FILED MARCH 6, 2015

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: **13-O-13309–YDR**
	)	**(13-O-13455; 13-O-13662**
BARRY STEVEN JORGENSEN,	)	**13-O-13665; 13-O-13744)**
	)	
Member No. 79620,	)	
	)	**AMENDED DECISION**
A Member of the State Bar.	)	

Introduction[1]

BARRY STEVEN JORGENSEN (Respondent) is charged with seven counts of professional misconduct for his involvement in mortgage loan modification or forbearance cases involving five former clients. The charged misconduct includes: (1) violation of Civil Code section 2944.7(a)(1)[2] and Business and Professions Code section 6106.3[3] (accepting illegal advanced fees); (2) aiding in the unauthorized practice of law; and, (3) sharing legal fees with a non-lawyer. The court finds by clear and convincing evidence that Respondent is culpable in

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[1] The original decision, filed March 5, 2015, has been amended to delete any reference to or recommendation that Respondent comply with Rule 9.20 of the California Rules of Court.

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

[2] Civil Code section 2944.7(a)(1), effective October 11, 2009, in relevant part provides: "(a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following: (1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

[3] Business & Professions Code section 6106.3 provides: "(a) It 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 2944.6 or 2944.7 of the Civil Code."

one matter for collecting an illegal advanced fee. In addition, Respondent admitted culpability to sharing fees with a non-lawyer as to the five former clients.

After careful consideration of the applicable attorney discipline standards and in view of aggravating and mitigating factors, including no prior disciplinary record in over 33 years of practice and cooperation with the State Bar, the court recommends, among other things, that Respondent be suspended from the practice of law for one year with execution of suspension stayed, that Respondent be placed on probation for two years and that he be actually suspended for the first 30 days of probation.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on April 24, 2014. Respondent filed a response May 21, 2014. A hearing in this matter was held November 20-21, 2014 and December 8, 2014. Senior Trial Counsel, Anthony Garcia and Deputy Trial Counsel, Sherell N. McFarlane, represented the State Bar. Edward O. Lear, Century Law Group LLP, represented Respondent. The court took this matter under submission December 8, 2014 and the parties filed closing briefs, January 9, 2015.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 2, 1978, and has been a member of the State Bar of California at all times since that date.

These findings of fact are based on the record and the evidence admitted at trial. The facts set forth below are common to the five matters on which Respondent was charged with misconduct.

During September or October 2011, Respondent was asked by attorney Joseph Renteria to make special court appearances on various matters where he represented clients of Legally

Yours, LLC in foreclosure cases. In late September 2011, Mr. Renteria suffered a heart attack and advised his clients he was fully disabled and could no longer handle their litigation matters. Subsequently, Andrea Franchino aka Andrea DuBois, a paralegal who owned and operated Legally Yours, asked Respondent to represent Legally Yours' clients in connection with foreclosure defense litigation against their mortgagors.

On October 5, 2011, Legally Yours and Respondent entered into an Attorney/Paralegal Services Agreement which provided that Respondent would engage Legally Yours as an independent contractor to provide paralegal services, including but not limited to: 1) drafting legal pleadings, discovery, jury instructions, letters, etc.; 2) interviewing Respondent's clients and performing legal research; 3) handling client billing and collections; 4) bookkeeping and payroll services; 4) case management, scheduling and calendaring services; 5) office management, including providing a receptionist, legal secretary and marketing. Respondent was allowed to operate his law practice out of Legally Yours' offices without charge or apportionment of rent. Respondent agreed to pay Legally Yours $300 per hour for its services. Legally Yours paid Respondent a monthly salary from the legal fees it collected from each of the five former clients.

Four of the five former clients involved in this proceeding entered into a retention agreement with Legally Yours which referred to Legally Yours as "Attorney." However, four sets of former clients entered into retention agreements that identified Mr. Renteria as counsel who would represent the clients by providing "litigation services" with respect to a mortgage loan on their respective properties. The fifth set of former clients, Luis and Angelina Maldonado, entered into a retention agreement with Legally Yours which referred to it as "Attorney" but identified Respondent as the counsel who would represent them in connection

with "litigation regarding 1st Mortgage." Each former client paid initial fees and monthly payments to Legally Yours for litigation services.

