

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

	)	Case Nos.: 10-O-04457-RAH
	)	(10-O-04827; 10-O-05587;
In the Matter of	)	10-O-05597; 10-O-05887;
	)	10-O-09250; 10-O-09320;
GARY LANE,	)	10-O-10927; 10-O-11318;
	)	11-O-10404; 11-O-11147;
Member No. 50960 ,	)	11-O-11200; 11-O-12831;
	)	11-O-18817; 12-O-10844;
A Member of the State Bar.	)	12-O-11211; 12-O-12148)
)	
	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
)	

Introduction¹

Respondent is charged with multiple violations of California Civil Code § 2944.7, which, if proven, would subject him to discipline under Business and Professions Code § 6106.3. In addition, he is also charged with other violations of the State Bar Act and the Rules of Professional Conduct, involving sixteen individual client matters. Finally, he is charged with two counts alleging moral turpitude and aiding and abetting the unauthorized practice of law. These two final counts each incorporate all of the facts of the sixteen client matters.

As is set forth in more detail below, respondent joined a previously operating loan modification operation staffed by non-attorneys. He incorporated the business, but the

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

ownership of this corporation is not clearly known, even to respondent. The business represented several hundred clients. None of the clients in this action benefited from respondent's representation. Nevertheless, respondent, by his counsel, Paul Vapnek, urges this court to dismiss most, if not all of the counts as baseless. Respondent further urges this court to reduce or eliminate the discipline costs if he is found culpable on only a few of the counts. The State Bar of California, by Deputy Trial Counsel Anthony Garcia and Sean Beckley, asks this court to disbar respondent for the alleged misconduct, arguing that he was actively engaged in a scheme to prey on his vulnerable clients.

While the court does not find for the State Bar on all of the alleged counts, as is set forth below, the court finds that respondent repeatedly failed to act competently with respect to multiple matters; that he participated in a scheme that purposefully took unfair advantage of his clients; that he violated the Civil Code proscription against receipt of advanced fees in loan modification matters; and that, in multiple matters, he failed to properly withdraw from his representation when his clients could no longer pay.

As a result of this extensive misconduct, and despite a long record of discipline free practice, the court finds that the public can only be protected if respondent is disbarred from the practice of law.

Significant Procedural History

This matter was filed on November 14, 2012. Trial commenced on March 11, 2013. On March 12, 2013, the parties submitted a stipulation as to facts and documents, and the matter was submitted for decision on May 29, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on January 5, 1972, and has been a member of the State Bar of California at all times since that date.

Respondent's Background

Respondent graduated from City University of New York, Queens College in 1966. He received his Juris Doctor degree from the University of San Diego in 1969. Thereafter, he went to George Washington University and received an LLM degree in 1970. He then enrolled at USC in the masters in public policy program. Finally, he went to NYU Law Center for an LLM degree in government law and business. He also went to a brief certificate program at Harvard Law School. He was either a part-time or full-time professor or administrator at various law schools from 1976 through 2000.

Issues Common to All Matters

The specific facts applicable to each matter are discussed below. However, the legislative background and the business model that respondent employed have general applicability to all of the clients.

Legislation Regulating Loan Modification²

In 2009, state laws were enacted to protect homeowners facing foreclosures. California legislators sought to curb abuses by “a cottage industry that has sprung up to exploit borrowers who are having trouble affording their mortgages, and are facing default, and possible foreclosure, if they are unable to negotiate a loan modification or any other form of mortgage loan forbearance with their lender.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, pp. 6-7.)

On October 11, 2009, California Senate Bill number 94 (SB 94) became effective, providing two safeguards for borrowers who employ the services of someone to help with a loan modification: (1) a requirement for a separate notice to borrowers that it is not necessary to use a

² Much of the discussion in this section is taken directly from the review department's decision in *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221.

third party to negotiate a loan modification (codified as Civ. Code, § 2944.6);³ and (2) a proscription against charging pre-performance compensation, i.e., restricting the collection of fees until all loan modification services are completed (codified as Civ. Code, § 2944.7).⁴ The new legislation was designed to “prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, p. 7.) A violation of either Civil Code provision constitutes a misdemeanor (Civ. Code, §§ 2944.6, subd. (c); 2944.7, subd. (b)), and is cause for imposing attorney discipline. (Bus. & Prof. Code, § 6106.3.)

³ Civil Code section 2944.6 requires that before entering into a fee agreement, a person attempting to negotiate or arrange a loan modification must provide the borrower the following information in 14-point font “as a separate statement:”

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

⁴ The relevant portion of Civil Code section 2944.7 reads:

(a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

Recently, the review department of the State Bar Court filed its opinion in *In the Matter of Taylor*, *supra*, 5 Cal. State Bar Ct. Rptr. 221. In its opinion, the review department specifically stated that Civil Code § 2944.7 is clear on its face:

“The language of Civil Code section 2944.7, subdivision (a), plainly prohibits *any person* engaging in loan modifications from collecting *any fees* related to such modifications until *each and every* service contracted for has been completed. (*In the Matter of Jaurequi* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 56, 59 [plain language of statute controlled where meaning lacked ambiguity, doubt, or uncertainty].) [footnote] We find nothing ambiguous about the statute’s language, or the legislative history, which provides that “legal professionals” are one of the groups the bill was designed to reach. [footnote] (See 4 Miller & Starr, Cal. Real Estate (3d ed. 2011) § 10:145.10 [statute directed at brokers and attorneys who, as self-styled consultants, were holding themselves out as able to facilitate loan modifications, “but usually produced no worthwhile results after collecting substantial advance fees from desperate homeowners”].)”

(*In the Matter of Taylor*, *supra*, at p. 232.)

This court is bound to follow this interpretation of the statute.

CPLS

In 2008, respondent started working in the loan modification field. He helped organize a “law firm” called Consumer Protection Legal Services (CPLS). The evidence was unclear as to his exact role with this company. He characterized his position as a “founder” of CPLS, but also stated that it was a corporation that had no owners. He did recall that the Board of Directors membership rotated, but could not state when these rotations occurred, or who the former members were. He recalled that there were attorneys on the Board, and that he was always on the Board.

CPLS rented space and appeared to rent virtually all its furniture and equipment from Pepe Abad (Abad).⁵ Abad was the former owner of Home Owner’s Assistance (HOA), a loan

⁵ Respondent testified that he did not really know who the owner of all of the equipment and furniture was.

modification firm.⁶ Abad maintained the largest office in the suite, and, according to respondent, was only responsible for “marketing,” working as an “outside independent contractor.”

According to respondent, Abad also operated a real estate business out of his office in the firm. When respondent moved into the suite, he was the only attorney in an organization that had about 50 employees, including 23 negotiators, two accounting personnel, and 25 intake employees.

The intake personnel were not attorneys, but were sales people. They answered telephone calls generated through advertisements or referrals. In his role as the marketing person, Abad made advertising buys, primarily on radio. These advertisements were made in both Spanish and English. Abad would prepare the script for the advertising segments, and the script would go to an advertising agency, which would produce the advertisements using paid actors.

The firm grew to have several attorneys. There was substantial turnover among attorneys. But with new hires, the total attorneys at any given time peaked at about seven. Hiring was done by respondent and the Human Relations employee, Ray Quiros (Quiros). Quiros determined the rate of pay and signed all the payroll checks up until the last two years, when respondent took over that task.

CPAC

In March 2011, respondent formed CPAC, Inc. of Delaware (CPAC). CPAC was originally planned to be a not-for-profit business. However, the business plan and activities of CPAC were virtually the same as that of CPLS. It used the same offices, the same computers and other equipment, and the same employees.

⁶ Abad’s company, HOA, had been shut down by the Department of Real Estate for having violated Business and Professions Code section 10085 and Regulation 2970, Title 10, California Code of Regulations.

Respondent's Business Model

Before the change in the law as a result of SB 94, respondent's firm was in the business of performing loan modifications. As a result of the passage of SB 94, respondent felt he needed to change the focus of the loan modifications he performed. Therefore, instead of performing conventional loan modifications, he told clients seeking loan modifications that he needed to file a lawsuit on their behalf to protect their rights. In some cases, the clients' loans on the property simply exceeded the value of the property and/or the clients' ability to pay, and they came to respondent seeking a loan modification. Other clients' properties had already been sold at foreclosure, and respondent counseled them that he could perform an "REO⁷ reversal." Others were facing an imminent foreclosure sale.

Respondent's Retainer Agreements

All of the clients in this proceeding contacted respondent in order to obtain his assistance in getting a loan modification. In most cases, respondent's staff redirected the client toward filing a lawsuit. In some cases, respondent told the client that this was the only way to get the lender's attention. Most of the clients were unsophisticated in legal matters. As such, the clients signed what was put in front of them in order to get their loan modification.

Respondent⁸ prepared a written retainer agreement when a client sought his services. Often, he entered into an array of agreements with the same client, sometimes several on the same day. The agreements took on many forms, depending on whether they were from CPLS or CPAC, and depending on the services that respondent proposed to provide (e.g., filing a

⁷ REO is a banking term referring to "real estate owned" by the bank after having foreclosed and purchased the property itself at a foreclosure sale.

