

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-TE-15622-RAH
)	
SEAN ALAN RUTLEDGE)	DECISION AND ORDER OF INACTIVE
)	ENROLLMENT (BUS. & PROF. CODE
Member No. 255938)	SECTION 6007, SUBDIVISION (c)(1))
)	
<u>A Member of the State Bar.</u>)	

1. INTRODUCTION

This matter is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (Office of the Chief Trial Counsel) seeking to involuntarily enroll respondent Sean Alan Rutledge (respondent) as an inactive member of the State Bar pursuant to Business and Professions Code section¹ 6007, subdivision (c)(1) and rule 461 of the Rules of Procedure of the State Bar of California (Rules of Procedure).

The Office of the Chief Trial Counsel was represented by Deputy Trial Counsel Timothy G. Byer. Respondent was represented by attorney Edward O. Lear. A hearing was held on October 23, 2009. This matter was submitted for decision, following the filing of supplemental documentation, on October 26, 2009.

After reviewing and considering this matter, the court finds that respondent's conduct poses a substantial threat of harm to his clients or the public, and respondent is ordered

¹ Future references to section(s) are to this source.

involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1).

2. JURISDICTION

Respondent was admitted to the practice of law in California on June 2, 2008, and has been a member of the State Bar at all times since.

3. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Section 6007, subdivision (c) authorizes the court to order an attorney's involuntary inactive enrollment upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a threat of harm, the following three factors must be shown: (1) the attorney has caused or is causing substantial harm to his clients or the public; (2) the injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted or, alternatively, there is a reasonable likelihood that the harm will continue;² and (3) there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on the merits of the underlying disciplinary matter. (*Conway v. State Bar* (1989) 47 Cal.3d 1107; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

Respondent was given notice of this proceeding pursuant to rule 461 of the Rules of Procedure. The application is based on matters not yet the subject of disciplinary charges pending in the State Bar Court. (Rules Proc. of State Bar, rule 461(a)(3).) The court's findings of fact are based on clear and convincing evidence.

² But where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shifts to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

A. General Background of Respondent's Loan Modification Practices

With the recent decline in the real estate market, more and more distressed homeowners are searching for relief from their existing home mortgage loans. Many of these homeowners have turned to loan modification companies for help. These companies generally represent that they can help homeowners navigate the uncertain waters of loan modification.

The business of loan modification has become more prevalent in the attorney community because attorneys may charge advanced fees for loan modification services, while non-attorneys often may not.

On June 2, 2008, respondent was admitted to practice law in California. In August 2008—two months after his admission to the practice of law—respondent founded a law corporation known as United Law Group (ULG). ULG specializes in mortgage loan modification, and has some type of affiliation with other existing loan modification companies including The Bergstrum Group and Kirkland Holdings.

Generally, clients seeking loan modification would contact or be contacted by ULG or one of the other aforementioned companies. ULG would then accept representation of the clients and debit advanced fees from the clients' bank accounts.

Respondent's clients were typically cash-strapped home owners facing the threat of foreclosure. While there were some differences in the handling of the individual client matters (as discussed below), many similarities existed. In most of these client matters, the clients became dissatisfied with the apparent lack of performance of ULG and their affiliated loan modification companies. Often the client would then make repeated efforts to obtain a status updates from ULG and its affiliated modification companies. Typically, however, the clients' requests for status update and proof of work were either ignored or answered with repetitive generic assurances that the requisite work was being performed on their file.

ULG clearly attempted to shield its clients away from respondent. Several clients specifically requested respondent's email address or telephone number, however, ULG's non-attorney staff would not provide such information.

On the occasions when respondent's clients were able to contact him, respondent appeared indignant and annoyed. Respondent often told clients how busy he was and that they should instead be dealing with his non-attorney staff. Worse yet, respondent's interaction with some of his clients was so threatening and demeaning that it gravely compromised his duties as a lawyer.³ As a result, in such cases, the court questions respondent's ability to fairly and competently represent his clients' interests.

Ultimately, many of respondent's clients demanded refunds. Some refunds were issued, however, prior to receiving a refund, these clients were forced to sign a waiver of liability.

B. Client Matters

The evidence before the court comes solely by way of declaration. (Rules Proc. of State Bar, rule 465(a).) The Office of the Chief Trial Counsel raised some objections to respondent's declaration. These objections were ruled upon and respondent's revised declaration reflects the changes resulting from the court's evidentiary rulings. (See Joint Submission by State Bar and Sean Rutledge of Rutledge Declaration, filed October 23, 2009.)

The Office of the Chief Trial Counsel submitted 18 declarations in support of its application for respondent's involuntary inactive enrollment (application). Out of these 18

³ This is not to say that respondent's behavior was ethically inappropriate because it was in some way "offensive." (See *United States v. Wunsch* (9th Cir. 1996) 84 F.3d 1110, 1119-1121.) Rather, his conduct was sometimes so abusive that it represented departures from his duty of loyalty—a fundamental fiduciary duty imposed on all attorneys. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 594.)

declarations, 16 are from individual clients, and the remaining 2 are from employees of the Office of the Chief Trial Counsel.⁴

Respondent submitted his own declaration in support of his opposition to the application. In his declaration, respondent addressed all of the individual client declarations presented by the Office of the Chief Trial Counsel. Respondent also attached some proof of work performed by ULG on some of the client matters, however, the proof of work presented by respondent varied greatly between clients. In some cases respondent attached form letters that were sent to various lenders once ULG was retained. In other cases respondent attached telephone logs. In none of these cases, did respondent attach any actual loan modification offers or other correspondence from his clients' lenders.

1. The Kimbra Long Matter

In January 2009, Kimbra Long (Long) resided in Buckeye, Arizona. Due to financial difficulties, Long and her husband had skipped their mortgage payments.

In late January, a company called the Bergstrum Group left a message on Long's answering machine, offering loan modification services. Long responded to the message and was informed by an employee of the Bergstrum Group that they worked with ULG.

On January 28, 2009, Long and her husband signed an attorney-client fee agreement with ULG for loan modification services and agreed to pay a \$3,000 up-front retainer fee. ULG subsequently withdrew \$3,000 from Long's checking account.

