PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed October 1, 2015

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 09-O-18521 (10-O-10839;
	)	11-O-10577; 11-O-11182; 11-O-12544;
STEVAN JOHN HENRIOULLE,	)	11-O-14266; 11-O-19729; 12-O-11761;
No. 57282; and	)	12-O-11764; 12-O-13429); 12-O-16519 [Henrioulle];
	)	
RONALD VERIDIANO UY,	)	09-O-18520 (10-O-10838; 11-O-11183;
No. 177157,	)	11-O-14267; 12-O-10521; 12-O-10523;
	)	12-O-11765; 12-O-12450); 12-O-16520 [Uy] (Cons.)
Members of the State Bar.	)	
	)	OPINION AND ORDER

Respondents Stevan John Henrioulle and Ronald Veridiano Uy appeal the disbarment recommendations of a hearing judge who found they engaged in a widespread scheme to defraud their clients by charging and collecting legal fees without any intent to perform legal services or by filing meritless lawsuits. The hearing judge also found they were culpable of other misconduct in nine client matters, including the failure to perform with competence, communicate with clients, return unearned fees, render an accounting, and aiding and abetting the unauthorized practice of law (UPL) by a former attorney who had resigned with disciplinary charges pending.

This misconduct occurred during a two-and-a-half-year period when Henrioulle and Uy were suing lenders for predatory practices on behalf of homeowners facing foreclosures. Henrioulle and Uy deny committing any fraud, although they admit much of the misconduct, which they characterize as simple negligence due to their high-volume litigation practice.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12) and adopt most, but not all, of the hearing judge's culpability determinations. As we discuss more fully

below, we do not find that Henrioulle and Uy engaged in an intentional scheme to defraud their clients. Nevertheless, when viewed holistically, we find that their misconduct was reckless, amounting to a habitual disregard of their clients' interests, which constitutes moral turpitude, in violation of Business and Professions Code, section 6106.[1]

Ultimately, we conclude that the evidence in mitigation is insufficient to outweigh the aggravation and the widespread misconduct, which resulted in significant harm to numerous clients. Having considered the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[2] and the relevant decisional law, we recommend disbarment for both Henrioulle and Uy.

I. HENRIOULLE'S DUE PROCESS CHALLENGE LACKS MERIT

At the outset, we consider Henrioulle's claim that his due process rights were violated when the hearing judge limited his opportunity to present all of his evidence in his defense. We reject this contention because Henrioulle waived this issue, having failed to raise it at trial. (*In the Matter of Ike* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 483, 491 [attorney who failed to present constitutional due process issue to hearing judge waived issue on appeal].) But, even if we were to consider it, the record reveals that the hearing judge did not improperly limit Henrioulle's evidentiary presentation. In fact, the judge allowed him to take a witness out of order, heard his and Uy's witnesses for most of two trial days, and scheduled a special trial day to hear one of Henrioulle's witnesses. Moreover, the judge did not err by refusing to admit evidence of Henrioulle's successful litigation results on behalf of numerous clients because

[1] Section 6106 applies to "any act involving moral turpitude, dishonesty or corruption." All further references to sections are to the Business and Professions Code.

[2] Effective July 1, 2015, these standards were revised and renumbered. Because this appeal was submitted for ruling before the July 1, 2015 effective date, we apply the prior version of the standards, which was effective January 1, 2014 through June 30, 2015. All further references to standards are to the prior version of this source.

Henrioulle did not produce this evidence in response to discovery requests by the Office of the Chief Trial Counsel of the State Bar (OCTC). (Rules Proc. of State Bar, rule 5.65(H).)

II. UY'S CHALLENGE TO VICARIOUS LIABILITY LACKS MERIT

Uy argues that Henrioulle was solely responsible for handling the litigation in several client matters and thus Uy may not be held vicariously liable since he was unaware of Henrioulle's misconduct. We reject his argument because it is not supported by the record. Uy admits in his brief on appeal: "While there was an agreed upon division of labor between Mr. Uy and Mr. Henrioulle, Mr. Uy and Mr. Henrioulle understood that as the attorneys of record for each of the clients, they both were individually responsible for the entirety of a client's file and the management of the office." Henrioulle also stipulated that "both [Henrioulle and Uy] were jointly and severally responsible for the representation of all of the clients mentioned in this Notice of Disciplinary Charges."

III. PROCEDURAL AND FACTUAL BACKGROUND

OCTC filed two Notices of Disciplinary Charges (NDCs) on December 12, 2012 and May 8, 2013, respectively.[3] Henrioulle and Uy responded to each NDC. After a seven-day trial, the hearing judge filed her decision on October 28, 2013.

Henrioulle was admitted to practice law in California in December 1973. Over the years, his practice included criminal defense, personal injury, family law, business litigation, and estate planning. Uy was admitted to practice law in June 1995 and focused on immigration, personal injury, and family law. Beginning in 2006, numerous clients who had problems with their mortgage payments sought Uy's services to obtain loan modifications or to litigate against their

[3] The first NDC, alleging 38 counts of misconduct in numerous client matters, was filed in case numbers 09-O-18521 (10-O-10839; 11-O-10577; 11-O-11182; 11-O-12544; 11-O-14266; 11-O-19729; 12-O-11761; 12-O-11764; 12-O-13429) [Henrioulle] and 09-O-18520 (10- O-10838; 11-O-11183; 11-O-14267; 12-O-10521; 12-O-10523;12-O-11765; 12-O-12450) [Uy]. The second NDC, alleging six counts of misconduct, was filed in a single client matter with case numbers 12-O-16519 and 12-O-16250.

lenders for predatory practices. In 2009, Henrioulle and Uy were introduced by one of Uy's employees, Tarik Soudani, a former attorney who resigned in 1988 with disciplinary charges pending against him. Henrioulle and Uy joined together and created the Law Offices of Uy & Henrioulle (the Firm) in the spring of 2009.

Henrioulle and Uy employed Soudani as their litigation manager and provided him with his own office, where he displayed his law school degree, as well as business cards with "J.D." printed after his name. Additionally, his email signatures sometimes read "TARIK SOUDANI, J.D." or "Litigation Manager. Law Offices of Uy & Henrioulle." The Firm utilized Soudani as the initial contact with potential clients, allowing him to meet with them without any supervision, leading many clients to believe Soudani was an attorney. At times, Soudani actually introduced himself as a lawyer.

Many of the Firm's clients spoke English as a second language, and heard about the law firm through foreign language radio advertisements. Upon hiring the Firm, the client signed a fee agreement requiring an initial payment of between $3,995 and $4,500 as a nonrefundable "retainer" that was earned upon receipt. The agreement required clients to pay an additional monthly fee ranging from $500 to $850, irrespective of whether any legal services were provided. In return, Henrioulle and Uy agreed to: (1) review loan documents; (2) pursue all "legitimate claims, actions and remedies available" in state or federal court under the Fair Lending Act; and (3) negotiate with lenders for settlement of litigation and/or modification of the loans. Several clients testified that they were led to believe by Soudani that, if they initiated litigation against their lenders, they would receive "free and clear" title to their homes or they had a "100 percent chance" of saving their homes.

