

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 11-O-18657-DFM
	)	(11-O-19474; 11-O-19646;
BRUCE STEVEN WEINER,	)	12-O-11217; 12-O-11279;
	)	12-O-11333; 12-O-11931;
Member No. 78533,	)	12-O-12417; 12-O-12665;
	)	12-O-12675; 12-O-12676;
A Member of the State Bar.	)	12-O-12690; 12-O-12718;
	)	12-O-12733; 12-O-12760;
	)	12-O-13263; 12-O-13270;
	)	12-O-13527)
)	
	)	DECISION INCLUDING DISBARMENT
	)	RECOMMENDATION AND
	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT ORDER

INTRODUCTION

Respondent **Bruce Steven Weiner** (Respondent) is charged with 57 counts of misconduct involving 18 client matters. The charges include willfully violating: (1) rule 3-110(A) of the California Rules of Professional Conduct¹ (failure to perform legal services with competence) [5 counts]; (2) section 6106.3, subdivision (a) (violation of loan modification provisions) [5 counts]; (3) rule 3-700(D)(2) (failure to refund unearned fees) [5 counts]; (4) rule 4-100(B)(3) (failure to account) [5 counts]; (5) rule 1-300(B) (unauthorized practice of law in

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

another jurisdiction) [13 counts]; (6) rule 4-200(A) (illegal fee) [13 counts]; and (7) section 6068, subdivision (i) (failure to cooperate in a disciplinary investigation) [11 counts].

In view of Respondent's misconduct and the aggravating factors, the court recommends, *inter alia*, that Respondent be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on May 31, 2012. On June 22, 2012, Respondent filed his response to the NDC, admitting certain factual allegations, but denying the vast majority of the factual allegations and any culpability in the matters.

On August 14, 2012, the parties filed a brief stipulation of undisputed facts. Trial commenced on October 2, 2012, and completed on October 16, 2012.² The State Bar was represented at trial by Deputy Trial Counsel Anthony Garcia and Lara Bairamian. Respondent was represented at trial by J. Sean Dumm.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the stipulation of undisputed facts filed by the parties, on the admissions contained in Respondent's response to the NDC, and on the documentary and testimonial evidence admitted at trial.

At trial, Respondent was called to testify by the State Bar. Respondent properly asserted his Fifth Amendment privilege. The court draws no inference therefrom as to the credibility of Respondent or as to any matter at issue in this proceeding. (Evidence Code section 913, subdivision (a).)

² Respondent's October 16, 2012 motion to strike Exhibit 63 is **DENIED**. The document submitted on behalf of Respondent by his counsel in this litigation is the "sort of evidence on which responsible persons are accustomed to rely." (Rules Proc. of State Bar, rule 5.104(C); see also Evidence Code section 1222.) The court notes that Respondent has relied on other documents authored by attorney Borchard in defending counts of failing to cooperate.

Jurisdiction

Respondent was admitted to the practice of law in California on December 21, 1977, and has been a member of the State Bar at all relevant times.

Preliminary Facts

At all relevant times noted below, Respondent was the owner of, and an attorney for, the Novation Law Center (Novation), the All State Law Group (All State), and the Realty Law Center (Realty). Respondent is licensed to practice law in the State of California. He is not licensed to practice law in any of the other states referenced below. There is also no indication in the record that any other attorneys, licensed in the below-referenced states, were employed by Novation, All State, or Realty during the relevant time periods.

Clients of All State, Novation, and Realty would typically sign attorney-client fee agreements. All State's and Novation's fee agreements were set up in an effort to circumvent Civil Code section 2944.7(a)(1). Civil Code section 2944.7(a)(1) prohibits a person from receiving compensation in loan modification matters until "after the person has fully performed *each and every* service the person contracted to perform or represented that he or she would perform." (Emphasis added.) Accordingly, the fee agreements attempted to divide the services the companies provided into prequalification services and post-qualification services. Several of the fee agreements required the clients pay in full once the prequalification services were complete. Prequalification services consisted of basic rudimentary functions such as interviewing the client, determining whether to accept the case, and setting up a new client file. This creative division of labor, however, did not alleviate the requirement that Respondent perform *each and every* service contracted prior to receipt of compensation.

Case Number 11-O-18657 – The Crawford Matter

On May 13, 2011, Valerie Crawford (Crawford) employed Respondent and his law firm, All State, to provide her with legal services in connection with negotiating and obtaining a home mortgage loan modification on her residence in Oxnard, California. That same day, Crawford paid Respondent \$3,250 in advanced attorney fees. Crawford was charged advanced fees despite specific language in All State's contract stating that it did not accept advanced fees for its services.

On or about May 18, 2011, Crawford paid Respondent an additional \$1,500 in advanced attorney fees to handle the loan modification on a rental property she owned.

Prior to performing any services on Crawford's behalf, All State closed and its phone and emails were disconnected. Crawford's file was unilaterally transferred to another one of Respondent's companies, Realty. Crawford was not given any notice of the closure or transfer.

After discovering on her own that All State had closed and determining that her case had been transferred to Realty, Crawford communicated with Realty. Crawford requested that Realty focus its attention on the loan modification involving her residence, rather than the matter involving her rental property.

There is no evidence that Respondent, All State, or Realty made any legitimate efforts to pursue a loan modification on Crawford's behalf, and Respondent failed to provide any other legal services of value for Crawford. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for Crawford, prior to demanding, charging, collecting, or receiving the advanced attorney fees.