On February 17, 2009, Long and her husband entered into a power of attorney with ULG and respondent. Between February 23 and March 16, 2009, Long received a few automated

⁴ The declaration of Office of Chief Trial Counsel Investigator Alma Cueto included summaries of seven additional investigation matters. The clients involved in these matters did not submit individual declarations. The court has not considered these seven additional matters in rendering the present decision. In addition, the court does not rely on the 74 Better Business Bureau complaints attached to Cueto's declaration.

messages from ULG stating that her case was being worked on, however, these messages never gave a detailed description of what work was actually performed.

On March 23, 2009, a ULG representative informed Long that ULG would not be able to proceed with her loan modification until July 2009 because Long had previously entered into a loan modification with the lender. Long responded by stating that if ULG could not provide immediate service, then it should refund the retainer fee.

On March 26, 2009, Long received an email from ULG stating that her request for a refund was approved and that Long and her husband should sign and return a release in favor of ULG, releasing them from liability associated with its representation of the client (“liability release”). Long and her husband had reservations about signing the release without an attorney.

After negotiating some changes, Long and her husband ultimately signed the release on April 10, 2009. Three days later, Long contacted ULG regarding the status of her refund. A ULG representative informed her that ULG just discovered that the retainer Long paid was charged by the Bergstrum Group, not ULG.

ULG finally provided Long with a full refund on July 22, 2009—after Long filed a complaint with the State Bar.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rules of Professional Conduct of the State Bar of California, Rule 3-700(D)(2)⁵
[Failure to Promptly Refund Unearned Fees];⁶ and

⁵ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

⁶ Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned.

b. Rule 3-400(B) [Limiting Liability to the Client].⁷

2. The Helen Klebanova Matter

In late 2008, Helen Klebanova (Klebanova) resided in Valley Village, California. Klebanova's workload drastically decreased near the end of the 2008 year, causing her income to drop to nearly half of her regular earnings.

In early December, a ULG representative called Klebanova regarding loan modification. On December 12, 2008, Klebanova signed a retainer agreement with ULG to review her loan and negotiate a loan modification with her lender. ULG subsequently debited a \$3,000 up-front retainer fee from Klebanova's checking account in December 2008.

On December 16, 2008, Klebanova signed another retainer agreement with ULG, in which she agreed to pay an additional \$1,500 for loan modification services relating to a vacation home she owned in Las Vegas, Nevada. ULG debited the \$1,500 up-front retainer fee from Klebanova's checking account in January 2009.

On or about January 9, 2009, ULG sent a letter to Klebanova requesting various items of documentation. According to the letter, this documentation was required to move forward with the loan modification. The letter went on to state that if Klebanova did not provide ULG with copies of the requested documentation by January 16, 2009, then her file would be "put on hold."

During January and February 2009, Klebanova made at least 25 calls to ULG, but was unable to speak with someone who would actually assist her. Klebanova only spoke with non-attorney staff, mainly secretaries and receptionists. Klebanova always demanded to speak to an attorney, but at best, the receptionist transferred her to a non-attorney supervisor.

⁷ Rule 3-400(B) states that an attorney shall not settle a claim or potential claim for the attorney's liability to the client for the attorney's professional malpractice unless the client is informed in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and is given a reasonable opportunity to seek that advice.

Klebanova did not provide ULG with the documentation that—according to ULG’s January 9, 2009 letter—was required to move forward with her loan modification.

In February 2009, Klebanova contacted ULG and requested a full refund. A ULG representative told her that ULG cannot provide her with a refund on the basis that Klebanova refused to send ULG the essential documents they requested in their January 9, 2009 letter.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charge:

- a. Section 6068, subdivision (m) [Failure to Communicate];⁸ and
- b. Rule 3-700(D)(2) [Failure to Promptly Refund Unearned Fees].

3. The Georgia L. Marshall-Woods Matter

Georgia L. Marshall-Woods (Marshall-Woods) resided in Pasadena, California. Marshall-Woods’s savings were being depleted and she felt that she needed to obtain a loan modification.

In December 2008, Marshall-Woods called ULG. A ULG representative told Marshall-Woods that ULG could help her negotiate a loan modification with her lender. Per ULG’s request, Marshall-Woods faxed ULG a blank voided check. ULG faxed Marshall-Woods an attorney-client fee contract.

Following her conversation with ULG, Marshall-Woods’s daughter-in-law advised her that she should hold off on signing anything with ULG. As a result, Marshall-Woods advised ULG that she did not want to retain their services.

On December 16, 2008, ULG withdrew \$3,500 from Marshall-Woods’s bank account.

⁸ Section 6068, subdivision (m), provides that it is the duty of an attorney to 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.

In early February 2009, Marshall-Woods contacted ULG and demanded to know why she was charged \$3,500 when she didn't sign the attorney-client fee contract. On February 10, 2009, ULG sent Marshall-Woods a billing statement listing all the services they claimed to have performed on her behalf. The fees for these services totaled \$3,220.

Beginning in February 2009, Marshall-Woods tried several times to get into contact with someone at ULG who could discuss the \$3,500 debit to her bank account. Marshall-Woods was unable to contact someone who could help her.

On April 13, 2009, Marshall-Woods filed a complaint with the State Bar. On May 18, 2009, a ULG representative contacted Marshall-Woods and sent her a waiver and release agreement to sign as a precondition for receiving a refund. Marshall-Woods signed the agreement and was issued a \$3,500 refund on May 20, 2009.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charge:

- b. Rule 3-700(D)(2) [Failure to Promptly Refund Unearned Fees]; and
- a. Rule 3-400(B) [Limiting Liability to the Client].

4. The Duane Franklin Matter

Duane Franklin (Franklin) resided in Hollister, California. In early 2009, Franklin received a pay cut and his fiancée became unemployed. These events led Franklin to seek a loan modification.

In early April 2009, Franklin received a telephone message from ULG offering its services. On April 6, 2009, Franklin entered into an attorney-client fee agreement with ULG to negotiate his loan modification. This agreement included an up-front retainer fee of \$3,000.

On April 10, 2009, ULG debited \$3,000 from Franklin's bank account. Shortly thereafter, Franklin and his fiancée changed their mind regarding pursuing the loan modification. On April 15, 2009, Franklin called ULG and requested a full refund. The ULG representative told Franklin that refunding the \$3,000 would not be a problem since ULG had not done any work on Franklin's case. The ULG representative told Franklin that someone from the accounting department would contact Franklin regarding the refund.