⁸ Because respondent was the responsible attorney for all of the client matters in this proceeding, this decision will refer to "respondent" as including respondent acting through The Law Offices of Gary Lane, CPLS, or CPAC, as applicable.

temporary restraining order, performing a loan audit or “lender fraud and detection services”, filing a lender lawsuit and lis pendens, or preparing a “CHAMP”⁹ evaluation of the client’s loan.) Without doubt, the numerous retainer agreements represented a confusing combination of legal terminology, especially for his legally unsophisticated clients. For example, Modesta Alvarado entered into the following agreements:

CPLS – Client Champ Retainer
CPLS – Client Lender Qualified Written Request with Add-ons Agreement
CPLS – Client Lis Pendens Filing on a Lender Lawsuit Filing Retainer Agreement.

Jose Quardado entered into the following agreements:

CPLS – Client Lender Lawsuit Filing Retainer Agreement
Two different versions of the *CPLS – Client Filing Requesting a Temporary Restraining Order Against Lender Retainer Agreement* (with two different fees and two different scopes of services)
CPLS – Client Lender Lawsuit Filing Retainer Agreement
CPLS – Client Lender Lawsuit Filing Retainer Agreement (Appeal to the Federal Court of Appeals)

The retainer agreements which called for filing a lawsuit contained language similar to the following: “PAYMENT OF FEES. \$_____. Client agrees to pay a ***one-time flat fee*** for CPLS’s services.” (Emphasis added.) However, another provision sometimes was inserted in the agreement, or in a separate agreement, stating that respondent’s services only included filing the initial complaint and attending a single court appearance. Further court appearances were charged at an additional cost, usually between \$995 and \$1,500.

One of the standard agreements provided the following, under scope of services:

Client is hiring CPLS to represent Client in connection with the following specified matters **ONLY**: [emphasis in original]

⁹ This was respondent’s acronym for the HAMP program. HAMP stands for Home Affordable Modification Program, which is a federal program for certain qualified borrowers.

- a. To have the documents prepared for filing a lawsuit against Client's lender. The filing of only one lawsuit against one lender is covered by this retainer.
- b. To have the above stated documents filed in a court of competent jurisdiction, against the one lender.
- c. To arrange for attorney appearance *at the first court appearance* for the above-referenced civil lawsuit, to provide either settlement conference or calendar conference representation, as there required. [Emphasis added.]
- d. Conduct an analysis of Client's mortgage loan documents when such are provided by client within 7 calendar days from engagement of this agreement as represented by both parties' executed signatures and full retainer received by law firm in verified funds.
- e. Conduct analysis of foreclosure documents and lender's adherence to State specific timelines as well as other mortgage lender correspondence to identify potential claims against mortgage lender for violations of State and Federal laws.
- f. Conduct review of lender's & service: (sic) past, present, and ongoing business practices to ascertain potential predatory violations.
- g. Submit to Lender a financial package complete with a written proposal for a loan modification.
- h. Negotiate with Lender, as permitted by Lender, on the proposed loan modification package, through Lender's response to such package, acceptance, rejection, or proposed modification plan.

Client understands and agrees that the services above are the ONLY legal services that CPLS will arrange to perform on Client's behalf. Interrogatories, depositions, motions, and any other activities shall be at an additional charge. Client does not expect CPLS to represent Client in any further proceedings of said lawsuit, under this retainer. Should Client wish to proceed further with said lawsuit, Client will have to sign an additional retainer agreement for any such additional work.

Client agrees that CPLS has not represented that it will advise or assist Client in the modification, improvement or correction of credit entries contained on Client's credit reports, or that CPLS can stop all collection phone calls or correspondence.

(Emphasis added.)

Other agreements contained some or all of paragraphs a - h, above. The retainer agreements also contained other provisions, such as a disclaimer of any guarantee as to the final resolution of the matter, as well as a provision allowing CPLS to withdraw at any time for good cause. "Good cause" is defined as any material breach by the Client of the agreement; Client's

failure to cooperate with CPLS or to follow CPLS's advice on a material matter; or any fact or circumstance that would render CPLS's continuing representation unlawful, unethical, or impracticable for any reason.

Outcomes of the Filed Lawsuits

To be sure, in some cases, respondent or his staff filed and documented extensive paperwork and conducted numerous telephone conferences and correspondence with the investors/lenders, and with the clients. But his work was uniformly of no value and poorly conceived. In every case, the lawsuits filed by respondent had very little, if any, chance of success.¹⁰ The relief sought was inappropriate and the causes of action were improperly pled.¹¹ In sum, the claims were without merit and spurious.

It is clear that respondent's lawsuits were simply an "end-run" around the requirements of SB 94. Instead of charging an "up-front" fee for a loan modification, respondent figured he could charge such a fee for frivolous litigation, hoping for a settlement that included a loan modification. His strategy was flawed, because he was uniformly met by highly qualified attorneys who recognized the frivolous nature of his claims. (For example, see exhibit 207, pages 1 through 16.)¹² On occasion, respondent paid for his frivolity, in the form of sanctions.

¹⁰ Respondent testified that even though he did not prevail in getting the relief he sought, he provided a benefit to the client by causing a delay in the sale of the property. However, the delays were not substantial in length, and were often very expensive to the client, to say nothing of their expense to the court system and opposing parties.

¹¹ For example, instead of damages, some sought a "loan modification" in the prayer for relief.

¹² The magnitude of respondent's frivolous conduct can be seen in the summary by the law firm of Bryan Cave LLP, when it listed respondent's cases that the firm had handled, including the outcome of each. Although many of these cases are not part of this proceeding, this listing at exhibit 207, pages 112 through 120, is shocking in the number of cases filed and their almost universal ineffectiveness.

Almost all of the lawsuits were responded to by a demurrer or removed to federal court and a motion to dismiss was filed. In almost every such case, the demurrer was sustained or the motion to dismiss was granted. In some cases, the initial motion to dismiss was granted without leave to amend. (See e.g., Exhibit 8.) If leave to amend was granted and respondent actually filed an amendment, respondent failed to make substantive changes to the complaint and a further demurrer/motion to dismiss was sustained/granted.

Further, as noted above, the retainer agreement often stated that the initial payment was only for a single court appearance. Inevitably, the first court appearance was a demurrer or a motion to remove/motion to dismiss. As noted above, in almost every hearing on a demurrer or a motion to dismiss, the demurrer was sustained or the motion was granted. This left the client with a further charge he was required to pay in order to simply get the lawsuit that he had contracted for on file. Often, the client paid the extra amounts, which varied from \$950 to \$1,500. However, when the client did not so pay, respondent often did not even appear at the hearing, arguing that the terms of his retainer agreement did not require his appearance, because the client had breached the retainer agreement. In all such cases where he failed to appear, respondent effectively abandoned and improperly withdrew from his representation of the client.

Advance Fees

All of the fees referred to in this decision were paid before respondent had fully performed each and every service he had contracted to perform or represented that he would perform (hereinafter, “advanced” fees.)

Case No. 10-O-04457 – The Maria de la Cruz Matter

Facts

On June 4, 2009, Maria de la Cruz (de la Cruz) hired CPLS for home loan modification services, including civil litigation.¹³ On June 4, 2009, de la Cruz paid CPLS \$3,000 in advanced attorney's fees and also gave CPLS a second check for \$2,000 in advanced attorney's fees to be cashed by CPLS approximately two weeks later. CPLS cashed this \$2,000 check approximately two weeks later.

On August 18, 2009, CPLS, on behalf of de la Cruz, filed a civil action against de la Cruz's lender, Chase Home Finance LLC (Chase), in Los Angeles Superior Court, case no. KCO56556. On September 21, 2009, Chase filed and properly served on CPLS a Notice of Removal in U.S. District Court for the Central District of California, case no. 2:09-cv-06870. On September 28, 2009, Chase filed and properly served on CPLS a motion to dismiss the complaint for failure to state a claim.

CPLS, on behalf of de la Cruz, failed to file a response, opposition, or any appearance whatsoever in response to Chase's motion to dismiss. On October 8, 2009, the court in case no. 2:09-cv-06870 granted Chase's motion to dismiss in its entirety with prejudice, and properly served CPLS with notice of the dismissal. Respondent failed to inform de la Cruz of this significant development.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. De la Cruz paid CPLS with a \$995 check dated December 3, 2009, in advanced attorney's fees for the purpose of respondent making an appearance in case no. 2:09-cv-06870. At no time did CPLS make an

¹³ De la Cruz was employed selling clothing.

appearance in case no. 2:09-cv-06870 or otherwise prosecute the complaint that respondent signed on de la Cruz's behalf.

In December 2009, de la Cruz requested from CPLS a full refund of the \$5,995 that she paid respondent in attorney's fees. On January 4, 2010, CPLS sent \$995 to de la Cruz. That check never cleared. On February 19, 2010, CPLS refunded \$995 to de la Cruz. CPLS did not provide de la Cruz with an accounting.

Conclusions

Count One - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Two - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. By failing to refund \$5,000 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Three - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. The client has demanded a refund of the unearned fees, but respondent has refused to comply with this demand. Respondent is obligated

to provide the clients with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Count Four - § 6068, subd. (m) [Failure to Communicate]

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Respondent failed to inform his client that her case had been dismissed. As such, respondent failed to keep his client informed of a significant development in this case, in willful violation of section 6068, subdivision (m).