Respondent did not earn any portion of the advanced attorney fees paid by Crawford. On or about September 26, 2011, Crawford sent a letter to Respondent terminating his services and demanding a refund of the \$4,750 she had paid him in advanced attorney fees. Respondent

received the letter. To date, Respondent has not refunded any portion of the unearned fee paid by Crawford. At no time did Respondent provide Crawford with an accounting.

On or about November 3, 2011, the State Bar opened an investigation, case number 11-O-18657, pursuant to a complaint made by Crawford (the Crawford investigation). After the State Bar became involved, Crawford spoke to Respondent and he told her that he was intending to issue her a refund. Despite this assurance, Respondent did not subsequently provide Crawford with a refund.

On or about March 9, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by March 26, 2012, to the allegations of misconduct being investigated by the State Bar in the Crawford investigation. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 1 – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to provide any legal services in connection with negotiating and obtaining a loan modification on Crawford's residence, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count 2 – Section 6106.3, subd. (a) [Violation of Loan Modification Provisions]

Section 6106.3 states that an attorney's violation of Civil Code section 2944.7 constitutes cause for the imposition of discipline. Civil Code section 2944.7(a)(1) prohibits the collection of advanced fees, after October 10, 2009, in mortgage loan modification matters. By negotiating to perform a mortgage loan modification or mortgage loan forbearance for a fee paid by a borrower,

and demanding and collecting fees from Crawford prior to fully performing each and every service he had contracted to perform or represented that he would perform in violation of Civil Code section 2944.7, Respondent willfully violated section 6106.3.

Count 3 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. As noted above, All State closed its doors and unilaterally transferred Crawford's file before performing any work on Crawford's behalf. There is no evidence that Respondent, All State, or Realty made any legitimate efforts to pursue Crawford's loan modification, and Respondent failed to provide any other legal services of value for Crawford. By not returning any portion of the \$4,750 in unearned fees, Respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

Count 4 – Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney's possession. By failing to provide an accounting of his fees to Crawford, Respondent failed to render appropriate accounts to a client regarding all funds of the client coming into Respondent's possession, in willful violation of rule 4-100(B)(3).

Count 5 – Section 6068, subd. (i) [Failure to Cooperate]

Section 6068, subdivision (i) provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. The State Bar did not establish, by clear and convincing evidence, Respondent's failure to cooperate in the present investigation. The evidence demonstrated that

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 5 is dismissed with prejudice.

Case Number 11-O-19474 – The Aaron Majka Matter

On May 20, 2011, New Hampshire resident Aaron Majka (Aaron) employed Respondent and his law firm, All State, to provide him with legal services in connection with negotiating and obtaining a home mortgage loan modification on his residence in Salem, New Hampshire. That same day, Aaron paid Respondent \$3,495 in advanced attorney fees.

All State provided Aaron with a contract. In the contract, All State identified itself as a “California Professional Law Corporation.” The language of the contract clearly demonstrated that All State and Aaron established an attorney-client relationship.

New Hampshire Rule of Professional Conduct 5.5(b)(2) states, “A lawyer who is not admitted to practice in this jurisdiction shall not: . . . hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.”

Respondent is not now, nor ever has been, admitted to practice law in the State of New Hampshire. Respondent entered into an agreement for, charged, and collected attorney fees from Aaron, in a jurisdiction in which he was not admitted to practice law.

On or about December 5, 2011, the State Bar opened an investigation, case number 11-O-19474, pursuant to a complaint made by Aaron (the Aaron matter). On or about March 9, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by March 26, 2012, to the allegations of misconduct being investigated by the State Bar in the Aaron matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 6 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

Rule 1-300(B) states that a member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction. By accepting employment with Aaron and holding himself out as entitled to practice law in New Hampshire in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law in the State of New Hampshire, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 7 – Rule 4-200(A) [Illegal Fee]

Rule 4-200(A) states that a member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee. Attorneys are not entitled to charge or collect fees for services that constitute the unauthorized practice of law. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 904.) By entering into an agreement for, charging, and collecting fees from Aaron, when he was not licensed to practice in New Hampshire, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Count 8 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 8 is dismissed with prejudice.

Case Number 11-O-19646 – The Eric and Velika Majka Matter

On May 18, 2011, Massachusetts residents Eric and Velika Majka (the Majkas) employed Respondent and his law firm, All State, to provide them with legal services in connection with negotiating and obtaining a home mortgage loan modification on their residence in West

Newbury, Massachusetts. On that same day, the Majkas paid Respondent \$3,495 in advanced attorney fees.

All State provided the Majkas with a contract. In the contract, All State identified itself as a “California Professional Law Corporation.” The language of the contract clearly demonstrated that All State and the Majkas established an attorney-client relationship.

Massachusetts General Law 221 section 46A states, “No individual, other than a member, in good standing, of the bar of this commonwealth shall practice law, or by word, sign, letter, advertisement or otherwise, hold himself out as authorized, entitled, competent, qualified or able to practice law”

Respondent is not now, nor ever has been, admitted to practice law in the State of Massachusetts, and has never petitioned the courts of Massachusetts for permission to practice law in that state. Respondent entered into an agreement for, charged, and collected attorney fees from the Majkas, in a jurisdiction in which he was not admitted to practice law.

On or about December 15, 2011, the State Bar opened an investigation, case number 11-O-19646, pursuant to a complaint made by the Majkas (the Majkas matter). On or about March 9, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by March 26, 2012, to the allegations of misconduct being investigated by the State Bar in the Majkas matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 9 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

By accepting employment with the Majkas and holding himself out as entitled to practice law in Massachusetts in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law

in the State of Massachusetts, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 10 – Rule 4-200(A) [Illegal Fee]

By entering into an agreement for, charging, and collecting fees from the Majkas, when he was not licensed to practice in Massachusetts, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Count 11 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 11 is dismissed with prejudice.