In addition to the initial retainer and monthly fees, clients paid $600 for a "Predatory Lending-Forensic Loan Analysis Report" (forensic analysis) that was prepared by an unrelated

company, Loan Fraud Investigations. Henrioulle and Uy used the forensic analysis to determine if statutory violations had occurred when their clients obtained their mortgages. If so, they incorporated the results of the forensic analysis into the client's complaint filed in superior court. They received none of the $600, which was paid to Loan Fraud Investigations.

Henrioulle and Uy testified that they intended to pursue litigation as leverage to obtain more favorable loan terms and/or to prevent foreclosures so that the clients could remain in their homes. In many instances, they failed to competently provide legal services to their clients, and many lost their homes. Other clients were able to keep their homes, usually through their own efforts to restructure their loans.

IV. FINDINGS OF FACT[4] AND CONCLUSIONS OF LAW

A. Moral Turpitude—Scheme to Defraud [§ 6106] (Count 1 of First NDC)

OCTC alleged in Count 1 of the first NDC that Henrioulle and Uy violated section 6106 because they engaged in a scheme to defraud their clients "by exploiting [them] for personal gain and accepting employment without an intent to perform." OCTC further alleged that "[t]he cases that respondents filed were meritless. The cases were filed not to protect respondent's [*sic*] clients, but rather to generate income for respondents." The hearing judge found that Henrioulle and Uy were culpable as charged in Count 1. However, the record lacks clear and convincing evidence that Henrioulle and Uy accepted fees without any intent to perform services. To the contrary, the record is replete with evidence that Henrioulle and Uy provided legal services to most of the complaining witnesses, albeit with varying degrees of competence and/or success.

At trial, OCTC presented an expert witness, Elizabeth Letcher, to establish that the various lawsuits filed by Henrioulle and Uy had no legal merit. We give little weight to

[4] Our factual findings are based on the hearing judge's findings, which we afford great weight (Rules Proc. of State Bar, rule 5.155(A)), the Stipulations as to Facts and Admission of Documents, the trial testimony, and the documents admitted in evidence.

Letcher's testimony because it was offered to establish the *legal* insufficiency of the lawsuits, which is not a proper subject for expert testimony. "[I]t is thoroughly established that experts may not give opinions on matters which are essentially within the province of the court to decide. [Citations.]." (S*heldon Appel Company v. Albert & Oliker* (1989) 47 Cal. 3d 863, 884; see also Witkin, Cal. Evid. (5th ed. 2012) Opinion, § 98, p. 745 ["expert cannot testify to legal conclusions in the guise of expert opinion"].)

Moreover, Letcher equivocated at trial, testifying that "it's a larger question whether they had any value at all, and that's a question that I can't answer without more context . . . . Maybe they were using this as leverage to negotiate a solution." Both Henrioulle and Uy testified that this was indeed one of their purposes in pursuing their litigation strategy. OCTC did not establish that Henrioulle and Uy engaged in a scheme to defraud their clients as alleged in Count 1 of the first NDC, and we dismiss this count with prejudice.

B. Failures to Perform with Competence [Rules of Professional Conduct, Rule 3-110(A)][5]

The hearing judge found multiple failures by Henrioulle and Uy to perform competently on behalf of numerous clients. We agree with most of these culpability findings, as detailed below.

1. Zakharova (11-O-10577 – Count 6 of First NDC)[6] [Henrioulle Only]

Galina Zakharova stopped making mortgage payments on her family home in 2009 after her husband had a stroke, and she then filed a complaint against her lender in pro per alleging predatory practices and fraud. In November 2009, she retained Henrioulle, agreeing to pay a

[5] Rule 3-110(A) provides: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

[6] Upon motion by OCTC, the hearing judge dismissed with prejudice Counts 2 through 5 in Case Nos. 10-O-10838 and 10-O-10839. We affirm these dismissals.

non-refundable retainer of $3,500 plus an $850 monthly fee and $600 for the forensic analysis. In total, she paid $4,610, plus the forensic analysis.[7]

Henrioulle substituted in as attorney of record shortly before the Zakharova home was sold at a trustee sale on November 30, 2009. After the lenders' demurrer was sustained, Henrioulle failed to file an amended complaint, and the lenders sought dismissal.[8] In the meantime, in March 2010, the lenders filed an unlawful detainer action against the Zakharovas. Henrioulle filed a motion to strike and demurrer, but both were unsuccessful. He then filed an answer on Zakharova's behalf. In July 2010, the court granted the lenders' summary judgment motion, and the Zakharovas were evicted in August 2010.

We do not agree with the hearing judge that Henrioulle's failure to prevent the trustee's sale of the home violated rule 3-110(A). At the time Zakharova hired Henrioulle, she was in default and had known for months that the house would be sold at a trustee's sale only 17 days after her first meeting with Henrioulle. OCTC failed to offer clear and convincing proof[9] that it was even feasible to stop the imminent trustee's sale, much less that it was reckless not to do so. However, we find culpability based on Henrioulle's failure to file the amended complaint which resulted in the dismissal of the lender liability lawsuit. His inaction was clearly incompetent. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action toward purpose client retained him to accomplish].)

[7] The hearing judge determined that Zakharova paid Henrioulle at least $13,000 in fees, but the evidence admitted at trial demonstrates she paid only $4,610 in fees.

[8] The lender liability lawsuit was dismissed in May 2011.

[9] 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.)

2. Kovalev (11-O-11182, 11-O-11183—Count 10)

In May 2009, Natalya Kovalev and her husband retained Uy[10] to obtain a loan modification and to represent them in litigation against the lender. Kovalev needed to reduce her mortgage payments since she was the only employed family member. The Kovalevs signed a fee agreement agreeing to pay a $4,500 non-refundable retainer, $500 in monthly fees, and $600 for a forensic analysis. In total, they paid $12,000, excluding the forensic analysis.[11] Nine months later, Uy secured a loan modification that the Kovalevs rejected because the proposed $1,289 monthly payment was more than half of Kovalev's $2,000/month salary. Henrioulle then brought a lender liability lawsuit[12] in the superior court in May 2010, but the Kovalevs lost their home in a trustee sale in August 2010. Thereafter, Henrioulle and Uy virtually abandoned the lawsuit. In April and June 2011, the court issued two orders to show cause (OSCs) regarding their failure to comply with local and case management rules. They failed to respond to either OSC, and the case was dismissed.