Case No. 10-O-04827 – The Martinez Matter

Facts

On June 13, 2009, Rodolfo Victor Martinez (Martinez) hired CPLS for home loan modification services, including a loan modification and civil litigation. On June 17, 2009, Martinez paid CPLS \$2,995 in advanced attorney's fees.

On October 15, 2009, CPLS, on behalf of Martinez, filed a civil action against Martinez's lender, Countrywide Home Loans, Inc. (Countrywide), in Los Angeles Superior Court, case no. BC424006. On February 5, 2010, Countrywide filed and properly served on CPLS a demurrer to the complaint and a motion to strike portions of the complaint. Both the motion to strike and the demurrer stated that a hearing on the matters was scheduled for March 9, 2010. CPLS failed to file a response on behalf of Martinez to either the demurrer or motion to strike filed by Countrywide.

On March 9, 2010, the court held a hearing on Countrywide's demurrer and motion to strike. Respondent did not attend the March 9, 2010 hearing. On March 9, 2010, the court

sustained Countrywide's demurrer without leave to amend on all causes of action alleged in the complaint and then found the motion to strike moot.

On March 9, 2010, CPLS served on counsel for Countrywide a request for leave to file a first amended complaint. CPLS did not file this request with the court. On March 10, 2010, CPLS was properly served with a notice of ruling on the demurrer.

On March 18, 2010, Countrywide filed and properly served on CPLS a motion to strike Martinez's untimely request for leave to file a first amended complaint. On March 29, 2010, the court filed and properly served on CPLS an order of dismissal, dismissing Martinez's action with prejudice and awarding costs to Countrywide.

On April 15, 2010, CPLS, on behalf of Martinez, filed a second civil action against Martinez's lender, Countrywide, in Los Angeles Superior Court, case no. BC435910, alleging substantially the same causes of actions. On April 28, 2010, Countrywide filed and properly served on CPLS a notice of related cases in both case no. BC424006 and case no. BC435910. On May 14, 2010, the court in case no. BC424006 filed and properly served on CPLS an Order re: Related Cases and found that case no. BC424006 and case no. BC435910 were related.

On May 20, 2010, Countrywide filed and properly served on CPLS a demurrer to the complaint in case no. BC435910. The demurrer clearly stated that a hearing on the matter was scheduled for June 21, 2010.

On May 21, 2010, Countrywide filed and properly served on CPLS a notice of entry of order re: related cases in both case no. BC424006 and case no. BC435910.

CPLS failed to file a response on behalf of Martinez to the demurrer in case no. BC435910. On June 11, 2010, Countrywide filed and properly served on CPLS a notice that CPLS had filed no opposition to the demurrer filed in case no. BC435910 on behalf of Martinez and stating that the hearing on the demurrer was set for June 21, 2010.

On June 21, 2010, the court in case no. BC435910 held a hearing on Countrywide's demurrer. CPLS did not attend the June 21, 2010 hearing, but attorney Kurt Bollin specially appeared for Martinez. On June 21, 2010, the court in case no. BC435910 issued a tentative ruling sustaining Countrywide's demurrer without leave to amend on all causes of action alleged in the complaint. At the request of Countrywide, the court scheduled an order to show cause (OSC) re sanctions for July 22, 2010, and ordered Martinez to explain why he did not dismiss case no. BC435910 when it was identical to case no. BC424006, in which the demurrer was sustained without leave to amend. The court further stated that it would consider allowing Martinez to amend the complaint if and only if Martinez appeared at the OSC hearing scheduled for July 22, 2010. On June 24, 2010, Countrywide filed and properly served CPLS with notice of the court's June 21, 2010 ruling, including notice of the court sustaining Countrywide's demurrer and the OSC re sanctions hearing scheduled for July 22, 2010.

On July 14, 2010, CPLS filed a declaration from respondent in response to the OSC re: sanctions and a request for 30 days leave to amend the complaint. On July 15, 2010, Countrywide filed and properly served on CPLS a motion in case no. BC435910 requesting monetary sanctions against respondent for pursuing a duplicative, meritless action.

On July 22, 2010, the court in case no. BC435910 held a hearing on the OSC, but respondent and Martinez failed to appear. The court affirmed its tentative ruling of June 21, 2010, sustaining Countrywide's demurrer without leave to amend and continuing the OSC re: sanctions to August 27, 2010. The case was dismissed, but the dismissal order was not effective until the continued date of the OSC re sanctions on August 27, 2010. On or about July 26, 2010, Countrywide properly served CPLS with notice of the court's ruling and the continuance of the OSC.

On August 27, 2010, the court held the OSC re sanctions hearing. Respondent was present. The court held that Countrywide did not properly request sanctions.

On September 17, 2010, Countrywide filed and properly served on CPLS a motion for sanctions against respondent and CPLS in case no. BC435910. The motion for sanctions stated that a hearing on the motion was scheduled for October 22, 2010.

On October 22, 2010, the court in case no. BC435910 held the hearing on Countrywide's motion for sanctions. Respondent was present at this hearing. The court ruled, via minute entry dated October 22, 2010, that respondent was ordered to pay sanctions in the amount of \$3,000 to the Los Angeles Superior Court for filing a duplicative lawsuit and for violating the court's OSC for respondent's failure to file a responsive pleading to Countrywide's demurrer and for respondent's failure to appear at the July 22, 2010 hearing. Respondent was properly served with the minute entry on or about October 22, 2010. On October 26, 2010, Countrywide filed and properly served on CPLS notice of entry of the court's October 22, 2010 order.

CPLS did not obtain a loan modification for Martinez. The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. To date, CPLS has provided no refund or accounting to Martinez.

Conclusions

Count Five - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Six - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. By failing to refund \$2,995 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Seven - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent was obligated to provide the clients with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Case No. 10-O-05587 – The Sarkadi Matter

Facts

On February 12, 2010, CPLS charged and collected \$1,395 in advanced attorney's fees from Joseph and Klara Sarkadi (the Sarkadis) for loan modification services.¹⁴ CPLS did not provide the Sarkadis with a separate statement laying out the warning language identified in Civil Code section 2944.6.¹⁵

Conclusions

Count Eight - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

¹⁴ Joseph Sarkadi was a retired mechanical engineer.

¹⁵ There is no indication in the record that the Sarkadis were provided a refund.

Count Nine - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Case No. 10-O-05597 – The Botello Matter

Facts

On June 27, 2009, Jorge Botello (Botello) hired CPLS for home loan modification services, including a loan modification and civil litigation.¹⁶ On June 27, 2009, Botello paid \$500 to CPLS in advanced attorney's fees. On July 9, 2009, Botello paid \$1,000 to CPLS in advanced attorney's fees. On July 23, 2009, Botello paid \$2,000 to CPLS in advanced attorney's fees. On August 20, 2009, Botello paid \$3,350 to CPLS in advanced attorney's fees.

On October 16, 2009, CPLS, on behalf of Botello, filed a civil action against Wells Fargo Financial California, Inc. (Wells Fargo) and First Dial West, Inc., in Los Angeles Superior Court, case no. BC423993. On November 19, 2009, Wells Fargo filed and properly served on CPLS a demurrer to the complaint. The demurrer clearly stated that a hearing on the matter was scheduled for March 2, 2010.

CPLS failed to file a response or opposition to Wells Fargo's demurrer. On March 2, 2010, the court held the hearing on the demurrer. At the hearing, where an appearance attorney was present for CPLS, the court sustained the demurrer without leave to amend as to the first count and sustained the demurrer with ten days leave to amend for counts two through nine. At no time did CPLS file an amended complaint on behalf of Botello.

¹⁶ Botello worked in a foundry. He had difficulty spelling his name in English.

On April 8, 2010, the court held a hearing on Wells Fargo's ex parte motion to dismiss for failure to amend. The court granted Wells Fargo's request to dismiss the entire action with prejudice. On June 9, 2010, Wells Fargo filed and properly served on CPLS the judgment of dismissal, dismissing the entire action with prejudice.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. CPLS did not obtain a loan modification for Botello. To date, CPLS has provided no refund or accounting to Botello.

Conclusions

Count Ten - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Eleven - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$6,850 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Twelve - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent was obligated to provide the clients with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Case No. 10-O-05887 – The Garcia Matter

Facts

In May 2009, Everardo Garcia (Garcia) hired CPLS for home loan modification services, including requesting a temporary restraining order (TRO) against his home loan mortgage

lender, a loan modification, and civil litigation.¹⁷ On May 28, 2009, Garcia issued a check for \$2,500 to CPLS in advanced attorney's fees. On June 9, 2009, Garcia issued a check for \$2,500 to CPLS in advanced attorney's fees. On June 12, 2009, Garcia signed two retainer agreements with CPLS, one titled "Client Filing Requesting a Temporary Restraining Order Against Lender Retainer Agreement," which stated that the fee was \$500, and one titled "Client Lender Lawsuit Filing and Loan Modification Retainer Agreement," which stated that the fee was \$5,000. On June 15, 2009, Garcia issued a check for \$500 to CPLS in advanced attorney's fees.

