PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **JOSEPH LYNN DECLUE,** **Member No. 163954,** A Member of the State Bar.	**Case Nos.: 14-O-05915; 15-O-10786; 15-O-11558; 15-O-12123; 15-O-12450-WKM** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT (Bus. & Prof. Code, § 6007, subd. (c)(4).)**

Introduction

The Office of Chief Trial Counsel of the State Bar of California (OCTC) charges respondent **JOSEPH LYNN DECLUE** with 22 counts of misconduct. In the first 18 counts, OCTC charges respondent with various acts of misconduct in five separate client matters involving home-mortgage-loan modifications; in the next three counts, OCTC charges respondent with aiding his office staff in engaging in the unauthorized practice of law (UPL); and in the last count, OCTC charges respondent with habitually disregarding the interests of his clients. For the reasons set forth *post*, the court finds respondent culpable on only seven of the first 18 counts and on the last count charging habitual disregard of client interests.

In light of respondent's habitual disregard of his clients' interests, the court concludes that only disbarment will adequately protect the public, the profession, and the courts; properly maintain the profession's high standards; and preserve the public's confidence in the profession. (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 566 [Even when an attorney's habitual disregard of

client interests "is grossly negligent or careless, rather than willful and dishonest, it is an act of moral turpitude and professional misconduct justifying disbarment. (Citations.)"].)

Because the court will recommend that respondent be disbarred, the court will also order respondent's involuntary inactive enrollment pending the final disposition of this proceeding. (§ 6007, subd. (c)(4).)

Pertinent Procedural History

OCTC filed the notice of disciplinary charges (NDC) in this matter on February 1, 2016. Thereafter, respondent filed his response to the NDC on March 22, 2016.

On June 1, 2016, the parties filed a partial stipulation of facts and admission of exhibits. A five-day trial was held on June 2, 21, 22, and July 19 and 20, 2016. During the trial, the parties filed a first supplemental stipulation as to undisputed facts on June 2, 2016, and a second supplemental stipulation as to undisputed facts and authenticity of exhibits on June 21, 2016. After the trial concluded, the court ordered the parties to file posttrial briefs, which OCTC filed on August 8, 2016,[1] and respondent filed on August 11, 2016. The court took the matter under submission for decision on August 11, 2016.

At trial, the State Bar was represented by Senior Trial Counsel Anand Kumar. Respondent represented himself.

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[1] OCTC makes a number of motions to amend the NDC in its posttrial brief. The motions are stricken as improperly made. Unless expressly otherwise authorized by a rule, statute, or leave of court, Rules of Procedure of the State Bar, rule 5.45 requires that motions in the State Bar Court be in writing and set forth in a separate, properly denominated pleading and that the opposing party be provided 10 days to file a response. Nothing in Rules of Procedure of the State Bar, rule 5.44(c) authorizes motions to amend the NDC to conform to proof of issues raised by the pleadings or to include matters proved by evidence introduced at a contested trial without objection to be made other than in accordance with rule 5.45. Moreover, the NDC need not be amended to conform to proof with respect to minor variances between the pleadings and the proof.

Findings of Fact and Conclusions of Law

The following findings of fact are based on respondent's response to the NDC, the parties' partial stipulations of facts, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on April 6, 1993. He has been a member of the State Bar of California continuously since that time.

Background Facts

Prior to 2012, respondent had an established criminal defense and immigration law practice in Santa Ana, California (Law Office of Joseph DeClue). In the summer of 2012, respondent decided to greatly expand his practice to include residential foreclosure defense. Even though respondent did not have any experience in, or meaningful understanding of, foreclosure law or foreclosure defense, he wanted to practice in that area after seeing the many problems that his family and friends, who were facing foreclosures on their homes, endured at the hands of their mortgage lenders and mortgage loan servicers. Respondent, like many attorneys, believed that mortgage lenders and their loan servicers were acting illegally towards the thousands of individuals who suddenly became unable to make the payments on their home mortgage loans beginning in about 2007 with the start of the Great Recession.

In August 2012, respondent opened a foreclosure defense practice in Corona, California under the name "Millenia Law Group" (MLG). Respondent was the sole owner of MLG from its inception until it ceased operations in June 2014. Not only were the offices of MLG and the Law Office of Joseph DeClue in separate cities, which are about 25 miles apart, but MLG's operations were separate and distinct from the operations of the Law Office of Joseph DeClue and respondent was the only attorney who supervised the nonattorney staff in each entity.

Because respondent did not have any experience in, or meaningful understanding of, foreclosure law or foreclosure defense, respondent hired One World Alliance, Inc. (OWA) to operate MLG under a written management services agreement. OWA was owned and operated by Robert Campoy (Campoy). At OWA, Campoy worked closely with Andres Martinez (Martinez). Campoy and Martinez purportedly had years of experience in, and extensive knowledge of, foreclosure law and foreclosure defense.[2] However, neither Campoy nor Martinez has ever been licensed to practice law.

In accordance with the management services agreement, OWA selected, hired, employed, and supervised all of the individuals who performed work for MLG. The agreement expressly provided that "[a]ll personel [sic] will be employees or independent contractors of OWA and not of MLG, and OWA shall be responsible for all income and payroll tax withholding and reporting ...." Moreover, under the agreement, OWA, and not respondent, was responsible for instructing, supervising, and managing all personnel who performed work for MLG. The agreement expressly provided that "[t]he manner in which the Services are to be performed and the specific hours to be worked ... shall be determined by OWA." The agreement also expressly provided that MLG was to pay OWA $250,000 per month for its services, even though respondent testified, but did not prove, that OWA's monthly payment was never more than $175,000. Clearly, OWA's management services agreement with MLG is inherently incompatible with the duties of an attorney because respondent delegated all of his duties, including his non-delegable duties he owed his clients, to OWA. Thus, respondent's signing of the management services agreement with OWA alone is a significant, overt act evidencing respondent's habitual disregard of his clients' interests.

[2] Respondent testified that he hired Campoy and Martinez specifically for their knowledge in the area of foreclosure defense and was hoping to learn from them.