Case Number 12-O-11217 – The Alotta Matter

In or about July 2011, Illinois resident Sylvia Alotta (Alotta) learned about All State after receiving a mailer. Alotta spoke to an All State representative over the telephone. The representative told Alotta about Respondent's involvement with All State and encouraged her to go to the All State website. Alotta visited the website and saw Respondent was identified as the attorney for All State, by name and bar number.

On July 8, 2011, Alotta employed Respondent and All State to provide her with legal services in connection with negotiating and obtaining a home mortgage loan modification on her residence in Berwyn, Illinois. On or about July 13, 2011, Alotta paid Respondent \$1,000 in advanced attorney fees. On or about August 17, 2011, Alotta paid Respondent an additional \$1,000 in advanced attorney fees.³

³ Alotta subsequently sent Respondent a final check for \$1,495, but she put a stop-payment order on this check.

All State provided Alotta with a contract. In the contract, All State identified itself as a “California Professional Law Corporation.” The language of the contract clearly demonstrated that All State and Alotta established an attorney-client relationship.

Illinois Rules of Professional Conduct 5.5(b)(2) states, “A lawyer who is not admitted to practice in this jurisdiction shall not: . . . hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.” In addition, Chapter 705 of the Illinois Compiled Statutes, section 205/1 states, “No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State. No person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney, nor may an unlicensed person advertise or hold himself or herself out to provide legal services.”

Respondent is not now, nor ever has been, admitted to practice law in the State of Illinois. Respondent entered into an agreement for, charged, and collected attorney fees from Alotta, in a jurisdiction in which he was not admitted to practice law.

Alotta received no services from All State. Alotta requested a refund and the All State representative laughed at her.

On or about February 7, 2012, the State Bar opened an investigation, case number 12-O-11217, pursuant to a complaint made by Alotta (the Alotta matter). On or about March 9, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by March 26, 2012, to the allegations of misconduct being investigated by the State Bar in the Alotta matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 12 – Rule 1-300(B) [Unauthorized Practice of Law in another Jurisdiction]

By accepting employment with Alotta and holding himself out as entitled to practice law in Illinois in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law in the State of Illinois, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 13 – Rule 4-200(A) [Illegal Fee]

By entering into an agreement for, charging, and collecting fees from Alotta, when he was not licensed to practice in Illinois, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Count 14 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 14 is dismissed with prejudice.

Case Number 12-O-11279 – The Guillaume Matter

On or about August 2, 2011, Robert and Elizabeth Guillaume (the Guillames) employed Respondent and his law firm, All State, to provide them with legal services in connection with negotiating and obtaining a home mortgage loan modification on their residence in Livermore, California. On or about that same day, the Guillames paid Respondent \$3,500 in advanced attorney fees. Respondent did not fully perform each and every service he had contracted to perform or represented that he would perform for the Guillames, prior to charging and receiving the advanced attorney fees.

The Guillaumes learned about All State from an advertisement. They had previously attempted to obtain a loan modification on their own, but this process was unsuccessful because they filed bankruptcy. The Guillaumes were still in bankruptcy when they hired All State.

A major problem with the Guillaumes' ability to obtain a loan modification was an ongoing dispute between the Guillaumes and their lender as to whether the Guillaumes had been making house payments after September 2009. The lender claimed that the Guillaumes owed \$79,000 that the Guillaumes believed they had already paid.

The All State (and later Realty) representatives gathered information from the Guillaumes and submitted this information to their lender. In January 2012, the lender offered a loan modification to the Guillaumes. The Guillaumes rejected the loan modification because the lender was continuing to contend that the Guillaumes owed the disputed \$79,000.

All State's efforts had the effect of obtaining a proposed loan modification, which was rejected solely because of the Guillaumes' contention that they had previously made \$79,000 in payments. The work by All State also stalled the efforts by the lender to sell the Guillaumes' home in foreclosure. No evidence was presented to this court to show that the Guillaumes were correct in their claim of having made prior payments. Elizabeth Guillaume's accuracy as a historian was demonstrated at several times during the trial to be quite suspect.

After a loan modification was offered and rejected, the Guillaumes demanded a full refund. Respondent has not refunded any portion of the fees paid by the Guillaumes. Respondent also did not provide the Guillaumes with an accounting.

On or about February 13, 2012, the State Bar opened an investigation, case number 12-O-11279, pursuant to a complaint made by the Guillaumes (the Guillaume matter). On or about March 9, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by March 26, 2012, to the allegations of misconduct being investigated by the State

Bar in the Guillaume matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 15 – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

The NDC alleged that Respondent failed to provide any legal services in connection with negotiating and obtaining a home mortgage loan modification or perform any other legal services of value in the representation of the Guilllaumes. However, as noted above, Respondent and All State obtained a loan modification for the Guilllaumes and performed the legal services for which they were retained. Consequently, Count 15 is dismissed with prejudice.

Count 16 – Section 6106.3, subd. (a) [Violation of Loan Modification Provisions]

By negotiating, arranging, or offering to perform a mortgage loan modification or mortgage loan forbearance for a fee paid by a borrower, and charging and receiving fees from the Guilllaumes prior to fully performing each and every service he had contracted to perform or represented that he would perform, in violation of subsection (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated section 6106.3.