Henrioulle and Uy violated rule 3-110(A) by failing to respond to the superior court's two OSCs and failing to obey the court rules, which resulted in the dismissal of the Kovalevs' lender liability lawsuit. (*In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 316 [attorney culpable of violating rule 3-110(A) for missing two OSC hearings, resulting

[10] The agreement signed in May 2009 was with the "Law Office of Ronald V. Uy." Henrioulle did not associate with Uy's firm until July 2009, but much of the misconduct is the direct result of Henrioulle's inaction and/or incompetence after he and Uy formed their law firm. The monthly fees continued to be collected from the Kovalevs after the two attorneys joined together. The same analysis applies to the Nair and Oliveira matters, which we discuss *post*.

[11] Uy stipulated that the Kovalevs paid him over $5,000 in fees and an additional $5,000 after he and Henrioulle formed their partnership. The trial evidence confirms they paid $12,000.

[12] In the various client matters discussed herein, Henrioulle and Uy filed virtually identical lawsuits against various lenders, alleging, inter alia, Breach of the Covenant of Good Faith and Fair Dealing, Deceit, Unfair Competition, Promissory Estoppel, Fraud, Unjust Enrichment, Slander of Title, Civil Conspiracy, Declaratory Relief, Rescission, Injunctive Relief, and Breach of Fiduciary Duty. For ease of reference, we refer to these lawsuits as "lender liability lawsuits."

in dismissal of client's case].) They also failed to take prompt action to stop the sale of the Kovalevs' home. Uy ultimately returned $3,000 as a settlement when the Kovalevs filed a lawsuit for a refund.

3. Nair (11-O-12544, 12-O-10523—Count 13)

In March 2009, Vinod M. Nair signed a retainer agreement with Uy's law firm[13] to negotiate a loan modification and file a lender liability lawsuit. He agreed to pay a $2,995 non-refundable retainer plus $500 a month and $600 for the forensic analysis. Nair never met either Henrioulle or Uy; he was referred to and communicated solely with Soudani, who Nair thought was an attorney. In October 2009, Nair learned of a law restricting the right of attorneys to charge up-front fees for loan modifications (Civil Code section 2944.7), and thereafter refused to make additional monthly payments. In total, he paid $4,200, plus the cost of the forensic analysis. Henrioulle testified that they "suspended" services due to Nair's non-payment of his monthly fees. The bank foreclosed on Nair's home in April 2011.

The record provides no evidence that Henrioulle and Uy provided any services of value during the year they represented Nair. They were retained to obtain a modification of his loan and/or to bring a lawsuit against the lender, but they did neither. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 323-324 [violation of rule 3-700(D)(2) where insufficient evidence of work performed and attorney did not obtain result for which he was retained].) Henrioulle testified that he felt justified in not providing services once Nair stopped paying this monthly fees. However, Nair's nonpayment of fees does not excuse Henrioulle and Uy's failure to pursue his case diligently. They could not withdraw without first protecting Nair's interests. We therefore find that Henrioulle and Uy violated rule 3-110(A). (*In*

[13] See analysis in footnote 10 *ante*.

the Matter of Myrdall (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 373 [attorney may withdraw for nonpayment of fees only after ensuring client's interests are protected].)

4. Crisostomo (11-O-14266, 11-O-14267—Count 17)

In 2009, Sergio Crisostomo, who was a self-employed plumber with a dwindling income, was having difficulty in paying his mortgage. He met with Henrioulle and Soudani in December 2009, and agreed to pay them $4,500 initially and $650 a month thereafter, plus $600 for a forensic analysis, to file a lender liability lawsuit or to obtain a loan modification. Henrioulle filed the lawsuit in January 2010 against Chase Home Finance LLC (Chase) and other lenders, and opposed Chase's demurrer, which the court sustained in part, overruled in part, and granted leave to amend. After an amended complaint was filed, the court sustained Chase's second demurrer without leave to amend in September 2010. Thereafter, Henrioulle failed to prosecute Crisostomo's lawsuit. He did not appear at the case management conference (CMC) held on October 14, 2010 and the court issued an OSC as to why the case should not be dismissed, and ordered $750 in sanctions for failure to prosecute the case. The court held the OSC hearing on December 8, 2010, and dismissed the lawsuit on that date when Henrioulle did not appear.

Crisostomo testified that Henrioulle and Uy told him that his case was dismissed but they could "refile" it if Crisostomo continued to pay the monthly fees, which he did. Henrioulle and Uy performed no additional work, yet they continued to charge Crisostomo $650 each month. Crisostomo himself ultimately succeeded in obtaining a loan modification after negotiating directly with his bank, and thereafter terminated Henrioulle and Uy. He had paid a total of $13,600 in fees, excluding the cost of the forensic analysis.[14]

[14] The hearing judge and OCTC indicated the total fees were about $15,000 but the record establishes the amount as $13,600. Ultimately, Henrioulle and Uy refunded $3,900 in monthly charges erroneously billed to Crisostomo, which we discuss *post*.

We find Henrioulle and Uy culpable of violating rule 3-110(A) by abandoning the lawsuit against Chase et al., and failing to perform services after October 2010.

5. LaBrasca (11-O-19729, 12-O-10521—Count 22)

In June 2010, Grace LaBrasca was having difficulty making her monthly mortgage payments. She met with Soudani and signed a fee agreement, agreeing to pay Henrioulle and Uy $4,500 as a non-refundable retainer plus $800 a month for them to pursue a lender liability lawsuit. Henrioulle filed the lawsuit in July 2010, and thereafter filed an opposition to a demurrer, an amended complaint, a case management statement, and a notice of lis pendens. In October 2011, LaBrasca hired a new attorney, who filed a second amended complaint. Her lawsuit was dismissed, but she was ultimately able to obtain a loan modification through her new attorney, and thereby saved her home. Although LaBrasca paid $13,200 to Henrioulle and Uy in addition to the forensic analysis fee, she was awarded $6,400 after she initiated a fee arbitration, seeking a refund of unearned fees. Henrioulle and Uy did not appear at the arbitration, and they have not paid the arbitration award.

We do not find that Henrioulle and Uy violated rule 3-110(A) because they pursued a meritless lawsuit. OCTC failed to prove by clear and convincing evidence that the litigation had no merit. The mere fact that the complaint filed by Henrioulle was subject to a demurrer does not establish a violation of rule 3-110(A), and the matter was dismissed after the second attorney substituted in as counsel. Nonetheless, we take into consideration the evidence that Henrioulle and Uy have not paid the arbitration award ordering restitution in the amount of $6,400, discussed below, and we find Henrioulle and Uy culpable of violating rule 3-110(A).

6. Escobar (12-O-11761, 12-O-12450—Count 24)

Elizabeth Escobar met with Soudani in January 2011, and agreed to pay a non-refundable retainer of $4,500 and a monthly fee of $850 for Henrioulle and Uy to file a lender liability

lawsuit as leverage to modify her mortgage payments. By June 2011, they had taken no action. In September 2011, Escobar received an offer of help from an attorney at a nonprofit organization. She and the attorney met with Henrioulle, who told them the bank declined to modify her loan due to her low income. Subsequently, the nonprofit organization helped Escobar obtain a loan modification that allowed her to make her monthly payments. In total, she paid $6,200 in attorney fees.

