

Filed May 30, 2018

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case Nos. 14-O-06366 (15-O-10090;
	)	15-O-10686; 15-O-11035; 15-O-11090;
STEPHEN RAWLIEGH GOLDEN,	)	15-O-11237); 16-O-10260 (16-O-10597;
	)	16-O-10896; 16-O-11152; 16-O-11971)
A Member of the State Bar, No. 163366.	)	(Consolidated)
	)	
_____	)	OPINION

Stephen Rawliegh Golden appeals a hearing judge’s decision finding him culpable of 25 counts of misconduct related to home loan modification services in 11 client matters. Specifically, the judge found Golden culpable of multiple counts in each of three categories of misconduct: (1) charging pre-performance fees; (2) failing to provide separate statements, required by law, disclosing that a third-party representative was unnecessary for loan modifications; and (3) failing to render appropriate accountings. The judge found Golden’s misconduct was mitigated by his 17 years of discipline-free practice and his cooperation in these proceedings (i.e., stipulating to many facts that established his culpability for the first two categories, and expressly stipulating to culpability for the third). She found aggravating significant client harm, multiple acts demonstrating a pattern of misconduct, indifference toward rectification, uncharged misconduct, failure to make restitution, and overreaching. The judge recommended a one-year actual suspension, continuing until Golden makes restitution of illegal fees charged to his clients, totaling more than \$278,000.

Golden appeals. He challenges culpability, principally arguing that he provided foreclosure defense litigation rather than purely loan modification services, and, thus, was permitted to charge and collect advance fees. The Office of Chief Trial Counsel of the State Bar

(OCTC) does not appeal and requests that we affirm the judge's findings and discipline recommendation.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's findings of fact and law with minor modifications. After reviewing the applicable disciplinary standards and relevant loan modification case law, we agree with the judge that Golden's misconduct warrants a one-year actual suspension to continue until he makes full restitution. We also recommend that he remain suspended until he proves his rehabilitation and fitness to practice law.

### **I. RELEVANT PROCEDURAL HISTORY**

Golden was admitted to practice law in California on January 4, 1993, and has no prior record of discipline. On October 27, 2015, OCTC filed a 13-count Notice of Disciplinary Charges (NDC) in Case Nos. 14-O-06366 (15-O-10090; 15-O-10686; 15-O-11035; 15-O-11090; 15-O-11237) (NDC-1).

On July 14, 2016, OCTC initiated an expedited proceeding (Case No. 16-TE-14488) seeking Golden's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (c)(1)-(3).<sup>1</sup> A hearing judge denied OCTC's petition.

On September 7, 2016, OCTC filed an NDC in Case Nos. 16-O-10260 (16-O-10597; 16-O-10896; 16-O-11152; 16-O-11971) (NDC-2). NDC-1 and NDC-2 were consolidated on October 6, 2016. OCTC filed an amended 13-count NDC-2 (ANDC-2) on December 28, 2016.

On March 13, 2017, the parties filed an extensive "Stipulation to Facts and Conclusions of Law and Authentication of Exhibits" (Stipulation). A five-day trial was held in March 2017. OCTC presented 11 witnesses, including several of Golden's former clients. Golden testified

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<sup>1</sup> All further references to sections are to the Business and Professions Code unless otherwise noted. Under section 6007, subdivision (c), an attorney may be involuntarily enrolled as inactive based on a finding that the "attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public."

and presented three witnesses. Prior to the end of trial, the hearing judge granted OCTC's motion to conform the charges to the proof at trial, including the facts in the Stipulation. Posttrial briefing followed, and the judge issued her decision on June 28, 2017.<sup>2</sup>

## **II. LEGISLATION REGULATING LOAN MODIFICATION SERVICES**

In 2009, the Legislature amended the law to regulate an attorney's performance of home loan modification services. California Senate Bill No. 94 (SB 94),<sup>3</sup> which became effective on October 11, 2009, provided two safeguards for borrowers who employ someone to assist with a loan modification: (1) a requirement for a separate notice advising borrowers that it is not necessary to employ a third party to negotiate a loan modification (Civ. Code, § 2944.6, subd. (a));<sup>4</sup> and (2) a proscription against charging pre-performance compensation, i.e., restricting the collection of fees until all contracted-for loan modification services are completed. (Civ. Code, § 2944.7, subd. (a)).<sup>5</sup> The intent was to "prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the

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<sup>2</sup> After trial was completed, the judge received and granted Golden's unopposed motion to withdraw Exhibit 1041. Inadvertently, Exhibit 1041 was not removed from the record.