Count 17 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

The NDC claims that the Guilllaumes sent a letter to Respondent in November 2011, terminating his services and demanding a refund. However, there was no evidence to substantiate this allegation. Instead, Elizabeth Guillaume testified that she felt the All State/Realty representatives were doing their jobs in November 2011. The Guilllaumes did not demand a refund until after the loan modification was offered and rejected. Respondent's fee agreement included a disclaimer of any guarantee of an acceptable loan modification. Here, a

loan modification was offered, but not accepted. Consequently, Respondent earned the fee it had charged, and Count 17 is dismissed with prejudice.⁴

Count 18 – Rule 4-100(B)(3) [Failure to Account]

The NDC alleged that Respondent violated rule 4-100(B)(3) by failing to provide an accounting to the Guillaumes. The court disagrees. The contract between Respondent and the Guillaumes was based on a fixed fee/flat rate. The work was performed as required. Consequently, Respondent did not have a duty to provide the Guillaumes an additional accounting. Therefore, Count 18 is dismissed with prejudice.

Count 19 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 19 is dismissed with prejudice.

Case Number 12-O-11333 – The Arnold Matter

On March 21, 2011, Rose Arnold (Arnold) employed Respondent and his law firm, Novation, to provide her with legal services in connection with negotiating and obtaining a home mortgage loan modification on her residence near Sacramento, California. On that same day, Arnold paid Respondent \$3,500 in advanced attorney fees.

After paying the advanced attorney fees, Arnold filled out and submitted the paperwork requested by Novation. Despite numerous calls requesting a status update, Arnold heard nothing further from Novation until she demanded a refund. Arnold never got a loan modification. In fact, there is no evidence or indication that her matter was even submitted to her lender.

⁴ While Respondent was not authorized to collect the fee upfront, the court finds this issue is separate and distinct from the issue of whether or not the fee was unearned. Consequently, the court does not recommend restitution in the Guillaume matter.

Respondent failed to provide the legal services necessary to negotiate and obtain a loan modification for Arnold, and failed to perform any other legal services of value for Arnold in connection with negotiating and obtaining a home mortgage loan modification.

Respondent also did not fully perform each and every service he had contracted to perform or represented that he would perform for Arnold, prior to charging and receiving the advanced attorney fees. Contrary to Civil Code section 2944.7, Respondent's fee agreement stated, "This fee agreement . . . will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the initial deposit called for under Paragraph 5."

In or about July 2011, Arnold left several telephonic messages for Respondent terminating his services and demanding a refund of the \$3,500 she had paid him in advanced attorney fees. Respondent received the messages, but did not refund any portion of the unearned fee or provide Arnold with an accounting of the \$3,500 in advanced attorney fees.

On or about February 10, 2012, the State Bar opened an investigation, case number 12-O-11333, pursuant to a complaint made by Arnold (the Arnold matter). On or about March 9, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by March 26, 2012, to the allegations of misconduct being investigated by the State Bar in the Arnold matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 20 – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By failing to provide any legal services in connection with negotiating and obtaining a home mortgage loan modification or perform any other legal services of value in the

representation of Arnold, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count 21 – Section 6106.3, subd. (a) [Violation of Loan Modification Provisions]

By negotiating, arranging, or offering to perform a mortgage loan modification or mortgage loan forbearance for a fee paid by a borrower, and charging and receiving fees from Arnold prior to fully performing each and every service he had contracted to perform or represented that he would perform in violation of subsection (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated section 6106.3.

Count 22 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

By failing to refund any portion of the advanced attorney fees paid by Arnold, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 23 – Rule 4-100(B)(3) [Failure to Account]

By failing to provide an accounting to Arnold, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in willful violation of rule 4-100(B)(3).

Count 24 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 24 is dismissed with prejudice.

Case Number 12-O-11931 – The Larkins Matter

On or about October 20, 2011, Georgia resident Aljosie Larkins (Larkins) employed Respondent and Realty to provide her with legal services in connection with negotiating and

obtaining a home mortgage loan modification on her residence in Ellenwood, Georgia. On or about that same day, Larkins paid Respondent \$1,437.50 in advanced attorney fees.

When Larkins initially spoke with Realty, Respondent's representative advised that he worked for All State. When the contract arrived, however, it was with Realty. The language of the contract clearly demonstrated that Realty and Larkins established an attorney-client relationship. The contract also laid out that the attorney fees were non-refundable and that "Attorney shall have no obligation to provide services to Client until Client pays Attorney in full."

Georgia Code section 15-19-51 states that it is unlawful for any person other than a duly licensed attorney to hold himself out as being entitled to practice law, render or furnish legal services or advice, or to use or advertise the title of "lawyer," "attorney," or equivalent terms in such a manner as to convey the impression that he is entitled to practice law or furnish legal advice. Respondent is not now, nor ever has been, admitted to practice law in the State of Georgia. Respondent entered into an agreement for, charged, and collected attorney fees from Larkins, in a jurisdiction in which he was not admitted to practice law.

On or about March 2, 2012, the State Bar opened an investigation, case number 12-O-11931, pursuant to a complaint made by Larkins (the Larkins matter). On or about April 17, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by May 1, 2012, to the allegations of misconduct being investigated by the State Bar in the Larkins matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 25 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

By accepting employment with Larkins and holding himself out as entitled to practice law in Georgia in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law in the State of Georgia, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 26 – Rule 4-200(A) [Illegal Fee]

By entering into an agreement for, charging, and collecting fees from Larkins, when he was not licensed to practice in Georgia, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Count 27 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 27 is dismissed with prejudice.

Case Number 12-O-12417 – The Klink Matter

On or about June 2, 2011, Massachusetts residents Sean and Allison Klink (the Klinks) employed Respondent and his law firm, All State, to provide them with legal services in connection with negotiating and obtaining a home mortgage loan modification on their residence in Pittsfield, Massachusetts. On or about June 20, 2011, the Klinks paid Respondent \$3,495 in advanced attorney fees.