When Respondent first began to represent the former clients, each of them had a home that was in some stage of foreclosure, e.g., each had already received a recorded notice of default or a notice of pending trustee's sale.

Case No. 13-O-13309 – The Ramirez Matter

Facts

Delfino Ramirez received a flyer from Legally Yours and contacted them when two of his properties were in foreclosure. He entered into a March 1, 2011 retainer agreement that was executed by Mr. Ramirez[4], Andrea DuBois and attorney Sarah Golden.[5] The first retainer agreement did not specifically require an initial fee but did require monthly payments of $750. According to Receipt #1, dated February 10, 2011, Mr. Ramirez made a partial payment of $1,774 to Legally Yours for a "[b]ankruptcy filing fee Chapter 13" and for "mortgage litigation," leaving a balance due of $2,000.

Legally Yours was retained for "the sole and limited purpose of litigation" regarding the first mortgage loan secured by Mr. Ramirez's property located on Linda Way (Linda Way Property) where his daughter lived. A notice of default had been recorded on the Linda Way Property before Mr. Ramirez contacted Legally Yours. On March 21, 2011, Sarah Golden, an attorney working for Legally Yours, filed a wrongful foreclosure action against Mr. Ramirez's

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[4] Mr. Ramirez testified at trial with the assistance of an interpreter. However, it did not appear that Mr. Ramirez reads or writes Spanish or English. He credibly testified that he can only recognize and read his initials and his name.

[5] Ms. Golden substituted out of the Ramirez case. Joseph Renteria became the attorney managing the Ramirez litigation during July 2011.

Linda Way lender, GMAC, and other defendants. (Orange County Superior Court, Central Justice Center, case no. 30-2011-00459542-CU-OR-CJC.)

Mr. Ramirez executed a second retainer agreement with Legally Yours on August 22, 2011, which identified Joseph Renteria as the attorney handling the first mortgage loan/ settlement of the second mortgage with respect to the property located at Rene Drive (Rene Drive property) where Mr. Ramirez lived. Mr. Ramirez was the only signer on this retainer agreement. This agreement required an initial fee of $4,000 and a monthly fee of $750. Mr. Ramirez paid the last $2,000 due for the initial fee of $4,000 on September 21, 2011.

Respondent did not begin to provide legal services to Mr. Ramirez with regard to either property until late October 2011. By letter dated October 26, 2011, Respondent advised Mr. Ramirez that he had been retained to represent him in the Linda Way litigation in place of Joseph Renteria. He further advised Mr. Ramirez that the trustee's sale of the Linda Way property had been cancelled, a civil complaint had been filed on his behalf in Orange County Superior Court and all defendants had been served. Defendants demurred and Respondent caused a first amended complaint to be filed. After Defendants demurred to the first amended complaint, Respondent filed and served a second amended complaint. Subsequently, the court in the Linda Way litigation sustained the GMAC Mortgage LLC and ETS defendants' demurrer without leave to amend the Ramirez's second amended complaint on February 28, 2012.

The record does not reflect that Respondent negotiated a loan modification with Mr. Ramirez's lenders after the Linda Way second amended complaint was dismissed with prejudice.

As to the Rene Drive property, Respondent forwarded a letter to Mr. Ramirez dated October 28, 2011, which stated that Respondent had substituted in for Mr. Renteria and was conducting a forensic loan audit and evaluating the status of the foreclosure proceedings in order to prepare a complaint which Respondent anticipated filing by November 14, 2011. Respondent

further advised Mr. Ramirez that the trustee's sale for his Rene Drive Property had been canceled and all foreclosure activity regarding the property had ceased. During January 2012, counsel for the Rene Drive property lender, Ocwen, contacted Respondent to negotiate resolution of the litigation against Ocwen by offering to modify Mr. Ramirez's loan by reducing the monthly payment by almost 50%. Ms. Ramirez testified that although Ocwen offered a loan modification, Mr. Ramirez did not accept it because he did not consider the payment amount to be affordable.