When respondent hired OWA, respondent knew that Campoy and Martinez had recently been involved with at least two other California attorneys whose practices included mortgage foreclosure defense and home mortgage loan modifications. In fact, respondent was aware that Campoy and Martinez had previously been involved in the practice of Attorney Jack Huang (Huang) and then separately with Attorney Charlotte Spadaro (Spadaro). Moreover, respondent knew that the State Bar had charged Huang with professional misconduct following his involvement with Campoy and Martinez. Notwithstanding his actual knowledge of the disciplinary charges against Huang, respondent proceeded with his desire to work with Campoy and Martinez, improvidently attributing Huang's disciplinary troubles to Huang's own management failures.[3]

In addition to supplying, directing, and supervising all of MLG's staff members, OWA also supplied the office space that MLG occupied in Corona. OWA previously ran MarCam for Spadaro in the same office it provided for MLG. In the fall of 2012 when MarCam Law Group (MarCam) was being shut down, Campoy and Martinez transferred about 200 cases from MarCam to MLG. By respondent's own estimation, MLG had, during its existence, at least

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[3] Surprisingly, respondent testified that, as a result of his "background checks" before signing the management services agreement with OWA, he was aware of Campoy's and Martinez's past history; nonetheless, he did not heed facts that should have given any reasonable person pause about working with these two men. Specifically, he knew that Campoy and Martinez had operated a loan modification business called National Mitigation Services. He also knew that, in 2009, Campoy and Martinez worked with Huang, and that Huang opened a branch office in Corona under the fictitious business name Jack Law Group and commenced a loan modification practice, with Campoy and Martinez as co-managers. Respondent was in possession of, and actually reviewed, the NDC that OCTC filed against Huang. That NDC charged Huang with, inter alia, violating the loan modification laws, failing to supervise Campoy and Martinez, and aiding and abetting Campoy and Martinez in engaging in UPL. Notwithstanding this overwhelming negative evidence regarding Campoy and Martinez, respondent decided, after only talking to Campoy and Martinez about the NDC, that Huang's actions alone were responsible for the misconduct charged in the NDC.

about 500 clients/cases. This is in sharp contrast to respondent's caseload at the Law Office of Joseph DeClue in Santa Ana, California, which was 10 cases at the time.

None of OWA's employees were attorneys. Nonetheless, a small amount of MLG's legal work (e.g., court appearances and drafting of certain legal documents) was performed by attorneys, but these attorneys did not have any contact with MLG's clients or their mortgage lenders or home loan servicers. Respondent delegated the jobs of interviewing all potential clients and working with clients to OWA staff members. Respondent claims that he was present and working in MLG's office in Corona three or four days per week for about 25 hours per week. The court, however, after carefully considering respondent's demeanor while testifying, rejects respondent's uncorroborated testimony on this point for want of credibility. Further, while respondent obtained case management software to supervise the work of MLG, he could not access the software or its data off-site.

In December 2013, respondent learned that Martinez had forged his signature on a pleading, which Martinez then filed in a matter unknown to respondent and in which respondent had never agreed to be the attorney of record. Respondent, however, did not immediately terminate OWA's contract or immediately begin reviewing MLG's client files to see if his signature had been forged on any other pleadings or documents. Instead, respondent waited until later in the month to have a meeting with, and to confront, Campoy and Martinez about Martinez forging respondent's name on the pleading. During that meeting, respondent even agreed to give OWA until the spring of 2014 (or about 90 days) to dissolve the contractual relationship between it and MLG. Respondent asserts that he made it clear to Campoy that MLG was not to accept any new clients during the transition period and that all of MLG's existing clients were to be transferred to the SCC Law Group (SCC), which was yet another law group that Campoy had arranged for OWA to manage for some other attorneys.

OWA failed to dissolve its relationship with MLG by the agreed upon spring 2014 deadline. Thus, respondent and Edmond Goubran (Goubran), a legal assistant employed by respondent at the Law Office of Joseph DeClue, focused on the work that OWA was doing for MLG. In late May 2014, respondent and Goubran discovered that OWA had surreptitiously continued to accept and collect legal fees from new foreclosure/loan modification clients after the December 2013 agreement to dissolve the relationship and that OWA was not transferring all of MLG's existing clients to SCC. At that point, respondent took all the MLG files he could locate in MLG's office in Corona and physically moved the files to a new office respondent obtained for MLG in Newport Beach, California. At that point, respondent for the first time, actually started reviewing MLG's client files. Thereafter, respondent quickly discovered that MLG had many clients that he did not know about or approve.

Case Number 14-O-05915 – the Saucedo Matter

Facts

In June 2013, Judy Saucedo (Saucedo) met with Paul Vierra (Vierra), one of OWA's nonattorney employees working at MLG. At the meeting, Saucedo came to believe that Vierra was an attorney based on his statements to her. Therefore, on June 25, 2013, Saucedo entered into a retainer agreement with MLG. Respondent stipulated that the retainer agreement was for home mortgage loan modification services with respect to the following 10 properties Saucedo owned at the time: (1) a primary residence in California; (2) one rental property in Texas; and (3) eight rental properties in Oklahoma.[4] The retainer agreement did not break down the fees per

[4] The retainer agreement stated that the scope of work to be performed was "foreclosure defense," which was further defined as "pre-litigation discovery" and "settlement for an Alternative Dispute Resolution (ADR) which may result in a workout agreement such as a *loan restructure and cancellation of foreclosure proceedings*. This is an accommodation and there is **no charge** for this service." (Original bolded and underlined, but italics added.) Thus, even if respondent had not stipulated that the June 25, 2013, retainer agreement was for home mortgage loan modification services for Saucedo on her 10 properties, the court would have independently

property and, instead, charged Saucedo a flat $25,000 "initial retainer fee" for performance of the loan modification services on all 10 of her properties, which she paid by making an initial $15,000 payment on June 26, 2013, and by making six consecutive monthly payments of $1,666.66. Notably, when Saucedo first met with Vierra, she was not behind on any of her 10 mortgage payments. During her first meeting with Vierra, Vierra advised her to stop making payments, and she followed his advice.

The $25,000 that Saucedo paid to MLG between June 26, 2013, and January 7, 2014, was deposited into respondent's general operating account at Chase Bank, account number ending in 9166. At all relevant times, respondent had control over and access to that account.

