform legal services related to negotiating and obtaining loan modifications; (2) respondent or the EQ Group was retained to perform legal services for Dardashti; (3) respondent provided any legal services for Dardashti, thereby working in a dual capacity; and/or (4) any part of the \$18,500 fee advanced to the EQ Group was an attorney fee for legal services, the allegations in Count 17 are insufficient to support a finding by clear and convincing evidence that respondent violated rule 3-700(D)(2). Accordingly, Count 17 is dismissed with prejudice.

Count 18: Sharing Legal Fees with a Non-Lawyer (Rule 1-320(A))

As set forth, *ante*, it is alleged that on or about September 17, 2008, respondent and Dardashti entered into four retainer agreements whereby the EQ Group was to negotiate and obtain home mortgage loan modifications on Dardashti's four rental properties. On or about September 17, 2008, Dardashti issued four checks totaling \$18,500 to the EQ Group as advance

fees for the four loan modifications. The NDC alleges that “from the \$18,500 in fees Unique Mortgage received \$10,500 as payment for referring Dardashti to EQ Group.”

It is further alleged that Gadi Ben Lavi (Lavi) was the executive director of Unique Mortgage and that Yair Harpaz (Harpaz) was “of Unique Mortgage.”⁴ Lavi and Harpaz are not attorneys.

The NDC charges that “[b]y sharing the advanced fees paid by Dardashti with non-attorneys Gadi Ben Lavi and Yair Harpaz of Unique Mortgage, Respondent willfully shared legal fees with a person who is not a lawyer in willful violation of Rules of Professional Conduct, rule 1-320(A).”

While there is an allegation that Zakaria directed Feighner, an EQ employee, to contact “Gadi and Yair” of Unique Mortgage and instruct them to refund \$10,500 referral fee to Dardashti, there are no facts alleged to support a finding that either Gadi Ben Lavi or Yair Harpaz received a share of the \$10,500 fee.

Moreover, as discussed in Count 17, *ante*, the facts set forth in the NDC fail to demonstrate that the \$18,500 fee paid by Dardashti to the EQ Group was a legal fee. Therefore, there is no evidence to support a finding that the \$10,500 referral fee paid to Unique Mortgage from the \$18,500 involved a legal fee.

Accordingly, for lack of clear and convincing evidence that respondent shared a legal fee with a person who is not a lawyer, the court dismisses count 18 with prejudice.

Count 19: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide the State Bar investigator with a written response to the allegations of misconduct in the Dardashti complaint, respondent failed to cooperate and participate in a

⁴ The NDC contains no allegations as to what Harpaz’s title, position or employment status was in relation to Unique Mortgage.

disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

G. Coggins Matter (Case No. 09-O-13415 – Counts 20-23)

The findings of fact, as set forth in count 7, *ante*, are incorporated by reference as if set forth fully herein.

In or about June 2008, Britt Stenstrom (Stenstrom) who is not an attorney, but is a real estate broker and owner of Kalos Incorporated, entered into an agreement to refer clients to the EQ Group for loan modifications.

In or about October 2008, Stenstrom, referred Bryan Coggins (Coggins) to EQ Group to obtain loan modifications on Coggins's 10 properties.

On or about October 7, 2008,⁵ Coggins had a consultation with the EQ Group and was told that the EQ Group was completing loan modifications within ninety days. On or about October 8, 2008, Coggins and the EQ Group entered into a retainer agreement, which provided that the EQ Group would negotiate and obtain home mortgage loan modifications on Coggins's 10 properties. Pursuant to the retainer agreements, the EQ Group would refund the advanced fees to Coggins if Coggins did not receive loan modifications from his lenders.

On or about October 14, 2008, Coggins paid the EQ Group 10 separate retainer amounts for the 10 loan modifications. The fees for the 10 separate loan modifications matters that Coggins advanced to the EQ Group totaled \$21,500.

⁵ Paragraph 173 of the NDC states that on or about October 7, 2009, Coggins had a consultation with the EQ Group. The year "2009" is clearly a clerical error, which the court finds to be de minimis.

In or about December 2008, the EQ Group paid Kalos Incorporated \$8,714.80 from the \$21,500, for referring Coggins to the EQ Group.