Conclusions

Count One –§ 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]

Mr. Ramirez's retention contract reflected that Legally Yours was to provide mortgage loan foreclosure litigation services, not loan modification services, in connection with Mr. Ramirez's properties that were in various stages of foreclosure in late October 2011, when Respondent began to represent Mr. Ramirez. The fees that were paid were for Respondent's representation of Mr. Ramirez in foreclosure prevention litigation against GMAC and Ocwen, respectively. There is not clear and convincing evidence that Mr. Ramirez and Respondent contracted for Respondent to perform any services other than the litigation services performed. Accordingly, the court does not find a violation of Civil Code section 2944.7(a)(1) and section 6106.3.

Case No. 13-O-13455 – The Garcia Matter

Facts

On September 27, 2011, Heriberto and Maria Garcia, executed a retainer agreement with Legally Yours which identified Joseph Renteria as the attorney handling the first mortgage loan/ settlement of second mortgage with respect to the Garcias' primary residence located at

Graystone in Norwalk, CA. (Graystone property). In the agreement, Mr. Garcia indicated that he had received notices of default and sale for the Graystone property.

Respondent's March 15, 2012 letters to the Garcias stated: "On March 13, 2012, I spoke with opposing counsel (your lender's attorney) and informed her that our main goal in this matter is that you be given a modification of your loan so that you can afford the monthly payments." Respondent also informed the Garcias that the trustee's sale had been cancelled.

The May 31, 2012 letter from Respondent to the Garcias advised that the court sustained mortgage defendant's demurrer without leave to amend and stated that the Garcias' financials would be submitted in hopes of obtaining a more affordable mortgage payment under a new program. In August 2012, Respondent sought to reassure the Garcias that the culmination of the lawsuit "is not the end of the road, we are currently in the process of collecting your financial information so we can get a review of your loan directly from your lender."

From September 28, 2011 through December 21, 2012, the Garcias paid Legally Yours and Respondent about $20,995, comprised of an initial payments of $3,000 and $2,000 and monthly payments of $1,200. From May 24, 2012 through December 21, 2012, the Garcias paid Legally Yours and Respondent $8,400 ($1200 per month for 7 months.)

The Garcias did not get a loan modification from the lender while Respondent represented them. They eventually hired another lawyer who, according to Ms. Garcia, "stopped the bank from taking the house" after Respondent fired her for refusing to pay more money until after the modification was obtained.

Conclusions

Count Two –§ 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]

While Respondent represented the Garcias in foreclosure prevention litigation that they originally contracted for, Respondent represented that his goal was to obtain a more affordable

monthly payment for the Garcias. After the foreclosure prevention litigation was dismissed in May 2012, Respondent charged the Garcias an advance fee for loan modification services. The Garcias paid advanced fees to Respondent from May 24, 2012 through December 21, 2012 for loan modification services which Respondent never obtained for them. Accordingly, by charging the Garcias advanced loan modification fees from May 24, 2012 through December 21, 2012, Respondent violated Civil Code section 2944.7(a)(1) and willfully violated section 6106.3.

Case No. 13-O-13662 – The Maldonado Matter

Facts

On March 19, 2012, Luis and Angelina Maldonado executed a retainer agreement with Legally Yours[6] which identified Barry Jorgensen as the attorney handling the Maldonados' representation in "litigation regarding [their] first mortgage lien" on their Stimson Avenue home (Stimson property). [7] At the time the Maldonados retained Legally Yours, they had received a notice of default on the Stimson property and a trustee's sale was projected for June 19, 2012.

By April 18, 2012, Respondent had filed a complaint against the Maldonados' lender, Bank of America. During May 2012, in an effort to settle the litigation, opposing counsel agreed to allow the Maldonados to submit a loan modification package for review and to postpone the Stimson property foreclosure sale while the review was pending. Subsequently, while the litigation was pending, the Maldonados' lender approved the loan modification contingent upon

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[6] From March 2012 through August 2012, the Maldonados paid Legally Yours fees comprised of a complaint filing fee of $395, "retainer" payments totaling $ 5,000 and monthly payments of $1,200. Respondent advised the Maldonados in September 2012, to start endorsing and forwarding monthly payments directly to himself.