On April 3, 2014, Saucedo received an email from MLG in which it stated that the pre-litigation work was completed, and that, while MLG was still negotiating for her to obtain settlement on her properties' mortgages, any future litigation work would require a separate retainer. The email from MLG explained that the retainer would be $5,000 for each of the 10 properties for a total of $50,000 plus a $1,000 "monthly case management" fee for each of the 10 properties for a total of $10,000 per month. On April 7, 2014, and June 18, 2014, Saucedo received emails from SCC stating that Saucedo was now an SCC client.

On September 24, 2014, Saucedo sent a letter to respondent requesting a refund of the $25,000 initial retainer fee she paid MLG. Respondent was completely unaware that Saucedo was an MLG client until he received her September 24 letter. On September 30, 2014,

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made that finding given that the agreement's scope of work clearly covers the modification of the Saucedo's mortgages, notwithstanding the contract language that the $25,000 fee was for "pre-litigation discovery" only and that the "loan restructure" is a gratis service. The semantics of this charade are apparent in Vierra's June 19, 2013, email to Saucedo before she even became a client, in which he stated that once MLG's research (i.e., responses from the lender provided pursuant to demand) revealed "conflicting facts," MLG would then send a "settlement package," consisting of financial information in conformity with then-existing federal or state loan modification programs, along with a demand to agree to a settlement or otherwise face litigation. Other than the bald assertion that litigation would commence if no settlement was reached, no real difference exists between these actions and a request for a loan modification.

respondent and Saucedo met each other for the first time. At that meeting, the discussed Saucedo's file and respondent offered to prepare and file a bankruptcy petition for Saucedo in order to provide her with an opportunity to re-negotiate her real estate loans in bankruptcy, and also to give Saucedo a $25,000 credit towards his fees for representing her in bankruptcy. Saucedo declined respondent's advice and offer. To date, respondent has not refunded any portion of the $25,000 fees paid by Saucedo.

Conclusions of Law

Count One – Civil Code § 2944.7, Subd. (a)(1) (Illegal Advanced Fee)

In count one, OCTC charges that respondent willfully violated Civil Code section 2944.7, subdivision (a)(1)'s proscription against charging compensation for loan modification services before all loan modification services are completed.[5] Specifically, OCTC charges that respondent violated Civil Code section 2944.7, subdivision (a)(1) by charging and collecting, from Saucedo, a total of $25,000 in attorney's fees for home loan modification services between about June 27, 2013 and January 7, 2014, which was before respondent had fully performed each service respondent contracted to perform or represented to Saucedo that he would perform. Respondent stipulated that his fee agreement with Saucedo was for home mortgage loan

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[5] Civil Code section 2944.7, subdivision (a), 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:
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> > (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.
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> > (2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.
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> > (3) Take any power of attorney from the borrower for any purpose.

modification services. The record clearly establishes that respondent charged and collected the $25,000 before he had performed all of the services he agreed to perform.

The court rejects respondent's contentions that he is not culpable because he was unaware that Saucedo was a MLG client until September 2014. Even though respondent did not know Saucedo was a MLG client until September 2014, he cannot avoid culpability by shifting responsibility onto OWA and the OWA nonattorney employees who performed all of the work for MLG. As the sole supervising attorney at MLG, respondent owed the non-delegable fiduciary duties of an attorney to each client MLG accepted. That respondent elected to drastically expand his practice by hiring OWA to staff and operate MLG with nonattorneys in an office about 25 miles away from the Law Office of Joseph DeClue did not relieve him of those obligations. (*Bernstein v. State Bar* (1990) 50 Cal.3d 221, 231.) Without question, respondent had a duty, under rule 3-110(A), to adequately supervise the staff who performed work for MLG. Respondent not only repeatedly failed to fulfill that duty, he deliberately abdicated his duty to OWA in utter disregard for his clients' interests. Respondent willfully allowed, if not authorized, OWA to accept and contract with new clients, handle their matters, and collect fees on his behalf with minimal, if any, supervision.

At a minimum, respondent facilitated MLG's violations of Civil Code section 2944.7, subdivision (a)(1). In addition, respondent clearly profited monetarily from MLG's violations. Thus, respondent is responsible for the violations. In sum, the record clearly establishes respondent's culpability on the charged violations of Civil Code section 2944.7, subdivision (a)(1), in the Saucedo matter. Respondent's violations of Civil Code section 2944.7 are disciplinable under Business and Professions Code section 6106.3, subdivision (a).[6]

[6] Except where otherwise indicated, all further statutory references are to the Business and Professions Code. Section 6106.3, subdivision (a), provides: "It shall constitute cause for

Count Two – State Bar Rules of Prof. Conduct, rule 1-300(B)[7] (UPL in Other Jurisdictions)

Rule 1-300(B) provides: "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." In count two, OCTC charges that respondent engaged in UPL in Oklahoma and Texas because he held "himself out as entitled to practice law in the states of Oklahoma and Texas by entering into an agreement to perform legal services, including to negotiate home mortgage loan modifications on properties located in Oklahoma and Texas, as an attorney for a client, Judy Saucedo, and when to do so was in violation of the regulations of the profession in Oklahoma and Texas ...." The record fails to establish the charged violation of rule 1-300(B) by clear and convincing evidence. Moreover, OCTC failed to cite any authority to support its contentions that respondent's conduct violated either rule 5.5(b)(2) of the Oklahoma Rules of Professional Conduct or Texas Penal Code section 38.122. Nothing in the record suggests, much less establishes by clear and convincing evidence, that respondent provided any legal services for Saucedo while respondent was in Oklahoma or Texas. Nor is there anything in the record that suggests respondent held himself out as entitled to practice law in Oklahoma or Texas. Contrary to OCTC's contentions, nothing in any of MLG's letters to Saucedo's lenders, whose loans are secured by her Oklahoma and Texas properties, implies or suggests that respondent is licensed to practice law in Oklahoma or Texas or that respondent was practicing law in Oklahoma or Texas.

Finally, nothing in the record remotely suggests that either Oklahoma or Texas intend for their respective laws to prohibit a California resident who is seeking to obtain, from an out of state lender (i.e., a lender located in a state other than Oklahoma or Texas), the modification of a

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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."

[7] Except where otherwise indicated, all further references to rules are to these State Bar Rules of Professional Conduct.

loan secured by real property located in their respective boundaries from obtaining legal advice and representation in California from an attorney licensed by California. Accordingly, count two is DISMISSED with prejudice.