On August 13, 2009, CPLS, on behalf of Garcia, filed a civil action against Garcia's lenders, T.D. Service Company (T.D. Service Co.) and Wilshire Credit Corporation (Wilshire), in Santa Barbara Superior Court, case no. 1316352. On September 17, 2009, Wilshire filed and properly served on CPLS a notice of removal in U.S. District Court for the Central District of California, case no. 2:09-cv-06764. On September 21, 2009, Wilshire filed and properly served on CPLS a motion to dismiss complaint for failure to state a claim in case no. 2:09-cv-3 06764. The motion to dismiss clearly stated that a hearing on the matter was scheduled for October 19, 2009.

On September 25, 2009, the court in case no. 2:09-cv-06764 filed and properly served on CPLS an order setting a status conference for October 19, 2009. The court further ordered that the attorneys in charge of the conduct of the trial be the attorneys who attend the October 19, 2009 status conference. CPLS, on behalf of Garcia, failed to file a response, opposition, and failed to appear in any way whatsoever in response to Wilshire's motion to dismiss in case no. 2:09-cv-06764.

On October 19, 2009, the court in case no. 2:09-cv-06764 held the status conference. No CPLS attorney appeared at the status conference. On October 20, 2009, the court in case no.

¹⁷ Garcia is a musician. He did not speak English.

2:09-cv-06764 filed and properly served on CPLS an order granting Wilshire's motion to dismiss and further ordered that Wilshire was entitled to \$1,985 in attorney's fees.

On October 22, 2009, T.D. Service Co. filed and properly served on CPLS a motion to dismiss complaint for failure to state a claim in case no. 2:09-cv-06764. T.D. Service Co.'s motion to dismiss stated that a hearing on the matter was scheduled for November 16, 2009. CPLS, on behalf of Garcia, failed to file a response, opposition, or any appearance whatsoever in response to T.D. Service Co.'s motion to dismiss.

On November 16, 2009, the court in case no. 2:09-cv-06764 held a hearing on T.D. Service Co.'s motion to dismiss. No CPLS attorney appeared at the hearing. On November 16, 2009, the court in case no. 2:09-cv-06764 filed and properly served on CPLS an in-chambers order granting T.D. Service Co.'s motion to dismiss. At no time did any CPLS attorney make an appearance in case no. 2:09-cv-06764 or otherwise prosecute the complaint that CPLS filed on Garcia's behalf.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. CPLS did not obtain a loan modification or file a TRO for Garcia. The client has demanded a refund of all unearned fees. To date, CPLS has provided no refund or accounting to Garcia.

Conclusions

Count Thirteen - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Fourteen - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$5,500 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Fifteen - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent was obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Case No. 10-O-09250 – The Farias Matter

Facts

In or about December 2009, Maria Farias (Farias) hired CPLS for home loan modification services.¹⁸ On December 18, 2009, Farias paid CPLS \$1,195 in advanced attorney's fees. On December 22, 2009, Farias paid CPLS \$5,584 in advanced attorney's fees. On December 31, 2009, Farias paid CPLS \$2,000 in advanced attorney's fees. On January 2, 2010, Farias paid CPLS \$850 in advanced attorney's fees.

On January 11, 2010, CPLS, on behalf of Farias, filed a civil action against Farias's lenders, Wells Fargo and First American Loanstar Trustee Services, LLC (First American), in Los Angeles Superior Court, case no. ECO52007. On February 16, 2010, Wells Fargo filed and properly served on CPLS a demurrer to the complaint in case no. ECO52007. The demurrer stated that a hearing on the matter was scheduled for March 26, 2010. CPLS filed no response on behalf of Farias to the demurrer filed by Wells Fargo. On March 26, 2010, the court in case no. ECO52007 filed and properly served on CPLS a minute entry continuing the hearing on the demurrer to May 7, 2010.

¹⁸ Maria Farias takes care of her mother on a full-time basis. She does not speak English. Her daughter speaks English, however.

On March 29, 2010, Farias paid CPLS \$1,200 in advanced attorney's fees. On May 6, 2010, Farias paid CPLS \$995 in advanced attorney's fees.

On May 7, 2010, the court in case no. ECO52007 held a hearing on the demurrer and sustained the demurrer as to all causes of action with ten days leave to amend. On May 10, 2010, Wells Fargo filed and properly served on CPLS a notice of ruling on the demurrer in case no. ECO52007.

On May 17, 2010, CPLS filed a first amended complaint in case no. ECO52007. On June 2, 2010, Wells Fargo filed and properly served on CPLS a demurrer to the first amended complaint in case no. ECO52007. The demurrer stated that a hearing on the matter was scheduled for July 23, 2010. CPLS filed no written response on behalf of Farias to the demurrer to the amended complaint filed by Wells Fargo.

On July 23, 2010, the court in case no. ECO52007 held a hearing on Wells Fargo's demurrer to the amended complaint. Respondent was not present. Attorney Michael M. Yellin specially appeared on behalf of Farias. The court ruled that Wells Fargo's demurrer was sustained without leave to amend on two of the five causes of action and that the demurrer was sustained with leave to amend within ten days on three of the five causes of action.

CPLS failed to file a second amended complaint in case no. ECO52007 within ten days of the court's July 23, 2010 order. On August 11, 2010, CPLS filed an opposition to Wells Fargo's demurrer to the first amended complaint. On August 18, 2010, the court held a case management conference (CMC) in case no. ECO52007. Respondent was not present. An appearance attorney appeared for respondent on behalf of Farias. At the CMC, the court ordered the entire matter dismissed without prejudice as no amended complaint had been filed on behalf of Farias within the time prescribed in the court's July 23, 2010 order.

On August 27, 2010, CPLS filed a motion for reconsideration of dismissal in case no. ECO52007 and a hearing was set for October 15, 2010. On October 15, 2010, the court in case no. ECO52007 issued a minute entry denying the motion for reconsideration.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. To date, CPLS has provided no refund or accounting to Farias.

Conclusions

Count Sixteen - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Seventeen - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$11,824 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Eighteen - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent was obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Case No. 10-O-09320 – The Alcantara Matter

Facts

In or about November 2009, Alberto and Theresa Alcantara (the Alcantaras) hired CPLS for home loan modification services.¹⁹ On November 23, 2009, CPLS charged and collected

¹⁹ Theresa Alcantara is currently unemployed, but was formerly an accountant. Alberto Alcantara is a training aide in the Piedmont Adult Day Program.

\$1,500 in advanced attorney's fees from the Alcantaras. On December 5, 2009, CPLS charged and collected \$1,450 in advanced attorney's fees from the Alcantaras. On December 20, 2009, CPLS charged and collected \$1,450 in advanced attorney's fees from the Alcantaras. On December 30, 2009, CPLS charged and collected \$1,450 in advanced attorney's fees from the Alcantaras.

On January 13, 2010, CPLS, on behalf of Theresa Alcantara, filed a civil action against her lender, American Home Mortgage Servicing, Inc. (AHMS), in Santa Clara Superior Court, case no. 1-10-CV-161393. On February 2, 2010, AHMS filed and properly served on CPLS a demurrer to the complaint. The demurrer stated that a hearing on the matter was scheduled for March 16, 2010. CPLS filed no response on behalf of Theresa Alcantara to the demurrer in case no. 1-10-CV-161393.

On March 16, 2010, the court in case no. 1-10-CV-161393 held a hearing on AHMS's demurrer. Respondent was not present at the hearing. Attorney William Pierce made a special appearance for Theresa Alcantara. At the hearing, the court sustained the demurrer without leave to amend. On March 25, 2010, AHMS filed and properly served CPLS with the court's order of March 16, 2010, sustaining the demurrer without leave to amend, and with the court's order of March 16, 2010, dismissing the civil action with prejudice in favor of AHMS.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. CPLS did not obtain a loan modification for the Alcantaras. To date, CPLS has provided no refund or accounting to the Alcantaras. CPLS also did not provide the Alcantaras with a separate statement laying out the warning language identified in Civil Code section 2944.6.

Conclusions

Count Nineteen - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

Count Twenty - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Count Twenty-One - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Twenty-Two - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$5,850 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Twenty-Three - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent was obligated to provide the clients with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Case No. 10-O-10927 – The Bravo Matter

Facts

In or about October 26, 2009, Maria Bravo Zavala (Bravo) hired CPLS for home loan modification services.²⁰ On October 26, 2009, Bravo paid CPLS \$1,500 in advanced attorney's fees. On November 2, 2009, Bravo paid CPLS \$4,000 in advanced attorney's fees. On November 10, 2009, Bravo paid CPLS \$2,445 in advanced attorney's fees. On November 21, 2009, Bravo paid CPLS \$4,000 in advanced attorney's fees. On November 28, 2009, Bravo paid CPLS \$680 in advanced attorney's fees. On December 9, 2009, Bravo paid CPLS \$165 in advanced attorney's fees.

On December 10, 2009, CPLS, on behalf of Bravo, filed a civil action against Bravo's lenders, Wells Fargo and WMC Mortgage Corporation (WMC), in Orange County Superior Court, case no. 30-2009-00327097. On January 11, 2010, Wells Fargo filed and properly served on CPLS a demurrer to the complaint. The demurrer stated that a hearing on the matter was scheduled for March 1, 2010. On February 11, 2010, CPLS filed a response to Wells Fargo's demurrer on behalf of Bravo. On March 1, 2010, CPLS filed a request for leave to file a first amended complaint.