Henrioulle and Uy violated rule 3-110(A) by failing to perform any service of value for Escobar and by virtually abandoning her. During the nine months they represented her, no lawsuit was ever filed on her behalf nor did anyone ever contact her about the status of her loan modification.

7. Tran (12-O-11764, 12-O-11765—Count 27)

Tuan A. Tran owned three properties in Southern California: one in Temecula (his primary residence); another in San Diego (a single-family rental); and the third in Murrieta (a condominium rental). He had trouble paying the mortgages on the three properties when his wife lost her job. After attending a presentation on suing lenders for fraud given by Soudani on behalf of Henrioulle and Uy, Tran signed a retainer agreement in October 2009 for the San Diego property, agreeing to pay a non-refundable retainer of $3,995 plus $500 a month and $600 for a forensic analysis.

In February 2010, he signed two more agreements for the Temecula and Murrieta properties, agreeing to pay with respect to each of these properties a $4,000 retainer, $500 per month, and $600 for the forensic analysis. Between October 2009 and March 2010, Tran paid $1,800 for the forensic analyses, plus $5,997.50 in legal fees, but did not pay the monthly fees.

Henrioulle filed a lender liability lawsuit against the bank in June 2010 after it sold the San Diego property at a trustee's sale. However, he failed to file a certificate of service and

missed an OSC hearing. In the meantime, the defendants filed a demurrer, which the court sustained with leave to amend, but Henrioulle and Uy did not file an amended complaint. Instead, in May, Henrioulle filed a motion to be relieved as counsel, which the court granted. On June 24, 2011, the court granted the defendants' ex parte application to dismiss the case due to Henrioulle and Uy's failure to amend the complaint. Henrioulle never informed Tran about the demurrer, his failure to file an amended complaint, or the motion to withdraw.

Henrioulle and Uy filed another lender liability lawsuit as to the Murrieta property in August 2010, but again failed to file a proof of service, resulting in an OSC. They did not appear at the OSC hearing. After two continuance requests, Henrioulle appeared at a CMC hearing to ask that the case be dismissed—without Tran's knowledge or consent. Henrioulle and Uy sought to withdraw from the case and again failed to advise Tran of their withdrawal. Thereafter, the superior court dismissed the action on June 18, 2012 for failure to prosecute. Tran lost his two rental properties, although he was able to save his home in Temecula by negotiating a loan modification directly with his lender.

Henrioulle and Uy failed to act with competence, in violation of rule 3-110(A), by not prosecuting the San Diego and Murrieta property lawsuits, and by effectively abandoning any effort to obtain loan modifications for the three properties. Further, they withdrew from representation and obtained dismissals of both lawsuits without Tran's knowledge or authority.

We reject Henrioulle's and Uy's arguments that their actions were justified because Tran paid less than half the retainer for each property matter and failed to make his monthly payments. As noted *ante*, their failure to pursue Tran's two cases diligently or to withdraw without prejudice to Tran is not excused by his nonpayment of fees. (*In the Matter of Myrdall, supra*, 3 Cal. State Bar Ct. Rptr. at p. 373.) Tran hired another attorney in an effort to obtain a refund, but he has not yet received one.

8. Oliveira (12-O-13429—Count 30) [Henrioulle only]

Carlos Oliveira and his mother Maria owned two properties—a family residence on Fairchild Drive and a commercial board-and-care home on Eilers Lane. The monthly mortgage payments on the Eilers Lane property had become "astronomical," according to Carlos, and his mother stopped paying them in early 2009. In April 2009, they met with Soudani and signed a retainer agreement with Uy's law firm.[15] They agreed to pay a $4,500 non-refundable fee plus $500 a month and an additional $600 for a forensic analysis to obtain a loan modification or pursue a lender liability action against the lenders for the Eilers Lane property. In June 2009, they entered into a second fee agreement, again agreeing to a $4,500 non-refundable fee plus $500 per month and an additional $600 for a forensic analysis to obtain a loan modification for the Fairchild residence.[16]

Shortly thereafter, in August 2009, the Eilers Lane property was sold at a trustee's sale. Henrioulle filed a notice of lis pendens and a lender liability lawsuit in November 2009. He obtained a temporary restraining order and a preliminary injunction enjoining the sale or transfer of the property. The injunction remained in place until July 19, 2011, when the court dismissed the case after Henrioulle failed to oppose the defendants' motion for judgment on the pleadings.

There is no evidence that Uy or Henrioulle provided any service to the Oliveiras with respect to the Fairchild residence. In July 2011, Carlos sold the Fairchild home in a short sale. Ultimately, the Oliveiras paid $7,500 in fees for the Fairchild residence and $4,500 for the Eilers Lane matter plus an additional $1,000 in 2011 without specifying for which property the payment was made.

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[15] See analysis in footnote 10 *ante*.

[16] The April contract incorrectly specified these services were for the Fairchild Property and the June contract incorrectly identified the Eilers Lane property. The parties agree the identity of the two properties were inadvertently switched on the two agreements.

The evidence is not clear and convincing that the Eilers Lane lawsuit lacked merit since Henrioulle succeeded in enjoining the sale of the property for a year and a half while the lawsuit continued to be prosecuted on the merits. However, no evidence excuses Henrioulle's failure to oppose the lenders' motion for judgment on the pleadings, which resulted in dismissal of the lawsuit. We also find that Henrioulle violated rule 3-110(A) by failing to provide services of any value to the Oliveiras regarding the loan modification for the Fairchild residence. We find the Oliveiras are entitled to $13,000 in restitution because they were represented incompetently in both the Eilers Lane and the Fairchild matters.

9. Montoya (12-O-16519, 12-O-16250—Count 1 of Second NDC)[17]

Guadalupe and Sergio Montoya hired Henrioulle and Uy in July 2010 after Sergio lost his job and could not pay their mortgage. They met with Soudani, and signed a fee agreement obligating them to pay a $3,000 non-refundable retainer and $800 as a monthly fee. The Montoyas wrote their first two checks to the Firm for a total of $3,000, but after August 24, 2010, they made their monthly checks payable to Soudani, which totaled an additional $5,816.72 as of April 9, 2011.[18]

In November 2010, Henrioulle filed a lender liability lawsuit against Bank of America and Freddie Mac, among others. When these two lenders filed demurrers, Henrioulle filed an opposition, but the court sustained the demurrers with leave to amend. Henrioulle then filed an amended complaint in March 2011. The two lenders again demurred, and Henrioulle and Uy did not file an opposition. The court sustained the demurrers without leave to amend and dismissed the lawsuit against Bank of America and Freddie Mac. The Montoyas did not respond to

[17] The misconduct in this matter was alleged in the second NDC, filed on May 8, 2013, and the counts are numbered one through six.

[18] In our order *post*, we impose a restitutional requirement, inter alia, for the repayment to the Montoyas of the total amount of $8,816.72 plus interest because the Montoyas issued the checks to Soudani in his capacity as an employee of the Firm and in payment for its services.

