PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of GENE WOOK CHOE, A Member of the State Bar, No. 187704.	Case Nos. 11-O-14497 (12-O-15738; 12-O-16063; 12-O-16064;12-O-16108; 12-O-16175; 12-O-16213; 12-O-16505; 12-O-16817; 12-O-17981;13-O-10149; 13-O-10172; 13-O-10173; 13-O-12284); 12-O-11029 (12-O-11037;12-O-11549; 12-O-13014; 12-O-13059; 12-O-13352; 12-O-14067); 12-O-14609 (12-O-15946; 12-O-16230; 12-O-16515; 12-O-16713; 12-O-16745; 12-O-16856; 12-O-16862; 12-O-16997; 12-O-17720; 12-O-17882) (Cons.) OPINION AND ORDER

The Office of the Chief Trial Counsel of the State Bar (OCTC) charged Gene Wook Choe with 133 counts of misconduct in 34 client matters. A hearing judge found Choe culpable of 65 counts, including collecting $258,400 in illegal advance fees for loan modification services, unauthorized withdrawals from client accounts, and acts of moral turpitude in his bankruptcy practice. The judge recommended disbarment and ordered restitution. Choe refutes the most serious charges and seeks a "significant period of actual suspension" rather than disbarment. OCTC supports the judge's decision.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability findings and most of his aggravation and mitigation findings. Choe's misconduct in his loan modification and bankruptcy practices was egregious and widespread, spanning nearly two years. He repeatedly violated state and federal statutes and caused significant harm to vulnerable individuals fighting to save their property as well as significant

harm to the bankruptcy courts. The record shows that Choe is unfit to practice law, and we affirm the judge's disbarment recommendation.

I. PROCEDURAL HISTORY

Choe was admitted to the State Bar of California in 1997. He has no prior record of discipline. For more than a decade, he ran a small civil law practice in the Koreatown neighborhood of Los Angeles. Around 2008, Choe rapidly expanded his practice for the purpose of providing home-loan modification services and other forms of loan forbearance, including bankruptcy and foreclosure defense. At the height of his practice, he had law offices in San Jose and Los Angeles. Choe[1] was the sole owner of the practice and testified he "operated three law offices with over 35 lawyers and 50 administrative staff, with approximately over 1300 active clients." All attorneys he employed were independent contractors.

A. OCTC Charged Choe with 133 Counts of Professional Misconduct

The State Bar began receiving complaints about Choe in 2011. According to Choe, the State Bar's subsequent investigation of the complaints caused many of his employees to quit, which forced him to sell his San Jose office in the summer of 2012. Choe sent notices to some of his clients that he was closing down his foreclosure litigation practice, effectively terminating his relationship with them. In October 2012, the California Attorney General executed a search warrant and searched Choe's Los Angeles office, accompanied by representatives of the State Bar.[2] In December 2012, Choe moved his remaining law office to a new location in Los Angeles and renewed his practice of providing home-loan modification services and other forms of home-mortgage-loan forbearance under a new business name.

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[1] Because Choe was the sole owner of his law firm, we refer to both Choe and his sole proprietorship as "Choe." As discussed below, we find Choe culpable for his actions as well as for the actions of his employees. We therefore refer to any action taken on behalf of Choe's law firm as taken by Choe.

[2] At trial, Choe admitted to a pending criminal investigation.

On December 7, 2012, OCTC filed a Notice of Disciplinary Charges (NDC-1).[3] On March 22, 2013, OCTC initiated an expedited proceeding (Case No. 13-TE-11511) seeking Choe's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (c)(1).[4] On May 1, 2013, the hearing judge found Choe posed a substantial threat of harm to the interests of his clients and the public and ordered that he be enrolled as inactive. On May 24 and July 5, 2013, OCTC filed a second NDC (NDC-2)[5] and third (NDC-3),[6] respectively. The judge then consolidated the matters.

The parties filed an extensive stipulation of facts, and a 19-day trial took place. OCTC presented the testimony of 32 witnesses, including Choe and 28 of his former clients. In addition to his own testimony, Choe presented 20 witnesses, including former clients and employees.

B. The Hearing Judge Found Choe Culpable on 65 Counts

On October 31, 2013, the hearing judge issued a 135-page decision, finding Choe culpable of: (1) 25 counts of collecting illegal advance fees; (2) seven counts of moral turpitude related to the unauthorized withdrawal of client funds; (3) nine counts of failing to refund unearned fees; (4) 15 counts of failing to render accounts of client funds; (5) two counts of failing to release client files; and (6) one count each of the improper withdrawal from employment, failing to respond to client inquiries, improper solicitation, seeking to mislead a judge and failure to comply with bankruptcy laws. The judge also found Choe culpable of acts

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[3] NDC-1 includes Case Nos.: 12-O-11029; 12-O-11037; 12-O-11549; 12-O-13014; 12-O-13059; 12-O-13352; 12-O-14067.

[4] Under the statute, an attorney may be involuntarily enrolled as inactive based on a finding that the "attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public."

[5] NDC-2 includes Case Nos.: 11-O-14497; 12-O-15738; 12-O-16063; 12-O-16064; 12-O-16108; 12-O-16175; 12-O-16213; 12-O-16505; 12-O-16817; 12-O-17981; 13-O-10149; 13-O-10172; 13-O-10173; 13-O-12284.

[6] NDC-3 includes Case Nos.: 12-O-14609; 12-O-16713; 12-O-16230; 12-O-17882; 12-O-16515; 12-O-16856; 12-O-17720; 12-O-16997; 12-O-16862; 12-O-15946; 12-O-16745.

of moral turpitude in his handling of seven bankruptcy petitions. The judge dismissed with prejudice all remaining counts of charged misconduct.[7]

In aggravation, the judge found three factors—multiple acts of misconduct, significant harm to Choe's clients and the administration of justice, and indifference and lack of insight. In mitigation, he found four factors—no prior record of discipline, cooperation for entering into a stipulation of facts and for admitting culpability for some charges, good character, and community service. The judge recommended disbarment and that Choe be ordered to pay restitution in 25 client matters totaling $240,234.

On appeal, Choe challenges most of the culpability findings and seeks additional mitigation, in particular for acting in good faith, and he requests less aggravation because he maintains he does not lack insight. As for discipline, Choe concedes that a significant period of actual suspension is appropriate for his "malfeasance," but maintains that, even assuming he is found culpable for accepting illegal advance fees, a disbarment recommendation is excessive and unduly harsh in light of the relevant case law and in balance with the mitigating factors.
We find the record clearly and convincingly supports the judge's culpability findings, which we affirm and summarize below.[8] We begin with the loan modification cases and then turn to the bankruptcy cases.

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[7] OCTC does not challenge the judge's dismissals, and we adopt and affirm them for the reasons given by the hearing judge.

[8] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) Rule 5.155(A) of the Rules of Procedure of the State Bar provides that the "findings of fact of the hearing judge are entitled to great weight."

II. LOAN MODIFICATION PRACTICE

A. Advance Fees Collected in 25 Client Matters

On October 11, 2009, the Legislature enacted Civil Code section 2944.7[9] (Section 2944.7) to regulate attorneys' performance of loan modification services 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 (2009–2010 Reg. Sess.) as amended Mar. 23, 2009, pp. 5-6.)

Choe concedes that prior to the enactment of Section 2944.7, he charged his clients advance fees for negotiating with lenders for loan modifications—defined by him as processing a client's financial paperwork, performing a financial analysis and assessing eligibility for a loan modification, communicating with a lender on an ongoing basis, submitting a loan modification proposal package, securing a trial modification, and obtaining a loan modification for his client. He further concedes he charged additional fixed or hourly fees for "litigation services," including bankruptcy services, if the above efforts failed and/or lenders threatened to proceed with foreclosure proceedings against a client's property.

Choe states that he changed his business model after Section 2944.7 became law "so that he would not run afoul of the statute." He states in his brief that he "only charged fixed fees for *litigation services* he was hired to perform, while concurrently providing loan modification services free of charge." (Italics in original.)

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[9] In relevant part, Section 2944.7, subdivision (a), provides that "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 . . . [¶] . . . [c]laim, 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."

The hearing judge found that Choe's new business model violated Section 2944.7. Specifically, as charged in the NDCs, the judge found Choe culpable of 25 counts of violating Section 2944.7 by negotiating, arranging or otherwise offering to perform a mortgage loan modification for a fee paid by the borrower, and demanding, charging, collecting or receiving such fee prior to fully performing each and every service Choe had contracted to perform or represented that he would perform. (Business and Professions Code, section 6106.3(a).)[10] We affirm as follows.

B. Factual Background

Twenty-five individuals or couples retained Choe from August 2010 through June 2012, and Choe required them to execute and enter into written fee agreements, which contained the following recitals in all but four cases:[11]

> WHEREAS Attorneys are a Law Firm intending to offer legal services of Real Estate Litigation, Loan Modification, Debt Counseling and Negotiation;
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> WHEREAS Client wishes to employ [Choe] to negotiate with their [sic] current lenders on real estate to restructure the current debt in a way that will allow Client to achieve and maintain stability; . . .
>
> WHEREAS Client understands and hereby acknowledges that loan negotiation laws are regulated by California law and that Client is not required to pay for any work until that portion of the work has been performed if the work involved solely call [sic] for straight modification loan modifications only.

The agreements also required that the client pay a flat fee at the time of the execution of the agreement and then pay a monthly flat fee thereafter until resolution—typically defined as until loss of title and possession of the property or the client began payment on a modified mortgage loan. Choe collected the initial and monthly fees either by depositing post-dated

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[10] Code section 6106.3, subdivision (a), provides that "[i]t shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of Section . . . 2944.7 of the Civil Code."