On or about January 27, 2009, Coggins emailed Jordan Martin of the EQ Group and Stenstrom regarding the lack of progress on his 10 loan modification matters and requested a refund. In the email, Coggins noted that as of January 27, 2009, none of his lenders had received a loan modification application from the EQ Group. In his January 27, 2009 email, Coggins also noted that he had only been contacted by the EQ Group once since retaining its services. On or about January 27, 2009, Coggins also sent the contents of the January 27, 2009 email to respondent with attachments via overnight mail. Respondent received the email but did not respond and did not provide a refund.

On or about April 1, 2009, Coggins sent another email to respondent, Zakaria, and others associated with the EQ Group. In his April 1st email, Coggins noted that he had requested updates regarding the status of his files, but had not received any response. He also stated in his email that he had only received one loan modification for which he had paid the EQ Group \$1,250 in advanced fees and that he was requesting a refund of the remaining \$20,000 he had paid in advanced fees. Respondent received the email, but did not respond and did not provide a refund.

Thereafter, respondent and the EQ Group did not take any further steps to negotiate and obtain home mortgage loan modifications on Coggins's behalf.

As of in or about June 2009, respondent and the EQ Group had not refunded any of the advanced fees paid by Coggins. As a result, on or about June 11, 2009, Coggins filed a civil action against respondent, the EQ Group, and Kalos Incorporated entitled, *Bryan Coggins et al. v. EQ Group, Inc., a California corporation et. al*, Orange County Superior Court, case No. 30-2009-00275368 (the Coggins action).

On or about August 5, 2009, the court in the Coggins action entered default against the EQ Group. Thereafter, on or about September 22, 2009, the court in the Coggins action entered default against respondent. In or about November 1, 2009, Coggins settled with Kalos Incorporated and received \$1,000.

To date, Coggins has not received a refund from respondent or the EQ Group.

On or about June 29, 2009, the State Bar opened an investigation, case no. 09-0-13415, pursuant to a complaint made against respondent by Coggins (the Coggins complaint).

On or about August 5, 2009, a State Bar investigator wrote respondent regarding the Coggins complaint. The investigator's August 5, 2009 letter requested that respondent respond in writing by August 19, 2009, to specific allegations of misconduct being investigated by the State Bar in the Coggins complaint.

The investigator's August 5, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address. Respondent received the August 5, 2009 letter, but failed to provide a response.

On or about November 10, 2009, the State Bar investigator wrote respondent regarding respondent's various open investigation matters. In the November 10, 2009 letter, the investigator noted that respondent had failed to respond to numerous State Bar letters. In the November 10, 2009 letter, the State Bar investigator reminded respondent that it was his duty pursuant to Business and Professions Code section 6068, subdivision (i) to respond.

The investigator's November 10, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address, to an alternate office address used by respondent as well as respondent's P.O. Box address. Respondent received the November 10, 2009 letter, but failed to provide a response.

On or about November 23, 2009, the State Bar investigator visited the offices belonging to respondent and the EQ Group. The State Bar investigator was able to speak to Zakaria, but not respondent.

On or about November 23, 2009, following the visit to respondent's office, the State Bar investigator received a telephone call from respondent. During the November 23, 2009 conversation, respondent acknowledged receiving the investigator's letters and told the investigator that he was going to retain counsel and provide responses to the open investigation matters.

To date, respondent has not provided the State Bar with a written response to the allegations in the Coggins complaint.

Count 20: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

The NDC charges that by taking months to pursue one loan modification on Coggins's behalf and by failing to negotiate and obtain loan modifications on nine of Coggins's properties, respondent failed to perform legal services with competence.

The NDC alleges that Coggins and the EQ Group entered into a retainer agreement, which provided that the EQ Group would negotiate and obtain home mortgage loan modifications on Coggins's 10 properties. The NDC, however, does not allege, nor is it apparent, that negotiating and obtaining loan modifications necessarily involve the performance of legal services. There are no allegations in the NDC which show that the services provided to Coggins by the EQ Group and/or respondent consisted of or could be construed as legal services. Nor does the NDC contain allegations that respondent agreed to perform legal services, was retained to perform legal services, and/or performed any legal services.

Moreover, the allegations in the NDC do not demonstrate that respondent was performing services in a dual capacity i.e., performing legal services in the capacity of a lawyer, as well as services that might be performed by a layman.