All State provided the Klinks with a contract. In the contract, All State identified itself as a “California Professional Law Corporation.” The language of the contract clearly demonstrated that All State and the Klinks established an attorney-client relationship.

Massachusetts General Law 221 section 46A states, “No individual, other than a member, in good standing, of the bar of this commonwealth shall practice law, or by word, sign, letter, advertisement or otherwise, hold himself out as authorized, entitled, competent, qualified or able to practice law”

Respondent is not now, nor ever has been, admitted to practice law in the State of Massachusetts, and has never petitioned the courts of Massachusetts for permission to practice law in Massachusetts. Respondent entered into an agreement for, charged, and collected attorney fees from the Klinks, in a jurisdiction in which he was not admitted to practice law.

On or about March 15, 2012, the State Bar opened an investigation, case number 12-O-12417, pursuant to a complaint made by the Klinks (the Klink matter). On or about April 17, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by May 1, 2012, to the allegations of misconduct being investigated by the State Bar in the Klink matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 28 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

By accepting employment with the Klinks and holding himself out as entitled to practice law in Massachusetts in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law in the State of Massachusetts, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 29 – Rule 4-200(A) [Illegal Fee]

By entering into an agreement for, charging, and collecting fees from the Klinks, when he was not licensed to practice in Massachusetts, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Count 30 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 30 is dismissed with prejudice.

Case Number 12-O-12665 – The Baughman Matter

On May 23, 2011, Clinton Baughman (Baughman) employed Respondent and his law firm, All State, to provide him with legal services in connection with negotiating and obtaining a home mortgage loan modification on his residence in Rocklin, California. On that same day, Baughman paid All State \$295 in advanced attorney fees.

On May 31, 2011, Baughman paid an additional \$1,500 in advanced attorney fees, pursuant to All State's instructions. On June 29, 2011, Baughman paid another \$1,200 to All State in advanced attorney fees. Baughman paid Respondent and All State a total of \$2,995.

On June 20, 2011, Baughman signed an authorization for All State to gather information on his behalf. Clearly, All State could not have performed each and every loan modification service it had contracted to perform on Baughman's behalf, without the use of his authorization.

Respondent failed to provide the legal services necessary to negotiate and obtain a loan modification for Baughman on his property, and failed to perform any other legal services of value for Baughman in connection with negotiating and obtaining a home mortgage loan modification. Respondent also did not fully perform each and every service he had contracted to

perform or represented that he would perform for Baughman, prior to charging and receiving the advanced attorney fees.

Respondent did not earn any portion of the advanced attorney fees paid by Baughman. In or about January 2012, Baughman sent a letter to Respondent terminating his services and demanding a refund of the \$2,995 he had paid him in advanced attorney fees. Respondent received the letter, but did not refund any portion of the unearned fee or provide Baughman with an accounting.

On or about March 22, 2012, the State Bar opened an investigation, case number 12-O-12665, pursuant to a complaint made by Baughman (the Baughman matter). On or about April 17, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by May 1, 2012, to the allegations of misconduct being investigated by the State Bar in the Baughman matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 31 – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By failing to provide any legal services in connection with negotiating and obtaining a home mortgage loan modification or perform any other legal services of value in the representation of Baughman, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count 32 – Section 6106.3, subd. (a) [Violation of Loan Modification Provisions]

By negotiating, arranging, or offering to perform a mortgage loan modification or mortgage loan forbearance for a fee paid by a borrower, and charging and receiving fees from Baughman prior to fully performing each and every service he had contracted to perform or

represented that he would perform, in violation of subsection (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated section 6106.3.

Count 33 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

By failing to refund any portion of the advanced attorney fees paid by Baughman, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 34 – Rule 4-100(B)(3) [Failure to Account]

By failing to provide an accounting to Baughman, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in willful violation of rule 4-100(B)(3).

Count 35 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 35 is dismissed with prejudice.

Case Number 12-O-12675 – The Shnayder Matter

On June 13, 2011, Massachusetts residents Michael and Isabella Shnayder (the Shnayders) employed Respondent and his law firm, All State, to provide them with legal services in connection with negotiating and obtaining a home mortgage loan modification on their residence in Natick, Massachusetts. On that same day, the Shnayders paid Respondent \$4,495 in advanced attorney fees.

All State provided the Shnayders with a contract. In the contract, All State identified itself as a “California Professional Law Corporation.” The language of the contract clearly demonstrated that All State and the Shnayders established an attorney-client relationship.

Massachusetts General Law 221 section 46A states, “No individual, other than a member, in good standing, of the bar of this commonwealth shall practice law, or by word, sign, letter, advertisement or otherwise, hold himself out as authorized, entitled, competent, qualified or able to practice law”

Respondent is not now, nor ever has been, admitted to practice law in the State of Massachusetts, and has never petitioned the courts of Massachusetts for permission to practice law in Massachusetts. Respondent entered into an agreement for, charged, and collected attorney fees from the Shnayders, in a jurisdiction in which he was not admitted to practice law.

On or about March 23, 2012, the State Bar opened an investigation, case number 12-O-12675, pursuant to a complaint made by the Shnayders (the Shnyder matter). On or about April 17, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by May 1, 2012, to the allegations of misconduct being investigated by the State Bar in the Shnyder matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 36 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

By accepting employment with the Shnayders and holding himself out as entitled to practice law in Massachusetts in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law in the State of Massachusetts, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 37 – Rule 4-200(A) [Illegal Fee]

By entering into an agreement for, charging, and collecting fees from the Shnayders, when he was not licensed to practice in Massachusetts, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Count 38 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 38 is dismissed with prejudice.