Count Three – Rule 4-200(A) (Illegal Fee)

Rule 4-200(A) provides: "A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee." In count three, OCTC charges that "Respondent entered into an agreement with and charged, a client, Judy Saucedo, a fee of $25,000, to perform legal services in Oklahoma and Texas, that was illegal because Respondent was not admitted and entitled to practice law in" those states." Nothing in the retainer agreement that Saucedo entered into with MLG suggests, much less establishes, that respondent agreed to practice or would be practicing law in Oklahoma or in Texas. In short, OCTC failed to establish the charged violation of rule 4-200(A) by clear and convincing evidence. Accordingly, count three is DISMISSED with prejudice.

Case Number 15-O-10786 – the Colon Matter

Facts

In early November 2012, Tanisha Colon (Colon) and Javier Cano (Cano) met with Mark Weiss (Weiss), a nonattorney OWA staff member performing work for MLG. The purpose of the meeting was to discuss saving Colon's home, which was in final the stages of foreclosure. Colon was hoping to have MLG secure a loan modification of her home loan, and she expressed this desire to Weiss. As a result of her meeting with Weiss, Colon initially signed on November 6, 2012, a $3,500 retainer agreement for MLG to perform a "pre-litigation securitization audit," along with an authorization to allow MLG to "negotiate a pre-litigation loan workout, Modification [sic] or settlement on [her] behalf."

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Subsequently, Colon signed five additional agreements with MLG. On November 6, 2012, she signed a $1,506 retainer agreement for MLG to prepare and file a chapter 7 bankruptcy petition, including the performance of a court-required means test. On November 10, 2012, she signed a $500 retainer agreement for MLG to perform a means test to determine if she qualified for a chapter 7 bankruptcy. On April 19, 2013, she signed a $1,000 retainer agreement for MLG to provide "title rescission" services, which became necessary after Colon's house was sold at a foreclosure sale. On August 20, 2013, she signed a $1,700 retainer agreement for MLG to submit a "pre-litigation ADR" demand. Finally, on September 11, 2013, Colon signed a $1,300 retainer agreement for MLG to prepare and file a wrongful foreclosure complaint against Nationstar, the servicer of her home loan, and to prepare and record in the real property records a lis pendens on her former house. At no time prior to her signing any of these retainer agreements had Colon met or talked with respondent or any other attorney associated with MLG, and Colon made all payments as described in the aforementioned retainer agreements.

On November 16, 2012, respondent electronically filed on Colon's behalf a "skeletal" petition for bankruptcy protection in the United States Bankruptcy Court for the Central District of California. On the same date, the bankruptcy court ordered respondent to complete the petition by November 30, 2012. On November 30, 2012, respondent filed one of the required documents, which was a declaration attesting to the veracity of the electronically filed petition, which was to be signed by both Colon and him.

At trial, Colon credibly testified that the signature on the declaration purporting to be her signature was not in fact hers. Further, respondent also testified at trial that the signature on the declaration purporting to be his signature was not in fact his. Respondent testified that, because he was not in the office the day his staff submitted the declaration to the bankruptcy court, he

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instructed a staff member to sign the declaration for him. The staff member signed respondent's name to the declaration without disclosing that she signed it for respondent.

On August 23, 2013, MLG submitted an "Alternative Dispute Resolution (ADR) Request for Settlement to Colon's home loan servicer, Nationstar. Colon's home was sold at a foreclosure sale on September 12, 2013. On October 31, 2013, MLG filed a verified complaint on Colon's behalf against Nationstar in the matted entitled *Colon v. Nationstar Mortgage, LLC, et al*, Riverside County Superior Court case number MCC1301632. In the prayer for relief, the complaint requested the court issue an order setting aside the trustee's sale and quieting title in the subsequent purchaser.

On April 15, 2014, respondent filed, one day late, a case management conference (CMC) statement on Colon's behalf in the Colon matter. The CMC hearing was properly noticed on April 29, 2014, yet respondent did not appear at the CMC on Colon's behalf because he forgot to calendar it. Respondent did not tell Colon that he filed the CMC statement late or that he failed to appear at the April 29, 2014, hearing. Subsequently, the court issued an order to show cause to respondent regarding his failure to appear at the CMC, and a hearing was set on June 10, 2014.

On May 6, 2014, Nationstar filed a demurrer to the Colon complaint. Respondent was properly and timely served with the demurrer. On June 16, 2014, respondent filed, one day late, an opposition to the demurrer on Colon's behalf. Respondent did not tell Colon that he filed the opposition to the demurrer late.

On June 9, 2014, respondent filed a declaration with the court, under penalty of perjury, regarding his failure to appear at the April 29, 2014, CMC hearing. Respondent testified at trial that this signature was not his, and that he likely directed a staff member to sign it, because he was probably not in the office at the time.

On June 25, 2014, the hearing on defendant's demurrer occurred. Respondent appeared on behalf of Colon. The court sustained Nationstar's demurrer to all of the causes of action in the complaint, but granted Colon 30 days' leave to amend the complaint. Respondent did not file an amended complaint, and on July 31, 2014, Nationstar filed a motion to dismiss. Prior to the hearing on the motion to dismiss, the parties verbally agreed to a settlement of the case, which included a temporary modification of the mortgage payments. At a subsequent CMC hearing, set prior to the hearing on the motion to dismiss, respondent made an oral motion to dismiss the complaint, which was granted without prejudice. However, while Colon signed the settlement agreement, the settlement agreement was not fully executed because respondent's staff failed to timely return the settlement agreement to Nationstar's attorneys, and Nationstar refused to sign it or perform pursuant to its terms. Subsequently, Colon and Cano were evicted from the property. To date, respondent has not refunded any portion of the $11,506 in advanced fees which the parties stipulate that respondent charged and collected from Colon in violation of Civil Code section 2944.7, subdivision (a)(1).

Conclusions of Law

Count Four – Rule 4-200(A) (Illegal Fee)

In count four, OCTC charges that the $2,500 fee respondent charged to prepare the chapter 7 bankruptcy petition for Colon was an illegal fee "because all of the bankruptcy services performed on Colon's behalf ... were performed by his non-attorney staff... without Respondent's supervision, and therefore constituted the unauthorized practice of law. Accordingly, respondent's collection of the illegal fee constituted a willful violation of the Rules of Professional Conduct, rule 4-200." The court cannot agree.