[11] In the Rodriguez, Williams, Khachi/ Mijaeli, and Lansdale client matters, Choe used different fee agreements, which are described below.

checks he had received earlier from his clients or through electronic withdrawals directly from his clients' bank accounts. Each agreement contained language stating that Choe charged fees only for litigation and not for loan modification services.

Based on the stipulations of undisputed facts, client testimony,[12] the agreements, and Choe's performance under the agreements, we find the clients hired Choe for the purpose of obtaining loan modifications or other forms of loan forbearance. Moreover, all services Choe contracted to perform and did perform under the agreements were for the sole purpose of obtaining a loan modification or other form of loan forbearance, including filing litigation against lenders and preparing and filing bankruptcy petitions. We make the following specific findings of fact as to the individual client matters:

1. Noemi Ramirez (Case No. 12-O-14067, NDC-1, Count 3)

On March 15, 2011, Noemi Ramirez hired Choe. Ramirez testified she hired him for the purpose of obtaining a loan modification and that he told her it would take roughly three months to obtain. The fee agreement stated: "The firm will file a lawsuit to challenge the validity of the foreclosure process and/or foreclosure documents."

Choe collected $21,625 in initial and monthly fees from Ramirez from March 16, 2011 through January 5, 2012. On June 2, 2011, Choe submitted a loan modification application to Ramirez's lender; the home went into foreclosure in October 2011. Choe sent a cease-and-desist letter to the lender and successfully postponed a threatened foreclosure sale until the end of February 2012. No litigation was filed.

In February 2012, Ramirez terminated Choe and sought a refund. She later secured a loan modification without his assistance. She consulted with an attorney about Choe and

[12] OCTC presented client testimony in 24 of these 25 matters.

complained to the State Bar. In July 2012, after both the attorney and the State Bar contacted Choe, he refunded $10,986 to Ramirez.

2. Steven Capuano (Case No. 12-O-11029, NDC-1, Count 10)

After receiving Choe's direct mail flier advertising loan modification services, on July 12, 2011, Steven Capuano hired Choe to obtain a loan modification and to forestall the pending foreclosure of his home. Capuano testified Choe represented that "he was very successful at negotiating loan modifications with the banks," and said he agreed to pay a $20,000 flat fee for a loan modification. The agreement defines scope of services as "litigation to challenge validity of foreclosure proceedings." From July 13 through September 13, 2011, Choe collected $12,000 in fees from Capuano.

During this time, the foreclosure sale of Capuano's home was postponed and rescheduled to August 31, 2011. In an effort to forestall the sale, Choe advised Capuano to seek bankruptcy protection. They entered into a separate fee agreement, and Capuano paid Choe $38,000 for handling the bankruptcy. On January 9, 2012, after the attorney directly responsible for Capuano's bankruptcy left Choe's firm, Capuano terminated Choe and hired the attorney at his new firm to take over the bankruptcy and loan modification efforts. Capuano demanded an accounting and transfer of all fees and costs paid to his new firm; Choe did not comply. On January 12, 2012, the lender sold Capuano's home at a trustee sale.

In June 2012, after Capuano filed a disgorgement motion, the bankruptcy court ordered Choe to disgorge the $50,000 in fees paid by Capuano under the two agreements. At the hearing, the bankruptcy judge discussed the timesheets submitted by Choe to justify his fees and stated: "It is obvious from his time records that there was no basis for any real estate litigation. Consequently, it was egregious for Choe to charge a flat fee of $20,000 for a loan modification and real estate litigation that was infeasible or ill-advised in the first place as well as being illegal

[Section 2944.7]." The judge further stated that "[t]he time records are simply inadequate for this Court to determine that any portion of the $50,000 paid to Choe is reasonable for legal services rendered." The judge ordered disgorgement and opined that Choe's "behavior is reprehensible." Choe subsequently disgorged $50,000 to Capuano.[13]

3. Miguel A. Rodriguez-Parra (Case No. 12-O-13352, NDC-1, Count 17)

On March 26, 2012, Miguel A. Rodriguez-Parra (Rodriguez) hired Choe. The agreement defines the scope of services as "those necessary . . . in challenging the validity of foreclosure proceedings, related debt counseling and restructuring, and bankruptcy" and required a minimum retainer of $10,000. Rodriguez paid Choe $3,000 on that day.

Choe took steps to temporarily stay the foreclosure sale of Rodriguez's home, including sending a cease-and-desist letter to the lender and pursuing loan modification. Choe also prepared and filed a bankruptcy petition for Rodriguez. Rodriguez, however, did not have legal status in the United States and had provided Choe with a false Social Security number for use on the bankruptcy filings.

Rodriguez ultimately decided not to proceed with the petition. He terminated Choe in May 2012. He demanded an accounting and refund, which were not provided. Soon after termination, Choe collected $1,000 from Rodriguez by depositing a post-dated check. These funds only were refunded on June 27, 2012. Rodriguez ultimately lost his home.

4. Leilani Randolph (Case No. 12-O-11549, NDC-1, Count 21)

Choe stipulated that on November 18, 2011, Leilani Randolph hired him to represent her mother in a home mortgage foreclosure proceeding. She paid Choe $1,000 on that day. Choe sent a cease-and-desist letter to the lender, but the home was sold at a foreclosure sale on

[13] Though the hearing judge found Choe disgorged all fees received from Capuano, he recommended Choe be ordered to pay Capuano $12,000 in restitution. As Choe has already disgorged all funds, we do not recommend restitution to Capuano.

December 1, 2011. On December 9, 2011, Randolph terminated Choe, demanded a refund, and asked for the files to be forwarded to a new attorney.

On December 29, 2011, Choe collected $2,000 from Randolph's bank account. He reversed the charge on January 18, 2012. Choe processed a second $2,000 withdrawal at the end of January 2012, which Randolph managed to stop before payment. In response to Randolph's small claims suit filed on March 12, 2012, Choe refunded the $1,000 initial fee (plus an additional $2,000 because Choe was unaware that the bank had reversed the withdrawal for that amount).

5. Lynn and Susan Hilden (Case No. 12-O-13014, NDC-1, Count 28)

Lynn and Susan Hilden wanted a loan modification and were advised by a loan modification company to default on their mortgage. The strategic default, however, did not result in a loan modification, and they were advised to file a lawsuit to motivate the lender to modify the loan. On January 5, 2012, the Hildens hired Choe. The parties stipulated that Choe was hired "for litigation services, specifically to file and pursue a lawsuit against their lender," and Susan Hilden testified that she was not expecting to get a money judgment, just "to rewrite the loan."

The agreement provided for a non-refundable $3,000 payment at the outset, a second payment of $3,000 and monthly payments of $1,000 thereafter. Choe collected $6,000 from the couple by February 18, 2012.

Choe sent a cease-and-desist letter to their lender on January 10, 2012, but never filed a lawsuit. Susan Hilden testified Choe provided no services and that she experienced great difficulty trying to communicate with him: "We felt like we were just continually put into a whirlwind loop of not knowing what was going on, and not being told." Increasingly frustrated

and concerned by the confusion, the Hildens contacted their lender directly and came to a satisfactory agreement.

On February 22, 2012, the Hildens terminated Choe and demanded a $3,000 refund, believing that $3,000 of the $6,000 paid was non-refundable. Thereafter, Choe sought to withdraw an additional $1,000 on two separate occasions from the Hildens' account. The Hildens were alerted in time to stop the withdrawals. At their bank's instruction, they closed their account to eliminate the risk of further efforts by Choe to withdraw funds. By July 9, 2012, Choe had refunded only $2,718.50 to the Hildens.

6. Donald Smith (Case No. 12-O-15738, NDC-2, Count 7)

On October 6, 2011, Donald Smith hired Choe to seek to set aside the foreclosure sale of his home and then to negotiate a loan modification of the prior mortgage. On October 6, 2011, Smith paid Choe $3,000 and made arrangements for $1,300 monthly withdrawals from his bank account. On November 8, 2011, Smith terminated Choe and demanded a refund because "it does not appear the firm did anything in my interest which they proposed to do."

On November 4 and 8, 2011, Choe electronically withdrew $1,300 from Smith's account, totaling $2,600. Smith filed a small claims suit on June 14, 2012. In response, Choe submitted a timesheet purporting to show he had performed $3,000 in legal services. The judge awarded a judgment of $5,880 (fees plus costs) in Smith's favor. Choe stipulated he is obligated to pay Smith this amount plus interest. Choe has made no refund to Smith.

7. Yohann and Jung Ok Chang (Case No. 12-O-16063, NDC-2, Count 10)

Choe stipulated that on October 11, 2010, Yohann and Jung Ok Chang hired him for home mortgage loan modification and other loan forbearance services, including debt settlement and obtaining a temporary restraining order (TRO) to stop the foreclosure. As Yohann testified, Choe promised "to take care of the loan modification" on their home. From October 11, 2010

through April 2011, Choe collected $14,000 from the Changs. He sent letters to the lender, including a cease-and-desist letter.

On March 5, 2012, the Changs received notice that their home had been sold in an auction, along with an eviction notice. They moved out of their home on May 21, 2012. In May 2012, Choe filed a wrongful foreclosure lawsuit on the Changs' behalf. The relationship soon broke down, the Changs hired a new attorney, and on November 2, 2012, the civil court granted Choe's motion to withdraw. Choe has not refunded any fees to the Changs.