Thus, the allegations in Count 20 are insufficient to support a finding by clear and convincing evidence that respondent failed to perform legal services with competence.

Accordingly, Count 20 is dismissed with prejudice.

Count 21: Failure to Return Unearned Fees (Rule 3-700(D)(2))

The NDC charges that by not refunding any portion of the \$20,000 in fees to Coggins despite his requests, respondent willfully failed to refund promptly any part of a fee paid in advance that has not been earned.

Because no facts are alleged in the NDC which show that: (1) the EQ Group or respondent represented to Coggins that the EQ Group or respondent would perform legal services related to negotiating and obtaining loan modifications; (2) respondent or the EQ Group was retained to perform legal services for Coggins; (3) respondent provided any legal services for Coggins, thereby working in a dual capacity; and/or (4) any part of the \$21,500 advanced fees (including the \$20,000 for which Coggins requested a refund in his April 1, 2009 email) paid to the EQ Group were attorney fees for legal services, the allegations in Count 21 are insufficient to support a finding by clear and convincing evidence that respondent violated rule 3-700(D)(2).

Count 22: Sharing Legal Fees with a Non-Lawyer (Rule 1-320(A))

As set forth, *ante*, it is alleged that in or about June 2008, Strenstrom, who is not an attorney, but is a real estate broker and owner of Kalos Incorporated, entered into an agreement to refer clients to the EQ Group for loan modifications. It is also alleged that in or about October 2008, Stenstrom referred Coggins to the EQ Group to obtain loan modifications on

Coggins's 10 properties. Thereafter, on or about October 8, 2008, Coggins and the EQ Group entered into 10 retainer agreements which provided that the EQ Group would negotiate and obtain home mortgage loan modifications on Coggins's 10 properties. On or about October 14, 2010, Coggins paid the EQ Group 10 separate retainer amounts for the 10 loan modifications. The fees for the 10 separate loan modifications matters that Coggins advanced to the EQ Group on October 14, 2008, totaled \$21,500.

The NDC further alleges that "[i]n or about December 2008, EQ Group paid Kalos Incorporated \$8,714.80 from the \$21,500 for referring Coggins to EQ Group."

The NDC charges that "[b]y sharing the advanced fees paid by Coggins with Britt Stenstrom of Kalos Incorporated, Respondent willfully shared legal fees with a person who is not a lawyer in willful violation of Rules of Professional Conduct, rule 1-320(A)."

As discussed in Count 21, *ante*, the facts set forth in the NDC fail to demonstrate that the \$21,500 fees paid to the EQ Group by Coggins were legal fees. Therefore, there is no evidence to support a finding that the \$8,714.80 referral fee paid to Kalos Incorporated from the \$21,500 involved legal fees.

Accordingly, for lack of clear and convincing evidence that respondent shared a legal fee with a person who is not a lawyer, the court dismisses count 22 with prejudice.

Count 23: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide the State Bar investigator with a written response to the allegations of misconduct in the Coggins complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

H. Orozco Matter (Case No. 09-O-13532 – Counts 24-27)

The findings of fact, as set forth in count 7, *ante*, are incorporated by reference as if set forth fully herein.

In or about 2008, David Morris (Morris) was a non-attorney and a real estate agent employed by Western Savings Incorporated. In or about 2008, Morris entered into a business arrangement with respondent to solicit and refer loan modification clients to respondent and the EQ Group. Pursuant to their agreement, Morris would negotiate the fee amount with the clients and direct the clients to make all payments to the EQ Group. Respondent and the EQ Group provided Morris with client leads. In addition, according to the agreement between Morris and respondent/EQ Group, respondent agreed to pay Morris a portion of the fees paid by each client referred to respondent and EQ Group.

In or about August 2008, Frank and Esther Orozco (the Orozcos) received a call from Morris asking if they were interested in obtaining a loan modification of their home loan mortgage. Morris referred the Orozcos to the EQ Group to obtain a loan modification and advised them that they would be paying \$3,500 in advanced fees to EQ Group. The Orozcos were unaware of how Morris obtained their telephone number or information regarding their home.