On April 20, 2009, after ULG did not respond, Franklin called ULG. A ULG representative requested that Franklin submit the refund request in writing. Later that day, Franklin faxed a letter to ULG requesting a refund.

On April 22, 2009, a ULG representative told Franklin that ULG would refund \$1,750.05 if Franklin signed a release of liability contract. Franklin was told that the remainder of the \$3,000 he paid was deducted for legal fees. Franklin objected and the ULG representative told him that she would discuss the matter with her supervisor and keep Franklin updated.

In late April 2009, Franklin called ULG. He was offered a refund of \$2,460 and was told, "Final offer; take it or leave it!" Franklin objected and requested a full refund.

On May 13, 2009, respondent told Franklin to "[j]ust sign the damn [waiver] before you end up getting sued." Respondent also wrote, "[i]f you don't sign you get nothing, how's that. FINAL OFFER!" Respondent also warned Franklin that he had spent hours dealing with him, and if he did not sign the release of liability agreement then respondent would charge this time to him at his hourly rate of \$500 per hour.

On May 13, 2009, Franklin signed the release of liability agreement and received a refund of \$2,460. Franklin feared that if he did not sign, he would incur more charges or possibly face a lawsuit.

During Franklin's dealings with ULG, he made numerous requests to speak to an attorney. ULG's non-attorney staff, however, always told Franklin that the attorneys were too busy or otherwise unavailable. The ULG staff refused to provide Franklin with any direct contact information for any ULG attorney.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-700(D)(2) [Failure to Promptly Refund Unearned Fees]; and
- c. Rule 3-400(B) [Limiting Liability to the Client].

5. The Lolissa Griffin Matter

Lolissa Griffin (Griffin) resided in Cordova, Tennessee. In mid-November 2008, Griffin communicated with ULG regarding loan modification. On December 1, 2008, Griffin and her husband signed an attorney-client fee contract with ULG. In December 2008, ULG debited a total of \$1,750 from Griffin's bank account.

On March 6, 2009, Griffin received a letter from a law firm's eviction department. The letter stated that her property had been foreclosed and that she must vacate the premises. In late March, Griffin called her lender to check on the progress of her loan modification. Griffin's lender informed her that ULG has never contacted them regarding her loan modification.

Griffin then made several attempts to contact ULG, but was only able to leave messages. Griffin eventually reached a ULG representative and demanded a refund.

On March 27, 2009, Griffin filed a complaint against ULG with the Better Business Bureau.

In mid April 2009, respondent called Griffin and left a voicemail berating and insulting Griffin and her husband. Respondent also threatened a lawsuit.

On or about April 7, 2009, a ULG representative called Griffin and apologized for respondent's conduct. The ULG representative told Griffin that ULG should have never taken her case because they have no Tennessee attorneys.

On or about April 7, 2009, Griffin received a letter from a ULG representative asking her to sign a prepared letter to the Better Business Bureau stating that Griffin's complaint against ULG has now been rectified to her satisfaction. Accompanying the letter was a \$150 Visa gift card as a token of ULG's appreciation of Griffin's cooperation. Griffin did not sign the letter.

Griffin's home was ultimately sold in foreclosure. On May 8, 2009, Griffin's bank credited her account for the monies paid to ULG.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence];⁹ and
- c. Rule 3-700(D)(2) [Failure to Promptly Refund Unearned Fees].

6. The Warren Jacobs Matter

Warren Jacobs (Jacobs) resided in Mesquite, Texas. In May 2008, Jacobs received a reduction in his earnings. In June 2008, Jacobs had to pay medical expenses relating to his daughter's cancer treatment. These factors made Jacobs's mortgage payments unaffordable.

⁹ Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

In January 2009, ULG left Jacobs an automated message on his answering machine regarding their loan modification services. Jacobs called ULG and discussed how they could assist in preparing, presenting, and negotiating Jacobs's home loan modification.

On January 21, 2009, Jacobs and his wife signed an attorney-client fee contract with ULG. Jacobs paid ULG in two installments in February and March 2009.

All of Jacobs's contacts with ULG were with non-attorney staff. ULG representatives encouraged Jacobs not to make any more mortgage payments and to stop communicating with his lender. Jacobs followed their advice.

In March 2009, ULG negotiated a modification with Jacobs's lender. Jacobs, however, had lost his job and was unable to qualify for the modification.

On May 1, 2009, Jacobs received a notice of foreclosure from his lender. Jacobs faxed this notice to ULG. Jacobs made several attempts to talk to someone at ULG about this matter, but no one responded to his messages until May 14, 2009. On that day, ULG informed Jacobs that they would "do a forbearance" on his behalf to delay the sale and extend the period for negotiation. ULG assured Jacobs that they would provide him with adequate warning if they were unable to successfully obtain a forbearance agreement.

ULG, however, did not seek a forbearance agreement on Jacobs's behalf. Jacobs's foreclosure was set for June 2, 2009. Therefore, on June 1, 2009, Jacobs and his wife had to file Chapter 13 bankruptcy to stop the foreclosure.

On June 5, 2009, Jacobs called ULG to check the status of his case. The ULG representative told Jacobs that everything was "going smoothly" and that the ULG negotiator was "still working on" his file. Jacobs requested a refund and the ULG representative told him that she would discuss the matter with the ULG legal team and would have someone contact Jacobs. No one from ULG contacted Jacobs.

ULG did not refund any of fees paid by Jacobs. On September 24, 2009, Jacobs's lender modified his loan.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence].

7. The Luna Abouelkhir Matter

Luna Abouelkhir (Abouelkhir) resided in Newark, California. In early February 2009, Abouelkhir received a voicemail message from the Bergstrum Group. Abouelkhir returned the call and learned that the Bergstrum Group was affiliated with ULG.

On February 6, 2009, Abouelkhir and her husband signed a retainer agreement with ULG. On February 9, 2009, ULG debited \$2,000 from Abouelkhir's bank account.¹⁰

On February 26, 2009, Abouelkhir asked to speak to respondent. A non-attorney representative from the Bergstrum Group told Abouelkhir that they should allow respondent to do his work, and that the non-attorney Bergstrum Group representatives are respondent's "filters" and this is how attorneys keep the fees down. Abouelkhir replied that she hired ULG because she thought she would be working with an attorney. Since she wasn't able to communicate with an attorney, Abouelkhir demanded a refund.