8. Maria Mariscal (Case No. 12-O-16064, NDC-2, Count 16)

On February 2, 2012, Maria Mariscal hired Choe, as he stipulated, for home-mortgage-loan-modification services and other loan forbearance services. The agreement defines the scope of services as obtaining a TRO to stop foreclosure on her home, filing a lawsuit to challenge the validity of the foreclosure process, and if necessary, a bankruptcy petition. From February 7, 2012 through July 2012, Choe collected $12,000 in fees from Mariscal.

Choe submitted a loan package, which was denied because Mariscal failed to provide all of the required documents. On July 12, 2012, Choe filed a lawsuit against the lender and succeeded in getting the foreclosure date postponed until August 30, 2012. On August 17, 2012, Mariscal terminated Choe and her case was dismissed in December. Choe has not refunded any fees to Mariscal.

9. Victoria Smiser (Case No. 12-O-16018, NDC-2, Count 21)

Choe stipulated that on September 22, 2011, Victoria Smiser hired him for home-mortgage-loan-modification services and other loan-forbearance services, including litigation, debt counseling, and negotiations. The agreement lists the scope of services as obtaining a TRO and provided for a non-refundable $4,000 initial fee plus a $2,000 recurring monthly fee. From September 22, 2011 through June 2012, Choe collected $22,000 in fees from Smiser. Choe sent

a cease-and-desist letter to the lender followed by other documents to the lender in late 2011, but filed no litigation. There is no evidence of other significant activity by Choe on Smiser's behalf.

In mid-July 2012, Smiser terminated Choe upon the advice of an attorney at the California Department of Justice and reported Choe to the State Bar. On July 15, 2012, Choe deposited a $2,000 post-dated check from Smiser. On July 19 and August 6, 2012, Smiser sent written demands for the return of the $2,000 collected after termination. No refund or accounting has been provided.

10. Icylyn Williams (Case No. 12-O-16175, NDC-2, Count 26)

Choe stipulated that on May 1, 2012, Icylyn Williams hired him for home-mortgage-loan-modification services and other loan-forbearance services, including litigation, debt counseling and restructuring, and bankruptcy to stop foreclosure proceedings. The agreement defines the scope of services, which "includes negotiations and litigation to challenge the validity of foreclosure proceedings." The agreement states all payments "are considered fully earned and non-refundable flat or fixed fees." On May 1, 2012, Choe collected $5,000 from Williams.

In May, Choe sent a cease-and-desist letter to the lender but did not file litigation on her behalf. In August 2012, Choe notified Williams that he was closing his foreclosure litigation department. On August 14, 2012, Williams terminated Choe. The following day, on August 15, Choe deposited Williams's post-dated August 10, 2012 check for $1,000. On September 15, 2012, Choe deposited Williams's post-dated September 10, 2012 check for $1,000. Williams demanded a refund but has not received one.

11. Tina Youngson and Sang Park (Case No. 12-O-16213, NDC-2, Count 32)

Choe stipulated that in July 2010, Tina Youngson and Sang Park hired him for home-mortgage-loan-modification services and other loan-forbearance services, including filing a lawsuit against their lender. Park testified he heard Choe's radio advertisement and sought a loan modification for his home in foreclosure: "I was informed that I needed to file a lawsuit in

order to do my loan modification, and at the time, I was also shown some samples of the work that they've done, showed me the loan modifications handled and done by attorney Gene Choe, and then I was explained that I should not worry, because the owner, attorney Gene Choe, was taking care of all these things, and the cost of this was $15,000. So I signed the paper there."

Between August 2010 and May 2012, Choe collected $17,500 in fees from the Parks. In September 2010, Choe prepared and submitted a loan modification application for the Parks. In July 2011, the application was denied.

No lawsuit was filed on their behalf. In 2012, the Parks were frustrated that no lawsuit had been filed and asked for a refund. They were put off for a week until at a follow-up meeting, for the first time, Choe's office staff showed the Parks a draft complaint prepared in their case. They told the Parks that Choe had done $30,000 worth of legal work on the case. No accounting was provided. The Parks terminated Choe but have not received a refund. They subsequently received assistance from a government agency and secured a loan modification.

12. Jessie Lee and Wilma Pratt (Case No. 12-O-16505, NDC-2, Count 34)

Choe stipulated that on October 25, 2011, Jessie Lee and Wilma Pratt hired him for home-mortgage-loan-modification services and other loan-forbearance services, including litigation services. The agreement stated Choe would prepare and file a lawsuit for a TRO and seek a preliminary injunction. From November 2011 through July 2012, Choe collected $10,500 in fees from the Pratts. Choe did not file a lawsuit or provide the Pratts with services of value. On August 28, 2012, the Pratts terminated Choe in writing and demanded a refund, which Choe has not provided.

13. Ki Tae and Kyung Sook Kim (Case No. 12-O-16817, NDC-2, Count 36)

On June 24, 2011, after hearing Choe's advertisements on a Korean-language radio station and reading them in the Korean newspaper, Ki Tae and Kyung Sook Kim hired Choe to obtain a loan modification. The agreement defined the scope of services as: "TRO Litigation +

Loan Modification + BK." And it stated the Kims agreed to pay "at least $3,500 before the TRO litigation" and further provided for an initial non-refundable payment of $1,500 and then ongoing monthly fees.

Between July 15, 2011 and July 2012, Choe collected $7,750 in fees from the Kims. Choe submitted a loan modification package to the lender in November 2011. No litigation was ever filed. In August 2012, the Kims terminated Choe after he informed them he was closing down his foreclosure litigation business. Choe has not refunded any fees.

14. Hans Weigel (Case No. 12-O-17981, NDC-2, Count 40)

Choe stipulated that on November 9, 2011, Hans Weigel hired him for home-mortgage-loan-modification services and other loan-forbearance services, including filing a lawsuit against his lender. The agreement described the scope of services as: "TRO Litigation + Loan Modification + BK." And it stated that Weigel agreed to pay an initial non-refundable payment of $3,000 and then ongoing monthly fees. Between November 2011 and July 2012, Choe collected $14,000 in fees from Weigel. In December 2011, Choe sent a cease-and-desist letter to Weigel's lender and filed a lawsuit against the lender in May 2012.

On August 6, 2012, Weigel notified Choe that he intended to transfer his file to Consumer Action Law Group (CALGroup) and indicated future monthly payments would be paid by Weigel to CALGroup as of that date. On August 20, 2012, Choe cashed a $1,000 post-dated check. Weigel requested the $1,000 be returned; Choe has not refunded any of the $15,000 Weigel paid.[14]

[14] The hearing judge ordered Choe to pay $12,000 in restitution to Weigel, apparently not considering the initial $3,000 payment in calculating restitution. We order restitution of all $15,000 Choe stipulated he collected from Weigel.

15. Janet Khachi and Bijan Mijaeli (Case No. 13-O-10149, NDC-2, Count 44)

Choe stipulated that in May 2012, Janet Khachi and Bijan Mijaeli hired him for home-mortgage-loan-modification services and other loan-forbearance services, including obtaining a TRO, securing a loan modification, and pursuing bankruptcy protection. Mijaeli hired Choe after receiving a mailer advertising Choe's success in obtaining loan modifications. The agreement defined the scope of services as "those necessary to represent the Client in challenging the validity of foreclosure proceedings by the foreclosing lender only, including related debt counseling and restructuring, and bankruptcy." It also stated all payments "are considered fully earned and non-refundable flat or fixed fees."

Between May and July 2012, Choe collected $9,000 in fees from Khachi and Mijaeli. On June 7, 2012, Choe filed an amended complaint[15] against the lender and later filed an opposition to a demurrer. In September or October 2012, Choe informed Khachi and Mijaeli he would no longer represent them. The lawsuit was dismissed with prejudice in November 2012 for failure to state a claim against the lender. No loan modification was obtained. Choe has made no refund.

16. Frank and Aida Ayre (Case No. 13-O-10172, NDC-2, Count 47)

Choe stipulated that on November 19, 2011, Frank and Aida Ayre hired him for home-mortgage-loan-modification services and other loan-forbearance services. Frank testified he hired Choe to file a lawsuit alleging violations on the loan "to bring the lender to the table." The agreement defined the scope of services as to "prepare and file a lawsuit" for a TRO and to seek a preliminary injunction, and provided for an initial up-front fee of $2,500 and recurring monthly payments of $1,500. Between November 19, 2011 and January 2012, Choe collected $5,575 in

[15] The couple had earlier filed a complaint pro se.

fees from the Ayres. Monthly payments were to continue until the Ayres began payment on a loan modification.

On December 14, 2011, Choe filed a lawsuit against their lender and an ex parte application for TRO to stop the foreclosure sale of their home. In February, while the lawsuit was pending, the lender offered a loan modification proposal, which was made permanent on June 6, 2012 and was to begin on July 1, 2012.

On February 14, 2012, Choe filed a request to dismiss the lawsuit. Even after the lawsuit was dismissed, Choe unsuccessfully sought payment under the contract in mid-June. The Ayres closed their bank account to prevent Choe from collecting further payments. Choe has made no refund.

17. Javier Gonzalez (Case No. 13-O-10173, NDC-2, Count 50)

Choe stipulated that in February 2012, Javier Gonzalez hired him for home-mortgage-loan-modification services and other loan-forbearance services, including lender litigation, defense of an unlawful detainer action, and reinstatement of home ownership and the home mortgage. Between February and August 2012, Choe collected $11,000 in fees from Gonzalez. Choe initially resisted the unlawful detainer action brought against Gonzalez, but in July 2012, Gonzalez was evicted. On August 1, 2012, Gonzalez terminated Choe. On that same day, Choe processed another monthly payment of $1,200. The record does not establish whether this was done before or after he was terminated. No money has been refunded to Gonzalez.