Following their conversation with Morris, the Orozcos received a letter from respondent and the EQ Group that included a retainer agreement for the Orozcos' signatures. Pursuant to the retainer agreement between the EQ Group and the Orozcos, the EQ Group would refund all advanced fees to the Orozcos if they did not receive a loan modification from their lender, Wachovia.

On or about August 13, 2008, the Orozcos hired respondent and the EQ Group in connection with negotiating and obtaining a home mortgage loan modification on their behalf

and paid the EQ Group \$3,500 in advanced fees. From the \$3,500, respondent paid \$2,000 to Morris for referring the Orozcos to the EQ Group.

On or about October 27, 2008, the EQ Group submitted an Authorization to Represent to Wachovia authorizing both respondent and non-attorney Jordan Martin (Martin) to negotiate the Orozcos' home mortgage loan. Martin submitted a RESPA letter to Wachovia requesting documents pertaining to the Orozcos' home mortgage loan. On or about December 5, 2008, Martin also submitted a modification package to Wachovia on behalf of the Orozcos. Thereafter, respondent and the EQ Group did not take any further steps to negotiate and obtain a home mortgage loan modification on behalf of the Orozcos.

On or about December 11, 2008, Wachovia responded to the EQ Group's letters regarding the Orozcos' account. In the December 11, 2008 letter, Wachovia said it was unclear from the EQ Group's letter if they were seeking to modify the loan or ask a specific servicing question. Wachovia asked the EQ Group to provide additional information and documentation so it could respond to the EQ Group's request. The EQ Group received Wachovia's letter, but failed to respond and failed to provide additional information.

Respondent did not provide any legal services of value to the Orozcos in connection with negotiating and obtaining home loan modifications on behalf of the Orozcos.

From in or about December 2008 through in or about April 2009, the Orozcos called the EQ Group several times and left messages regarding their loan modification. The Orozcos did not receive a response until April 2009, when they received a call from Zakaria. During the April 2009 conversation, the Orozcos requested a full refund of the \$3,500 paid to the EQ Group. Zakaria requested two weeks to provide the refund.

In or about April 2009, a conference call took place occurred among respondent, Morris, and the Orozcos. During the conference call, respondent demanded that Morris refund his

portion of the fees to the Orozcocos. In or about late April 2009, Morris paid \$2,000 to the Orozcocos.

On or about May 7, 2009, the Orozcocos spoke to Zakaria who agreed that the EQ Group would refund the remaining \$1,500. In or about May 2009, the Orozcocos received a check from EQ Group for \$750.

To date, the Orozcocos have not received the remaining \$750 in unearned fees from respondent and the EQ Group.

On or about July 6, 2009, the State Bar opened an investigation, case No. 09-0-13532, pursuant to a complaint made against respondent by Frank and Esther Orozco (the Orozco complaint).

On or about August 5, 2009, a State Bar investigator wrote respondent regarding the Orozco complaint. The investigator's August 5, 2009 letter requested that respondent respond in writing by August 19, 2009, to specific allegations of misconduct being investigated by the State Bar in the Orozco complaint.

The investigator's August 5, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address. Respondent received the August 5, 2009 letter, but failed to provide a response.

On or about November 10, 2009, the State Bar investigator wrote respondent regarding respondent's various open investigation matters. In the November 10, 2009 letter, the investigator noted that respondent had failed to respond to numerous State Bar letters. In the November 10, 2009 letter, the State Bar investigator reminded respondent that it was his duty pursuant to Business and Professions Code section 6068, subdivision (i) to respond.

The investigator's November 10, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership

records address, to another office address used by respondent, as well as to respondent's P.O. Box address. Respondent received the November 10, 2009 letter, but failed to provide a response.

On or about November 23, 2009, the State Bar investigator visited the offices belonging to respondent and the EQ Group. The State Bar investigator was able to speak to Zakaria, but not respondent.

On or about November 23, 2009, following the visit to respondent's office, the State Bar investigator received a telephone call from respondent. During the November 23, 2009 conversation, respondent acknowledged receiving the investigator's letters and told the investigator that he was going to retain counsel and provide responses to the open investigation matters.

To date, respondent has not provided the State Bar with a written response to the allegations in the Orozco complaint.

Count 24: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

The NDC charges that by not performing any legal services of value to the Orozcos, including, not negotiating and obtaining home mortgage loan modification on the Orozcos' behalf, respondent failed to perform legal services with competence.