On February 27, 2009, Abouelkhir emailed the Bergstrum Group again demanding a refund and terminating her contract with ULG.

On March 18, 2009, Abouelkhir emailed the Bergstrum Group again expressing her concerns about everything that had happened up until then, including not being allowed to speak with her attorney, and asking for a refund.

¹⁰ Abouelkhir was told that ULG's service would cost \$4,900, but that she could make a \$2,000 payment and then pay the balance in installments.

On April 28, 2009, respondent emailed Abouelkhir stating:

“WE WILL MOST LIKELY BE SUING YOU. WHY DON’T YOU TAKE THE TIME TO READ YOUR CONTRACT. NEVER THREATEN US AGAIN. IF YOU ARE NOT A COMPLETE SHIT HEAD, YOU WILL REALIZE YOU HIRED THE BEST FORECLOSURE PREVENTION LAW FIRM IN THE COUNTRY, RATHER THAN BEING A GREEDY LOSER, WHY DON’T YOU CALL AND ARRANGE A MEETING/CONFERENCE. OTHERWISE STICK YOUR COMPLAINTS. WE ARE SO DAMN GOOD, WE WIN EVERY CASE WE TOUCH, WHAT IS YOUR PROBLEM? DO YOURSELF A FAVOR AND GIVE US A CALL.”

Minutes later, respondent sent Abouelkhir a second email stating:

“I’M SORRY FOR MY PREVIOUS EMAIL, I CAN GUARANTEE, UNLESS YOU PULL YOU *[sic]* HEAD OUT, WE WILL BE SUING YOU.”

Abouelkhir has not heard from respondent or ULG since the April 28, 2009 emails.

Abouelkhir has not received a refund.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate]; and
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

8. The D’Zahr Matter

Jean-Pierre D’Zahr (D’Zahr) resided in San Diego, California. D’Zahr was unemployed for much of 2008, and was facing the threat of looming foreclosure.

In late January 2009, D’Zahr saw an advertisement for home foreclosure prevention and loan modification on ULG’s website. On January 27, 2009, D’Zahr contacted ULG. On that same day, D’Zahr hired ULG. D’Zahr signed an agreement to pay ULG a total retainer fee of \$8,500.

On January 29, 2009, ULG debited the first installment of \$1,500 from D’Zahr’s bank account. On April 8, 2009, D’Zahr paid ULG a second installment of \$2,500.

D’Zahr made numerous attempts to speak with respondent. ULG’s staff, however, repeatedly told D’Zahr that respondent was in court and unavailable to speak to D’Zahr. ULG’s staff refused to provide D’Zahr with respondent’s email address. ULG’s staff would advise D’Zahr that a supervisor would contact him, but D’Zahr never received a call back from anyone.

On February 18, 2009, D’Zahr was finally able to guess respondent’s correct email address, after having attempted several variations of his name. On February 26, 2009, D’Zahr sent respondent an email. That same day, respondent replied stating, in part, as follows:

“With all do [*sic*] respect we are extremely busy. Letters have been sent to the lenders, we have proof of that. I encourage you to take notice of our track record of success and know that we are the largest loan modification law firm in California and soon the [*sic*] be [t]he United States.

“If you have any questions, please call customer care at ...”

From February to May 2009, D’Zahr made several written and verbal requests to ULG to send him copies of documentation that showed some work being done on his case. ULG never provided such documentation to D’Zahr.¹¹

On April 15, 2009, ULG sent D’Zahr an incoherent list of services they had purportedly performed on his behalf. This statement reflected the following services and prices:

Service	Price
RESPA WRITTEN REQUEST	\$4,689.45
FDCPA STOP CALL LETTER	\$1,563.15
LOAN MOD PREPARATION	\$2,188.41
PREP FINANCIAL STATEMENT	\$4,376.82
RESPA AUDIT/ANALYSIS	\$6,252.60
LOAN MOD ANALYSIS	\$3,751.56
LOAN MOD DEMAND/PROPOSAL	\$2,188.41
VALIDATION OF DEBT	\$1,563.15
LOAN MOD COMPLIANCE DEMAND	\$3,126.30
FINANCIAL HARDSHIP ANALYSIS	\$1,563.15

¹¹ Respondent also did not provide any such documentation to the court in the present proceeding.

This statement reflected that ULG had performed services adding up to \$31,263.¹² Yet, the charge for services rendered was listed as \$7,820.

From late April to May 2009, a ULG representative from their collection department called D’Zahr up to eight times a day and insisted that he continue to pay ULG the remainder of the \$8,500 retainer fee.

On May 2, 2009, a ULG representative from their collection department told D’Zahr that his home was going to a trustee sale on May 8, 2009, but if D’Zahr paid ULG an additional \$4,500, ULG could stop the foreclosure sale. D’Zahr contacted his bank and verified that no such sale was scheduled for May 8, 2009.

On May 5, 2009, D’Zahr emailed respondent regarding his concerns about his home being foreclosed and the lack of action by ULG. That same day, respondent replied as follows:

“All the above services have been provided. We don’t guarantee results. If your home is sold then so be it. We do our best and that’s all the law requires. Do me a favor the next time you ‘BLAST YOUR EMAIL’S IN MY FACE.[’] READ THE CONTRACT YOU SIGNED. IT SAYS NO GURANTEES [*sic*]. IF THE BANK DENIES THE LOAN MOD THEN YOU LOSE. THAT’S LIFE. NO REFUNDS, YOU KNOW THAT BECAUSE YOU AGREED TO IT.

“Have a nice day.”

On June 5, 2009, D’Zahr sent respondent and ULG a letter demanding that ULG cease and desist contact with D’Zahr’s banks and creditors and refund the \$4,000 paid to ULG by D’Zahr. ULG did not respond to D’Zahr’s June 5, 2009 letter; nor did they refund the retainer fee paid to ULG by D’Zahr.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

¹² The court notes that the prices for the services purportedly provided to D’Zahr are exponentially higher than prices quoted to some of respondent’s other clients. (See the exhibits attached to the declaration of Georgia Lee Marshall-Woods).

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence]; and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

9. The Robin Pine Matter

Robin Pine (Pine) resided in Brentwood, California. In or about mid-April, Pine called ULG regarding loan modification. Pine was told that the fee would be \$4,000, but that ULG only needed \$2,000 to get started.