18. Michael Lansdale (Case No. 12-O-17882, NDC-3, Count 1)

In June 2012, Michael Lansdale hired Choe to stop the foreclosure sale of his home scheduled for October 17, 2012. The agreement defines the scope of services as "those necessary to represent the Client in challenging the validity of foreclosure proceedings by the

foreclosing lender only, including related debt counseling and restructuring, and bankruptcy." It also states all payments "are considered fully earned and non-refundable flat or fixed fees."

The parties stipulated that in June 2012, Choe collected $4,000[16] in fees from Lansdale. Despite the scheduled foreclosure sale, Lansdale's case was overlooked, and no prompt action was taken. In September 2012, Choe finally took notice of the case and began preparing a loan modification package to send to the lender. Two days before the scheduled foreclosure sale, Choe advised Lansdale to file for bankruptcy protection to save the home and create more time to file a lawsuit. Lansdale did not file for bankruptcy protection. On October 15, 2015, Choe filed a lawsuit against the lender in an attempt to hold off a foreclosure sale. It was not successful, and the sale went forward as scheduled.

Choe advised Lansdale that his options were either to file a bankruptcy petition to delay eviction and negotiate for a potential buy-back or to move out. The parties stipulated that on April 7, 2013, Lansdale paid Choe another $1,000 to file a bankruptcy petition, which was filed on April 8, 2012. Ultimately, Lansdale vacated his home on May 2, 2013, and the bankruptcy petition was dismissed. Choe has not returned any fees.

19. Graciela Garcia (Case No. 12-O-17720, NDC-3, Count 5)

On March 21, 2012, Graciela Garcia hired Choe at the time her property was scheduled for foreclosure; she testified he told her "that he will save my property, that he will work with the bank to do the modification or, you know, some kind of litigation." The scope of services was defined in the fee agreement as the preparation and filing of a lawsuit to challenge the validity of the foreclosure process and/or foreclosure documents and to file a bankruptcy petition if necessary.

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[16] The hearing judge found Choe collected $3,000 from Lansdale pursuant to the fee agreement. Based on our review of the stipulations, and the record of payments, we find Lansdale paid at least $5,000 pursuant to the agreement. We order restitution accordingly.

Choe collected $3,600 in fees from Garcia on March 21, 2012. On March 31, 2012, Garcia terminated Choe, after he informed her that he could not help her because her property was an investment property. She later demanded a refund; the parties stipulated that Choe refunded $1,915.50 on June 6, 2012.

20. Patricia Herrera (Case No. 12-O-15946, NDC-3, Count 13)

Patricia Herrera lived in Texas and owned a rental property in Northern California that was in foreclosure. She had tried unsuccessfully to obtain a loan modification and testified she hired Choe on January 30, 2012 "to help with a loan modification and if we couldn't reach some sort of compromise with the lender," then Choe would "take the lender to court." The fee agreement defined the scope of services as filing a TRO and "a lawsuit to challenge the validity of the foreclosure process and/or foreclosure documents and should it become necessary" to file a bankruptcy petition and provide eviction defense. The agreement further provided for an immediate payment of $2,500 and ongoing monthly payments of $1,750. From February 1, 2012 through April 10, 2012, Choe collected $6,000 in fees from Herrera.

On February 1, 2012, Herrera received notice of a trustee sale. On February 17, 2012, Choe sent a cease-and-desist letter to the lender. On February 27, 2012, Herrera filed an in pro per bankruptcy petition in Texas in an effort to postpone the April 27, 2012 scheduled sale date; it was dismissed with prejudice for failure to file the required paperwork. On April 24, 2012, Choe filed a lawsuit against the lender in California and, two days later, filed an application for a TRO and order to show cause to stay the pending sale of the home. The court denied the TRO stating that Herrera had failed to demonstrate a likelihood of success on the merits. Choe then filed an emergency bankruptcy petition which postponed the sale date until May 30, 2012.

Shortly after he filed the bankruptcy petition, Choe ended his representation of Herrera. She demanded a refund. A small refund was promised but never provided.

21. Edna Parker (Case No. 12-O-16856, NDC-3, Count 20)

On November 2, 2011, Edna Parker hired Choe for the purpose of obtaining a home loan modification. The agreement defines the scope of services as: "File a lawsuit in superior court for temporary restraining order. We will also seek a preliminary injunction." Beginning November 2, 2011, Choe collected $9,500 in fees from Parker. Other than a single call to the lender, it appears Choe took no action on Parker's behalf. On August 2, 2012, Parker terminated Choe because she saw no evidence that any work was being done. Choe provided no refund or accounting.

22. Kevin Lynn and Janet Lynn (Case No. 12-O-16862, NDC-3, Count 25)

On September 27, 2011, Kevin and Janet Lynn filed for bankruptcy protection in pro per to stay the foreclosure of their property, which was scheduled to be sold in a trustee sale on October 27, 2011. On October 5, 2011, the Lynns hired Choe for the purpose of obtaining a loan modification after receiving direct mail from Choe, advertising his success in obtaining modifications. The agreement defines the scope of services as: "File a lawsuit in superior court for temporary restraining order. We will also seek a preliminary injunction." The agreement further provided for an immediate payment of $3,000 and ongoing monthly payments of $2,000. Between October 2011 and March 2012, Choe collected $11,075 in fees from the Lynns.

On October 11, 2011, Choe substituted in as attorney of record in the bankruptcy case. On November 29, 2011, the bankruptcy court granted the lender's motion for relief from the automatic stay, and the matter was dismissed on December 8. Choe then sent a cease-and-desist letter to the lender and filed a complaint on December 28, 2011. The sale date was postponed.

In February 2012, Choe sent a letter to the Lynns stating that the firm could not assist them because the laws that the firm based their complaints on required the premises to be owner-occupied. Nevertheless, he subsequently prevailed on them to continue with his representation.

Through their personal attorney, the Lynns agreed, on the condition that Choe would retroactively convert their agreement to an hourly basis and provide an accounting. Choe did not provide the requested fee agreement or an accounting. In August 2012, Choe ended his representation of the Lynns. They again demanded an accounting but did not receive one, and they have not received a refund.

23. Diane Robinson (Case No. 12-O-16515, NDC-3, Count 33)

In August 2011, Diane Robinson hired Choe to obtain a loan modification on her rental property and to seek a TRO to stop the pending foreclosure sale. The fee agreement defined the scope of services as seeking a TRO and "a lawsuit to challenge the validity of the foreclosure process and/or foreclosure documents" and "should it become necessary," to file a bankruptcy petition and provide eviction defense. From August 2011 until March 2012, Choe collected $6,800 in fees from Robinson.

Between August and October 2011, Choe contacted her lender, filed a lawsuit against the lender, and sought two TROs. Robinson then filed a Chapter 13 bankruptcy petition with another attorney, which was later dismissed. Frustrated by her feeling that not enough was being done on her case, Robinson demanded an accounting and partial refund in December 2011. She received neither. Her lawsuit was dismissed without prejudice on February 1, 2012.

On July 12, 2012, Robinson filed a small claims action against Choe. At the time of the disciplinary hearing, the action was still pending. Choe has made no refund to Robinson.

24. Luis Olvera and Hyesoon Kim Olvera (Case No. 12-O-16745, NDC-3, Count 37)

In April 2011, Luis Olvera and Hyesoon Kim Olvera hired Choe. The agreement defined the scope of services as "TRO Litigation + Loan Modification + BK + 2nd Mod or 2nd Litigation." Between April 2011 and July 2012, Choe collected $17,000 in fees from the Olveras. Choe filed a lawsuit against their lender as well as a bankruptcy petition. Choe also

filed a TRO, which the court granted. The lender filed three demurrers in the lawsuit. The first two were sustained and thereafter Choe filed an amended complaint. A hearing on the third demurrer was scheduled for August 27, 2012. On August 6, 2012, Choe ended his representation of the Olveras. They demanded a refund and an accounting but did not receive either. On September 7, 2012, the court sustained the third demurrer and dismissed the complaint without leave to amend.

25. Kum Soo Joo (Case No. 12-O-16997, NDC-3, Count 42)

On September 20, 2010, Kum Soo Joo hired Choe. By September 2011, Choe had collected $16,000 in fees from Joo. Choe filed a bankruptcy petition on Joo's behalf. We consider Choe's alleged misconduct in handling the bankruptcy petition in Section III below.

C. Choe Is Culpable of Violating Section 2944.7

The record clearly and convincingly establishes that the clients hired Choe for the purpose of securing a loan modification or other form of loan forbearance, and the fee agreements expressly contemplate that loan modification was encompassed by the retention. Pursuant to the agreements, Choe collected fees, often characterized as non-refundable, before he performed *any* service he had contracted to perform and continued to collect monthly flat fees from his clients before he fully performed each and every service he contracted to perform. In each case, the agreement and the collection of fees violated Section 2944.7. (*In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 [statute prohibits collection of any fees in advance of full performance of each and every service].) It follows that all fees Choe collected under the agreements were illegal and must be refunded.

1. Section 2944.7 Applies to All Services Choe Provided Under the Agreements

Choe argues that he is not culpable because "[t]here is absolutely nothing in the language of § 2944.7 which proscribes an attorney from charging a client a fixed fee(s) for preparing,

filing and prosecuting litigation on behalf of a client against the client's lender" even if the litigation "ultimately result[s] in the lender offering the client a loan modification as a settlement" of threatened or filed litigation. He points to the agreements, the services he provided, and his timesheets as evidence that he lawfully collected advance fees to prosecute litigation against lenders concurrently with providing loan modification services for free.