<sup>3</sup> SB 94 added sections 2944.6 and 2944.7 to the Civil Code and section 6106.3 to the Business and Professions Code (Stats. 2009, Ch. 630, § 10).

<sup>4</sup> Civil Code section 2944.6, subdivision (a), requires that a person attempting to negotiate a loan modification must, before entering into a fee agreement, disclose to the borrower the following information in 14-point bold type font "as a separate statement":

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

<sup>5</sup> In relevant part, Civil Code section 2944.7, subdivision (a), provides that "it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to . . . [¶] . . . [c]laim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform."

borrower worse off than before he or she engaged the services of a loan modification consultant.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009–2010 Reg. Sess.) as amended Mar. 23, 2009, pp. 5–6.) At all times relevant to this matter, a violation of either Civil Code provision constituted a misdemeanor (Civ. Code, §§ 2944.6, subd. (c), 2944.7, subd. (b)), which is cause for imposing attorney discipline. (§ 6106.3.)<sup>6</sup>

### III. FACTUAL FINDINGS<sup>7</sup>

The hearing judge’s factual findings are, for the most part, undisputed by the parties and supported by the record. We adopt these findings with minor modifications, as summarized below. Notably, the judge found that the testimony of Golden and his staff lacked credibility. The judge based this conclusion “on, among other things, the fact that their testimony directly contradicted the overwhelming credible evidence before this court on various issues.” We give great weight to the judge’s credibility findings. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions].)

Golden stipulated that clients in 11 matters (collectively, the clients) sought his services to help them keep their homes or properties. Several of the clients contacted Golden after having been unsuccessful in obtaining loan modifications themselves. Golden discussed with the clients all available remedies, including a loan modification and litigation. He advised the clients that he anticipated filing litigation on their behalf in the event that their respective lenders denied their loan modification applications or for other reasons.

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<sup>6</sup> Prior to January 1, 2017, section 6106.3 provided, “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.” Effective January 1, 2017, the statute was amended so that the reference to Civil Code section 2944.7 was removed. However, since all of the misconduct underlying this matter occurred before January 1, 2017, we find that the former version of section 6106.3 applies.

<sup>7</sup> The facts included in this opinion are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge’s factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

Each client signed a retainer agreement committing to pay Golden a monthly advance fee. While these agreements were largely similar, some differences existed, notably only six included the Civil Code section 2944.6 disclaimer language (§ 2944.6 disclaimer), and three stated that the monthly fee would be billed during the “loan mod/litigation process” while the others used different language. Golden submitted loan modification applications for all but one of the clients,<sup>8</sup> and negotiated with their various lenders.

Golden also stipulated that, after termination of his employment, he failed to render appropriate accountings to the clients for the fees they paid, in violation of rule 4-100(B)(3) of the Rules of Professional Conduct.<sup>9</sup>

In addition, with one exception detailed below, Golden failed to refund any advance fees he received from the clients.

**A. McDonough Matter (Case No. 16-O-10260, ANDC-2, Counts One–Four)**

On November 18, 2010, Joshua McDonough employed Golden and paid him an advance fee of \$500. Their fee agreement did not contain the § 2944.6 disclaimer. On March 19, 2012, McDonough paid Golden another \$2,500, and subsequently made monthly payments of \$1,200.