On May 4, 2009, ULG mistakenly debited \$4,000 from Pine's checking account. This caused Pine to incur an overdraft fee. The \$4,000 was subsequently credited back to Pine's account.

On May 15, 2009, ULG debited \$2,000 from Pine's checking account. Following this transaction, Pine put a stop payment on her bank account to prevent any further attempts on the part of ULG to debit her account.

On May 22, 2009, Pine and her husband sent respondent and ULG a letter requesting a refund of their \$2,000. On May 29, 2009, ULG sent Pine a waiver of rights and release of liability agreement. Pine and her husband were not comfortable signing away their rights. Therefore, they refused to sign the agreement.

On June 1, 2009, ULG attempted to debit another \$1,000 from Pine's bank account. The bank processed the transaction, but rescinded it after Pine advised the bank of her stop payment order.

Respondent refused to refund Pine's fees because she did not sign the waiver of rights and release of liability.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-700(D)(2) [Failure to Timely Refund Unearned Fees]; and
- b. Rule 3-400(B) [Limiting Liability to the Client].

10. The Mary Doughty Matter

Mary Doughty (Doughty) resided in Fresno, California. In early November 2008, Doughty received a call from Kirkland Holdings regarding loan modification. The Kirkland Holdings representative advised Doughty that Kirkland Holdings worked with ULG.

On November 6, 2008, Doughty signed a retainer agreement with ULG. Doughty also paid ULG a \$2,000 retainer.

In December 2008, a ULG representative communicated to Doughty that her lender had agreed to reduce her monthly mortgage payment from \$1,389 to \$1,249. This would result in a savings of \$140 per month and \$1680 per year. Doughty, however, was not satisfied with this offer and did not accept it.

Doughty then demanded a full refund, stating that the Kirkland Holdings representative promised that her mortgage would be reduced by considerably more than \$140 per month. The attorney-client fee contract, however, states that ULG will offer and negotiate a client's modification proposal, but does not promise or guarantee a certain result.

Doughty's refund demand was subsequently denied by respondent based on the work performed by ULG.

Legal Conclusions

Based on the evidence currently before the court, there is not a reasonable probability that the Office of the Chief Trial Counsel will prevail on any disciplinary charges in the Doughty matter.

11. The Brian Stephens Matter

Brian Stephens (Stephens) had been experiencing financial difficulties for some time. As a result, he was struggling to keep up with his mortgage payments.

On March 3, 2009, Stephens telephoned ULG. On March 4, 2009, a ULG representative called Stephens and told him that he had been approved by ULG. Stephens then provided the ULG representative with his banking information.

On March 5, 2009, Stephens contacted ULG and told them that his wife had gotten upset that Stephens did not consult with her before hiring ULG. Stephens informed ULG that he would not be requiring their services. The ULG representative informed Stephens that his termination should not be a problem since it had been less than 24 hours and Stephens hadn't returned any of his paperwork to ULG.

On March 6, 2009, Stephens discovered that ULG had withdrawn \$3,200 from his bank account. Stephens called ULG and told them that he needed that money back to pay his mortgage. The ULG representative told Stephens that the money would be returned by March 9, 2009.

On March 10, 2009, Stephens called ULG again and informed them that he had yet to receive the refund. The ULG representative told Stephens that the refund had been approved and that the money should be back in Stephens's account by March 11, 2009, at the latest.

On March 13, 2009, Stephens called ULG again and informed them that he still had not received the refund. The ULG representative told Stephens that he was surprised Stephens had

not received the money back. The ULG representative said he would check on it and get back to Stephens. The ULG representative, however, did not call Stephens back.

In late March 2009, Stephens brought this situation to the attention of his bank. The bank was able to credit the money back to Stephens's account.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charge:

- a. Rule 3-700(D)(2) [Failure to Timely Refund Unearned Fees].

12. The Eva Velez Matter

Eva Velez (Velez) resided in Brawley, California. In December 2007, Velez's son suffered from a serious medical condition that required him to be hospitalized. As a result, Velez and her husband incurred unexpected medical expenses that greatly affected their ability to afford their mortgage payments.

In early July 2008, a Kirkland Holdings representative called Velez and offered loan modification services. On July 9, 2008, Velez made a \$3,500 credit card payment to Kirkland Holdings.

On August 11, 2008, a Kirkland Holdings representative told Velez that respondent and ULG would be handling her loan modification. Velez signed a form giving power of attorney to respondent.

On October 7, 2008, a ULG representative contacted Velez and told her that her lenders had 30 days to respond to the demand letters ULG sent on Velez's behalf. Velez was assured that everything was going well with her loan modification.

On November 19, 2008, Velez contacted respondent to inquire about the status of her loan modification, but he did not respond. After a few more unsuccessful attempts to contact respondent, Velez set an appointment to meet with respondent in person.

On December 8, 2008, respondent contacted Velez to confirm the meeting. Respondent told Velez that, in the future, instead of talking to him, Velez should refer to ULG's website or contact "customer care personnel" to answer her loan modification questions. Respondent told Velez that he was extremely busy with over 4000 clients and that he didn't have time to "chit chat" with her.

On December 11, 2008, Velez met with respondent and expressed her concern that no substantive work had been done on her loan modification. Respondent told Velez that ULG had done everything on its part, and that they were simply waiting for the lenders to respond.

On January 8, 2009, respondent contacted Velez and suggested that they should sue her lenders because they violated the law by persistently contacting her after they were notified to cease all contact for collection of payments during the dispute process. On January 12, 2009, Velez expressed her interest to respondent in pursuing such a lawsuit.

On January 19, 2009, Velez emailed respondent and inquired about what files ULG had on her case that showed proof that her lenders had acknowledged that she was represented by respondent and ULG. On January 21, 2009, respondent replied stating, "[y]ou would do us a huge favor if you would quit contacting us everyday [*sic*], repeatedly asking us to provide letters, or whatever."

On March 27, 2009, Velez and her husband went to meet with respondent again. Even though they had a scheduled appointment to meet with him, Velez and her husband were informed that respondent was out of town. Consequently, Velez and her husband instead met with the ULG representative who was assigned as their "negotiator." Velez demanded to see

copies of the lenders' responses, mortgage forensic audits, copies of letters sent to the lenders, and any documentation showing steps being taken in preparation for the lawsuit. Velez's negotiator did not produce any of the requested documentation. Velez's negotiator told Velez that she had no knowledge as to the status of Velez's loan modification.