We reject his semantic arguments; any assertion that his clients retained him to obtain anything other than loan modifications is pretextual. All services Choe provided under the agreements were loan modification services because whether preparing a loan modification packet, filing a lawsuit against a lender, or filing a bankruptcy petition, each service was undertaken for the sole purpose of modifying the loan. Further, Choe did not change his practice when Section 2944.7 became law. Instead, he simply revised his fee agreements in, as the hearing judge found, "an obvious, but unsuccessful effort to avoid the prohibition of section 2944.7." In truth, Choe provided *no* services for "free."[17] He obligated his clients to pay steep initial fees and sizeable ongoing monthly fees regardless of the "type" of services he performed or, in fact, whether he did any work at all for them. Because Choe was hired for the sole purpose of obtaining a loan modification or other type of loan forbearance, he was not permitted to collect fees under the agreement until he had fully performed each and every service he contracted to perform, including filing lawsuits against lenders and handling bankruptcy petitions.

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[17] As for Choe's timesheets, they are vague in many cases about when and what services were provided and reflect an inflated value of the "litigation services" and "pre-litigation services" described, which belies any claim that he provided any service free of charge. The more detailed statements show that Choe routinely collected thousands in advance fees months before providing any "litigation services" and also continued to collect fees after a lawsuit was dismissed. We also note that Choe testified that he hastily created timesheets when confronted by angry clients demanding refunds, suggesting that the timesheets in those cases were manufactured to avoid refunding fees.

2. Choe's Communications with the State Bar Are Not a Defense

We also reject Choe's defense that his communications with the State Bar created ambiguity, excusing his conduct. To begin, a violation of Section 2944.7 only requires that the attorney act willfully and does not require proof of bad faith or intent to violate the law. (See *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467 [no intent to violate law, to injure another, or to acquire advantage required]; see also *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186 [willfulness does not require bad faith or knowledge of provision violated].)

Moreover, the record is contrary to his claim that the State Bar advised him that his business model complied with the law. Sometime in 2011, Choe spoke with a State Bar investigator regarding numerous client complaints. He testified that she directed him to "prepare a quantum meruit accounting . . . and . . . issue refund checks, and as long as I did that, there wasn't going to be any follow-up on the accusations, on the charges." Choe did not testify, however, that the investigator opined that his business model did not run afoul of Section 2944.7. In fact, Choe admitted he took no meaningful effort to research the issue: "I didn't really think that we were violating [Section 2944.7] at that time. Maybe I was. Maybe the firm was. I had consulted several attorneys within the firm, and I don't think that I consulted anybody else. Maybe that's some of the mistake that I made. I should have consulted ethics attorneys back then . . . . Nobody really thought that our retainer was in violation" of the Section 2944.7. Such a lackadaisical attitude, combined with his fee agreements worded to finesse the reach of Section 2944.7, belie any claim that Choe was acting on a good faith belief that he was in compliance with the law.

D. Moral Turpitude in Withdrawing or Attempting to Withdraw Fees in Seven Matters

In seven of the above client matters, the hearing judge found that Choe acted with moral turpitude in violation of Business and Professions Code section 6106 by withdrawing or seeking

to withdraw fees from his clients' bank accounts without their consent.[18] We agree. Choe concedes that he collected $1,000 from Rodriguez in June 2012, after Rodriguez had terminated him in May 2012, by depositing a post-dated check received earlier from Rodriguez. Choe later returned the funds. (Case No. 12-O-13352, NDC-1, Count 14.) We also find that Choe collected an additional $8,600 from five other clients:

- $2,000 from Randolph on December 29, 2011, after Randolph had terminated Choe on December 9, 2011 (Case No. 12-O-11549, NDC-1, Count 20);
- $2,600 from Smith on November 8 and December 8, 2011, after Smith had terminated Choe on October 29, 2011, which he has failed to refund (Case No. 12-O-15738, NDC-2, Count 6);
- $2,000 from Smiser on July 15, 2012, after Smiser had terminated Choe on July 12, 2012, which he has failed to refund (Case No. 12-O-16018, NDC-2, Count 22);
- $1,000 from Williams on September 15, 2012, after Williams terminated Choe on August 14, 2012, which he has failed to refund (Case No. 12-O-16175, NDC-2, Count 27); and
- $1,000 from Weigel on August 20, 2012, after Weigel transitioned his case to CALGroup on August 10, 2012, which he has failed to refund (Case No. 12-O-17981, NDC-2, Count 41).

Choe avers that he had "protocols in place to ensure that withdrawals were not made after" termination and attributes the erroneous withdrawals to the difficulties he was having with his accounting department—specifically, that his accounting manager was on leave from December 2011 until June 2012. He also testified to his attempts to fix the problems with additional staffing, and he presented other evidence showing his efforts at improvement. Though he concedes he could not perfect the system with close to 100 employees and more than 1,000 clients, he argues that he is culpable of simple negligence, not moral turpitude.

We disagree. Choe failed to ensure that his clients' funds were properly maintained. (See *Palomo v. State Bar* (1984) 36 Cal.3d 785, 795 [an attorney has personal and non-delegable

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

obligation of reasonable care to comply with critically important rules of safekeeping and disposition of client funds]; *Coppock v. State Bar* (1988) 44 Cal.3d 665, 680.) His protocols were clearly inadequate, as demonstrated by the numerous unauthorized withdrawals over more than ten months from November 2011 through August 2012. We find that in each case, Choe is culpable of gross negligence amounting to moral turpitude. (*Lipson v. State Bar* (1991) 53 Cal.3d 1010, 1020 [moral turpitude finding proper for gross carelessness in handling client funds].)

More generally, we observe that throughout his briefs, Choe attempts to avoid culpability by shifting responsibility for his ethical failures to his contract attorneys and non-attorney employees. Yet Choe chose to operate his firm as a sole proprietorship, thereby enjoying all its profits, but also assuming all its risks and responsibilities. That he elected to exponentially expand his practice through the use of contract attorneys and other staff did not relieve him of his responsibilities. To the contrary, his risk expanded with his practice, and we find him culpable here, and below, for the failures of his employees vis-a-vis *his* clients. (*Bernstein v. State Bar* (1990) 50 Cal.3d 221, 231 [retained attorney is not required to personally do all work on client matter but "an attorney who accepts employment necessarily accepts the responsibilities of his trust (citations)"].)

We also affirm the hearing judge's finding that Choe is culpable of moral turpitude in the Hildens matter by seeking to withdraw $1,000 from the Hildens' bank account on two separate occasions, weeks after his termination. While the funds in question were not withdrawn, Choe still acted with gross negligence amounting to moral turpitude in failing to ensure that his accounting department would not improperly withdraw from accounts after termination (Case No. 12-O-13014, NDC-1, Count 24).

E. Failure to Refund Fees in Nine Client Matters

We affirm the judge's findings that, in nine client matters,[19] Choe willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct,[20] which requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

As discussed above, the advance fees collected in eight of these nine matters were illegal. Therefore, we find that none of the fees were earned. Just as Choe violated Section 2944.7 by collecting the fees, he violated rule 3-700(D)(2) by failing to return the illegal and/or unearned fees when he was terminated.

In the Vasilica Vasilescu matter,[21] Choe was not charged with the collection of illegal advance fees. In that case, we adopt and affirm the judge's finding, based on Choe's stipulation, that he failed to promptly refund fees (Case No. 12-O-11037, NDC-1, Count 7).

F. Failure to Account for Fees in 15 Client Matters

We agree with the hearing judge's finding that Choe is culpable as charged of 15 counts of willfully violating rule 4-100(B)(3), which provides that a member shall "[m]aintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]" This duty includes accounting for collected advance fees. (See *In the Matter of Fonte* (Review Dept. 1994)

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[19] Ramirez (Case No. 12-O-14067, NDC-1, Count 4); Hilden (Case No. 12-O-13014, NDC-1, Count 26); Smith (Case No. 12-O-15738, NDC-2, Count 8); Garcia (Case No. 12-O-17720, NDC-3, Count 6); Herrera (Case No. 12-O-15946, NDC-3, Count 17); Parker (Case No. 12-O-16856, NDC-3, Count 21); Capuano (Case No. 12-O-11029, NDC-1, Count 13); Randolph (Case No. 12-O-11549, NDC-1, Count 22); and Olvera (Case No. 12-O-16745, NDC-3, Count 38).

[20] All further references to rules are to the Rules of Professional Conduct of the State Bar unless otherwise noted.

[21] On November 14, 2011, Vasilica Vasilescu hired Choe for the purpose of modifying her home loan. From November 14, 2011 through January 23, 2012, Vasilescu paid Choe fees totaling $6,600. On June 4, 2012, Choe provided a refund of $3,751 in unearned fees.

2 Cal. State Bar Ct. Rptr. 752, 757-758 [attorney had duty to account for advance fees]; see also *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 211.)

1. Capuano demanded an accounting on January 9, 2012, after he terminated Choe. Choe did not promptly provide an accounting to Capuano. Instead, he provided one to the State Bar on April 12, 2012—after Capuano complained to it. We reject Choe's argument that this late accounting to the State Bar satisfied his duty to Capuano. Further, we reject his defense that he relied in good faith on a staff attorney to deliver the accounting. As Capuano's attorney, Choe had a non-delegable duty to provide the accounting. (Case No. 12-O-11029, NDC-1, Count 12.)

2. We adopt the hearing judge's finding that Rodriguez demanded an accounting after he terminated Choe in May 2012, a fact Choe disputes. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315 ["determinations of testimonial credibility must receive great weight because the hearing judge heard and saw the witnesses and observed their demeanor (citations)"].) We find that Choe did not provide one and is culpable as charged. (Case No. 12-O-13352, NDC-1, Count 19.)