Henrioulle's email informing them of the dismissal of the two lenders and inquiring about the remaining defendants. When no one appeared for the Montoyas at a scheduled CMC, the court dismissed the case in January 2012.

While we do not find clear and convincing evidence that the lender liability lawsuit lacked merit, Henrioulle and Uy nevertheless failed to act with competence, in violation of rule 3-110(A), when they did not file an opposition to the demurrer to the first amended complaint and did not attend the CMC, thereby resulting in the dismissal of the case. Henrioulle maintains that he did not attend the CMC because he sent the Montoyas an email recommending that they terminate their lawsuit in light of the demurrer's outcome. Henrioulle failed to act competently by allowing the lawsuit to be dismissed without first obtaining the authorization of the Montoyas to do so.

C. Failure to Respond to Clients [§ 6068, subd. (m)][19]

1. Zakharova (11-O-10577—Count 7) [Henrioulle Only]

Henrioulle did not disclose to Zakharova that: (1) the court sustained the lenders' demurrer with leave to amend; (2) he had not filed an amended complaint; (3) the defendants filed a motion to dismiss her lawsuit; and (4) he requested a dismissal of the case on her behalf. We find that Henrioulle is culpable of failing to inform Zakharova about significant case developments, in violation of section 6068, subdivision (m).

2. Crisostomo (11-O-14266, 11-O-14267—Count 18)

After the court sustained Chase's second demurrer without leave to amend in September 2010 in Crisostomo's lender liability lawsuit, Henrioulle and Uy did not perform any additional work to prosecute the case, resulting in a dismissal in December 2010. Henrioulle and Uy are

[19] Section 6068, subdivision (m), provides that it is the duty of an attorney "[t]o respond promptly 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."

culpable of violating section 6068, subdivision (m), by failing to inform Crisostomo that they had ceased working on his matter.

3. Tran (12-O-11761, 12-O-12450—Count 28)

Tran testified that his frequent attempts to communicate with Henrioulle and Uy were unsuccessful. They neither returned his calls nor responded to his emails. As such, they never notified him that they had: (1) ceased working on his three matters; (2) failed to file amended complaints in two lawsuits; (3) withdrawn as his counsel; or (4) sought dismissal of his cases. Based on these facts, we find Henrioulle and Uy violated section 6068, subdivision (m). We reject Uy's argument that they withdrew because they could not reach Tran while he was deployed in the armed services. No evidence shows that they attempted with reasonable diligence to contact him. To the contrary, the record shows that Tran communicated by email, but received no response.

4. Oliveira (12-O-13429—Count 31) [Henrioulle Only]

Henrioulle failed to respond to Carlos Oliveira's status inquiries from August to November 2011, and did not inform him of significant developments in his two matters. We find Henrioulle violated section 6068, subdivision (m), by failing to communicate the status of Oliveira's matters to him.

D. Failure to Account [Rule 4-100(B)(3)][20]

1. Zakharova (11-O-10577—Count 8) [Henrioulle Only]

Henrioulle stipulated that he never provided Zakharova with an accounting. He violated rule 4-100(B)(3) by not doing so.

[20] Rule 4-100(B)(3) requires an attorney to maintain complete records of client funds, securities, and other properties and to render an accounting.

2. Kovalev (11-O-11182, 11-O-11183—Count 11)

Henrioulle and Uy obtained a loan modification that the Kovalevs could not afford, and filed a lender liability lawsuit on their behalf, but failed to account for the services they performed. Their culpability for violating rule 4-100(B)(3) is not in dispute and is supported by the record.

3. Nair (11-O-12544, 12-O-10523—Count 15)

After Nair terminated Henrioulle's and Uy's services, he requested an accounting. Henrioulle argues that the firm provided a January 2011 letter "itemizing" the services performed. However, the letter is not part of the record, and we find his testimony is insufficient evidence to establish that they provided a satisfactory accounting. Accordingly, we find that Henrioulle and Uy violated rule 4-100(B)(3).

4. Crisostomo (11-O-14266, 11-O-14267—Count 19)

By the time Cristostomo terminated Henrioulle and Uy, he had paid a total of $13,350, yet he was never provided with an accounting, even when Henrioulle and Uy sent a partial refund more than a year later. Henrioulle and Uy thus violated rule 4-100(B)(3).

5. LaBrasca (11-O-19729, 12-O-10521—Count 23)

During the time Henrioulle and Uy represented LaBrasca, she repeatedly requested an itemized accounting, but never received one. Henrioulle and Uy thus violated rule 4-100(B)(3).

6. Escobar (12-O-11761, 12-O-12450—Count 26)

Even after Escobar terminated Henrioulle and Uy and retained a new attorney, they never provided her with an accounting of the $6,200 fees she had paid. As such, they violated rule 4-100(B)(3).

E. Failure to Return Unearned Fees [Rule 3-700(D)(2)][21]

1. Zakharova (11-O-10577—Count 9) [Henrioulle Only]

After she lost her home, Zakharova requested that Henrioulle return the fees she had paid to him. Although she twice demanded a refund, Henrioulle did not return the fees because he maintains his efforts in the unlawful detainer action allowed Zakharova and her family to remain in their home for nine months after it was sold at a trustee's sale.

Based on our finding that Henrioulle incompetently represented Zakharova, we find he wrongfully failed to promptly refund $4,610 in unearned fees, in violation of rule 3-700(D)(2). (*In the Matter of Phillips, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 323–324 [violation of rule 3-700(D)(2) where insufficient evidence of work performed and attorney did not obtain result for which he was retained].)

2. Kovalev (11-O-11182, 11-O-11183—Count 12)

The Kovalevs paid $12,000 in attorney fees to pursue a lender liability lawsuit, which was dismissed due to Henrioulle's and Uy's failure to perform. After the Kovalevs' home was sold in a trustee sale, they tried unsuccessfully to obtain a refund. Ultimately, they hired another attorney and sued Henrioulle and Uy, who paid $3,000 to settle the case. However, Henrioulle and Uy are culpable of failing to *promptly* refund unearned fees, in violation of rule 3-700(D)(2), waiting until after the Kovalevs filed a lawsuit.[22]

3. Nair (11-O-12544, 12-O-10523—Count 16)

In May 2010, Nair terminated Henrioulle and Uy, and demanded a refund. The hearing judge found Nair's testimony credible that the only work performed on his matter was a

[21] Rule 3-700(D)(2) requires attorneys to refund *promptly* any part of a fee paid in advance that has not been earned.

[22] In light of the $3,000 settlement, we find that the Kovalevs are not entitled to a further refund of the $12,000 they paid in attorney fees.

notification sent by Henrioulle and Uy to Nair's bank that they had been retained to represent him. They violated rule 3-700(D)(2) by failing to promptly refund $4,200 in unearned fees.