Golden’s firm sent several loan modification applications to McDonough’s lender but was unsuccessful for approximately two years. On June 8, 2012, Golden filed a lawsuit on McDonough’s behalf in Los Angeles County Superior Court. On August 8, the lawsuit was removed to federal court, and on November 21, Golden dismissed it. On April 11, 2013, Golden filed a second lawsuit for McDonough, but again later dismissed it.

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<sup>8</sup> Golden began preparing an application for that one client, who paid him monthly fees.

<sup>9</sup> All further references to rules are to the Rules of Professional Conduct unless otherwise noted. Under rule 4-100(B)(3), a member shall “[m]aintain complete records of all funds, securities, and other properties of a client . . . and render appropriate accounts to the client regarding them . . . .”

In March 2014, Golden submitted another application for McDonough. In April 2014, Golden entered into another fee agreement with him that included the § 2944.6 disclaimer, and thereafter continued to try to obtain a loan modification.

Before terminating Golden's employment, McDonough paid fees totaling \$35,117. After his termination, Golden failed to render an appropriate accounting to McDonough and failed to refund any advance fees received from him.

**B. Mazziotti Matter (Case No. 16-O-10597, ANDC-2, Counts Five–Seven)**

Tim Mazziotti and Suzanne Wells Schurman (the Mazziottis) employed Golden and paid him an advance fee of \$1,500 on August 28, 2012. Their fee agreement did not contain the § 2944.6 disclaimer.

On February 2, 2013, Golden submitted a loan modification application for the Mazziottis. At their lender's request, Golden later submitted additional documents, but the application was denied on June 10, 2013.

On August 29, 2013, Golden filed a lawsuit and recorded a lis pendens on behalf of the Mazziottis. On March 14, 2014, he filed a First Amended Complaint, and on October 22, a Second Amended Complaint. The Mazziottis made monthly payments from August 2012 to June 2015, and ultimately paid Golden a total of \$51,000.

On June 3, 2015, the Mazziottis decided to sell their home and asked Golden to represent them in the escrow, which he did. They discussed settling an outstanding cause of action with the lender for \$2,500. On February 8, 2016, the Mazziottis called about that settlement. Golden's office accountant responded by email, "You had a balance due of \$5,487.93 at the time that we received the settlement check. We applied the \$2,500 balance and you still have a balance remaining for \$2,987.93. We are actually owed money from you which is why we did

not send any funds to you.” After his termination, Golden failed to render an appropriate accounting to the Mazziottis and failed to refund any advance fees received from them.

**C. Johnson Bennett Matter (Case No. 16-O-10896, ANDC-2, Counts Eight and Nine)**

Doris Johnson Bennett employed Golden and paid him an advance fee of \$1,650 on December 4, 2014. From February 2 to November 2015, Johnson Bennett made monthly payments to Golden and ultimately paid a total of \$18,150.

On April 17, 2015, Golden submitted a loan modification application on Johnson Bennett’s behalf. On June 15, 2015, Golden filed a lawsuit against her loan servicer in Los Angeles County Superior Court, which was removed to federal court in July and dismissed with prejudice in November. Golden appealed, but the appeal was dismissed on January 20, 2016, for failure to prosecute. After his termination, Golden failed to render an appropriate accounting to Johnson Bennett and failed to refund any advance fees received from her.

**D. Bartlett Matter (Case No. 16-O-11152, ANDC-2, Counts Ten and Eleven)**

Jonathan Bartlett employed Golden on September 6, 2013. Their fee agreement did not contain the § 2944.6 disclaimer.<sup>10</sup> Between September 6, 2013, and January 21, 2014, Bartlett paid Golden fees totaling \$17,623.06. Golden submitted a loan modification application on Bartlett’s behalf. After his termination, Golden failed to render an appropriate accounting to Bartlett and failed to refund any advance fees received from him.