[7] The court notes, however that Respondent subsequently indicated that in a conversation with the lender's attorney, he "informed him that the purpose of this law suit is to have your financial information diligently reviewed *in the hopes of getting you into a more affordable payment."* (Emphasis added.). According to Respondent, opposing counsel responded by agreeing to allow the Maldonados to submit a modification package.

the Maldonados agreeing to dismiss without prejudice the foreclosure prevention complaint filed by Respondent.

The case settled and the action was dismissed. Mr. and Mrs. Maldonado both credibly testified that they eventually obtained a loan modification from their lender, Bank of America, and, they are both satisfied with the loan modification obtained for them and with Respondent's representation of their interests during the foreclosure litigation.

Conclusions

Count Three –§ 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]

The Maldonados' retention contract reflected that Respondent was to provide mortgage loan foreclosure litigation services in connection with the Maldonados' Stimson property that was already in foreclosure and scheduled to be sold at a trustee's sale. As a result of the foreclosure prevention litigation Respondent filed on their behalf, opposing counsel agreed to modify the Maldonados' home loan in an effort to resolve the litigation. This court finds that Respondent did not violate Civil Code section 2944.7(a)(1) and section 6106.3 because Respondent and the Maldonados' lender negotiated a loan modification in an effort to resolve the pending litigation that Respondent contracted to perform.

Case No. 13-O-13665 – The Herrera Matter

Facts

The Notice of Disciplinary Charges alleges that Respondent collected about $10,645 from Michael Herrera[8] before Respondent had fully performed each and every service he had been contracted to perform or represented to the client Respondent would perform in violation of Civil Code, section 2944.7 and, in willful violation of Business and Professions Code, section

[8] Notwithstanding the service of a trial subpoena on Mr. Herrera, he did not appear at trial. The information reflected here with respect to Count Four was obtained as a result of the parties' stipulation of facts and admissible evidence proferred by others.

6106.3. The retainer agreement entered into between Legally Yours and attorney Joseph Renteria on September 15, 2011, states that the legal services to be provided under the retainer agreement include "litigation regarding First Mortgage Loan." No other legal services are specified in the agreement.

By letter dated October 28, 2011, Respondent explained to Mr. Herrera that he had been retained as the new attorney, substituting in for Joseph Renteria. Respondent touted his experience in real estate, business law and civil litigation. Respondent also noted, "I have extensive experience with foreclosure defense matters." Nowhere did Respondent mention his skills vis-à-vis loan modifications or the negotiation of loan modifications. Respondent did, however, update Mr. Herrera regarding the status of the civil complaint filed on his behalf in Riverside Superior Court. On January 12, 2012 and March 9, 2012, Respondent forwarded additional case update letters which apprised Mr. Herrera of the status of the lawsuit[9] and subsequently, that a loan modification package which was being reviewed by opposing counsel.

Conclusion

Count Four –§ 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]

There is not clear and convincing evidence that Respondent violated Civil Code section 2944.7 and willfully violated Business and Professions Code section 6106.3. Respondent did not accept an illegal advanced fee to perform a mortgage loan modification or other form of loan forbearance. Rather, Respondent accepted fees to defend Mr. Herrera in the foreclosure prevention action he actively litigated against Mr. Herrera's lenders, South Pacific Financial Corporation and JPMorgan Chase. Moreover, Mr. Herrera's loan modification was negotiated at the suggestion of and with Mr. Herrera's lender's counsel who sought to settle the foreclosure

[9] Specifically, Respondent advised Mr. Herrera about the filing of a first amended complaint on January 12, 2012, the filing of a demurrer, Respondent's opposition to the demurrer and, a case management conference scheduled for April 25, 2012.

litigation by agreeing to give Mr. Herrera a permanent loan modification. The loan modification was obtained for Mr. Herrera and, as the parties agreed, a Request For Dismissal of the foreclosure litigation was filed.

Case No. 13-O-13744 – The Sanchez de Uribe Matter

Facts

On September 10, 2011, Consuelo Sanchez de Uribe executed a retainer agreement with Legally Yours which identified Joseph Renteria as the attorney handling the first mortgage loan/ settlement of second mortgage with respect to her Opal Street primary residence (Opal Street property). In the agreement, Ms. Sanchez stated that she had previously received a notice of default and a notice of trustee's sale for the Opal Street property.[10] The property was scheduled to be sold on November 18, 2011.