On March 1, 2010, the court in case no. 30-2009-00327097 held a hearing on Wells Fargo's demurrer. No CPLS attorney was present at the hearing. At the hearing, the court sustained the demurrer with leave to amend within 20 days. On March 16, 2010, Wells Fargo filed and properly served CPLS with notice of the court's March 1, 2010 ruling.

The hearing on the motion for leave to amend was continued until April 5, 2010. On April 5, 2010, the court ruled CPLS's March 1, 2010 motion for leave to amend moot based on

²⁰ Bravo worked at a hospital.

the court's March 1, 2010 ruling which granted Bravo 20 days leave to amend. CPLS was properly served with this order.

On April 6, 2010, Bravo paid CPLS \$995 in advanced attorney's fees. That same day, CPLS filed a first amended complaint on behalf of Bravo. On May 6, 2010, Wells Fargo filed and properly served on CPLS a demurrer to the first amended complaint. The demurrer stated that a hearing on the matter was scheduled for June 21, 2010.

On June 1, 2010, WMC filed and properly served on CPLS a demurrer to the first amended complaint. CPLS filed no response on behalf of Bravo to the demurrers to the first amended complaint filed by Wells Fargo and WMC.

On June 21, 2010, the court held a hearing on Wells Fargo's demurrer to the first amended complaint. Respondent was not present at the hearing. Attorney Paula Skerston (Skerston) made a special appearance for Bravo. At the hearing, the court sustained the demurrer without leave to amend. At the hearing, Skerston made an oral request to dismiss the case, but the court ordered that a written request for dismissal be filed.

On September 16, 2010, respondent filed a motion to be relieved as counsel and a declaration in support signed by Liz Trujillo (Trujillo), a non-attorney CPLS employee. On September 28, 2010, respondent filed a motion to be relieved as counsel, a declaration in support signed by respondent, and a declaration of Trujillo.

On October 18, 2010, the court dismissed Bravo's case with prejudice. On November 5, 2010, Wells Fargo filed and properly served on CPLS notice of dismissal of the case. Respondent did not inform Bravo that her case had been dismissed.

CPLS did not obtain a loan modification for Bravo. The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. To date, CPLS has provided no refund or accounting to Bravo.

CPLS also did not provide Bravo with a separate statement laying out the warning language identified in Civil Code section 2944.6.

Conclusions

Count Twenty-Four - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Twenty-Five - § 6068, subd. (m) [Failure to Communicate]

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Respondent failed to inform his client that the client's case had been dismissed. As such, respondent failed to keep his client informed of a significant development in this case in willful violation of section 6068, subdivision (m).

Count Twenty-Six - § 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth]

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. The State Bar failed to prove that respondent made misleading statements to the judge or judicial officer. As such, the State Bar failed to offer clear and convincing proof of the violation of this section, so it is dismissed with prejudice.

Count Twenty-Seven - § 6106 [Moral Turpitude]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. As noted above, the State Bar failed to present proof that respondent made misleading statements to the judge or judicial officer. As such, the State Bar failed to offer clear and convincing proof of the violation of this section, so it is dismissed with prejudice.

Count Twenty-Eight - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$13,785 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Twenty-Nine - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent was obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Count Thirty - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

Count Thirty-One - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Case No. 10-O-11318 – The Dawson Matter

Facts

On September 30, 2009, Steven and Maria Dawson (the Dawsons) hired CPLS for home loan modification services, including civil litigation, and agreed to pay \$5,695 in advance fees.²¹ On October 1, 2009, the Dawsons paid CPLS \$5,695 in advanced attorney's fees. On October 12, 2009, the Dawsons paid CPLS \$3,000 in advanced attorney's fees.

On October 19, 2009, the Dawsons emailed respondent and requested to either meet with him or speak to him on the phone. Respondent received this email, but did not respond.

On October 30, 2009, CPLS, on behalf of the Dawsons, filed a civil action against the Dawsons' lenders, GMAC Mortgage, LLC (GMAC), Aurora Loan Servicing (Aurora), Cal-Western Reconveyance Corporation, and MERSCORP, Inc. (MERS), in Los Angeles Superior Court case no. LC087407. On November 12, 2009, the Dawsons emailed respondent and asked for a status update on their case and a call from respondent. Respondent received this email, but did not respond.

On December 3, 2009, Aurora and MERS filed and properly served CPLS with a notice of removal in U.S. District Court for the Central District of California, case no. 2:09-cv-08873. On December 4, 2009, GMAC filed and properly served CPLS with a demurrer to the complaint in case no. LC087407. On December 8, 2009, both Aurora and MERS (jointly) and GMAC filed and properly served CPLS with motions to dismiss the complaint in case no. 2:09-cv-08873. At no time did CPLS file a response to either Aurora/MERS's or GMAC's motions to dismiss or make any appearance whatsoever in case no. 2:09-cv-08873. On February 11, 2010, the court in case no. 2:09-cv-08873 issued and properly served CPLS with an order denying both Aurora's

²¹ Maria Dawson was unemployed.

and GMAC's motions to dismiss as moot and remanding the entire action back to Los Angeles Superior Court, case no. LC087407.

On March 15, 2010, Aurora and MERS filed a demurrer to the complaint in case no. LC087407 and properly served CPLS with the demurrer. The demurrer stated that a hearing on the matter was scheduled for May 12, 2010. On March 22, 2010, GMAC filed and properly served CPLS with a demurrer to the complaint. The demurrer stated that a hearing on the matter was scheduled for May 12, 2010. On May 6, 2010, Aurora and MERS filed and properly served on CPLS a notice of non-receipt of opposition to demurrer wherein they stated that any opposition to their demurrer had been due no later than April 29, 2010, and that as of May 4, 2010, counsel for Aurora and MERS had received no opposition from CPLS. On May 6, 2010, CPLS filed an opposition to GMAC's demurrer.

On May 13, 2010, counsel for both Aurora, MERS, and GMAC filed and properly served CPLS with notices of ruling on demurrers. The demurrers were sustained with leave to amend.

On May 17, 2010, the Dawsons received a billing statement from CPLS. On May 20, 2010, respondent filed a motion to be relieved as counsel, a declaration in support signed by respondent, and a declaration of Delilah Elshalie, a non-attorney CPLS employee.

On May 20, 2010, respondent filed a declaration under penalty of perjury in support of his motion to be relieved as counsel, stating that the Dawsons had not cooperated with respondent in prosecuting their case. This was a false statement. In fact, the Dawsons had repeatedly communicated with respondent and had fully cooperated with CPLS. Respondent's motion to be relieved was improper, premature, and resulted in prejudice to his clients.

Respondent did not inform the Dawsons that their case was removed to and later remanded from federal court, and did not inform them of the demurrers filed in the superior court

case. Respondent also failed to respond to emails and telephone calls from the Dawsons, requesting a status update.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. The clients have demanded a refund of all unearned fees. To date, CPLS has provided no refund or accounting to the Dawsons.

Conclusions

Count Thirty-Two - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his clients after the lawsuit was filed, and by generally performing no services of value to his clients, respondent willfully violated rule 3-110(A).

Count Thirty-Three - § 6068, subd. (m) [Failure to Communicate]

By failing to inform the clients of their case's removal to and remand from federal court, and by failing to inform the clients of the demurrers filed in the superior court case, respondent failed to keep a client reasonably informed of significant developments in this matter, in willful violation of section 6068, subdivision (m).

Count Thirty-Four - § 6068, subd. (m) [Failure to Communicate]

By failing to respond to the clients' emails and telephone calls, respondent failed to respond to reasonable status inquiries of his clients, in willful violation of section 6068, subdivision (m).

Count Thirty-Five - § 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth]

By a false statement in support of his motion to be relieved as counsel, respondent sought to mislead a judge, in willful violation section 6068, subdivision (d).

Count Thirty-Six - § 6106 [Moral Turpitude]

By filing a false declaration with the court in support of his motion to be relieved as counsel, respondent committed an act of moral turpitude, dishonesty, or corruption, in willful violation of section 6106. However, since this count is based on the same conduct as Count 35, the court does not assign it any additional weight in culpability.

Count Thirty-Seven - Rule 3-700(A)(2) [Improper Withdrawal from Employment]

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws. Respondent's unwarranted withdrawal from the Dawsons' case without taking appropriate steps to avoid foreseeable prejudice to the clients constituted a willful violation of rule 3-700(A)(2).

Count Thirty-Eight - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$8,695 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Thirty-Nine - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

The clients demanded a refund of the unearned fees, but respondent has refused to comply with this demand. Respondent was obligated to provide the clients with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Count Forty - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3. The court notes, however, that Civil Code section 2944.7, subdivision (a), did not go into effect until October 11, 2009. Consequently, respondent's culpability on this charge is limited to the fees received on October 12, 2009.

Count Forty-One - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

As noted above, Civil Code section 2944.6, subdivision (a), was not effective until October 11, 2009. Respondent was retained prior to that date and therefore was not required to comply with this section. Therefore, this count is dismissed with prejudice.