Without a doubt, respondent had a duty, under rule 3-110(A), to adequately supervise the OWA nonattorney staff members who drafted Colon's chapter 7 bankruptcy petition for MLG.

OCTC, however, has not charged respondent with violating rule 3-110(A) by failing to adequately supervise the drafting of Colon's bankruptcy petition. Nor has OCTC cited any authority to support its novel assertion that respondent's uncharged failure to adequately supervise the OWA nonattorney staff member in this matter establishes, by clear and convincing evidence, that the staff member or respondent, or both, engaged in UPL, which could subject them to criminal prosecution, and transforms the $2,500 advanced fee respondent collected from Colon to prepare the chapter 7 petition into an illegal fee for which respondent may be disciplined under rule 4-200(A). Nor is the court independently aware of any authority that supports such an assertion. In short, count four is, therefore, DISMISSED with prejudice for want of proof.

Count Five – Civil Code § 2944.7, Subd. (a)(1) (Illegal Advanced Fee)

In counts five, seven, eight, and nine, OCTC charges respondent with willfully violating Civil Code section 2944.7, subdivision (a)(1)'s proscription against charging advanced compensation for loan modification services in the Colon matter. The court CONSOLIDATES the charged violations of section 2944.7, subdivision (a)(1) in counts seven and eight into count five. The court does not consolidate the misconduct charged in count nine into count five because, for the reason stated *post*, the court dismisses count nine with prejudice because it fails to state a disciplinable offense.

The record clearly establishes, as charged in modified count five, that respondent willfully violated Civil Code section 2944.7, subdivision (a)(1) when he charged and collected about $1,506 from Colon in November 2012; charged and collected about $1,000 from Colon in April 2013; and charged and collected about $1,700 from Colon in August 2013. Respondent's violations of Civil Code section 2944.7 are disciplinable under section 6106.3, subdivision (a).

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Count Six – Section 6106 (Moral Turpitude)

Section 6106 proscribes acts involving moral turpitude, dishonesty, or corruption. At trial, on OCTC's motion without objection, count six was amended to conform to proof on OCTC's motion. As amended, court six charges that respondent engaged in an act involving moral turpitude in willful violation of section 6106 on November 15, 2012. Specifically, OCTC alleges that respondent allowed a declaration, made under penalty of perjury in support of Colon's chapter 7 petition, to be filed in the bankruptcy court bearing Colon's forged signature and without disclosing that respondent's signature on the declaration was simulated by a staff member with respondent's permission. The record establishes that respondent asked a staff member to sign his name to the declaration because he was not in the office on the day it was filed, but fails to establish that respondent knew that Colon's signature was forged. Accordingly, the record establishes that respondent violated section 6106 only to the extent that respondent permitted the declaration to be filed with the court without disclosing that his signature was simulated on the declaration by a staff member with respondent's permission. Respondent's conduct involved moral turpitude because he effectively misrepresented to the bankruptcy court that he personally signed the declaration. (*In the Matter of* Yee (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 334 [signing under penalty of perjury "gives 'the additional imprimatur of veracity, and reasonably notifies others that the statements are true and complete"].)

Count Nine – Civil Code § 2944.7, subd. (a)(1) (Illegal Advanced Fee)

In count nine, OCTC charges respondent with willfully violating Civil Code section 2944.7, subdivision (a)(1)'s proscription against charging advanced compensation for loan modification services in the Colon matter in September 2013 when he charged and collected about $4,800 in legal fees to prepare and file a wrongful foreclosure lawsuit against Nationstar, which was the loan servicer for Colon's former mortgage lender. OCTC has not cited any

authority or provided sufficient legal analysis to support its contention that Civil Code section 2944.7, subdivision (a)(1) prohibits an attorney from charging and collecting advanced legal fees for filing a wrongful foreclosure lawsuit. Nothing in Civil Code section 2944.7, subdivision (a)(1) suggests that its proscription against charging advanced compensation for home mortgage loan modification services applies after a lender has foreclosed on the homeowner's home. OCTC has not established that Colon's mortgage loan itself (as opposed to a deficiency debt) remained after the lender's foreclosure on and sale of the collateral for the loan (i.e., Colon's house). In the court's view, a lawsuit seeking damages for wrongful foreclosure filed after a lender has foreclosed on the borrower's home is not a lawsuit seeking "a mortgage loan modification or other form of mortgage loan forbearance" to which Civil Code section 2944.7, subdivision (a)(1) applies. Accordingly, count nine is DISMISSED with prejudice for failing to state a disciplinable offense.

Count Ten – Section 6106 (Moral Turpitude)

At trial, count ten was amended to conform to proof on OCTC's motion, and without objection. As amended at trial, court ten charges that respondent engaged in an act involving moral turpitude in willful violation of section 6106 on June 9, 2014, when he allowed a declaration made under penalty of perjury to be filed in Riverside Superior Court without disclosing that respondent's signature on the declaration was simulated by a staff member with respondent's permission. The record clearly establishes that respondent is culpable of willfully violating section 6106 as charged. Respondent's conduct involved moral turpitude because he effectively misrepresented to the superior court that he personally signed the declaration. (*In the Matter of Yee, supra,* 5 Cal. State Bar Ct. Rptr. at p. 334.)

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Count Eleven -- Rule 3-110(A) (Failure to Perform)

Rule 3-110(A) provides: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." In count eleven, OCTC charges that respondent willfully violated rule 3-110(A) because he failed to timely file a case management conference statement on in April 2014, failed to file an opposition to Nationstar's demur, and failed to appear for a case management conference in April 2014. At best, these three failures establish that respondent was negligent in his direct representation of Colon after MLG ceased operating in June 2014. As the Review Department has repeatedly held, attorney negligence, even that amount to professional malpractice, is insufficient to establish a rule 3-110(A) violation. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149.) Accordingly, count eleven is DISMISSED with prejudice for want of proof.