In a series of client report letters, Respondent advised Ms. Sanchez that during late October 2011, he caused a complaint to be filed and served on Ms. Sanchez's lenders who subsequently demurred to the complaint. The hearing on the demurrer was initially set to be heard January 31, 2012 and then was continued to March 26, 2012. By letter dated March 16, 2012, Respondent further advised Ms. Sanchez that an opposition to the demurrer had been filed on her behalf and that he would seek postponement of the trustee's sale of the Opal Street property that had been previously been rescheduled to go forward April 9, 2012.

Respondent's March 16, May 31, and August 24, 2012 letters to Ms. Sanchez all contained the following statement: "I spoke with opposing counsel (your lender's attorney) and informed him that the purpose of this law suit is to have your financial information diligently

[10] Ms. Sanchez also indicated that she had previously received a loan modification.

reviewed in the hopes of getting you into a more affordable payment." [11] Respondent's May 31, 2012 letter also reflected that while continuing to litigate the foreclosure issues, Respondent had commenced efforts to obtain a loan modification for Ms. Sanchez. He advised her that "[o]pposing counsel has agreed to allow us to submit a modification package, of which his office and our office will facilitate the review process to ensure it is handled properly. The completed modification package was submitted to opposing counsel and as of May 30, 2012, no updated documents or information has been requested."

On July 23, 2012, defendant Bank of America, N.A. (BANA)'s demurrer to the second amended complaint was sustained without leave to amend. A week later, BANA's counsel advised Respondent that Ms. Sanchez's loan modification was denied due to her failure to provide certain requested documentation. By August 24, 2012, not only had Ms. Sanchez's modification review been denied, but her Opal Street property was set for a trustee's sale on October 10, 2012. Subsequently, according to Respondent's October 18, 2012 client update letter to Ms. Sanchez, the sale was rescheduled to go forward December 20, 2012.

Although Ms. Sanchez's second amended complaint had been dismissed as to her primary lender, Bank of America, the litigation was still pending with respect to lender defendant PMC Bancorp (PMC). On September 13, 2012, Respondent filed a request for entry of default as to PMC Bancorp. However, Respondent did not pursue the default judgment against PMC because sometime around February 2013, Ms. Sanchez ceased to communicate with Respondent regarding the lawsuit.

Respondent was never able to obtain a loan modification or more affordable mortgage payment for Ms. Sanchez.

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[11] Respondent testified that he did not recall telling opposing counsel what the true purpose of the law suit was but he did recall sharing that information with the client.

Conclusions

Count Five –§ 6106.3 [Violation of Civil Code, Section 2944.7(a)(1) (Illegal Advanced Fee)]

Ms. Sanchez contracted for foreclosure prevention litigation which Respondent pursued against her lender, Bank of America, on her behalf until April 3, 2013, when the court dismissed the complaint. There is not clear and convincing evidence that Respondent made a "claim, demand, charge, collect[ed] or receive[d] any compensation" from Ms. Sanchez for loan modification services after the contracted-for foreclosure litigation ended.[12]

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Count Six – Rule 1-300(A) **[Aiding the Unauthorized Practice of Law]**

Rule 1-300 (A) provides that an attorney shall not aid any person or entity in the unauthorized practice of law. In Count Six, the State Bar charges Respondent with knowingly allowing Andrea Franchino to practice law by "providing legal advice, evaluating legal needs, and setting legal fees relating to loan modification services" in the aforementioned five client matters. However, Ms. Franchino credibly testified that she did not draft the foreclosure defense complaints and did not set the legal fees for the services provided to the complaining witnesses. The State Bar did not rebut Ms. Franchino's testimony and proferred no evidence in support of its rule 1-300 (A) charging allegations. Accordingly, there is not clear and convincing evidence that Respondent willfully violated rule 1–300(A).