Case No. 11-O-10404 – The Geremia Matter

Facts

In December 2009, Thomas Geremia (Geremia) contacted CPLS for loan modification services.²² On March 6, 2010, Geremia paid CPLS \$2,034 in advanced attorney's fees. On March 8, 2010, Geremia paid CPLS \$850 in advanced attorney's fees.

On March 30, 2010, CPLS, on behalf of Geremia, filed a civil action against Geremia's lender, Wachovia Mortgage (Wachovia) and Golden West Savings Association Service Co. (Golden West), in Napa Superior Court, case no. 26-52217. On May 14, 2010, Wachovia and Golden West jointly filed and properly served on CPLS a demurrer to the complaint. The demurrer clearly stated that a hearing was set for June 22, 2010. On June 9, 2010, CPLS filed an opposition to the demurrer on behalf of Geremia.

²² Geremia has worked for the U.S. Postal Service for 27 years.

On June 22, 2010, the court held the hearing on the demurrer. Geremia was present at the hearing, but respondent was not. The court sustained the demurrer and granted Geremia ten days to file an amended complaint. At no time did CPLS file an amended complaint on behalf of Geremia.

Between March 9, 2010 and July 12, 2010, Geremia was charged and did pay respondent an additional \$3,895 in advance legal fees.

On July 12, 2010, Geremia sent respondent a letter and asked for a detailed accounting of the \$6,779 that Geremia had paid to CPLS in advanced attorney's fees. On September 13, 2010, Geremia sent respondent a letter again asking for an accounting and also requesting a refund of the \$6,779 that Geremia had paid to CPLS in advanced attorney's fees.

On September 13, 2010, respondent filed a motion to be relieved as counsel. Respondent failed to inform Geremia that he was seeking to be relieved as counsel. On September 16, 2010, Geremia received a billing statement from respondent via email.

On October 18, 2010, Wachovia and Golden West filed and properly served on CPLS an order dismissing the matter without prejudice signed by the court on or about October 15, 2010. Respondent did not inform Geremia of the order dismissing the case. CPLS did not obtain a loan modification for Geremia.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. The client has demanded an accounting and a refund of all unearned fees. To date, CPLS has provided no refund or accounting to Geremia. CPLS also did not provide Geremia with a separate statement laying out the warning language identified in Civil Code section 2944.6.

Conclusions

Count Forty-Two - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Forty-Three - § 6068, subd. (m) [Failure to Communicate]

Respondent failed to inform his client that he was seeking to be relieved as counsel and later, that the case had been dismissed. As such, respondent failed to keep his client informed of significant developments in this case, in willful violation of section 6068, subdivision (m).

Count Forty-Four - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$6,779 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Forty-Five - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

The client has demanded a refund of the unearned fees, but respondent has refused to comply with this demand. Respondent was obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Count Forty-Six - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

Count Forty-Seven - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Case No. 11-O-11147 – The Bolen Matter

Facts

In or about December 2009, Bryant Bolen (Bolen) hired CPLS for home loan modification services. On December 18, 2009, Bolen paid CPLS \$918 in advanced attorney's fees.²³ On February 4, 2010, Bolen paid CPLS \$4,000 in advanced attorney's fees.

During the period respondent represented Bolen, Bolen frequently tried to communicate with respondent. In the beginning, Bolen was able to speak with a non-attorney staff member. The only communication involved requests for the payment of more money. However, Bolen soon could not get through to CPLS staff members handling his matter.

On March 10, 2010, CPLS, on behalf of Bolen, filed a civil action against Bolen's lender, Wells Fargo, in Napa Superior Court, case no. 25-51946. On April 5, 2010, Wells Fargo filed and properly served on CPLS a demurrer to the complaint. On April 22, 2010, CPLS filed by facsimile an opposition to the demurrer. On May 7, 2010, the court filed and properly served on respondent the court's final ruling on its May 5, 2010 tentative order, sustaining the demurrer, and allowing respondent ten days, from May 7, 2010, to file an amended complaint.

²³ Bolen has been a Lineman for Pacific Gas and Electric for over 48 years.

On May 11, 2010, CPLS re-filed the opposition to the demurrer, again by facsimile. On June 10, 2010, the court issued and properly served on CPLS its judgment of dismissal on the case. CPLS did not obtain a loan modification for Bolen or inform him that his case was dismissed.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. The client has demanded a refund of all unearned fees. To date, CPLS has provided no refund or accounting to Bolen. CPLS also did not provide Bolen with a separate statement laying out the warning language identified in Civil Code section 2944.6.

Conclusions

Count Forty-Eight - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Forty-Nine - § 6068, subd. (m) [Failure to Communicate]

Despite Bolen's efforts, respondent's office soon ceased speaking with Bolen and failed to inform him that his case had been dismissed. As such, respondent failed to keep his client informed of significant developments in this case, in willful violation of section 6068, subdivision (m).

Count Fifty - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$4,918 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Fifty-One - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

The client demanded a refund of the unearned fees, but respondent refused to comply with this demand. Respondent is obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Count Fifty-Two - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

Count Fifty-Three - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Case No. 11-O-11200 – The Alvarado Matter

Facts

In or about January 2011, Modesta C. Alvarado (Alvarado) hired CPLS for home loan modification services. On January 12, 2011, CPLS charged and collected \$2,790 in advanced attorney's fees from Alvarado.²⁴ Thereafter, CPLS added services, and required her to sign new retainer agreements. On January 14, 2011, Alvarado paid CPLS \$5,500 in advanced attorney's fees. Thereafter, Alvarado became upset when CPLS increased the price of its services and had lost her paperwork. She terminated her contract soon after signing the retainers.

²⁴ Alvarado is a housekeeper. She does not speak English.

On June 29, 2011, CPLS sent Alvarado a refund check in the amount of \$560. Alvarado received this check and cashed the check. Alvarado has demanded a refund of all unearned fees. At no time has CPLS refunded the remaining \$7,730²⁵ in advanced attorney's fees paid by Alvarado. CPLS also did not provide Alvarado with a separate statement laying out the warning language identified in Civil Code section 2944.6.

Conclusions

Count Fifty-Four - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

Count Fifty-Five - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Count Fifty-Six - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Respondent only represented Alvarado for a brief period. There was no clear and convincing evidence that respondent failed to perform any services for Alvarado. As such, the State Bar has failed to prove a violation of rule 3-110(A), and this count is dismissed with prejudice.

²⁵ The stipulation entered into by the parties recites the payments made by Alvarado, totaling \$8,290, and a refund by respondent in the amount of \$560. The parties appear to erroneously conclude that only \$4,940 was remaining unpaid, instead of \$7,730, so the court has inserted this number as the correct amount remaining unpaid.

Count Fifty-Seven - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$7,730 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Fifty-Eight - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

The client has demanded a refund of the unearned fees, but respondent has refused to comply with this demand. Respondent is obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Case No. 11-O-12831 – The Small Claims Court Matters

Facts

Respondent acknowledged that several of the clients filed small claims court actions seeking a return of their fees. The State Bar contends that these lawsuits are in the nature of legal malpractice actions, requiring disclosure to the State Bar pursuant to section 6068, subdivision (o)(1). Respondent did not handle these matters, but rather they were delegated to an assistant.

Conclusions

Count Fifty-Nine - § 6068, subd. (o)(1) [Failure to Report Lawsuits]

Section 6068, subdivision (o)(1) requires that an attorney report, within thirty days, the filing of three or more lawsuits in a twelve-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity. There was insufficient clear and convincing evidence that the small claims court matters alleged in this count were actions within the meaning of this section, and further, that respondent willfully failed to report them to the State Bar. As such, this count is dismissed with prejudice.

Case No. 11-O-18817 – The Rodas Matter

Facts

In or about December 2010, Elsa Rodas (Rodas) hired CPLS for home loan modification services.²⁶ On December 29, 2010, CPLS charged and collected \$1,995 in advanced attorney's fees from Rodas. On February 25, 2011, CPLS charged and collected \$7,350 in advanced attorney's fees from Rodas.

On April 28, 2011, CPLS, on behalf of Rodas, filed a civil action against Rodas's lender, Bank of America, in Los Angeles Superior Court case no. NC044015. On June 1, 2011, Bank of America filed and properly served on CPLS a demurrer to the complaint. The demurrer stated that a hearing on the matter was scheduled for July 28, 2011. On July 14, 2011, CPLS filed an opposition to the demurrer. On September 8, 2011, Bank of America filed and properly served on CPLS a renewed demurrer to the complaint. The demurrer stated that a hearing on the matter was scheduled for October 18, 2011.

CPLS failed to file a response on behalf of Rodas to the renewed demurrer. On October 13, 2011, CPLS filed a request for dismissal without prejudice which the court granted on or about October 13, 2011. Respondent failed to inform Rodas that her case had been dismissed.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. The client has demanded a refund of all unearned fees. To date, CPLS has provided no refund or accounting to Rodas. CPLS also did not provide Rodas with a separate statement laying out the warning language identified in Civil Code section 2944.6.

²⁶ Rodas is employed taking care of a man who suffers from an infirmity.