Case Number 15-O-10786 – the Guzman Matter

Facts

On March 22, 2013, Eric and Aletheia Guzman (the Guzmans) signed a legal representation agreement for MLG to perform home mortgage loan modification services for their home. Pursuant to this agreement, the Guzmans paid a total of $4,000, consisting of a $2,500 initial deposit, along with three $500 payments for case management fees. The representation agreement stated that the scope of work to be performed was "foreclosure defense," which was further defined as "pre-litigation discovery" and "settlement for an Alternative Dispute Resolution (ADR) which may result in a workout agreement such as a *loan restructure and cancellation of foreclosure proceedings*. This is an accommodation and there is **no charge** for this service." (Original bolding and underlining, but italics added.) Pursuant to this agreement, MLG submitted two loan modification packages to the Guzmans' lender, one on

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April 25, 2013, and the other on September 17, 2013.[8] Respondent testified at trial that he had no role in the preparation of these loan modification packages. Again, the fact that respondent had no role in the loan modifications is neither a defense nor mitigating circumstance to the charged violations of Civil Code section 2944.7, subdivision (a)(1). (See rule 3-110(A); *Bernstein v. State Bar, supra*, 50 Cal.3d at p. 231.)

On April 3, 2014, the Guzmans hired MLG to pursue litigation against their mortgage lender, Citibank, for wrongful foreclosure on their home. The Guzmans paid advanced fees of $7,500 towards the litigation, but no lawsuit was by filed by MLG on behalf of the Guzmans. Respondent was not aware that the Guzmans were clients of MLG and had not had any direct contact with the Guzmans before September 5, 2014. On September 8, 2014, the Guzmans requested a refund of the $11,500 that they had paid to MLG. To date, respondent has not refunded any portion of the $11,500 advanced fees paid by the Guzmans.

Conclusions of Law

Count Twelve – Civil Code § 2944.7, subd. (a)(1) (Illegal Advanced Fee)

In count twelve, OCTC charges respondent with willfully violating Civil Code section 2944.7, subdivision (a)(1)'s proscription against charging advanced compensation for loan modification services by charging and collecting, from the Guzmans, about $4,000 in advanced fees for loan modification or other forms of loan forbearance between about April 1, 2013, and November 1, 2013. The record clear establishes respondent's culpability for the charged violations of Civil Code section 2944.7, subdivision (a)(1). Respondent's violations of Civil Code section 2944.7 are disciplinable under section 6106.3, subdivision (a).

[8] If the parties had not stipulated that MLG's representation agreement with the Guzmans was for home-mortgage-loan-modification services, the court would have independently made such a finding because, as noted in footnote 4, *ante*, the scope of work as described/set forth in the agreement clearly covers the modification of the Guzmans' mortgage loan.

Count Thirteen – Civil Code § 2944.7, subd. (a)(1) (Illegal Advanced Fee)

In count thirteen, OCTC charges respondent with willfully violating Civil Code section 2944.7, subdivision (a)(1)'s proscription against charging advanced compensation for loan-modification services by charging and collecting, from the Guzmans, $7,500 in advanced fees to prepare, file, and pursue a wrongful foreclosure lawsuit against Citibank. For the same reasons set forth under count nine *ante*, count thirteen is DISMISSED with prejudice for failing to state a disciplinable offense.

Case Number 15-O-12123 – the Harnden Matter

On August 9, 2013, Albert Harnden (Harnden) signed a legal representation agreement with MLG which contained the same statements regarding the scope of the work that MLG was to perform that are contained in MLG's representation agreements in the Saucedo and Guzman matters, which are quoted *ante*.[9] Here, though, respondent did not stipulate that MLG's representation agreement with Harnden provided for home mortgage loan modification service. Respondent did, however, stipulate that the Harnden complaint was filed to prevent the foreclosure on Harnden's home and to obtain a mortgage loan modification. In any event, the court finds that the statements regarding the scope of work in MLG's representation agreement with Harnden alone clearly establish that the agreement provides for home mortgage loan modification services with respect to Harnden's home loan.

Pursuant to the representation agreement, Harnden's friend, Reginald Stark (Stark), paid a total of $7,000 to MLG on Harnden's behalf. Thereafter, MLG submitted a loan modification package to Seterus, Inc., which was the servicer of Harden's mortgage loan. Seterus denied the loan modification in September 2013.

[9] The representation agreement in the Harnden matter contained an additional statement that expanded the scope of the work by including "Foreclosure Validation to verify Trustee compliance with Cal. Civ. Code § 2923.5, 2924, and [SB94]."

On or about October 4, 2013, Harnden hired MLG to file a lawsuit against Seterus to prevent the sale of his home, as his home was in the foreclosure process, with the goal of obtaining a loan modification or other form of loan forbearance through settlement of the lawsuit. On the same day, MLG filed a complaint on Harnden's behalf against Seterus, Harnden's mortgage lender, and others involved in Harnden's home loan in a matter entitled *Harnden v. Security National Mortgage Co., et al*, Riverside County Superior Court case number RIC1311363 (the Harnden complaint), alleging various causes of action, including a violation of the Homeowner's Bill of Rights and wrongful foreclosure, among other allegations. In the prayer for relief, the Harnden complaint requested temporary and permanent injunctions preventing the defendants from selling Harnden's home.

On October 11, 2013, Harnden formally entered into a written retainer agreement with MLG for the prosecution of the Harnden complaint, which required Harnden to pay MLG $5,000 in advanced fees. Stark paid the $5,000 in advanced fees to MLG on behalf of Harnden.

On October 22, 2013, respondent filed an ex parte application for a temporary restraining order to enjoin the trustee sale for Harnden's house, which was scheduled on October 24, 2013. The ex parte application was granted by the court the following day, and the sale date was cancelled. Over the next several months, concurrent with MLG's attempts to negotiate a loan modification on Harnden's behalf, the Harnden compliant was heavily litigated by the parties, including respondent filing amended complaints and oppositions to demurrers on Harnden's behalf.

On July 14, 2014, Harnden's home was actually foreclosed on and sold at a trustee's sale to the Federal National Mortgage Association. On December 24, 2014, judgment was entered in favor of Seterus and against Harnden on the Harnden complaint. Thereafter, the complaint against Seterus was formally dismissed on March 26, 2015. On March 27, 2015, Seterus filed a

motion for attorney's fees and costs. Respondent was properly and timely served with the motion. On July 13, 2015, respondent filed an opposition to Seterus's motion on behalf of Harnden. Then, on July 15, 2015, the superior court granted Seterus's motion and issued a $36,607.80 award for attorney's fees and costs against Harnden and in favor of Seterus. On July 27, 2015, defense counsel sent respondent an email asking when Harnden would pay the award.