Case Number 12-O-12676 – The Lynch Matter

On or about January 18, 2011, Connecticut resident Danny Lynch (Lynch) employed the Consult Legal Group to provide him with legal services in connection with negotiating and obtaining a home mortgage loan modification on his residence. The court, however, did not receive clear and convincing evidence that Respondent owned or was affiliated with the Consult Legal Group. The State Bar investigator testified that there were several companies in California using this name. While Respondent was affiliated with one of them, there was insufficient evidence to show that he was affiliated with the group contracting with Lynch.

On or about March 26, 2012, the State Bar opened an investigation, case number 12-O-12676, pursuant to a complaint made by Lynch (the Lynch matter). On or about April 17, 2012, a State Bar investigator sent Respondent a letter requesting that he respond in writing by May 1, 2012, to the allegations of misconduct being investigated by the State Bar in the Lynch matter. Respondent received the letter. Respondent subsequently communicated with the State Bar investigator and received an extension of time to respond. Respondent cooperated with the State Bar investigator and ultimately provided responses to all inquiries.

Count 39 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

The State Bar did not establish by clear and convincing evidence that Respondent held himself out as entitled to practice law in Connecticut and accepted employment with Lynch. Consequently, Count 39 is dismissed with prejudice.

Count 40 – Rule 4-200(A) [Illegal Fee]

The State Bar did not establish by clear and convincing evidence that Respondent entered into an agreement for, charged, and collected attorney fees from Lynch. Consequently, Count 39 is dismissed with prejudice.

Count 41 – Section 6068, subd. (i) [Failure to Cooperate]

Respondent communicated with the State Bar and, after securing extensions of time, provided responses to all investigative inquiries. Consequently, Count 41 is dismissed with prejudice.

Case Number 12-O-12690 – The Hladun Matter

On November 1, 2011, New York resident Natalia Hladun (Hladun) employed Respondent and his law firm, Realty, to provide her with legal services in connection with negotiating and obtaining a home mortgage loan modification on her residence on Staten Island in New York. On November 4, 2011, Hladun paid Respondent \$1,750 in advanced attorney fees. On December 5, 2011, Hladun paid Respondent an additional \$1,750 in advanced attorney fees.

The language of the contract clearly demonstrated that Realty and Hladun established an attorney-client relationship. The contract also laid out that the attorney fees were non-refundable and that “Attorney shall have no obligation to provide services to Client until Client pays Attorney in full.”

New York’s McKinney’s Judiciary Law section 478 provides in pertinent part: “It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney

and counselor-at-law for a person other than himself in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law . . . in such a manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath.”

Respondent is not now, nor ever has been, admitted to practice law in the State of New York. Respondent entered into an agreement for, charged, and collected attorney fees from Hladun, in a jurisdiction in which he was not admitted to practice law.

Count 42 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

By accepting employment with Hladun and holding himself out as entitled to practice law in New York in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law in the State of New York, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 43 – Rule 4-200(A) [Illegal Fee]

By entering into an agreement for, charging, and collecting fees from Hladun, when he was not licensed to practice in New York, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Case Numbers 12-O-12718; 12-O-12733; and 12-O-12760

Based on the failure/inability of the complaining witnesses to appear to testify, Counts 44-49 were dismissed with prejudice during trial, upon request of the State Bar.

Case Number 12-O-13263 – The Perry Matter

On or about January 11, 2012, North Carolina residents James and Rosie Perry (the Perrys) saw an advertisement on television and employed Respondent and his law firm, Realty, to provide them with legal services in connection with negotiating and obtaining a home mortgage loan modification on their residence in Charlotte, North Carolina. The language of the fee agreement and borrower’s authorization clearly demonstrated that Realty and the Perrys established an attorney-client relationship.

On January 11, 2012, the Perrys paid Respondent \$995 in advanced attorney fees. On February 14, 2012, the Perrys paid Respondent an additional \$995 in advanced attorney fees.

North Carolina G.S.A. section 84-4 provides in pertinent part: “Except as otherwise permitted by law, it shall be unlawful for any person or association of persons, except active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law, . . . or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as being competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor-at-law, or in furnishing the services of a lawyer or lawyers”

Respondent is not now, nor ever has been, admitted to practice law in the State of North Carolina. Respondent entered into an agreement for, charged, and collected attorney fees from the Perrys, in a jurisdiction in which he was not admitted to practice law.

Count 50 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

By accepting employment with the Perrys and holding himself out as entitled to practice law in North Carolina in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law in the State of North Carolina, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 51 – Rule 4-200(A) [Illegal Fee]

By entering into an agreement for, charging, and collecting fees from the Perrys, when he was not licensed to practice in North Carolina, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Case Number 12-O-13270 – The Ransom Matter

On or about April 4, 2011, John Ransom (John) employed Respondent and his law firm, Novation, to provide him with legal services in connection with negotiating and obtaining a home mortgage loan modification on a residence located in Citrus Heights, California. On or about that same day, John’s mother, Donna Ransom (Donna), paid Respondent two checks for advanced attorney fees in the amounts of \$1,950 and \$1,550. Donna was instructed to post-date the second check to May 4, 2011.⁵ Donna was told that no work would be done unless an advanced payment was made. She was also told that the money would be “kept in holding until the work was done.”

Respondent also did not fully perform each and every service he had contracted to perform or represented that he would perform for John, prior to demanding, charging, collecting or receiving the advanced attorney fees.