Conclusions

Count Sixty - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, by failing to file a response to the demurrer, and by failing to take any other action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Sixty-One - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$9,345 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Sixty-Two - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent is obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Count Sixty-Three - § 6068, subd. (m) [Failure to Communicate]

Respondent failed to inform his client that the client's case had been dismissed.²⁷ As such, respondent failed to keep his client informed of a significant development in this case in willful violation of section 6068, subdivision (m).

Count Sixty-Four - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

²⁷ The State Bar also alleged in the NDC that respondent failed to advise Rodas that Bank of America had made a settlement offer. The court, however, did not find clear and convincing evidence of this offer in the record.

Count Sixty-Five - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Case No. 12-O-10844 – The Guardado Matter

Facts

On June 27, 2009, Jose Antonio Lopez Guardado (Guardado) hired CPLS for home loan modification services, including a loan modification and civil litigation.²⁸ On July 6, 2009, Guardado hired CPLS to file a temporary restraining order against his lender. On July 21, 2009, CPLS, on behalf of Guardado, filed a civil action against Guardado's lenders, Midland Mortgage Co. (Midland), U.S. Bank, N.A. (U.S. Bank), Citigroup Mortgage Loan Trust Inc. (Citigroup), Quality Loan Service Corp. (Quality), Opteum Financial Services, LLC (Opteum), and Homecomings Financial, LLC (Homecomings), in Los Angeles Superior Court, case no. GC043405.

On July 23, 2009, CPLS, on behalf of Guardado, filed a TRO application in case no. GC043405. On July 23, 2009, the court denied the TRO application request. CPLS received notice of this ruling. On September 25, 2009, Homecomings filed and properly served on CPLS a demurrer to the complaint. The demurrer stated that a hearing was set in November 2009. At that hearing, the court sustained Homecomings's demurrer with leave to amend the complaint.

On December 15, 2009, CPLS filed a first amended complaint on behalf of Guardado. On December 24, 2009, both Homecomings and U.S. Bank filed and properly served on CPLS demurrers to the first amended complaint. U.S. Bank's demurrer's stated that a hearing was set

²⁸ Guardado is a boiler technician at Occidental College.

for January 26, 2010, and Homecomings's demurrer stated that a hearing was set for February 23, 2010. CPLS failed to file a response on behalf of Guardado to the demurrers to the first amended complaint.

On February 23, 2010, the court held a hearing on U.S. Bank's and Homecomings's demurrers to the first amended complaint and sustained the demurrers with leave to amend. At no time did CPLS file a second amended complaint on behalf of Guardado.

On March 12, 2010, Homecomings filed an ex parte application for order of dismissal for CPLS's failure to file a second amended complaint. On March 24, 2010, the court granted the ex parte application and dismissed Guardado's complaint as to Homecomings. On April 2, 2010, Homecomings filed and properly served on CPLS notice of the court's March 24, 2010 order of dismissal.

On April 2, 2010, U.S. Bank filed an ex parte application for order of dismissal for CPLS's failure to file a second amended complaint. On April 5, 2010, U.S. Bank filed and properly served on CPLS notice of the court's order of dismissal with prejudice as to U.S. Bank. Respondent did not inform Guardado that his case had been dismissed.

During the period that respondent represented Guardado, respondent charged Guardado, and Guardado paid respondent advanced fees in the amount of \$15,790. At least \$3,000 of these fees was paid after October 11, 2009, the effective date of SB 94.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. The client has demanded a refund of all unearned fees. To date, CPLS has provided no refund or accounting to Guardado.

Conclusions

Count Sixty-Six - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Sixty-Seven - § 6068, subd. (m) [Failure to Communicate]

Respondent failed to inform his client that the client's case had been dismissed. As such, respondent failed to keep his client informed of a significant development in this case, in willful violation of section 6068, subdivision (m).

Count Sixty-Eight - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$15,790 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Sixty-Nine - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent is obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Count Seventy - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

Count Seventy-One - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

As previously noted, Civil Code section 2944.6, subdivision (a), was not effective until October 11, 2009. Respondent was retained prior to that date and therefore was not required to comply with this section. Therefore, this count is dismissed with prejudice.

Case No. 12-O-11211 – The Ramirez and Castaneda Matter

Facts

In or about December 2009, Rita Rodriguez Ramirez (Ramirez) and Jose Castaneda (Castaneda) hired CPLS for home loan modification services.²⁹ On December 7, 2009, CPLS charged and collected \$1,495 in advanced attorney's fees from Ramirez and Castaneda. On December 14, 2009, Ramirez and Castaneda mailed CPLS a cashier's check made payable to CPLS for \$5,650 for advanced attorney's fees. CPLS received the cashier's check for \$5,650 and deposited it.

On January 25, 2010, CPLS, on behalf of Ramirez and Castaneda, filed a civil action against Ramirez's and Castaneda's lenders, OneWest Bank (OneWest), Specialized Loan Servicing, LLC (Specialized), MTC Financial, Inc. (MTC) and Electronic Registration Systems, Inc., in Monterey Superior Court, case no. M103602.

On February 2, 2010, Specialized filed and properly served on CPLS a demurrer to the complaint. On February 25, 2010, MTC filed and properly served on CPLS a demurrer to the complaint. On March 2, 2010, OneWest filed and properly served on CPLS a demurrer to the complaint.

On March 26, 2010, CPLS charged and collected \$995 in advanced attorney's fees from Ramirez and Castaneda.

²⁹ Ramirez worked as a childcare provider.

On March 30, 2010, CPLS filed a first amended complaint on behalf of Ramirez and Castaneda. On April 15, 2010, CPLS charged and collected \$995 in advanced attorney's fees from Ramirez and Castaneda. On April 26, 2010, OneWest filed and properly served on CPLS a demurrer to the first amended complaint. On May 7, 2010, CPLS charged and collected \$995 in advanced attorney's fees from Ramirez and Castaneda.

On May 10, 2010, CPLS filed an opposition to Specialized's demurrer to the first amended complaint on behalf of Ramirez and Castaneda.

On May 21, 2010, the court held a hearing on Specialized's demurrer to the first amended complaint. The court sustained the demurrer with leave to amend on four counts and dismissed one count without leave to amend.

On May 28, 2010, the court held a hearing on OneWest and Specialized's demurrer to the first amended complaint and sustained the demurrer with leave to amend. On June 8, 2010, CPLS charged and collected \$995 in advanced attorney's fees from Ramirez and Castaneda.

On June 8, 2010, CPLS filed a second amended complaint on behalf of Ramirez and Castaneda. On June 30, 2010, Ramirez paid \$995 in advanced attorney's fees.

On July 16, 2010, the court held a hearing on Specialized's demurrer to the second amended complaint and sustained the demurrer with leave to amend. On July 30, 2010, the court held a hearing on OneWest and Specialized's demurrer to the second amended complaint and sustained the demurrer with leave to amend.

At no time did CPLS file a third amended complaint on behalf of Ramirez and Castaneda. On August 6, 2010, CPLS filed a request for dismissal without prejudice on behalf of Ramirez and Castaneda. On August 6, 2010, the court dismissed the case. Respondent failed to inform Ramirez and Castaneda that their case had been dismissed.

The lawsuit respondent filed in this matter was frivolous and otherwise completely without merit. Consequently, respondent did not earn any of the charged fees. CPLS did not obtain a loan modification for Ramirez and Castaneda. To date, CPLS has provided no refund or accounting to Ramirez and Castaneda. CPLS also did not provide Ramirez and Castaneda with a separate statement laying out the warning language identified in Civil Code section 2944.6.

Conclusions

Count Seventy-Two - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By filing a frivolous and spurious lawsuit that had little or no chance of success, and by failing to take adequate action to protect the rights of his client after the lawsuit was filed, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Seventy-Three - § 6068, subd. (m) [Failure to Communicate]

Respondent failed to inform his clients that their case had been dismissed. As such, respondent failed to keep his clients informed of a significant development in this case, in willful violation of section 6068, subdivision (m).

Count Seventy-Four - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$12,120 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Seventy-Five - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

Respondent is obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Count Seventy-Six - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform,

respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

Count Seventy-Seven - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Case No. 12-O-12148 – The Zavala Matter

Facts

In or about June 2011, Jose Zavala (Zavala) hired CPAC for home loan modification services. On June 14, 2011, CPAC charged and collected \$2,500 in advanced attorney's fees from Zavala.³⁰ On August 23, 2011, CPAC charged and collected \$1,500 in advanced attorney's fees from Zavala.

On November 9, 2011, Zavala hired CPAC to file a TRO against his lender, and agreed to pay \$2,300 for these services. On November 9, 2011, Zavala paid CPAC \$1,000 in advanced attorney's fees.

CPAC did not negotiate a loan modification on behalf of Zavala. CPAC also did not file the TRO, or perform any other services of value to Zavala. Consequently, respondent did not earn any of the charged fees. The client has demanded a refund of all unearned fees. To date, CPAC has provided no refund or accounting to Zavala. CPAC also did not provide Zavala with a separate statement laying out the warning language identified in Civil Code section 2944.6.

³⁰ Zavala owns and operates a small delivery business.