**E. Schneiders Matter (Case No. 16-O-11971, ANDC-2, Counts Twelve and Thirteen)**

Raymond and Suzanne Schneiders (the Schneiderses) employed Golden on February 10, 2014, and paid him an advance fee of \$1,500 on February 24. On July 15, 2015, Golden submitted a loan modification request, which was denied on July 23. Between February 2014 and November 2015, the Schneiderses paid Golden fees totaling \$37,422.29. After his

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<sup>10</sup> Although the parties stipulated to this fact, OCTC did not charge Golden with a violation of Civil Code section 2944.6, subdivision (a), in the Bartlett matter.

termination, Golden failed to render an appropriate accounting to the Schneiderses and failed to refund any advance fees received from them.

**F. Arellano Matter (Case No. 14-O-06366, NDC-1, Counts One and Two)**

Oscar Arellano employed Golden on August 22, 2012. Their fee agreement did not contain the § 2944.6 disclaimer.<sup>11</sup>

On February 13, 2013, Golden submitted a loan modification request to Arellano's lender and loan servicer. In July, he withdrew from Arellano's representation without informing Arellano, who continued to make monthly fee payments. In January 2014, Arellano visited Golden's office and was informed his case had been closed. In March 2015, Golden refunded \$7,500 for the fees collected after Golden's withdrawal. Arellano paid Golden a total of \$18,250<sup>12</sup> (after deducting the refund). After his termination, Golden did not render an appropriate accounting to Arellano and failed to refund any advance fees other than the \$7,500.

**G. McCarthy Matter (Case No. 15-O-10090, NDC-1, Counts Three and Four)**

Bo and Grace McCarthy (the McCarthys) employed Golden on January 15, 2014. Between January and October 2014, they paid Golden fees totaling \$13,500. On May 14, Golden submitted a loan modification request to the McCarthys' lender. Golden did not file litigation for the McCarthys. They terminated Golden's employment around December 2014. After his termination, Golden did not render an appropriate accounting and failed to refund any advance fees received from them.

**H. Garcia Matter (Case No. 15-O-10686, NDC-1, Counts Five and Six)**

Robert Garcia employed Golden on July 30, 2014, and paid him a \$1,650 advance fee. By September 2014, he had paid Golden fees totaling \$4,950. In August 2014, Golden started

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<sup>11</sup> Although the parties stipulated to this fact, OCTC did not charge Golden with a violation of Civil Code section 2944.6, subdivision (a), in the Arellano matter.

<sup>12</sup> In the Stipulation, this amount is listed as \$19,500, which is inconsistent with the sum of monthly payments listed in the Stipulation and the record.

preparing a loan modification application for Garcia. Garcia terminated Golden's employment effective October 16, 2014, but reinstated it on November 21. In February 2015, Garcia again terminated Golden's employment. Golden did not submit a loan modification request or file litigation for Garcia. After his termination, Golden did not render an appropriate accounting to Garcia and failed to refund any advance fees received from him.

**I. Kessler Matter (Case No. 15-O-11035, NDC-1, Counts Seven and Eight)**

Adrienne Kessler employed Golden on August 2, 2012. Their fee agreement did not contain the § 2944.6 disclaimer.<sup>13</sup> Between August 2012 and October 2014, Kessler paid Golden fees totaling \$41,599.60. In November 2012, Golden submitted a loan modification request to Kessler's lender. Golden later submitted further documentation for the request, which was eventually denied.

In March 2014, Golden filed a civil complaint for Kessler, which was removed to federal court in December 2014 and thereafter dismissed by Golden. Kessler terminated Golden's representation in January 2015. After his termination, Golden did not render an appropriate accounting to Kessler and failed to refund any advance fees received from her.

**J. Soule Matter (Case No. 15-O-11090, NDC-1, Counts Nine–Eleven)**

Felice Soule employed Golden on September 21, 2012, and paid him an advance fee of \$1,500 on September 30, 2012. Their fee agreement did not contain the § 2944.6 disclaimer. From November 2012 to October 2014, Soule made monthly payments to Golden. In total, Soule paid Golden \$32,000.

On November 27, 2012, Golden submitted a loan modification request to Soule's lender. Golden later submitted further documentation in support of the loan modification request, which was denied.

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<sup>13</sup> Although the parties stipulated to this fact, OCTC did not charge Golden with a violation of Civil Code section 2944.6, subdivision (a), in the Kessler matter.