On April 2, 2009, respondent left a message for Velez. Respondent told Velez that ULG could pursue the lawsuit, but that Velez would need to enter into a new contract with ULG based on a contingency fee.

Throughout April and May 2009, Velez made several attempts to contact respondent, but his mailbox was always full. Velez also sent respondent emails in regard to pursuing the lawsuit, but he never responded.

On June 12, 2009, Velez received a notice of default from her lender. On June 15, 2009, Velez contacted the "customer care" personnel—as directed by respondent—but no one was able to assist her. Velez learned that ULG had assigned a new negotiator to her case. Velez was told that she could not contact her new negotiator, but, instead, her new negotiator would contact her. Velez's new negotiator, however, never contacted her.

In or about the end of June 2009, the head supervisor of ULG sent an email to Velez. In this email, Velez was told that ULG was continuing to work on her loan modification and that it would take more time.

Also, in or about the end of June 2009, Velez's lenders told her that ULG had not contacted them since March 2009.

On July 8, 2009, Velez and her husband went to meet with respondent at his office. Velez and her husband, however, were told by respondent's staff that he was out of the country.

Velez's home went into foreclosure. Velez retained another attorney and was told that it was too late to modify her loan. Velez was forced to file bankruptcy to save her home.

Velez demanded a full refund from ULG. Velez did not receive a refund.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence]; and
- c. Rule 3-700(D)(2) [Failure to Timely Refund Unearned Fees].

13. The Jeanette Moore Matter

Jeanette Moore (Moore) resided in Lochbuie, Colorado. In January 2009, Moore's husband experienced a reduction in his work hours, resulting in a decrease in their income. On February 2, 2009, the mortgage loan for Moore's house became delinquent for the month of January.

In early February 2009, Moore received a telephone call from a representative of a company called United Processing. The United Processing representative spoke to Moore about loan modification.

On February 9, 2009, Moore and her husband signed an attorney-client fee contract with ULG. Moore and her husband believed they were signing with United Processing because of the similarity of the names. On February 9, 2009, ULG debited \$2,800 from Moore's bank account.

During March and April 2009, Moore and her husband made several attempts to contact ULG, but they only received a response about one-fourth of the time. Moore was attempting to determine the status of her case, but no one at ULG was able to help. Throughout their dealings with ULG, Moore and her husband only spoke to non-attorney staff.

In March 2009, Moore's lender told her that they had not received any documents from ULG. Moore's lender also had not received power of attorney informing them that Moore was represented by counsel and that her loan was in dispute.

In or about April 2009, Moore requested that ULG provide her with documentation of work being done on her case. ULG never provided such documentation. ULG told Moore not to contact her lender because they would lie to her about ULG.

In April 2009, Moore received a notice of foreclosure. On April 25, 2009, Moore faxed the foreclosure documents to ULG. ULG, however, claimed that they did not receive Moore's fax.

On April 28, 2009, Moore again faxed the foreclosure documents to ULG. ULG, however, again claimed that they did not receive Moore's second fax.

Each time Moore contacted ULG, they were unable to retrieve her file. In early May 2009, Moore contacted ULG and spoke to a representative. The ULG representative told Moore that they were "doing their job," and that she should stop contacting them.

By May 8, 2009, Moore was able to pay the back payments on her loan. In doing so, she established a payment plan and entered into a loan forbearance agreement with her lender.

On or about May 21, 2009, ULG asked Moore to send them a financial sheet to further work on her loan modification. On May 21, 2009, Moore mailed a letter to ULG requesting a full refund. ULG claimed it did not receive any such letter.

In or about the end of May 2009, Moore sent the refund request letter via certified mail. On June 2, 2009, the mail service certified that ULG received the letter. ULG, however, denied receiving the certified letter.

On June 30, 2009, Moore faxed the refund request letter. In early July, ULG confirmed receipt of the fax. The ULG staff told Moore that her refund request was submitted to the

accounting department, but there would be a delay in paying her a refund because they had a large pile of refund requests. The ULG staff also mentioned that Moore would likely be ineligible for a refund because she—on her own—negotiated a forbearance agreement with her lender.

ULG has not refunded Moore's \$2,800 retainer fee.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Section 6068, subdivision (m) [Failure to Communicate];
- b. Rule 3-110(A) [Failure to Perform with Competence]; and
- c. Rule 3-700(D)(2) [Failure to Promptly Refund Unearned Fees].

14. The Judy Jones Matter

Judy Jones (Jones) resided in Brentwood, California. In or about late June 2008, Jones received a voicemail from Kirkland Holdings. Jones called Kirkland Holdings and discussed loan modification with a representative.

In or about late July or early August, Jones told a Kirkland Holdings representative that she was interested in using their service to obtain a loan modification. Jones was told that a loan modification would cost \$3,500.

From November 2008 to the end of December 2008, Jones called and left messages with Kirkland Holdings for updates and questions. During this time period, Jones left approximately 30 messages with Kirkland Holdings. Approximately 12 of these messages were returned.

From January through May 2009, Jones was dealing with ULG instead of Kirkland Holdings. During this time period, ULG performed work on Jones's behalf, including postponing sale dates and attempting to negotiate a modification with Jones's lender.

Ultimately, on May 29, 2009, Jones received notice that her property was going to be sold as a short sale.

Jones lost her home and demanded that ULG refund her money because they did not save her home. ULG refused to issue a refund.

Legal Conclusions

Based on the evidence currently before the court, there is not a reasonable probability that the Office of the Chief Trial Counsel will prevail on any disciplinary charges in the Jones matter.

15. The Anthony Villa Matter

Anthony Villa (Villa) had been experiencing financial difficulties, and was struggling to keep up with his mortgage payments. In or about January 2009, Villa called ULG after hearing a radio advertisement. Villa retained ULG and paid them \$2,000.

After submitting his contract and the documents relating to his loan, Villa called ULG several times to get a status update on his case. Each time he called, Villa was told that ULG had not heard back from the lender, but things were moving as scheduled.

In or about early April 2009, Villa's lender sent an independent field inspector to his house. The field inspector asked Villa to call his lender as soon as possible. When Villa called his lender, he was advised that ULG had not responded to his lender's requests regarding his loan modification.