Conclusions

Count Seventy-Eight - § 6106.3 [Violation of California Civil Code § 2944.7, subd. (a)]

By claiming, demanding, charging, collecting, or receiving compensation before he fully performed each and every service he had contracted to perform or represented he would perform, respondent violated Civil Code section 2944.7, subdivision (a). As such, respondent has willfully violated section 6106.3.

Count Seventy-Nine - § 6106.3 [Violation of California Civil Code § 2944.6, subd. (a)]

By negotiating, arranging, and offering to perform a mortgage loan modification or other form of mortgage loan forbearance without providing the client, prior to entering into the agreement, the separate statement specifically required by Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3.

Count Eighty - Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By agreeing to file, but failing to file the TRO, and by generally performing no services of value to his client, respondent willfully violated rule 3-110(A).

Count Eighty-One - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

By failing to refund \$5,000 in unearned fees, respondent failed to refund promptly a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count Eighty-Two - Rule 4-100(B)(3) [Failure to Render Appropriate Accounts]

The client has demanded a refund of the unearned fees, but respondent has refused to comply with this demand. Respondent is obligated to provide the client with either a full refund or an accounting. His failure to do so constitutes a willful violation of rule 4-100(B)(3).

Case Nos. 10-O-04457, et al. – Moral Turpitude

Count Eighty-Three - § 6106 [Moral Turpitude – Scheme to Collect Fees]

Respondent developed a scheme for the collection of fees. He attempted an end-run around SB 94, despite the fact that all of the clients came into his office with the stated purpose of obtaining a loan modification, not filing a lawsuit. In respondent's view, the lawsuit path allowed him to collect advanced fees, regardless of the interests of the client.

Respondent's lawsuits were completely spurious and frivolous. The court rejects respondent's view that his cases were somehow novel or clever extensions of the law. Rather, they simply represented a blatant act of separating his clients from their money. When the money ran out, so did respondent. He left the clients without an active complaint on file, despite the payment of substantial sums of money. He blamed the client for not complying with the retainer agreement(s), which "required" the clients to "request" that he continue with the case. This was required even though respondent had not even been able to get a complaint on file that would survive a challenge. Often, when the client did not make the "request" and pay the price, he simply abandoned or dismissed the case, sometimes without even giving the client notice of his actions. In most cases, he failed to give any refund to the client. Where a refund was made, it was usually a fraction of the amount the client paid.

Respondent's actions violate the most basic duties of an attorney to protect the interests of his clients. As such, respondent committed serious willful acts of moral turpitude.

Case Nos. 10-O-04457, et al. – Aiding the Unauthorized Practice of Law

Count Eighty-Four - Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law. The State Bar only produced evidence that these clients mostly met with non-attorney staff in processing their lawsuits/loan modifications. While the non-

attorney quoted a price for the services, there was no evidence that this price was not previously approved by respondent. Further, there was no evidence that respondent did not properly supervise his non-attorney staff.

The State Bar produced insufficient evidence that respondent aided the unauthorized practice of law. As such, this count is dismissed with prejudice.

Aggravation³¹

Multiple Acts of Misconduct (Std. 1.2(b)(ii).)

Respondent committed multiple acts of misconduct in many client matters. This is an aggravating factor.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondent's misconduct resulted in significant financial harm to many of his clients, as they have been denied the use of their money. In addition, respondent's repeated filing of frivolous lawsuits also constituted significant harm to opposing parties and the administration of justice.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

The evidence before the court illustrates respondent's indifference toward rectification of or atonement for the consequences of his misconduct. Respondent has paid almost no restitution and continues to advocate his manipulative and oppressive scheme.

Lack of Insight

Respondent has demonstrated little recognition or understanding of his wrongdoing. Despite the fact that his lawsuits were routinely dismissed and his clients derived little to no benefit from his representation, respondent continued taking client funds and following the same

³¹ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

course of conduct. The court would expect that after the dismissal of two or three lawsuits, an attorney would re-evaluate and modify his or her approach. Here, respondent not only failed to gain insight by repeated dismissals, but he also showed little to no concern for the welfare of his clients. Respondent's lack of insight into his own obvious misconduct is a significant factor in aggravation.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent has no prior record of discipline over many years of practice. Respondent had been admitted to practice law in California for over 37 years before the first act of misconduct in this matter. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [attorney's practice for more than 20 years with an unblemished record is highly significant mitigation].) However, while still a significant mitigating factor, this mitigation is reduced somewhat because the underlying misconduct is serious. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Good Character (Std. 1.2(e)(vi).)

There was some evidence of respondent's good character. He worked in real estate and related fields, and had several short-term positions in business. He had an academic career of primarily brief stints at various teaching or administrative positions at various law schools. He reported that he worked for the Federal Emergency Management Agency as a reserve volunteer for which he proudly stated that he was given a security clearance to enter an underground bunker at "an undisclosed location that is still classified" and that he was "briefed as to the location of all Russian submarines."

Respondent did offer evidence of his civic participation and providing food to those who were in need. (Exhibit AZ.) He also offered testimonials of a few satisfied clients. (Exhibit AY.) There was also some evidence of respondent's pro bono work.

Respondent is entitled to minimal mitigation credit for evidence of his good character.

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent entered into a stipulation as to facts and documents in this matter and is entitled to some mitigation for his cooperation.

Good Faith (Std. 1.2(e)(ii).)

Respondent introduced testimony from Martin Andelman (Andelman), a business man who was very active in the loan modification industry. Andelman strongly feels that the current interpretation of the State Bar regarding SB 94 is incorrect. He contends that unbundling of fees is permissible under the statute. However, other than offering his view of the law, Andelman was completely unaware of any of the cases the State Bar has filed against respondent, and he had not reviewed any of the lawsuits that have been filed by respondent. As such, his testimony was not persuasive in supporting a finding of good faith.

Even if the court were persuaded by Andelman's opinion, there is no good faith explanation for respondent's repeated failures to perform, account, and communicate, among other things. Consequently, respondent's argument that he acted in good faith does not warrant any weight in mitigation.

Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal

profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.2(b), 2.3, 2.4(b), 2.6, and 2.10.) The most severe sanction is found at standard 2.3 which recommends actual suspension or disbarment for an act of moral turpitude, fraud, or intentional dishonesty.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be disbarred. Respondent, on the other hand, argues that he should be exonerated on all charges.

The court found some guidance in *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179. In *Varakin*, the attorney was disbarred for engaging in a repeated pattern of frivolous motions and appeals in four different cases over a 12-year span. In addition to section 6068, subdivision (c), the attorney in *Varakin* was also found culpable of committing moral turpitude and violating subdivisions (b), (f), (g), (i), and (o)(3) of section 6068. In mitigation, the attorney had no prior record of discipline, however, this factor was greatly outweighed by several factors in aggravation including the

attorney's lack of insight and remorse, the great harm he caused to individuals and the administration of justice, and his refusal to mend his ways.

The court finds many similarities between *Varakin* and the present case. While *Varakin* extended over a far greater period of time, the present case involves 16 client matters and considerably more misconduct. Like the court in *Varakin*, this court is troubled by respondent's lack of insight into his own misconduct, as well as his callous and indifferent representation of his clients. And akin to *Varakin*, although respondent has received highly significant mitigation for his extensive discipline-free record, the extent and severity of the present misconduct, coupled with respondent's unwillingness or inability to understand or atone for his misconduct, give the court little justification to recommend discipline short of disbarment.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

Recommendations

It is recommended that respondent **Gary Lane**, State Bar Number 50960, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Maria de la Cruz in the amount of \$5,000, plus 10% interest per annum from December 1, 2009;
- (2) Rodolfo Victor Martinez in the amount of \$2,995, plus 10% interest per annum from July 22, 2010;

- (3) Joseph and Klara Sarkadi in the amount of \$1,395, plus 10% interest per annum from February 12, 2010;
- (4) Jorge Botello in the amount of \$6,850, plus 10% interest per annum from June 9, 2010;
- (5) Everardo Garcia in the amount of \$5,500, plus 10% interest per annum from November 16, 2009;
- (6) Maria Farias in the amount of \$11,824, plus 10% interest per annum from May 6, 2010;
- (7) Alberto and Theresa Alcantara in the amount of \$5,850, plus 10% interest per annum from March 16, 2010;
- (8) Maria Bravo Zavala in the amount of \$13,785, plus 10% interest per annum from April 6, 2010;
- (9) Steven and Maria Dawson in the amount of \$8,695, plus 10% interest per annum from May 20, 2010;
- (10) Thomas Geremia in the amount of \$6,779, plus 10% interest per annum from July 12, 2010;
- (11) Bryant Bolen in the amount of \$4,918, plus 10% interest per annum from February 4, 2010;
- (12) Modesta C. Alvarado in the amount of \$7,730, plus 10% interest per annum from January 14, 2011;
- (13) Elsa Rodas in the amount of \$9,345, plus 10% interest per annum from February 25, 2011;
- (14) Jose Antonio Lopez Guardado in the amount of \$15,790, plus 10% interest per annum from April 5, 2010;
- (15) Rita Rodriguez Ramirez and Jose Castaneda in the amount of \$12,120, plus 10% interest per annum from June 30, 2010; and
- (14) Jose Zavala in the amount of \$5,000, plus 10% interest per annum from November 9, 2011.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: August ____, 2013

RICHARD A. HONN
Judge of the State Bar Court