⁵ The court notes that the check numbers of these two checks were in sequential order – 3239 and 3240.

Donna handled this matter for John. Donna provided requested documentation to Novation. Novation's representatives, however, kept asking for new copies of documents previously provided by Donna. In September 2011, Novation informed Donna that the loan modification package had been submitted to the bank. But in October, Novation asked Donna for new copies of the same documents. Donna asked for clarification that the documents had actually been sent to the bank, but no clarification was provided.

Donna was then told by Novation's representatives that everything was submitted in November 2011. Donna communicated with the bank in January 2012, and was told that no package from Novation had been received.

There is no evidence in the record that John ever terminated his contract with Novation. Neither Donna nor John demanded a refund.

Count 52 – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

The NDC alleges that Donna employed Respondent and Novation to provide her with legal services regarding obtaining a home mortgage loan modification on her property. The evidence offered by the State Bar instead showed that the contract was between Novation and John, involving property owned by John. Since the evidence does not prove the charges made in the NDC and no effort was made to amend the NDC to conform to proof, Count 52 is dismissed with prejudice.

Count 53 – Section 6106.3, subd. (a) [Violation of Loan Modification Provisions]

By negotiating, arranging, or offering to perform a mortgage loan modification or mortgage loan forbearance for a fee paid by a borrower, and charging and receiving fees from Donna prior to fully performing each and every service he had contracted to perform or

represented that he would perform, in violation of subsection (a)(1) of Section 2944.7 of the Civil Code, Respondent willfully violated section 6106.3.⁶

Count 54 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

The State Bar alleged that Respondent failed to refund unearned fees to Donna. The court finds that this count was not established by clear and convincing evidence. John was the client in this matter. There is no evidence that John ever terminated the contract with Respondent. Accordingly, Count 54 is dismissed with prejudice.

Count 55 – Rule 4-100(B)(3) [Failure to Account]

The State Bar alleged that Respondent failed to provide an accounting to Donna. As noted above, Donna was not Respondent's client. Consequently, Respondent did not have a duty to provide her with an accounting. Accordingly, Count 55 is dismissed with prejudice.

Case Number 12-O-13527 – The Thompson Matter

On or about May 17, 2011, Colorado resident Gary Thompson (Thompson) employed Respondent and his law firm, Realty, to provide him with legal services in connection with negotiating and obtaining a home mortgage loan modification on a property located in Lakewood, Colorado.

The language of the contract clearly demonstrated that Realty and Thompson established an attorney-client relationship. The contract also claimed that Realty did not accept advanced fees for their services, yet Thompson was instructed to pay fees upfront and provide Realty with post-dated checks.

On May 17, 2011, Thompson paid Respondent \$950 in advanced attorney fees. On that same day, Thompson paid Respondent two additional checks for advanced attorney fees in the

⁶ Because Respondent improperly required Donna to pay advanced fees, the court recommends full restitution.

amounts of \$950 and \$500. The Realty representative instructed Thompson to post-date the two checks to June 17 and July 17, 2011.⁷

Colorado Rules of Professional Conduct rule 5.5(a)(1) prohibits a lawyer from practicing law in Colorado without a license issued by the Colorado Supreme Court unless specifically authorized. Respondent is not now, nor ever has been, admitted to practice law in the State of Colorado. Nor was he specifically authorized to practice law in the State of Colorado. Respondent entered into an agreement for, charged, and collected attorney fees from Thompson, in a jurisdiction in which he was not admitted to practice law.

Count 56 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

By accepting employment with Thompson and holding himself out as entitled to practice law in Colorado in order to perform legal services in connection with negotiating and obtaining a mortgage loan modification, Respondent held himself out as entitled to practice law in the State of Colorado, a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction, in willful violation of rule 1-300(B).

Count 57 – Rule 4-200(A) [Illegal Fee]

By entering into an agreement for, charging, and collecting fees from Thompson, when he was not licensed to practice in Colorado, Respondent entered into an agreement for, charged, or collected an illegal fee, in willful violation of rule 4-200(A).

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof.

⁷ The three check numbers in question are in sequential order – 2223, 2224, and 2225.

Misconduct, std. 1.2(b).)⁸ The court makes the following findings with regard to possible aggravating factors.

Multiple Acts of Misconduct

Respondent has been found culpable of numerous counts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Prior Record of Discipline

Respondent has a record of three prior disciplines.⁹ (Std. 1.2(b)(i).)

On January 22, 1998, the California Supreme Court issued order no. S065607, suspending Respondent from the practice of law for a period of one year, stayed, with one year's probation. Here, Respondent stipulated to misconduct in a single-client matter, occurring in or about early to mid-1996. The misconduct involved accepting an illegal fee, failing to refund an unearned fee, and failing to promptly release client funds. In mitigation, Respondent had no prior record of discipline and cooperated with the State Bar. No aggravating circumstances were involved.

On December 1, 1999, the California Supreme Court issued order no. S082191, suspending Respondent from the practice of law for one year, stayed, with eighteen months' probation, including 120 days' suspension. In this matter, Respondent stipulated to four counts of misconduct occurring between mid-1995 and early 1999. Said misconduct included engaging in the unauthorized practice of law while suspended (two counts), failing to cooperate in a disciplinary investigation, and failing to timely comply with the terms and conditions of disciplinary probation. In aggravation, Respondent had one prior record of discipline and

⁸ All further references to standard(s) or std. are to this source.

⁹ As addressed below, Respondent actually has four prior disciplines, however, his third and fourth disciplines were resolved together, but separated for purposes of effectuations.

committed multiple acts of misconduct. In mitigation, Respondent displayed candor and cooperation with the State Bar, performed charitable work, and had a mistaken belief that he did not need to submit quarterly reports.