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[12] From September 10, 2011 through August 2012, Ms. Sanchez paid Legally Yours and Respondent about $15,450, comprised of initial payments of $2,000 and $2,500 and monthly payments of $1,000 for the first two months and $1,200 thereafter. The only evidence regarding payments made by Ms. Sanchez to Respondent after September 2012 is Respondent's November 8, 2012 letter to Ms. Sanchez, advising that her monthly payment of $1,200 would be due November 24, 2012 and a late fee of $50 would be charged if not received with 15 days of the due date.

Count Seven – Rule 1-320 (A) **[Sharing Legal Fees with a Non-Lawyer]**

Subject to certain exceptions which are not applicable here, rule 1-320(A) provides that a lawyer shall not directly or indirectly share legal fees with a person who is not a lawyer. In the November 17, 2014, Stipulation of Facts, Respondent admitted that he "shared legal fees with Legally Yours, LLC, a non-lawyer" in the aforementioned five client matters. Accordingly, by splitting legal fees with Legally Yours, Respondent shared a legal fee with a non-attorney entity, in willful violation of rule 1-320(A).

Aggravation[13] **--**

Multiple Acts (Std. 1.5(b).)

Respondent's commission of multiple acts of misconduct is an aggravating factor.

Mitigation

No Prior Record (Std. 1.6(a))

Respondent's 33 years of discipline-free practice up to the time of his misconduct in 2011, is a significant mitigating factor. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)

Candor/Cooperation to Victims/State Bar (Std. 1. 6(e).)

By stipulating to culpability of fee–splitting in five client matters, Respondent saved court resources which warrants consideration in mitigation.

Other

Respondent credibly testified to performing volunteer work with a youth radio station. This community service is entitled to some mitigation. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840.)

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[13] All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

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. 1.1.)

Standard 1.7 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. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standards 2.14 and 2.15 apply in this matter, allowing a range of disciplinary recommendations from suspension to disbarment. The more severe sanction is prescribed by standard 2.14 which indicates that disbarment or actual suspension is appropriate discipline for a violation of section 6106.3.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190; std. 1.1.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; std. 1.1.)

This case involved violations of section 6106.3 (one count) and rule 1–320 (A) (five counts). The court considered multiple acts of misconduct in aggravation. Mitigating factors

included no prior discipline in 33 years of practice, a very significant factor, as well as candor and cooperation and community service.

The court found instructive *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 232. 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. Aggravating circumstances included multiple acts of misconduct, significant client harm, and lack of remorse; his single mitigating factor was good character. He did not provide full refunds to his clients upon their request. Taylor consistently maintained throughout the proceedings that section 2944.7 permitted him to charge for unbundled services. He was suspended for six months and ordered to pay restitution. The instant case is distinguishable from *Taylor* as it presents much less misconduct and aggravation and considerably more mitigation; therefore, Respondent merits less discipline than that imposed in *Taylor*.

Accordingly, having considered the nature and extent of the misconduct, the aggravating and mitigating factors, and the law, the court recommends 30 days actual suspension and restitution, among other things, as sufficient to protect the public in this instance.

Recommendations

It is recommended that Respondent Barry Steven Jorgensen, State Bar No. 79620, be suspended from the practice of law in California for one year**,** that execution of that period of suspension be stayed**,** and that Respondent be placed on probation[14] for a period of two years subject to the following conditions:

1. Respondent Barry Steven Jorgensen is suspended from the practice of law for the first 30 days of probation.

[14] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (*See* Cal. Rules of Court, rule 9.18)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.

3. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

5. During the probation period, Respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, Respondent must state in each report whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of Respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether respondent is complying or has complied with Respondent's probation conditions.

7. It is recommended that during the period of probation, respondent must make restitution to Heriberto and Maria Garcia in the amount of $8,400.00 plus 10 percent interest per year from December 21, 2012 (or reimburse the Client Security Fund to the extent of any payment from the fund to Heriberto and Maria Garcia, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

8. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE)

requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

9. At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that Respondent be ordered to take, pass and provide satisfactory proof of passage of the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter. Respondent's proof of passage shall be provided to the State Bar's Office of Probation in Los Angeles.

Costs

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

Dated: March 5, 2015

YVETTE D. ROLAND
Judge of the State Bar Court