The NDC alleges that the Orozcos hired respondent and the EQ Group in connection with negotiating and obtaining a home mortgage loan modification on their behalf. On or about October 27, 2008, the EQ Group submitted an Authorization to Represent to Wachovia authorizing both respondent and non-attorney Martin to negotiate the Orozcos' home mortgage loan. Martin submitted a RESPA letter to Wachovia requesting documents pertaining to the Orozcos' home mortgage loan. On or about December 5, 2008, Martin also submitted a modification package to Wachovia on behalf of the Orozcos. Thereafter, respondent and the

EQ Group did not take any further steps to negotiate and obtain a home mortgage loan modification on behalf of the Orozcós.

The NDC, however, does not allege, nor is it apparent, that negotiating and obtaining a loan modification necessarily involves the performance of legal services. There are no allegations in the NDC which show that the services provided to the Orozcós by the EQ Group and/or respondent consisted of or could be construed as legal services. Nor does the NDC contain allegations that respondent agreed to perform legal services, was retained to perform legal services, and/or performed any legal services.

Moreover, the allegations in the NDC do not demonstrate that respondent was performing services in a dual capacity i.e., performing legal services in the capacity of a lawyer, as well as services that might be performed by a layman.

Thus, the allegations in Count 24 are insufficient to support a finding by clear and convincing evidence that respondent failed to perform legal services with competence.

Accordingly, Count 24 is dismissed with prejudice.

Count 25: Failure to Return Unearned Fees (Rule 3-700(D)(2))

The NDC charges that by not refunding \$750 of the \$3,500 advanced fee that the Orozcós paid to the EQ Group, respondent willfully failed to refund promptly any part of a fee paid in advance that has not been earned.

Because no facts are alleged in the NDC which show that: (1) the EQ Group or respondent represented to the Orozcós that the EQ Group or respondent would perform legal services related to negotiating and obtaining their loan modification; (2) respondent or the EQ Group was retained to perform legal services for the Orozcós; (3) respondent provided any legal services for the Orozcós, thereby working in a dual capacity; and/or (4) any part of the \$3,500 fee (including the \$750 that was not refunded to the Orozcós) advanced to the EQ Group was an

attorney fee paid for legal services, the allegations in Count 25 are insufficient to support a finding by clear and convincing evidence that respondent violated rule 3-700(D)(2).

Count 26: Sharing Legal Fees with a Non-Lawyer (Rule 1-320(A))

As set forth, *ante*, it is alleged that Morris, a non-attorney and a real estate agent, entered into a business arrangement with respondent to solicit and refer loan modification clients to respondent and the EQ Group. Pursuant to the agreement between Morris and respondent/EQ Group, respondent agreed to pay Morris a portion of the fees paid by each client referred to respondent and the EQ Group. It is also alleged that Morris referred the Orozcocos to the EQ Group to obtain a loan modification of their home loan mortgage and advised them that they would be paying \$3,500 in advanced fees to the EQ Group.

The NDC charges that “[b]y sharing the advanced fees paid by the Orozcocos with non-attorney David Morris, Respondent willfully shared legal fees with a person who is not a lawyer in willful violation of Rules of Professional Conduct.”

However, as discussed in Count 25, *ante*, the facts set forth in the NDC fail to demonstrate that the \$3,500 fee paid to the EQ Group by the Orozcocos was a legal fee. Therefore, there is no evidence to support a finding that the \$750 portion of the fee that was not refunded to the Orozcocos was a part of a legal fee.

Accordingly, for lack of clear and convincing evidence that respondent shared a legal fee with a person who is not a lawyer, the court dismisses count 26 with prejudice.

Count 27: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide the State Bar investigator with a written response to the allegations of misconduct in the Orozco complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

I. Bitensky Matter (Case No. 09-O-14457 – Counts 28-29)

The findings of fact, as set forth in count 7, *ante*, are incorporated by reference as if set forth fully herein.

On or about October 21, 2008, Orit Bitensky (Bitensky) hired respondent and the EQ Group in connection with negotiating and obtaining a home mortgage loan modification on her behalf. On or about October 21, 2008, Bitensky paid the EQ Group \$3,652 in advanced fees.