Conclusions of Law

Count Fourteen – Civil Code § 2944.7, subd. (a)(1) (Illegal Advanced Fee)

In count fourteen, OCTC charges respondent with willfully violating Civil Code section 2944.7, subdivision (a)(1)'s proscription against charging advanced compensation for loan modification services by charging Harnden and collecting from Stark on Harnden's behalf $7,000 in advanced fees for home-mortgage-loan-modification services. The record clearly establishes the charged violation of Civil Code section 2944.7, subdivision (a)(1). Respondent's violations of Civil Code section 2944.7 are disciplinable under section 6106.3, subdivision (a).

Count Fifteen – Civil Code § 2944.7, subd. (a)(1) (Illegal Advanced Fee)

In count fifteen, OCTC charges respondent with willfully violating Civil Code section 2944.7, subdivision (a)(1)'s proscription against charging advanced compensation for loan modification services by charging Harnden and collecting from Stark on Harnden's behalf $5,000 in advanced fees for filing and prosecuting the Harnden complaint in the superior court. The record clearly establishes the charged violations of Civil Code section 2944.7, subdivision (a)(1). Even though the Harnden complaint contained a cause of action for wrongful foreclosure, Harnden's home had not yet been foreclosed on or sold at a trustee's sale when MLG filed the Harnden complaint. Accordingly, Harden's home loan had not been extinguished and the Harnden complaint was pretextual for charging and collecting advanced fees for loan modification services.

Count Sixteen – Rule 3-110(A) (Failure to Perform)

Count sixteen was amended at trial to conform to proof without objection from respondent. As amended, OCTC charges that respondent intentionally, recklessly, or repeatedly failed to perform legal services competently in willful violation of rule 3-110(A) by filing Harnden's opposition to Seterus's March 27, 2015, motion for an award of attorney's fees and costs one day late, and by failing to promptly notify Harnden of Seterus's motion for attorney's fees. Contrary to OCTC's contention, no evidence exists whatsoever that the superior court granted the motion for attorney's fees because respondent filed Harnden's opposition one day late. The clerk's notation in the docket that Harnden's opposition was late filed is not evidence that the court struck or disregarded the opposition. Moreover, even a cursory review of Seterus's motion discloses that it was a well-written and based on well-established law. Realistically, few, if any, grounds exist upon which respondent could have successfully opposed the motion or reduced the dollar amount of the fees and costs awarded to Seterus.

At best, respondent's filing the opposition one day late and the other charged failures establish respondent's negligence. As noted *ante*, negligence is insufficient to establish a willful violation of rule 3-110(A). In short, the record fails to establish the charged violation of rule 3-110(A) by clear and convincing evidence. Count sixteen is DISMISSED with prejudice. Moreover, even though the record establishes that respondent failed to adequately communicate to Harnden significant developments, OCTC did not charge respondent with willfully violating rule 3-500, and, thus, no rule 3-500 violation is found.[10]

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[10] Rule 3-500 provides: "A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed."

Count Seventeen – Section 6068, Subdivision (c) (Maintain Unjust Action)

Section 6068, subdivision (d) provides that an attorney has a duty "[t]o counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense." In count seventeen, OCTC charges that respondent willfully violated section 6068, subdivision (c) by prosecuting the Harnden complaint because it was frivolous, without merit, prosecuted for improper purpose and for the purpose of delay. The record does not establish the charged violation of section 6068, subdivision (c). Specifically, the record fails to establish, by clear and convincing evidence, respondent either counseled or maintained the Harnden complaint knowing or believing that it was both illegal and unjust. Accordingly, count seventeen is also DISMISSED with prejudice for want of proof.

Case Number 15-O-12450 – the Kitay Matter

Facts

Arik Kitay (Kitay) testified that he retained MLG to perform home mortgage loan modification services for which he paid MLG a total of about $5,000. The court, however, rejects Kitay's testimony because it lacked credibility. Respondent credibly testified that he met with Kitay on at least two occasions; that respondent offered to refund the $5,000 in advanced fees Kitay claims to have paid MLG if Kitay would have provided proof that he actually paid MLG $5,000; and that Kitay has failed to provide any credible proof of payment.

Conclusions of Law

Count Eighteen – Civil Code § 2944.7, subd. (a)(1) (Illegal Advanced Fee)

In count eighteen, OCTC charges respondent with willfully violating Civil Code section 2944.7, subdivision (a)(1)'s proscription against charging advanced compensation for loan-modification services by charging and collecting from Kitay $5,000 in advanced fees for home-mortgage-loan-modification services. The record fails to established that respondent charged or

collected $5,000 in advanced fees from Kitay by clear and convincing evidence. Thus, count eighteen is DISMISSED with prejudice for want of proof.

Count Nineteen -- Rule 1-300(A) (Aiding UPL)
Count Twenty -- Rule 3-110(A) (Failing to Supervise
Count Twenty-One -- § 6105 (Permitting Misuse of Name)

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law. Section 6105 provides: "Lending his name to be used as attorney by another person who is not an attorney constitutes a cause for disbarment or suspension."

In counts nineteen, twenty, and twenty-one, OCTC charges respondent with aiding OWA nonattorney staff members in UPL by permitting them to misuse his name and by failing to fulfill his duty, under rule 3-110(A), to adequately supervise their work. The court relies on these same acts to find respondent culpable, under count twenty-two, of willfully violating section 6106's proscription of acts involving moral turpitude by habitually disregarding the interests of his clients. Thus, counts nineteen, twenty, and twenty-one are duplicative of count twenty-two. Accordingly, counts nineteen, twenty, and twenty-one are DISMISSED with prejudice as duplicative of count twenty–two.