4. Crisostomo (11-O-14266, 11-O-14267—Count 20)

Henrioulle failed to prosecute Crisostomo's lender liability lawsuit, resulting in a dismissal in December 2010. Yet Henrioulle and Uy continued to charge Crisostomo $650 each month through March 2011, despite performing no additional work. In May 2011, Crisostomo terminated Henrioulle and Uy after he negotiated a loan modification directly with his bank. He requested a refund of the fees paid after his case was dismissed. More than a year later, Uy sent Crisostomo a check for $3,900 for the overcharges. The year delay does not satisfy their obligation to "promptly refund" the overcharge, as required by rule 3-700(D)(2). Moreover, Henrioulle and Uy have yet to refund the remaining $9,700 in unearned fees.

5. Escobar (12-O-11761, 12-O-12450—Count 25)

By June 2011, Escobar had paid legal fees of $6,200, yet Henrioulle and Uy had taken no action on her behalf. More than once, she requested a refund. Henrioulle and Uy do not challenge the hearing judge's finding that they failed to refund unearned fees, in violation of rule 3-700(D)(2), which we adopt as supported by the record.

6. Tran (12-O-11764, 12-O-11765—Count 29)

Between October 2009 and March 2010, Tran paid $5,997.50 in legal fees, but he did not continue to pay the monthly fees. He lost the San Diego and Murrieta properties because Henrioulle and Uy failed to prosecute the two lawsuits involving those properties, and they abandoned any effort to obtain loan modifications for Tran. Subsequently, Tran hired an attorney to obtain a refund from Henrioulle and Uy.

We find that Henrioulle and Uy violated rule 3-700(D)(2) by failing to refund unearned fees. Henrioulle argues that they filed two lawsuits and paid the filing fees and costs of service. We reject this argument because their services provided no value to Tran.

F. Improper Solicitation [Rule 1-400(C)][23]

Nair (12-O-10523—Count 14)

When Nair began experiencing difficulty in paying his mortgage, a mortgage consultant referred him to Soudani, who Nair thought was an attorney. Nair communicated solely with Soudani and never met Henrioulle or Uy. The hearing judge found there was no clear and convincing evidence that an agent improperly solicited Nair on behalf of Henrioulle and Uy in violation of rule 1-400(C). OCTC does not challenge the hearing judge's finding, and we adopt it. Count 14 is therefore dismissed with prejudice.

G. Illegal or Unconscionable Fee [Rule 4-200(A)][24]

Crisostomo (11-O-14266, 11-O-14267—Count 21)

Henrioulle and Uy overcharged Crisostomo the $650 monthly fee, due to a billing error, for a total of $3,900, which they belatedly refunded. We do not find that the erroneous over-charge established an unconscionable or illegal fee, in violation of rule 4-200(A). Moreover, the same facts established culpability under Count 20 for failing to promptly refund the overcharge, and we therefore dismiss Count 21 with prejudice.

[23] Rule 1-400(C) provides: "A solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship . . . ."

[24] Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee.

H. Maintenance of Just Causes (12-O-16519, 12-O-16520—Count 2 of Second NDC) [§ 6068, subd. (c)][25]

The hearing judge dismissed this count, which alleged that Henrioulle and Uy violated their duty to maintain legal or just actions (§ 6068, subd. (c)), since no evidence established that the lender liability lawsuits filed in superior court on behalf of the Montoyas against Bank of America, Freddie Mac, and others were frivolous or unjust. We adopt the hearing judge's dismissal with prejudice.

I. Aiding and Abetting UPL (Count 32 of First NDC and Count 3 of Second NDC) [Rule 1-300(A)]

Rule 1-300(A) provides: "A member shall not aid any person . . . in the unauthorized practice of law." The NDCs allege that Henrioulle and Uy aided and abetted Soudani's UPL by allowing him to provide legal services and advice as their employee. We find them culpable as charged in Count 32 and in Count 3 of the second NDC.

Henrioulle and Uy claim they had no knowledge that Soudani was providing legal advice when he met with clients, but they clearly knew or should have known that he was holding himself out as entitled to practice. In fact, Henrioulle and Uy fostered an environment enabling Soudani to give the false impression that he was a licensed attorney.

Henrioulle argues he was not Uy's partner when Soudani held himself out as entitled to practice. Such is not the case. Soudani continued to communicate with clients and offer legal advice well after Henrioulle associated with Uy, and Henrioulle failed to supervise Soudani on an ongoing basis. We thus conclude that both Henrioulle and Uy willfully aided and abetted Soudani in holding himself out as entitled to practice law, which constitutes UPL. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [UPL includes attorney merely holding out as entitled to practice].) Furthermore, they failed to supervise Soudani, which significantly aided his UPL. (*In*

[25] Section 6068, subdivision (c), provides that an attorney must maintain only those actions or proceedings that appear "legal or just."

the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615 [failure to supervise non-attorney who negotiated client personal injury settlements violated rule 1-300(A)].)

J. Employment of Resigned Attorney (Count 33 of First NDC and Count 4 of Second NDC) [Rule 1-311(D)][26]

Henrioulle and Uy stipulated that they did not provide written notice to the State Bar or to their clients, as rule 1-311(D) requires of employers of a resigned attorney, and the record supports culpability, as alleged in Count 33 and Count 4 of the second NDC.

K. Prohibition of UPL by Employer (Count 34 of First NDC and Count 5 of Second NDC) [§ 6133][27]

Henrioulle and Uy violated section 6133 as alleged in Count 34 and in Count 5 of the second NDC by failing to supervise Soudani and permitting him to practice law. However, this misconduct does not warrant additional weight as it is based on the same facts establishing culpability in Count 32.[28]

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[26] Rule 1-311(D) provides that an attorney, on employing a disbarred, suspended, resigned, or involuntary inactive lawyer, must give the State Bar and clients written notice of the employment and the employee's status.

[27] Section 6133 provides that any active member employing an attorney who has resigned, or who has been suspended or disbarred, shall: (1) not permit the attorney to practice law; (2) not permit the attorney to advertise or hold himself or herself out as practicing law; and (3) supervise the attorney in any assigned duties.

[28] The hearing judge dismissed Count 35 (aiding resigned attorney in rendering legal advice) as duplicative of Counts 32 and 34. The judge also dismissed Count 36 (failure to maintain just actions) as duplicative of the rule 3-110(A) violation counts. These dismissals are unchallenged, and we adopt them.