3. We adopt the hearing judge's culpability finding, based on Choe's stipulation that he failed to provide an accounting to the Changs. (Case No. 12-O-16063, NDC-2, Count 11.)

4. Choe does not contest the judge's finding that he is culpable for failing to provide Smiser with an accounting, and we find him culpable. (Case No. 12-O-16018, NDC-2, Count 25.)

5. We adopt the hearing judge's findings that Williams demanded an accounting after terminating Choe in August 2012 and that Choe did not fully comply. His accounting addressed only $5,000 of the $7,000 collected from Williams. Therefore, Choe did not provide a complete, accurate accounting to his client. (Case No. 12-O-16175, NDC-2, Count 30.)

6. We adopt the judge's finding, based on Choe's trial testimony, that he failed to provide an accounting to the Pratts. The Pratts paid Choe $10,500 in fees and were entitled to receive an accounting when they terminated him. We reject Choe's argument that the Pratts were required to articulate a specific demand for an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952 [obligation to render appropriate accounts does not require that client demand accounting].) (Case No. 12-O-16505, NDC-2, Count 35.)

7. Upon his termination, Choe failed to account to Weigel and is therefore culpable as charged. (Case No. 12-O-17981, NDC-2, Count 42.)

8. At the time he ended his representation of Khachi and Mijaeli, Choe failed to provide them with an accounting of the $9,000 they had paid him. He is thus culpable as charged. (Case No. 13-O-10149, NDC-2, Count 45.)

9. After his termination, Choe failed to provide Gonzalez with an accounting of the $12,000 collected. (Case No. 13-O-10173, NDC-2, Count 51.)

10. At the time he ceased representing Herrera, Choe failed to provide her with an accounting of the $6,000 he was paid. (Case No. 12-O-15946, NDC-3, Count 16.)

11. Upon his termination, Choe failed to provide Parker with an accounting of the $9,500 collected. (Case No. 12-O-16856, NDC-3, Count 22.)

12. The Lynns requested an accounting of the $11,075 in fees they paid, but have not received one. (Case No. 12-O-16862, NDC-3, Count 26.)

13. Robinson demanded an accounting. Choe provided one that was inaccurate, in violation of rule 4-100(B)(3). (Case No. 12-O-16515, NDC-3, Count 35.)

14. The Olveras requested an accounting of the $17,800 in fees collected, but have not received one. (Case No. 12-O-16745, NDC-3, Count 39.)

15. Min Song Yi hired Choe in May 2009 (before Section 2944.7 was enacted) and collected $11,750 in fees for loan modification services. Yi demanded an accounting, but Choe never provided one. (Case No. 12-O-14609, NDC-3, Count 49.)

G. Improper Solicitation

We adopt the hearing judge's finding, based on Choe's stipulation, that Choe is culpable of making an improper solicitation of professional employment, in violation of rule 1-400(C).[22] When Choe sent Danielle Davidson a flier directly offering his legal services, including litigation against lenders and loan modification services, he did not have a family or prior professional relationship with her. Further, his fliers did not bear the words "advertisement," "newsletter," or others of similar import. The fliers did not include any statements informing Davidson that they were advertisements or newsletters. (Case No. 12-O-13059, NDC-1, Count 29.)

H. Failure to Release Files in Two Client Matters

We adopt the hearing judge's finding, based on Choe's stipulation, that he is culpable of failing to promptly return the Changs' files and documents upon request, in violation of rule 3-700(D)(1).[23] (Case No. 12-O-16063, NDC-2, Count 12.)

In the Williams's matter, Choe argues that he is not culpable because he provided Williams with her file. His argument ignores that the judge credited Williams's testimony on the issue, finding that "despite several subsequent requests for her file, it was never provided" to her. We adopt this finding (*In the Matter of Brown, supra*, 2 Cal. State Bar Ct. Rptr. at p. 315), and find Choe culpable as charged. (Case No. 12-O-16175, NDC-2, Count 31.)

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

[23] Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release, at the client's request, all client papers and property.

I. Failure to Respond to Client Inquiries in One Matter

Like the hearing judge, we find Choe culpable for failing to respond to Smiser's inquiries, in violation of section 6068, subdivision (m),[24] based on her credible testimony that she sought status reports on numerous occasions during the nine-month representation, all to no avail. At trial, Choe suggested Smiser's case might have fallen through the cracks at his San Jose office. On review, he argues that he was not personally involved in the matter and cannot be held vicariously liable for the failures of other attorneys. As explained above, we reject this argument because as a sole proprietor, he was Smiser's attorney and responsible for ensuring that her reasonable inquiries were answered. (Case No. 12-O-16018, NDC-2, Count 24.)

J. Improper Withdrawal from One Client Matter

We adopt the hearing judge's finding that Choe terminated his representation of Herrera, effective immediately, with no advance notice and without regard to the fact that he was counsel of record in pending proceedings (a bankruptcy petition and a lawsuit against her lender). This withdrawal violates rule 3-700(A)(2). (Case No. 12-O-15946, NDC-3, Count 15.)

III. BANKRUPTCY CASES

In addition to Choe's loan modification practice, OCTC made serious allegations with respect to Choe's handling of several bankruptcy petitions. The hearing judge found Choe culpable of moral turpitude for his actions before the bankruptcy court in seven cases, and, based in large part on the bankruptcy records admitted at trial, we affirm.

A. Compensation of Professionals from Bankruptcy Estates

In Chapter 11 bankruptcy proceedings, court approval is required for a debtor in possession to employ an attorney. (11 U.S.C. § 327.) An attorney "who perform[s] services for

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[24] Section 6068, subdivision (m), requires attorneys "[t]o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services."

a debtor in possession cannot recover fees for services rendered to the estate unless those services have been previously authorized by a court order." (*In re Atkins* (9th Cir. 1995) 69 F.3d 970, 973 [citing to 11 U.S.C. § 327, Fed. Rules Bank. Proc., rule 2014].) The attorney must file a fee application under title 11 United States Code section 330, and an attorney's fee request is evaluated for reasonableness. (11 U.S.C. §§ 328(a); 330(a).) In addition, the attorney must file a prescribed "Statement of Compensation," detailing all compensation paid within one year before the petition date for services rendered in contemplation of or in connection with the debtor's bankruptcy case. (11 U.S.C. § 329; Fed. Rules Bank. Proc., rule 2016(b).)

In Chapter 13 bankruptcy proceedings, court-approved employment is not required to compensate an attorney. (11 U.S.C. § 330(a)(4)(B).) To avoid having to review fees in every case, courts have local rules or fee guidelines setting a "presumptively reasonable" or "no-look" fee amount for Chapter 13 petitions. In the United States Bankruptcy Court for the Central District of California (the Court), the applicable "no-look" rule at times relevant to this case was $4,000 for non-business debtors and $4,500 for business debtors. Provided counsel does not exceed the "no-look" amount, no fee application is required. However, the fees must still be disclosed to the court and are subject to court review for excessiveness. (11 U.S.C. § 329.)

B. Choe Sought Compensation in Seven Bankruptcy Proceedings

From 2010 through 2012, Choe was the attorney-of-record for the debtor in possession in several[25] bankruptcy proceedings pending in the Court. Choe stipulated that in each case he and his law firm filed a bankruptcy petition for the client, and represented the client during the ensuing proceeding. Choe's violations of federal bankruptcy law and his incompetent handling of his clients' petitions resulted in the Court ordering him to disgorge $130,655 in fees.

[25] OCTC withdrew its allegations with respect to another bankruptcy petition (*In re: Philip J. Kajiszco*, Case no. 8:11-bk-27467). As the parties agree on review, we find that the hearing judge mistakenly indicated that the allegations from the *Kim* case were dismissed, not those from the *Kajiszco* case.

1. *In re: Sheri Moody*, Case no. 8:10-bk-20800. On July 19, 2010, Moody entered into a fee agreement with Choe for the purpose of securing a loan modification or other form of loan forbearance to save her home. The agreement identified legal fees totaling $10,500, and Moody provided Choe with post-dated checks totaling that amount.

On August 3, 2010, Moody filed a voluntary Chapter 13 petition. Within the bankruptcy papers was a Disclosure of Compensation signed by Choe falsely indicating that Moody had paid him $3,000. On September 14, 2010, Choe had an attorney, who was not eligible to practice law in California on that date, state to the Chapter 13 Trustee that he, the attorney, was representing Moody in the bankruptcy. On October 21, 2010, Moody terminated Choe and, at the direction of the Court, met with the United States Trustee regarding Choe. On December 14, 2010, the Trustee filed a motion to disgorge $10,500.

On June 30, 2011, a United States Bankruptcy Judge issued findings of fact and conclusions of law as follows. First, Choe incompetently failed to seek an extension of the automatic stay, which subjected Moody's home to foreclosure 30 days after the petition was filed, and amounted to "gross negligence." Second, Choe collected advance fees for loan modification work, in violation of Section 2944.7. Third, Choe caused a person not eligible to practice law to appear at a creditors meeting. Fourth, Choe accepted fees for services that did not benefit the estate or Moody. Accordingly, as Choe "failed to provide evidence that justifies compensation of any kind" and prejudiced Moody, the Court ordered Choe to disgorge $10,500.

2. *In re Hugo and Gladis Salazar*, Case no. 2:10-bk-41130. On August 10, 2010, the Salazars filed a voluntary Chapter 13 petition, and Choe filed a Disclosure of Attorney for Debtor Form indicating that he had agreed to accept $5,000 in fees and that the entire amount was received pre-petition. Also on the same day, the Salazars indicated in their Statement of Financial Affairs that on June 8, 2010, Choe was paid $5,000 in the previous year prior to filing.