Therefore, Villa called ULG. ULG told Villa that his case is "moving along" as usual, and that his lender was not responding to their calls. Villa tried several times to reach respondent, but his calls were not returned.

On or about April 20, 2009, Villa emailed respondent that his lender had advised him that his house was set to go to foreclosure sale on May 15, 2009, and that nobody from ULG was returning his calls. Respondent responded on April 21, 2009, stating:

“I apologize for any inconvenience you may have suffered, please feel free to contact me on my cell phone at ..., my dad is dying, so excuse the hell out of me for going to the funeral. I’ll be happy to talk with you at the service so feel free to call.”

On April 27, 2009, Villa emailed respondent expressing his frustration that the ULG representative assigned to Villa’s case was not returning his calls and complaining that his lender continued to contact him despite respondent’s representation. On April 28, 2009, respondent emailed Villa stating, in part:

“Your lenders are done. I am so pissed about this matter. We are ready to go to war. If you want to help, please, say a prayer for us, we are the winners, but even God’s people need prayer. We are so busy, my dad almost died, so I am sorry I didn’t call you back, I’m a young professional, I care about you and your family and if I can be frank, I’m gonna fuck these banks up for you. It is on.

“I will talk to you this week. Call my cell phone Never talk to the bank, they are not your friends. I am your attorney, that means a shit-load to me, I hope it means the same to you.”

On or about April 29, 2009, Villa emailed respondent in response to a phone call respondent made to Villa. Villa advised respondent regarding reporting ULG to the Better Business Bureau. Villa also requested proof of work ULG had sent to his lenders. Villa followed this email up with another email requesting a full refund.

On May 4, 2009, Villa’s negotiator at ULG obtained an offer of a payment amount from Villa’s lender that was \$220 more than a previous offer the lender had extended to Villa. Villa sent respondent an email complaining about this fact. On May 5, 2009, respondent replied as follows:

“Mr. Anthony:

“I don’t like you. We are done. You will get a refund minus work done. Then we are going to sue you for breach of contract. You have caused serious emotional distress to our employees. I will be filing a TRO against you tomorrow.

“You are a jerk, and a very stupid man. You tell the only people that can help you that we are your enemies, then so be it. I hope you have a lot of money saved up to defend yourselves [*sic*] from the upcoming litigation I am filing against you.

“Never email me again you loser.”

Villa quickly replied to respondent’s May 5, 2009 email stating, “FUCK YOU ASSHOLE!!!”

Moments later, respondent sent a final response stating:

“Anthony:

“How do you think all your profanity[] will play out with the State Bar. I have every right to sue you because you have caused me sever [*sic*] emotional distress. Your threats to report me are also illegal. You will be receiving a TRO, you have threatened my safety and the safety of my staff, don’t every [*sic*] email me again, I have told you repeatedly.”

On May 8, 2009, Villa sent respondent a letter requesting his case file. Respondent did not respond to this letter.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence]; and
- b. Rule 3-700(D)(2) [Failure to Promptly Refund Unearned Fees].

16. The Janice Littrell Matter

Janice Littrell (Littrell) resided in Mendocino, California. In late January 2009, Littrell received a voicemail from ULG.

Littrell returned the call and spoke to a ULG representative about loan modification. Littrell was told that the process would take between 30 to 60 days, and that it would cost \$3,250. Littrell agreed and ULG debited a first payment of \$1,500 from her checking account on January 29, 2009.

On March 3, 2009, ULG debited the remaining balance of their fee—\$1,750—from Littrell's checking account.

In March 2009, Littrell called ULG for a status update. She spoke to an individual who was identified as her "negotiator." He told her that her case would take 60 to 90 days to process. Littrell's negotiator also told her that loan modifications were now taking longer because the banks were getting behind.

For the next several months, each time Littrell called ULG for an update, she was told that she had a different negotiator. Littrell would leave messages for her negotiators or would be placed on hold and nobody would ever come to the phone and Littrell would eventually hang up.

In or about early June 2009, Littrell received a letter from her lender about her delinquent payments. Littrell contacted her lender and was told that they had not received any documentation from ULG.

On or about July 8, 2009, Littrell contacted ULG and was told that she had a new negotiator. Littrell spoke to her new negotiator. He told her that she shouldn't speak to her lender. He also told her that her loan modification process would take between 90 to 120 days.

Littrell subsequently checked ULG's website and saw that there had been no activity on her case between March 20 and July 16, 2009.

Between August 3 and August 12, 2009, Littrell tried to reach her current negotiator by phone and email. On August 12, 2009, Littrell was informed by a ULG representative that she—yet again—had a new negotiator.

On August 12 and 13, 2009, Littrell emailed her new negotiator with her concerns and questions. On August 18, 2009, Littrell's new negotiator replied to Littrell's email, informing her that the process would take another 60 days.

Littrell has never spoken to respondent. She is frustrated with ULG because she was placed on hold every time she called to get a status update. Nobody ever took her call, and Littrell hung up the telephone.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence]; and
- b. Section 6068, subdivision (m) [Failure to Communicate];

4. DISCUSSION

Respondent was admitted to the practice of law in June 2008. Less than a year later, he commenced a course of conduct that violated many of the canons he had so recently sworn to uphold. He began ignoring his clients' calls and otherwise failing to respond to their needs, refusing to promptly refund fees he had not earned, conditioning the return of the fees on the clients' releases of liability, as well as committing the other misconduct set forth in more detail, above.

Respondent ran a business on a large scale, claiming thousands of clients seeking his services. With characteristic bravado, he advised clients in grandiose terms of his skills and extensive record of success.¹³ Given his inexperience and brief tenure as an attorney, these claims were questionable, if not false. Often, his dealings with his clients were rough and abusive. He resorted to name-calling and threats, referring to his clients, variously, as "a greedy loser", "a shithead", "a jerk", and "a very stupid man."

¹³ He advised Luna Abouelkhir that "[w]e are so damn good, we win every case we touch" and then told her that she "had hired the best foreclosure prevention law firm in the country." He advised Jean-Pierre D'Zahr that he should "take notice of our track record of success and know that we are the largest loan modification law firm in California and soon the [sic] be [t]he United States."