Count Twenty-Two -- § 6106 (Moral Turpitude)

The record clearly establishes, as charged in count twenty-two, that respondent willfully violated section 6106's proscription of acts involving moral turpitude by habitually disregarding the interests of his clients. As noted *ante*, respondent abdicated his nondelegable fiduciary duties to his clients in the management services agreement he entered in with OWA. Respondent deliberately and repeatedly failed to comply with his duty, under rule 3-110(A), to adequately supervise the OWA nonattorney staff members performing work for MLG. Respondent delegated his duty to accept clients to OWA nonattorney staff members and engaged in a reckless manner of practicing law that put his and OWA's interests above his clients. These acts,

> [¶] [i]n short, ..."disclose an habitual failure to give reasonable attention to the handling of the affairs of his clients rather than an isolated instance of carelessness followed by a firm determination to make amends." (*Waterman v. State Bar* (1936) 8 Cal.2d 17, 21.) Such recklessness and gross carelessness, even if not deliberate or dishonest, violate "the oath of an attorney to discharge faithfully the duties of an attorney to the best of his knowledge and ability and involve moral turpitude, in that they are a breach of the fiduciary relation which binds him to the most conscientious fidelity to his clients' interests. [Citations.]" (*Simmons v. State Bar* (1970) 2 Cal.3d 719, 729; accord *Doyle v. State Bar* (1976) 15 Cal.3d 973, 978, and cases there cited.) Even repeated acts of mere negligence and omission involve moral turpitude and "prove as great a lack of fitness to practice law as affirmative violations of duty." (*Bruns v. State Bar, supra*, 18 Cal.2d at p. 672.)

(*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 522-523.)

Aggravation[11]

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds two aggravating circumstances.

Prior Record of Discipline (Std. 1.5(a).)

Respondent has two prior records of discipline which are significant aggravating circumstances. On March 26, 2014, the California Supreme Court issued an order in Supreme Court matter S215978 (State Bar Court Nos. 13-O-11459 (13-O-12264)) suspending respondent from the practice of law for two years, staying execution of the suspension, and placing respondent on probation for two years subject to certain conditions. In this prior disciplinary matter, respondent stipulated to: (1) intentionally, recklessly, or repeatedly failing to perform with competence by failing to supervise an employee in willful violation of rule 3-110(A); and (2) violating Civil Code section 2944.7, subdivision[12] (a)(1) in two client matters, by agreeing to negotiate or by negotiating, arranging or offering to perform a home mortgage loan modification for a fee for his client(s) and demanding, charging, collecting, or receiving money from the

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

[12] The stipulation referred to this as a subsection. However, it is a subdivision.

client(s) prior to fully performing each and every service he contracted to perform or represented that he would perform in willful violation of section 6106.3. In aggravation, respondent's misconduct caused significant harm to clients, and he engaged in multiple acts of misconduct. In mitigation, respondent had 19 years of discipline-free practice and cooperated with the State Bar by entering into a stipulation fully resolving this matter prior to the filing of disciplinary charges and without a trial.

On September 21, 2016, the California Supreme Court issued an order in Supreme Court matter S235949 (State Bar Court Nos. 14-O-00482 (14-O-03093)) suspending respondent from the practice of law for two years, staying execution of the suspension, and placing respondent on probation for two years subject to certain conditions, including that he be suspended from the practice of law for a minimum of the first six months of his probation and until he makes specified restitution. In this matter, the Review Department of the State Bar Court found respondent culpable in two matters of violating Business and Professions Code section 6106.3, subdivision (a), by collecting illegal advance fees in violation of Civil Code section 2944.7. The review department found significant aggravating circumstances: (1) a prior record of discipline; (2) that respondent's misconduct caused significant harm to his clients; (3) that he failed to pay restitution; and (4) uncharged misconduct, namely that respondent failed to perform competently by failing to supervise his non-attorney staff in violation of rule 3-110(A), and that he aided and abetted the unauthorized practice of law in violation of rule 1-300(A). The review department did not find any mitigating circumstances.

Multiple Acts of Misconduct (Std. 1.5(b).)

Respondent engaged in multiple acts of wrongdoing in this matter, which are a significant aggravating circumstance.

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Mitigating Circumstances

The member bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.5.) Respondent failed to establish any mitigating circumstances.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. The most severe sanction for the

found misconduct is found in standard 2.7(a). Standard 2.7(a) applies to the misconduct found under count twenty-two (i.e., that respondent's performance violations demonstrate the habitual disregard of client interests). Standard 2.7(a) provides that disbarment is the presumed sanction for communication, withdrawal, or performance violations demonstrating habitual disregard of client interests.

Respondent's previously discussed disregard for his clients' interests clearly establishes that respondent lacks a meaningful understanding of basic fiduciary law. Such a troubling conclusion strongly suggests that the misconduct will recur, and the fact that it has occurred in the past requires this court to ensure that it does not occur in the future. Finally, the record provides no compelling reasons for the court to depart from the presumed sanction of disbarment provided in standard 2.7(a). Accordingly, the court will recommend that respondent be disbarred.

RECOMMENDATIONS

Discipline

The court recommends that respondent **JOSEPH LYNN DECLUE, State Bar member number 163954,** 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.

The court further recommends that respondent JOSEPH LYNN DECLUE be ordered to make restitution to the following payees:

(1) Judy Saucedo in the amount of $25,000 plus 10 percent interest per year from January 7, 2014;

(2) Tanisha Colon in the amount of:

(a) $1,506 plus 10 percent interest per year from November 1, 2012;

(b) $1,000 plus 10 percent interest per year from April 1, 2013; and

(c) $1,700 plus 10 percent interest per year from August 1, 2013;

(3) Eric and Aletheia Guzman in the amount of $4,000 plus 10 percent interest per year from November 1, 2013; and

(4) Albert Harnden in the amount of:

(a) $7,000 plus 10 percent interest per year from September 1, 2013; and

(b) $5,000 plus 10 percent interest per year from October 11, 2013.

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 JOSEPH LYNN DECLUE 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 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the 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), the court orders that JOSEPH LYNN DECLUE be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)).

Dated: October 25, 2016

W. KEARSE McGILL
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on October 25, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT (Bus. & Prof. Code, § 6007, subd.(c)(4).)

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

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

JOSEPH L. DE CLUE
DE CLUE LAW GROUP, PC
2372 SE BRISTOL ST FL 2
NEWPORT BEACH, CA 92660

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Anand Kumar, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 25, 2016.

George Hue
Case Administrator
State Bar Court