On September 10, 2010, the United States Trustee filed an objection stating that where fees were provided they needed to be either within the Rights and Responsibilities Agreement or for the debtor to provide a fee application. On February 28, 2011, the case was dismissed. Choe did not file a Rights and Responsibilities Agreement or fee application.

On April 25, 2011, the Trustee filed a motion for accounting and disgorgement of fees. The Trustee argued Choe was required to file a fee application for all fees received because $5,000 fell outside the $4,000 "no-look" amount. Therefore, Choe failed to establish the reasonableness of his fees, and should be ordered to disgorge. On June 28, 2011, the Court ordered him to disgorge $1,000 in fees.

3. *In re Ceasareo Aragon and Gabriela Acevedo*, Case no. 6:11-bk-30745. On June 24, 2011, Aragon and Acevedo filed a voluntary Chapter 11 petition. On June 28, 2011, the Court lodged an order dismissing the case because it was filed after Aragon and Acevedo's prior bankruptcy case was dismissed with a 180-day restriction against filing a new bankruptcy case. On August 25, 2011, an order vacating the dismissal was entered.

On September 9, 2011, Choe filed his employment application and stated that he had received only $1,039 for filing fees and no other amount. The Debtors in Possession Schedules and Statement of Financial Affairs contained a disclosure of Compensation of Attorney for Debtors stating that Choe had received $38,000; in actuality, Aragon and Acevedo had paid Choe $48,000 for Chapter 11 services. The United States Trustee filed an objection to the employment application on September 22, 2011, and Choe's application was denied. Choe filed a second application on February 1, 2012. The Trustee again objected, but the Court approved the application. However, no order authorizing a fee application was filed or granted.

On July 18, 2012. Aragon and Acevedo retained new counsel after their case remained idle for a lengthy period. On September 27, 2012, Aragon and Acevedo filed a motion to

determine whether the compensation paid to Choe was excessive. They argued that, without approval, Choe collected $48,000 in legal services for the bankruptcy. They cited to other cases, including *Moody*, as establishing a pattern of behavior whereby Choe collected excessive fees and provided inadequate representation. In response to the motion, Choe conceded that he had received a $38,000 retainer and, without court authorization, had withdrawn the retainer.

On November 28, 2012, the United States Trustee filed a motion for the entry of an order determining whether the fees were excessive and compelling disgorgement of fees. Therein, the Trustee argued that a retainer must remain in trust pending court authorization. Further, an attorney is entitled to the funds only after demonstrating his services were reasonable and beneficial to the estate. Failure to obtain court authorization requires counsel to disgorge the retainer. The record shows that the Court granted the Trustee's motion on December 11, 2012, and issued a $48,105 disgorgement order.

4. *In re Sung Ja Kim*, Case no. 2:11-bk-56543. On September 19, 2011, Kim filed a voluntary Chapter 11 petition. In the employment application, Choe stated he had received $17,980 from Kim. Contained in the Debtors in Possession Schedules and Statement of Financial Affairs was a disclosure of Compensation of Attorney for Debtors that stated Choe had received $18,000 with a balance due of $20,000. Choe did not file a fee application. No order authorizing Choe's employment was entered by the Court. In January, 2012, the Court dismissed the case with a 180-day bar to re-filing, due to Kim's failure to file several required documents.

On February 9, 2012, the United States Trustee filed a motion to disgorge attorney fees in accordance with title 11 United States Code section 329. The Trustee argued that Choe should have retained the fees in his trust account until the Court issued an order authorizing payment of fees. Further, he argued that Choe was not entitled to keep the fees paid by Kim because: (1) no

benefit to the estate had been shown; (2) no order authorizing the employment had been entered by the Court; and (3) Choe had filed no fee application with the Court. The Trustee noted that neither Choe nor anyone from his firm had appeared at hearings on the motion to dismiss the case or at the status conference. And, he argued that Choe "failed to properly manage this case from inception and failed to properly staff the case with an attorney who was competent to handle chapter 11 matters . . . . It is abundantly clear that the Firm was not competent to handle this chapter 11 case of behalf of [Kim]."

On February 13, 2012, the Court granted the Trustee's motion and ordered Choe to disgorge $40,000 or such greater amount as received by Choe from Kim.

5. *In re Carniceria Perez*, Case no. 6:11-bk-48851. On December 29, 2011, Perez filed a voluntary Chapter 11 petition. Pre-petition, Choe had collected $30,000 from Perez. On January 3, 2012, Perez filed an application to employ Choe. The United States Trustee filed an opposition to the employment because the retainer contained unacceptable terms. On February 6, 2012, the Court issued an order dismissing the case based on the failure to file all necessary documents in the case.

On February 15, 2012, the Trustee filed a motion to disgorge attorneys' fees. Therein, the Trustee argued that Choe failed to receive Court approval of his retention prior to the dismissal of the case and that Choe failed to file a fee application. The Trustee also argued that Choe "should not receive an award of $30,000 when his work harmed, rather than benefitted, the estate." On March 15, 2012, the Court granted the Trustee's motion and entered a $30,000 disgorgement order.

6. *In re Lupe Ruiz*, Case no. 6:12-bk-10326. On January 5, 2012, Ruiz filed a voluntary Chapter 11 petition. On January 25, 2012, the Court dismissed the case, with a 180-day bar to re-filing, due to Choe's failure to file a number of required documents, including bankruptcy

schedules and a statement of financial affairs. Further, Choe did not file an employment application or seek court approval of his retention or his compensation. Choe also did not file a disclosure of compensation.

On February 26, 2012, the United States Trustee filed a motion to disgorge attorneys' fees. The Trustee argued that Choe "should not receive an award of compensation when his work harmed, rather than benefitted, the estate . . . . In light of the re-filing bar, [Ruiz] may find himself in an even worse position than he was *before* Choe filed the case." (Italics in original.) Further, the Trustee argued that Choe "failed to seek Court-approval of his retention prior to the dismissal of the case resulting from Choe's substandard work. Absent a proper employment application that discloses the source of Choe's compensation and a statement of disinterestedness, the Court and the [Trustee] are unable to determine if Choe holds a claim against the estate and/or if he is disinterested. Failure to obtain court approval for his employment mandates that Choe disgorge all funds received from Ruiz."

On July 2, 2012, Choe entered into a stipulation, admitting he had not filed an employment application or a disclosure of compensation of attorney, as required. The parties further stipulated that Choe would disgorge $1,050 to Ruiz, which was approved by the Court.

7. *In re Kum Soo Joo*, Case nos. 2:11-bk-23516; 2:12-bk-14628. On September 20, 2010, Kum Soo Joo hired Choe. On March 30, 2011, Joo filed a Chapter 7 petition. Along with the petition, he filed a document stating Choe's compensation was to be $2,701. On February 8, 2012, Choe filed a Chapter 13 petition on behalf of Joo. Along with the petition, Choe filed a document in which he asserted that he charged Joo only $3,500. In fact, between October 2012 and September 2011, Choe had collected $16,000 in fees from Joo.

C. Choe Is Culpable of Moral Turpitude in his Bankruptcy Practice

Related to the first six bankruptcy matters discussed above, OCTC alleges that by failing to file employment applications or applications for attorney compensation, by otherwise failing to obtain the court's approval of his employment and retention, and by falsely disclosing the amount of fees that he received from client-debtors, Choe misrepresented or concealed material information from the bankruptcy courts, thereby committing acts involving moral turpitude, dishonesty, or corruption, in violation of section 6106. Related to the *Joo* matter, OCTC alleges that Choe committed acts involving moral turpitude by filing false assertions about his compensation with the bankruptcy court. We affirm the judge's culpability findings on these two counts[26] (Case No. 13-O-12284, NDC-2, Count 1; Case No. 12-O-16997, NDC-3, Counts 43 and 44).

To begin, in *Ruiz*, Choe did not file an employment application or otherwise obtain the Court's approval of his employment, as required. We reject Choe's argument, as contrary to his stipulation in the bankruptcy proceeding and to the Court's order, that an application was not necessary because it was an emergency filing. In addition, in *Salazar*, *Aragon/Acevedo*, *Kim*, *Perez*, and *Ruiz*, he failed to obtain the Court's approval of his fees, as required.

Moreover, in *Moody* and *Joo*, Choe submitted papers falsely indicating that he had agreed to accept thousands of dollars less than he actually had received. We find that these were dishonest attempts to fall within the "no-look" fee amount for Chapter 13 bankruptcies. Choe also misrepresented how much he had received in the *Joo* Chapter 7 case. Similarly, in *Kim* and *Aragon/Acevedo*, he falsely disclosed to the Court the amount of fees he had received from his clients.

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[26] We adopt and affirm the hearing judge's finding in Count 2 that Choe failed to comply with bankruptcy laws in the handling of these petitions, but assign no additional discipline as a consequence because the same facts underlie the moral turpitude counts.

Choe's attempts to defend his actions are unpersuasive. On the one hand, he claims that he reasonably believed that the fees earned in these types of matters did not have to be disclosed, while, on the other hand, he tries to blame his staff. But Choe did not act reasonably. He had little day-to-day involvement with his bankruptcy practice and lacked the necessary expertise to run it. Instead, he relied on a contract attorney to manage the bankruptcy practice, who was himself not competent to handle these matters. Choe acknowledges that he was made aware of persistent problems in the practice, including the mishandling of petitions, and knew from the attorney manager that the practice was "chaotic." Yet he failed to take sufficient steps to correct the situation. As a result, it was not until after the attorney manager departed that Choe learned that all the Chapter 11 petitions the attorney had filed had been dismissed. At that point, he concedes "the Chapter 11 courts were up in arms against my law firm, and our employment applications." Choe's grossly negligent handling of his bankruptcy practice constitutes moral turpitude.