L. Failure to Cooperate (Count 38 of First NDC and Count 6 of Second NDC) [§ 6068, subd. (i)][29]

The record contains no evidence that Henrioulle failed to cooperate with the State Bar in violation of section 6068, subdivision (i) and we dismiss this count with prejudice.[30]

M. Moral Turpitude for Habitual Inattention to Clients' Affairs (Count 37) [§ 6106]

The NDC incorporates by reference Counts 1 through 36 in Count 37, which alleges that Henrioulle and Uy committed moral turpitude "[b]y repeatedly failing to perform competent legal services, failing to refund unearned fees, failing to properly communicate with clients, failing to provide accountings, permitting improper solicitations and aiding Soudani in [UPL]." The sum total of their misconduct, including aiding and abetting Soudani's UPL, "'disclose[s] an habitual failure to give reasonable attention to the handling of the affairs of [their] clients rather than an isolated instance of carelessness followed by a firm determination to make amends.' [Citation.] Such recklessness and gross carelessness, even if not deliberate or dishonest . . . involve moral turpitude . . . ." (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 522-523.) We find Henrioulle and Uy culpable as charged in Count 37.

[29] Section 6068, subdivision (i), requires all attorneys to "cooperate and participate" in any disciplinary proceeding.

[30] The hearing judge dismissed Count 38 of the first NDC with prejudice upon OCTC's motion. We affirm.

V. AGGRAVATION OUTWEIGHS MITIGATION[31]

A. Aggravation

1. Prior Record (Std. 1.5(a)) [Uy Only]

Uy's prior discipline record is an aggravating factor. (Std. 1.5(a).)[32] In case number 05-O-00674, filed on October 2, 2006, he was privately reproved in a single-client matter for failing to timely disburse funds to the correct payee after receiving the settlement, in violation of rules 3-110(A) and 4-100(B)(4). However, since this misconduct occurred 10 years ago and is dissimilar to the instant matter, we give this aggravating factor little weight.

2. Multiple Acts of Wrongdoing (Std. 1.5(b)) [Henrioulle and Uy]

Given the number of client matters and the numerous violations at issue, we would ordinarily consider this a serious aggravating circumstance. However, we have already accounted for the scope of the misconduct and the number of clients in finding moral turpitude under Count 37, so we give no weight in aggravation under standard 1.5(b) as it would be duplicative.

3. Significant Client Harm (Std. 1.5(f)) [Henrioulle and Uy]

We find significant harm to clients in aggravation under standard 1.5(f). Henrioulle and Uy provided services of no value to their clients, which exacerbated their dire circumstances. Many lost their homes and had their cases dismissed due to Henrioulle's and Uy's inaction, thereby prejudicing their opportunity to prosecute their claims.

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[31] Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Henrioulle and Uy to meet the same burden to prove mitigation.

[32] OCTC failed to offer Uy's prior record into evidence at trial. On appeal, Uy did not challenge the hearing judge's consideration of his prior record, nor did he object to OCTC's request at oral argument that we take judicial notice of his disciplinary record. Mindful that the Supreme Court has expressed concern when the record on appeal does not accurately reflect an attorney's prior discipline (*In re Mostman* (1989) 47 Cal.3d 725, 741), we take judicial notice, on our own motion, of our records in case number 05-O-00674. (Rules of Procedure of the State Bar, rule 5.156(B).)

4. Overreaching (Std. 1.5(d)) [Henrioulle and Uy]

As an additional aggravating factor, we find that Henrioulle's and Uy's misconduct is surrounded by overreaching. (Std. 1.5(d).) They took advantage of desperate, vulnerable homeowners, many of whom spoke little or no English, by requiring them to pay between $3,995 and $4,500 as initial non-refundable retainers that were earned upon receipt, regardless of whether any services were performed. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 959 [court found overreaching as aggravation where attorney charged non-refundable retainer to vulnerable clients to avoid obligation to provide services of value].) Thereafter, they charged substantial monthly fees, which continued to accrue even if Henrioulle and Uy provided no ongoing services. The Supreme Court has long recognized that the right to practice law "is not a license to mulct the unfortunate." *(Recht v. State Bar* (1933) 218 Cal. 352, 355.) We assign substantial weight to this factor in aggravation.

B. Mitigation

1. No Prior Discipline Record (Std. 1.6(a)) [Henrioulle Only]

OCTC acknowledges that the hearing judge properly found that Henrioulle's 36 years of discipline-free practice are entitled to mitigating credit, but it correctly asserts that the weight "is tempered by [the] seriousness of [Henrioulle's] misconduct." In *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029, the Supreme Court found that where misconduct is serious, a long discipline-free practice is most relevant for mitigation when the misconduct is aberrational. Given our finding that Henrioulle engaged in habitual disregard of his clients' interests, we cannot find his misconduct was aberrational. Thus, we assign minimal weight in mitigation to this factor.

2. Cooperation (Std. 1.6(e)) [Henrioulle and Uy]

"[S]pontaneous candor and cooperation displayed . . . to the State Bar" is a mitigating circumstance under standard 1.6(e). The hearing judge did not consider this factor, but we afford

modest weight for Henrioulle's cooperation since he stipulated to some material facts and some culpability. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigative weight for stipulation to material facts and culpability].) We give minimal weight to Uy as he stipulated only to easily provable facts but he did concede culpability for failing to notify his clients that Soudani was not entitled to practice law. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 938 [decline to afford significant weight in mitigation for stipulation to easily provable facts].)

3. Extreme Emotional Difficulties (Std. 1.6(d)) [Uy Only]

Uy's extreme emotional difficulties mitigated his misconduct. (Std. 1.6(d).) Between 2009 and 2011, Uy was beset by tragic family problems. His two brothers died within a year of each other, and he separated from his wife of 21 years, leaving him to be the primary caretaker of their three daughters. He also was the primary caretaker of an adult brother with special needs. Uy credibly testified that the confluence of these family problems clouded his judgment and affected his ability to manage his law firm at the time of his misconduct. We assign moderate weight to this mitigating factor. (*In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59-60 ["some mitigating weight" assigned to personal stress factors established by lay testimony]; *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 341 [mitigation afforded for personal problems based on lay testimony because it was "readily conceivable" that problems clouded attorney's judgment].)

4. Pro Bono Work [Uy Only]

Providing pro bono services is a mitigating factor. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Uy testified that he has represented numerous clients on a pro bono basis, and he devotes considerable effort to assisting the needy in his church and in the Filipino community.

His testimony was corroborated by one character witness. We assign slight weight to Uy's pro bono activities because we are unable to quantify the extent of his service from the record.

5. Good Character (Std. 1.6(f)) [Henrioulle and Uy]

Uy presented three declarations and eight witnesses who provided evidence of his good character, thus establishing his entitlement to mitigation under standard 1.6(f). He is well-respected in the Filipino community. Some of the witnesses had known him for more than 20 years, and one attorney witness attended law school with him. Another witness worked as Uy's legal assistant, and testified about his diligence and dedication to his clients. The witnesses described him as an honest, ethical man with integrity who is dedicated to his family and his church. Six witnesses were former clients who were very satisfied with the results Uy obtained for them. Some witnesses did not understand the charges against him, but when the misconduct was explained, they indicated their opinion of him would not change. The attorney witness described Uy as a man faithful to his religion, honest, ethical, and courteous. We assign substantial weight to Uy's good character evidence.