While the business marketplace may tolerate the practices in which respondent engaged, the practice of law will not. As an attorney, respondent obviously must conform to the standards of conduct set forth in the Rules and the State Bar Act. But respondent must also act as a fiduciary with respect to his clients. (*Cox v. Delmas* (1893) 99 Cal. 104, 123.) In this regard, respondent fails.

Respondent's abuse of his fiduciary relationship is manifest in the utter disdain he has shown for clients who seek to terminate his services, request a refund, or simply ask for information about the status of their case. Further, when he eventually has agreed to refund their fees as a result of his failure to effectively perform legal services, he placed his interests above those of his clients by insisting on a full release of liability as a condition of the refund. When one client properly refused, he responded "[j]ust sign the damn waiver before you end up getting sued...If you don't sign, you get nothing, how's that. FINAL OFFER." (Abouelkhir matter.)

Often, respondent would delegate his client contact to others who were not attorneys. When he was forced to speak with insistent clients, respondent was not averse to resorting to threats against his clients when he was displeased with them. As an example, after writing to Anthony Villa, indicating that he was going to fight hard for his rights, and was "gonna fuck these banks up for you", seven days later, respondent's tone was dramatically different:

"Mr. Anthony:

"I don't like you. We are done. You will get a refund minus work done. Then we are going to sue you for breach of contract. You have caused serious emotional distress to our employees. I will be filing a TRO against you tomorrow.

"You are a jerk, and a very stupid man. You tell the only people that can help you that we are your enemies, then so be it. I hope you have a lot of money saved up to defend yourselfs [*sic*] from the upcoming litigation I am filing against you.

"Never email me again you loser."

Similarly, with respect to Luna Abouelkhir, respondent threatened “I can guarantee, unless you pull you [*sic*] head out, we will be suing you.”

Finally, one of the main themes of respondent’s treatment of his clients is his repeated failure, after a proper demand, to promptly return unearned fees or return the client’s file. In almost every matter for which culpability was found, as set forth above, respondent violated his duties with respect to his withdrawal from the relationship with the client.

As mentioned earlier in this decision, section 6007, subdivision (c)(2) sets forth three factors for determining whether an attorney’s conduct poses a substantial threat of harm to the interests of the attorney’s clients or the public. All of the following factors must be found:

1. The attorney has caused or is causing substantial harm to his clients or the public;
2. The attorney’s clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is denied than the attorney is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by the attorney will reoccur or continue; and
3. That it is reasonably probable that the State Bar will prevail on the merits of the underlying disciplinary matter.

A. Reasonable Probability the State Bar will Prevail

Throughout the above Findings of Fact and Conclusions of Law, this court has made the required findings and conclusions with respect to the third of the above factors; that is, the likelihood of the State Bar prevailing on the merits of the charges presented in the Application. Those findings and conclusions will not be repeated here, except to note that, where indicated, the State Bar has satisfied its required proof as to section 6007(c)(2)(C), in that the court has found that there is a reasonable probability that the Office of the Chief Trial Counsel will prevail on 31 counts in 14 client matters. Although the facts may support finding other ethical violations, the Court has only addressed the charges presented.

B. Substantial Harm to the Public or the Attorney's Clients

Respondent promised to help troubled homeowners —many of whom were in arrears or on the brink of foreclosure —modify their home loans and maintain financial stability. Instead, he took their money and time and offered little or nothing in return. In fact, due to their loss of money and time, many of respondent's clients ended up in a worse position than they were in when they originally turned to respondent for help. Accordingly, the court finds that the Office of the Chief Trial Counsel has established, by clear and convincing evidence, that respondent has caused substantial harm to his clients.

C. Balancing of Harm to Attorneys and the Public, or the Likelihood that the Harm will Reoccur or Continue.

The evidence before the court demonstrates that the harm respondent caused his clients continues to this day. Respondent has demonstrated a lack of understanding or appreciation of the fiduciary duties—including the duty of loyalty—he owes to his clients. Absent the court's intervention, it is likely that respondent's conduct will continue to harm his present and future clients.

In addition, the evidence establishes a pattern of behavior, including acts likely to cause substantial harm. Here, respondent has engaged in a pattern of client neglect involving failing to perform, failing to communicate, and/or failing to refund unearned fees in 14 separate client matters. Respondent's misconduct began in 2008 and continues to this day, as many of the aforementioned clients have yet to receive a refund for unearned fees. As such, the burden of proof shifts to respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue. (Section 6007, subdivision (c)(2)(B).) There was no clear and convincing evidence that respondent has met his burden under Section 6007, subdivision (c)(2)(B).

Therefore, the court finds that each of the factors prescribed by Business and Professions Code section 6007, subdivision (c)(2) has been established by clear and convincing evidence. The court concludes that respondent's conduct poses a substantial threat of harm to his clients and the public. The court further finds that the involuntary inactive enrollment of respondent is merited for the benefit of the public, the courts and the legal profession.

5. ORDER

Accordingly, **IT IS ORDERED** that respondent Sean Alan Rutledge be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c)(1) effective three days after service of this order by mail. (Rules Proc. of State Bar, rule 466(b).) State Bar Court staff is directed to give written notice of this order to respondent and to the Clerk of the Supreme Court of California. (Bus. & Prof. Code, § 6081.)

IT IS FURTHER ORDERED that:

1. Within 30 days after the effective date of the involuntary inactive enrollment, respondent must:
 - a. Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;
 - b. Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may

be obtained, calling attention to the urgency of obtaining the papers or other property;

c. Refund any part of any fees paid in advance that have not been earned; and

d. Notify opposing counsel in pending matters, or in the absence of counsel, the adverse parties, of his involuntary inactive enrollment, and file a copy of the notice with the court, agency or tribunal before which the matter is pending for inclusion in the respective file or files;

2. All notices required to be given by paragraph 1 must be given by registered or certified mail, return receipt requested, and must contain respondent's current State Bar membership records address where communications may thereafter be directed to him;

3. Within 40 days of the effective date of the involuntary inactive enrollment, respondent must file with the Clerk of the State Bar Court an affidavit showing that he has fully complied with the provisions of paragraphs 1 and 2 of this order. The affidavit must also contain respondent's current State Bar membership records address where communications may thereafter be directed to him; and

4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of paragraphs 1 - 4 of this order may constitute a ground for denying his petition for termination of inactive enrollment or reinstatement.

Dated: November ____, 2009

RICHARD A. HONN
Judge of the State Bar Court