Pursuant to the retainer agreement, the EQ Group would refund all advanced fees to Bitensky, if she did not receive a loan modification from her lender, IndyMac.

On or about October 31, 2008, the EQ Group submitted an Authorization to Represent to IndyMac signed by Bitensky authorizing both respondent and non-attorney Martin (Martin) to negotiate Bitensky's home mortgage loan, as well as negotiate Bitensky's home equity line of credit (HELOC).

On or about October 31, 2008, Martin submitted a RESPA letter to IndyMac requesting documents pertaining to Bitensky's home mortgage loan.

On or about December 8, 2008, Martin submitted a loan modification request to IndyMac requesting a modification of Bitensky's home mortgage loan. However, the modification request lacked documentation and the documentation evidencing Bitensky's income was not in English. Thereafter, respondent and the EQ Group did not have any further contact with IndyMac regarding negotiating and obtaining a home mortgage loan modification on Bitensky's behalf.

On or about December 23, 2008, IndyMac wrote Bitensky denying the request for a modification of her home mortgage loan. Following the denial of her home loan modification, Bitensky made repeated attempts to contact EQ Group without success.

In or about February 2009, Bitensky contacted IndyMac regarding her home loan mortgage and her HELOC. In or about February 2009, Bitensky and IndyMac entered into an agreement to modify the terms of her HELOC. On or about March 3, 2009, IndyMac approved and completed Bitensky's HELOC modification.

On or about August 14, 2009, the State Bar opened an investigation, case no. 09-0-14457, pursuant to a complaint made against respondent by Orit Bitensky (the Bitensky complaint).

On or about September 11, 2009, a State Bar investigator wrote respondent regarding the Bitensky complaint. The investigator's September 11, 2009 letter requested that respondent respond in writing by September 25, 2009, to specific allegations of misconduct being investigated by the State Bar in the Bitensky complaint.

The investigator's September 11, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address. Respondent received the September 11, 2009 letter, but failed to provide a response.

On or about November 10, 2009, the State Bar investigator wrote respondent regarding respondent's various open investigation matters. In the November 10, 2009 letter, the investigator noted that respondent had failed to respond to numerous State Bar letters. In the November 10, 2009 letter, the State Bar investigator reminded respondent that it was his duty pursuant to Business and Professions Code section 6068, subdivision (i) to respond.

The investigator's November 10, 2009 letter was placed in a sealed envelope addressed to respondent and properly mailed to respondent at his State Bar of California membership records address, to another address used by respondent, as well as to respondent's P.O. Box address. Respondent received the November 10, 2009 letter, but failed to provide a response.

On or about November 23, 2009, the State Bar investigator visited the offices belonging to respondent and the EQ Group. The State Bar investigator was able to speak to Zakaria, but not respondent.

On or about November 23, 2009, following the visit to respondent's office, the State Bar investigator received a telephone call from respondent. During the November 23, 2009 conversation, respondent acknowledged receiving the investigator's letters and told the investigator that he was going to retain counsel and provide responses to the open investigation matters.

To date, respondent has not provided the State Bar with a written response to the allegations in the Bitensky complaint.

Count 28: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

The NDC charges that by not submitting a complete home loan modification request on Bitensky's behalf, by not following up with IndyMac regarding the home loan modification request once it was submitted, by not submitting a modification request for Bitensky's HELOC, and by not responding to Bitensky's telephone calls, respondent failed to perform legal services with competence.

The NDC alleges the EQ Group was hired by Bitensky in connection with negotiating and obtaining a home mortgage loan modification on her behalf. On or about October 31, 2008, the EQ Group submitted an Authorization to Represent to IndyMac signed by Bitensky authorizing both respondent and Martin to negotiate Bitensky's home mortgage loan, as well as negotiate Bitensky's home equity line of credit (HELOC).

On or about October 31, 2008, Martin submitted a RESPA letter to IndyMac requesting documents pertaining to Bitensky's home mortgage loan. On or about December 8, 2008, Martin submitted a loan modification request to IndyMac requesting a modification of

Bitensky's home mortgage loan. However, the modification request, lacked documentation and the documentation evidencing Bitensky's income was not in English. Thereafter, respondent and the EQ Group did not have any further contact with IndyMac regarding negotiating and obtaining a home mortgage loan modification on Bitensky's behalf.