Henrioulle also is entitled to significant mitigation for his good character evidence. He presented three declarations and four witnesses who described him as a good, honest man with great moral integrity. His current and former clients attested that they were very satisfied with his legal services. As one client explained, he works his "tail off" trying to help others, especially those "suffering a lot." The attorney declared that his high opinion of Henrioulle as a man of integrity did not change after reading the NDC because he believes that Henrioulle had no intent to defraud. His view is that Henrioulle "took in too many clients in his efforts to assist a deluge of clients impacted by the collapsing real estate market and related foreclosures."

VI. LEVEL OF DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) We balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Our analysis begins with the standards. The Supreme Court has instructed that we should follow them "whenever possible" (*In re Young*, *supra*, 49 Cal.3d at p. 267, fn. 11), and give them great weight to promote "the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91, internal quotations and citation omitted.)

Standard 2.7 provides the most relevant guidance because our finding of moral turpitude under Count 37 derives from the sum total of all of the misconduct.[33] Standard 2.7 states that "[d]isbarment or actual suspension is appropriate for an act of moral turpitude . . . . The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim . . . ." The standard thus guides us to the upper range of discipline due to the magnitude of the misconduct and the extent of harm in this matter. The decisional law, discussed below, also calls for imposition of discipline at the most serious end of the continuum.

[33] We also considered standard 2.5(b), which provides: "Actual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern." The hearing judge correctly did not find a pattern of misconduct because even though it was serious, the misconduct did not occur over an extended period of time. (*In the Matter of Valinoti, supra,* 4 Cal. State Bar Ct. Rptr. at p. 555 [repeated misconduct occurring over two-and-a-half year period not considered as pattern].) However, we focus on standard 2.7 because it calls for more serious discipline. Standard 1.6 guides us to consider the more serious discipline when two or more standards are applicable to the misconduct.

As noted above, we consider the misconduct here to be the habitual disregard of clients' interests, which has long been regarded by our Supreme Court as grounds for disbarment. (See, e.g., *McMorris v. State Bar* (1983) 35 Cal.3d 77; *Ridley v. State Bar* (1972) 6 Cal.3d 551, 560-561; *Grove v. State Bar* (1965) 66 Cal.2d 680, 683-684.) In *McMorris v. State Bar, supra,* 35 Cal.3d at p. 85, the Court noted: "As we have repeatedly stated, willful failure to perform legal services for which an attorney has been retained in itself warrants disciplinary action, constituting a breach of the good faith and fiduciary duty owed by the attorney to his clients. [Citations.] Moreover, habitual disregard by an attorney of the interests of his or her clients combined with failure to communicate with such clients constitute acts of moral turpitude justifying disbarment. [Citations.]"

The habitual disregard of client interests in this case began with Henrioulle and Uy's money-getting scheme involving a broadly based intake process that brought them far more clients than they could properly handle. They advertised their services to financially distressed individuals for whom English was their second language. In Henrioulle's own words, the firm grew from a "mom-and-pop practice to an explosion of clients." The chaos was increased by their lack of supervision of a resigned attorney who was not entitled to practice law, but who, acting in his capacity as the firm's litigation manager, nevertheless made several untrue and unwarranted representations to prospective clients, all the while holding himself out as entitled to practice.

It was a system designed to fail. The breadth of Henrioulle and Uy's incompetence, coupled with the non-refundable retainers and monthly fees collected regardless of whether services were provided, greatly exacerbated the harm sustained by highly vulnerable clients, many of whom lost their causes of action and endured foreclosures and evictions.

In weighing the appropriate discipline, we have considered the evidence in mitigation, which includes 36 years of discipline-free practice for Henrioulle, Uy's emotional difficulties, their cooperation in these proceedings, good character evidence, and community and pro-bono activities. But, ultimately, this evidence is insufficient to outweigh the harm caused by Henrioulle and Uy's widespread incompetence and disregard of their clients' interests, combined with their refusal to return unearned fees and their failure to supervise an employee who was not entitled to practice law. A discipline less than disbarment simply is not warranted by the standards or the decisional law. (See, e. g., *Cannon v. State Bar* (1990) 51 Cal.3d 1103, 1115 [disbarment for misconduct in five matters, not involving a pattern, but where attorney without prior record committed multiple acts of serious wrongdoing many of which involved moral turpitude, including failure to perform competently, communicate with clients, and return unearned fees]; *Farnham v. State Bar* (1988) 47 Cal.3d 429 [disbarment for seven instances of abandonment]; *Slaten v. State Bar* (1988) 46 Cal.3d 48 [disbarment for failure to perform for seven clients, commingling funds, advising client to violate law, and prior discipline record]; *McMorris v. State Bar, supra,* 35 Cal.3d 77 [disbarment for habitual failure to perform in seven matters involving five clients, and prior misconduct].) To protect the public, the courts, and the legal profession, we recommend that Henrioulle and Uy be disbarred and ordered to pay restitution.

VII. DISBARMENT RECOMMENDATION

We recommend that STEVAN JOHN HENRIOULLE and RONALD VERIDIANO UY be disbarred from the practice of law and that their names be stricken from the roll of attorneys admitted to practice in California.

We further recommend that STEVAN JOHN HENRIOULLE and RONALD VERIDIANO UY make restitution,[34] for which they are jointly and severally liable, to the following payees (or reimburse the Client Security Fund, to the extent of any payment from the Fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles:

(i) Vinod M. Nair in the amount of $4,200 plus 10 percent interest per year from May 1, 2009;

(ii) Grace LaBrasca in the amount of $6,400 plus 10 percent interest per year from June 17, 2011;

(iii) Sergio Crisostomo in the amount of $9,700 plus 10 percent interest per year from March 7, 2011;

(iv) Elizabeth Escobar in the amount of $6,200 plus 10 percent interest per year from May 12, 2011;

(v) Tuan A. Tran in the amount of $5,997.50 plus 10 percent interest per year from February 19, 2010; and

(vi) Guadalupe Montoya in the amount of $8,816.72 plus 10 percent interest per year from April 9, 2011.

We further recommend that STEVAN JOHN HENRIOULLE makes restitution[35] to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:

(i) Galina Zakharova in the amount of $4,610 plus 10 percent interest per year from June 10, 2010;

(ii) Carlos G. Lima Oliveira in the amount of $13,000 plus 10 percent interest per year from July 22, 2011.

[34] In each case where we order Henrioulle and Uy to pay restitution, the amount has been calculated from the last date of payment of the legal fees.

[35] In each case where we order Henrioulle to pay restitution, the amount has been calculated from the last date of payment of the legal fees.

We further recommend that STEVAN JOHN HENRIOULLE and RONALD VERIDIANO UY must comply with rule 9.20 of the California Rules of Court and 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 in this matter.

Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and that such costs be jointly and severally enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that STEVAN JOHN HENRIOULLE and RONALD VERIDIANO UY be involuntarily enrolled as inactive members of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective October 31, 2013, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

EPSTEIN, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.