On October 23, 2001, the California Supreme Court issued order no. S082191, revoking Respondent's previously ordered probation and suspending him for two months. In this matter, Respondent stipulated to failing to timely comply with the conditions of his disciplinary probation between 2000 and 2001. In aggravation, Respondent committed multiple acts of misconduct and had two prior records of discipline. No mitigating circumstances were involved.

On December 17, 2001, the California Supreme Court issued order no. S101205, suspending Respondent from the practice of law for 30 months, stayed, with 24 months' probation, on condition that he be suspended for 14 months and until he provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii). In this matter, Respondent was found culpable of engaging in the unauthorized practice of law, charging an illegal fee, failing to refund unearned fees, failing to cooperate in a disciplinary investigation, failing to comply with former rule 955 of the California Rules of Court,¹⁰ and issuing a client trust account check against insufficient funds. In aggravation, Respondent committed multiple acts of misconduct and had two prior records of discipline. No mitigating circumstances were involved.

The State Bar Court case underlying Supreme Court order no. S082191 was originally consolidated with the State Bar Court case underlying Supreme Court order no. S101205; however, after entering into a stipulation pertaining to both consolidated matters, the Hearing Department judge entered a modification order separating these matters for the purpose of effectuating them to the Supreme Court. The modification order included a recommendation that

¹⁰ This rule has since been renumbered 9.20.

neither matter be considered a prior discipline of the other. Consequently, the court will consider these two matters as one record of discipline. (Cf. *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

Significant Harm

Respondent's misconduct resulted in significant financial harm to several of his clients, as they were denied the use of their money. (Std. 1.2(b)(iv).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court makes the following findings with regard to possible mitigating factors.

Character Evidence

This court declines to find character evidence as a significant mitigating factor. Respondent presented good character testimony from only one witness, who attempted to testify that he had investigated the situation at Respondent's request and had determined that Respondent was somehow not culpable of any wrongdoing. Character evidence from such a single witness does not constitute "a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct." (Std. 1.2(e)(vi); *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359.)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional

standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

In this case, the standards call for the imposition of a sanction ranging from suspension to disbarment. (Standards 2.6, 2.2(b), and 1.7(b).) Standard 2.6 states that culpability of a member of a violation of section 6068 “shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.” Standard 2.2(b) calls for, at a minimum, a three-month period of actual suspension for the commingling of entrusted funds or the commission of another violation of rule 4-100 not resulting in the willful misappropriation of entrusted funds.

Due to Respondent’s prior record of discipline, standard 1.7(b) is also applicable. Standard 1.7(b) provides that, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court and Review Department have not historically applied standard 1.7(b) in a rigid fashion. Instead, the courts have weighed the individual facts of each case, including whether or not the instant misconduct represents a repetition of offenses for which the attorney has previously been disciplined. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977.) When such repetition has been found, the courts have typically found disbarment to be the appropriate sanction. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607;

In the Matter of Shalant (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841; *In the Matter of Thomson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 977.)

The present matter involves some of the same misconduct for which Respondent has been previously disciplined. This marks the third time he has been disciplined for charging illegal fees and failing to refund unearned fees.

In addition, the court notes that Respondent has twice previously been disciplined for failing to comply with the terms of his disciplinary probation. This causes the court to question Respondent's willingness or ability to comply with yet another round of disciplinary probation.

After weighing the evidence and the factors in aggravation, and considering the repetition of Respondent's misconduct and the extensive and egregious nature of the present misconduct, the court finds little reason to believe Respondent no longer poses a threat to public protection. Consequently, the court finds no compelling reason to deviate from standard 1.7(b), and agrees with the State Bar's recommendation that Respondent should be disbarred.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that Respondent **Bruce Steven Weiner**, Member No. 78533, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys of all persons admitted to practice in this state.

Restitution

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

- (1) Valerie Crawford in the amount of \$4,750, plus 10% interest per annum from September 26, 2011;
- (2) Aaron Majka in the amount of \$3,495, plus 10% interest per annum from May 20, 2011;

- (3) Eric and Velika Majka in the amount of \$3,495, plus 10% interest per annum from May 18, 2011;
- (4) Sylvia Alotta in the amount of \$2,000, plus 10% interest per annum from July 13, 2011;
- (5) Rose Arnold in the amount of \$3,500, plus 10% interest per annum from March 21, 2011;
- (6) Aljosie Larkins in the amount of \$1,437.50, plus 10% interest per annum from October 20, 2011;
- (7) Sean and Allison Klink in the amount of \$3,495, plus 10% interest per annum from June 20, 2011;
- (8) Clinton Baughman in the amount of \$2,995, plus 10% interest per annum from January 1, 2012;
- (9) Michael and Isabella Shnyder in the amount of \$4,495, plus 10% interest per annum from June 13, 2011;
- (10) Natalia Hladun in the amount of \$3,500, plus 10% interest per annum from November 4, 2011;
- (11) James and Rosie Perry in the amount of \$1,990, plus 10% interest per annum from January 11, 2011;
- (12) Donna and John Ransom in the amount of \$3,500, plus 10% interest per annum from April 4, 2011; and
- (13) Gary Thompson in the amount of \$2,400, plus 10% interest per annum from September 26, 2011.

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

California Rules of Court, Rule 9.20

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Costs

The court further recommends 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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Bruce Steven Weiner**, Member No. 78533, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)¹¹

Dated: November _____, 2012.

DONALD F. MILES
Judge of the State Bar Court

¹¹ An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or even to hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)