The NDC, however, does not allege, nor is it apparent, that negotiating and obtaining a loan modification, the service for which respondent/ EQ Group was hired, necessarily involves the performance of legal services. There are no allegations in the NDC which show that the services provided to Bitensky by the EQ Group and/or respondent consisted of or could be construed as legal services. Nor does the NDC contain allegations that respondent agreed to perform legal services, was retained to perform legal services, and/or performed any legal services.

Moreover, the allegations in the NDC do not demonstrate that respondent was performing services in a dual capacity i.e., performing legal services in the capacity of a lawyer, as well as services that might be performed by a layman.

Thus, the allegations in Count 28 are insufficient to support a finding by clear and convincing evidence that respondent failed to perform legal services with competence.

Accordingly, Count 28 is dismissed with prejudice.

Count 29: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

By failing to provide the State Bar investigator with a written response to the allegations of misconduct in the Bitensky complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(e) and (b).)

A. Mitigation

No mitigating factor was offered or received into evidence. (Std. 1.2(e).) However, respondent has no prior disciplinary record in his 10 years of practice at the time of his misconduct in 2007, which is a mitigating factor. (Std. 1.2(e)(i).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing, by failing to maintain client funds in a trust account, misappropriating client funds, failing to notify the client of receipt of client funds; failing to provide an accounting, failing to return unearned fees, engaging in the unauthorized practice of law in another jurisdiction; charging or collecting an illegal fee, and failing to cooperate with the State Bar. (Std. 1.2(b)(ii).)

Respondent's misconduct harmed significantly his clients. (Std. 1.2(b)(iv).) His clients are deprived of their funds, totaling \$17,181.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has not yet reimbursed his clients with their funds.

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar 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. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 1.6, 2.2, 2.3, 2.6, 2.7, and 2.10 apply in this matter.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) As the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.2(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificantly small or if the most compelling mitigating circumstances clearly predominate. The discipline must not be less than a one-year actual suspension, irrespective of mitigating circumstances. Here, respondent’s misappropriation of \$13,681.36 (i.e., the \$10,000 that was advanced to him by the Peters to pay

for depositions and the \$3,681.36 unused retainer balance that was refunded to him by the investigators on behalf of the Peters) is not insignificant; and, there is not compelling mitigation.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, which offense does not result in willful misappropriation of entrusted funds or property, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges disbarment. The court agrees.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An attorney’s failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) The court is seriously concerned about the possibility of similar misconduct recurring. Respondent has offered no indication that in the future he will not continue to engage in misconduct, similar to that misconduct of which he has been found culpable in this disciplinary proceeding. Instead of cooperating with the State Bar or rectifying his misconduct,

respondent defaulted in this disciplinary proceeding. The court has no information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

And, although respondent's record of 10 years of practice without prior discipline at the time of his misconduct is a mitigating circumstance, it does not outweigh the seriousness of his misconduct and the numerous aggravating circumstances. While not totally discounting respondent's years of practice as a mitigating circumstance, the court does not find it sufficiently outweighs the concerns set forth above to warrant a lesser sanction than disbarment. (See *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594 [attorney's 14 years of practice was mitigating, but did not outweigh the seriousness of attorney's misconduct, involving misappropriation of client funds and other aggravating circumstances].)

Thus, the court finds that respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Therefore, based on the serious nature of the misconduct and the aggravating circumstances, the court recommends disbarment.

A. Discipline

Accordingly, the court recommends that respondent **Stephen Paul Collette** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

B. Restitution

It is also recommended that respondent make restitution to the following:

1. **Densell and Rosalie Peters** in the amount of \$13,681 plus 10% interest per annum from November 14, 2007 (or to the Client Security Fund to the extent of

any payment from the fund to Densell and Rosalie Peters, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and

2. **Rory and Janet McDonald** in the amount of \$3,500 plus 10% interest per annum from April 29, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Rory and Janet McDonald, plus interest and costs, in accordance with Business and Professions Code section 6140.5)

Respondent must furnish satisfactory proof of payment thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

C. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁶

D. 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.

⁶ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (Powers v. State Bar (1988) 44 Cal.3d 337, 341.)

VII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: October _____, 2010

RICHARD A. HONN
Judge of the State Bar Court