IV. SERIOUS AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct,[27] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Choe to meet the same burden to prove mitigation.

[27] Effective July 1, 2015, the standards were revised and renumbered. Because this request for review was submitted for ruling after the July 1, 2015 effective date, we apply the revised version of the standards. All further references to standards are to this source.

A. Aggravation

The hearing judge found three factors in aggravation: (1) multiple acts; (2) significant harm; and (3) indifference. We agree but assign aggravating weight to only the first two.

First, we agree that Choe committed multiple acts of misconduct (std. 1.5(b)) and assign this factor serious weight in aggravation given the breadth and scope of his misconduct. Second, Choe significantly harmed his clients (std. 1.5(j)). He exploited their financial desperation and his fiduciary position by charging advance fees in violation of Section 2944.7, and then failing to refund those fees. Further, the bankruptcy courts and system were harmed by Choe's disregard of the bankruptcy laws and his dishonesty regarding his excessive fees. Third, while we agree with the hearing judge that Choe has demonstrated indifference, as described throughout this opinion, we assign this factor no weight in aggravation as our culpability analysis has subsumed our consideration of that factor (std. 1.5(k)).

B. Mitigation

The hearing judge found four mitigating factors: (1) a lengthy discipline-free practice; (2) cooperation; (3) good character; and (4) pro bono and community service. We agree with the last three.

First, unlike the hearing judge, we assign no mitigation to the 13 years Choe practiced before he began collecting illegal advance fees. A long record without discipline is *most* relevant when the misconduct is aberrational. (Std. 1.6(a) [mitigation for no prior record of discipline over many years coupled with present misconduct that is not likely to recur]; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational].) Because Choe's misconduct is systemic, not aberrational, we find it is likely to recur.

Second, we give Choe some mitigation for entering into an extensive stipulation and for admitting a few of the many charged violations. (Std. 1.6(e) [mitigation for spontaneous cooperation to victims of misconduct or to State Bar].)

Third, we adopt the hearing judge's finding that Choe is entitled to some mitigation credit for good character (std. 1.6(f)). He presented many witnesses who worked in his firm or were satisfied clients during the relevant time period. They attested to his good character, strong work ethic, desire to obtain good results for his clients, and his success in many legal matters.

Fourth, we credit Choe with having performed pro bono and community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community service is mitigating factor].) Choe testified that he was deeply involved in pro bono and community service activities, particularly forming and founding the Korean Community Lawyers Association (KCLA). He spent five to 10 hours a week on a regular basis for three to four years from 2007 to 2010 getting the organization "up and going." Other character witnesses confirmed that Choe was "very active" in KCLA and contributed to the core programs of the organization such as spearheading a Korean language book for the community, providing a monthly free legal clinic, and participating in annual seminars on the law school administration process to hopeful law students.

We assign no mitigating credit for Choe's purported good faith belief that his business model complied with Section 2944.7. (Std. 1.6(b); see *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [finding of good faith requires belief that is honestly held and reasonable].) As discussed above, Choe did not have an honest belief that he was in compliance with the statute. Indeed, his fee agreement was a clear attempt to circumvent the law and, contrary to his argument, the State Bar did not give Choe reason to believe his fee agreements were in compliance with the law.

Finally, we reject Choe's request for mitigation credit for promptly refunding some of the at-issue fees because he did not do so until well after he was terminated.

V. PUBLIC PROTECTION REQUIRES DISBARMENT[28]

Our disciplinary analysis begins with the standards. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Standard 2.18 instructs that disbarment or actual suspension is appropriate discipline for a violation of Business and Professions Code section 6106.3, and standard 2.11 instructs that actual suspension to disbarment is appropriate for acts of moral turpitude with the degree of sanction depending on the magnitude of the misconduct, the harm caused, and the extent to which it relates to the member's practice of law.

Choe maintains that disbarment is excessive in light of our only published case involving Section 2944.7—*In the Matter of Taylor*, *supra*, 5 Cal. State Bar Ct. Rptr. 221. We disagree because *Taylor* is distinguishable.

Taylor was culpable of charging pre-performance loan modification fees in eight matters and one count of failing to provide the required loan modification disclosures. His misconduct was aggravated by multiple acts of misconduct, significant client harm, and lack of remorse; his single mitigating factor was good character. He failed to provide full refunds to his clients upon their request. Throughout the disciplinary proceedings, Taylor maintained that Section 2944.7 permitted him to charge for unbundled services. He was suspended for six months and ordered to pay restitution totaling about $15,000 with interest.

Unquestionably, Choe's misconduct is more serious than Taylor's given the number of client matters and the amount of fees involved. Significantly, Taylor was not culpable of moral turpitude whereas Choe committed several acts of moral turpitude both in his bankruptcy

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[28] The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

practice and through the unauthorized withdrawal of fees. Accordingly, a much more significant discipline is warranted.

We conclude that Choe's unrelenting misconduct—spanning nearly two years and involving more than two dozen clients and the bankruptcy court—demonstrates he is unfit to practice law. Indeed, the moral turpitude counts alone render disbarment an appropriate discipline under standard 2.11. When we view this together with his collection of illegal advance fees and his failure to refund more than two hundred thousand dollars to his financially vulnerable clients, we find disbarment is required to protect the public, the courts, and the legal profession.

Our determination is further supported because the risk is high that Choe may engage in additional professional misconduct if permitted to continue practicing law and because all of his actions were directly related to his practice of law and seriously harmed his clients and the bankruptcy courts. (See *Cannon v. State Bar* (1990) 51 Cal.3d 1103, 1115 [disbarment where attorney without prior record committed multiple acts of serious wrongdoing, many of which involved moral turpitude]; see *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 [disbarment warranted without prior record for acts of gross negligence amounting to recklessness in failure to monitor attorney's client trust account and his office staff].) Disbarment is the appropriate discipline for Choe's widespread misconduct.

VI. DISBARMENT RECOMMENDATION

We recommend that Gene Wook Choe be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that he make restitution to the following individuals (or to the Client Security Fund to the extent of any payment from the Fund to any of them, in accordance

with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar Office of Probation in Los Angeles:

(1) Noemi Ramirez in the amount of $10,639 plus 10 percent interest per year from March 16, 2011;

(2) Miguel A. Rodriguez-Parra in the amount of $3,000 plus 10 percent interest per year from March 26, 2012;

(3) Lynn Hilden and Susan Hilden in the amount of $3,281.50 plus 10 percent interest per year from January 19, 2012;

(4) Donald Smith in the amount of $5,880 plus 10 percent interest per year from October 6, 2011;

(5) Yohann Chang and Jung Ok Chang in the amount of $14,000 plus 10 percent interest per year from October 11, 2010;

(6) Maria Mariscal in the amount of $12,000 plus 10 percent interest per year from February 7, 2012;

(7) Victoria Smiser in the amount of $24,000 plus 10 percent interest per year from September 22, 2011;

(8) Icylyn Williams in the amount of $7,000 plus 10 percent interest per year from May 1, 2012;

(9) Tina Youngson and Sang Park in the amount of $17,500 plus 10 percent interest per year from August 1, 2010;

(10) Jessie Lee and Wilma Pratt in the amount of $10,500 plus 10 percent interest per year from November 1, 2011;

(11) Ki Tae and Kyung Sook Kim in the amount of $7,750 plus 10 percent interest per year from July 15, 2011;

(12) Hans Weigel in the amount of $15,000 plus 10 percent interest per year from November 17, 2011;

(13) Janet Khachi and Biejan Mijaeli in the amount of $9,000 plus 10 percent interest per year from May 1, 2012;

(14) Frank J. Ayre, Jr., and Aida A. Ayre in the amount of $5,575 plus 10 percent interest per year from November 19, 2011;

(15) Javier Gonzalez in the amount of $12,200 plus 10 percent interest per year from February 1, 2012;

(16) Michael Lansdale in the amount of $5,000 plus 10 percent interest per year from June 29, 2012;

(17) Graciela Garcia in the amount of $1,684.50 plus 10 percent interest per year from March 21, 2012;

(18) Patricia Herrera in the amount of $6,000 plus 10 percent interest per year from February 1, 2012;

(19) Edna Parker in the amount of $9,500 plus 10 percent interest per year from November 2, 2011;

(20) Kevin Lynn and Janet Lynn in the amount of $11,075 plus 10 percent interest per year from October 1, 2011;

(21) Diane Robinson in the amount of $6,800 plus 10 percent interest per year from August 1, 2011;

(22) Luis Olvera and Hyesoon Kim Olvera in the amount of $17,000 plus 10 percent interest per year from April 1, 2011;

(23) Kum Soo Joo in the amount of $16,000 plus 10 percent interest per year from September 1, 2011; and

(24) Vasilica Vasilescu in the amount of $2,849 plus 10 percent interest per year from November 14, 2011.

We further recommend that he must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

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

VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Gene Wook Choe be involuntarily enrolled as an inactive member of the State Bar pursuant to Business and Professions Code section 6007, subdivision (c)(4), effective

November 3, 2013, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

STOVITZ, J.*

*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 16, 2016, I deposited a true copy of the following document(s):

OPINION AND ORDER FILED FEBRUARY 16, 2016

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

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

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

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

ALLEN BLUMENTHAL, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 16, 2016.

Jasmine Guladzhyan
Case Administrator
State Bar Court