Golden filed a civil complaint on Soule's behalf in Los Angeles Superior Court in December 2014. Soule terminated Golden's employment on February 2, 2015. After his termination, Golden did not render an appropriate accounting to Soule and failed to refund any advance fees received from her.

**K. Adams Matter (Case No. 15-O-11237, NDC-1, Counts Twelve and Thirteen)**

Cherie Adams employed Golden on March 4, 2014. From March to July 2014, Adams paid Golden fees totaling \$6,250. On July 2, 2014, Golden submitted a loan modification request, which was denied on July 7. After his termination, Golden did not render an appropriate accounting to Adams and failed to refund any advance fees received from her.

**IV. GOLDEN IS CULPABLE OF 25 COUNTS OF MISCONDUCT**

**A. Summary**

OCTC charged Golden with 26 counts of misconduct in 11 client matters. The hearing judge found Golden culpable of 25 counts, including 14 violations of section 6106.3, subdivision (a). Specifically, the judge found 11 violations of Civil Code section 2944.7, subdivision (a)(1) (charging pre-performance fees), and three violations of Civil Code section 2944.6, subdivision (a) (failing to provide a separate statement disclosing that a third-party representative was unnecessary for loan modifications). In addition, and as stipulated to by Golden, the judge found him culpable of 11 counts of failing to render an appropriate accounting, in violation of rule 4-100(B)(3). However, the judge found that OCTC did not prove that Golden obtained an interest adverse to his client, McDonough, in violation of rule 3-300, and therefore dismissed one count (ANDC-2, count four) with prejudice. OCTC does not challenge this dismissal on review.

We agree with and affirm all of the hearing judge's culpability findings, and, thus, find that Golden is culpable of 25 counts of misconduct and is subject to discipline.<sup>14</sup>

**B. Section 6106.3, Subdivision (a): Charging Fees Before Completing All Contracted-For Loan Modification Services (Civ. Code, § 2944.7, subd. (a)(1)) [NDC-1, Counts One, Three, Five, Seven, Nine and Twelve; ANDC-2, Counts One, Five, Eight, Ten, and Twelve]**

OCTC charged Golden with 11 counts of violating section 6106.3 by charging and collecting fees for loan modifications before performing all contracted services, as prohibited by Civil Code section 2944.7. The hearing judge found him culpable of all 11 counts. We agree.

We first interpreted Civil Code section 2944.7 for purposes of attorney discipline in *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221 (*Taylor*). There, we concluded that the statute clearly prohibited collecting any fees in advance of completing all loan modification services. (*Id.* at p. 232.) Furthermore, we found that the *Taylor* loan modification agreements, which “unbundle[ed] services within loan modifications and charge[d] separately for them,” ran afoul of the statutory provisions. (*Ibid.*)

Our analysis in *Taylor* applies equally to these 11 client matters. These clients sought loan modifications and paid Golden monthly advance fees to obtain them. Golden stipulated that: the clients retained his services to keep their homes and properties; he discussed with them available remedies, including loan modifications and litigation; he advised them that he would file litigation on their behalf if their lenders denied their applications; he submitted loan modification applications for all of them, except Garcia; and he negotiated with their lenders.

Golden also stipulated to facts establishing that he collected fees in each client matter before completing all loan modification services. His admitted conduct violated Civil Code section 2944.7, and hence section 6106.3. Therefore, we find him culpable as charged.

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<sup>14</sup> Since the NDCs alleged similar misconduct in each client matter, we have grouped the counts by charged misconduct, rather than by client matter or numerical order, to assist the reader.

**C. Section 6106.3, Subdivision (a): Failing to Provide Required Separate Statement Containing Disclaimer Language (Civ. Code, § 2944.6, subd. (a)) [NDC-1, Count Eleven; ANDC-2, Counts Two and Six]**

OCTC charged Golden with three counts of violating section 6106.3 by failing to provide a separate statement that a third-party negotiator was unnecessary. OCTC alleged those violations in the Soule matter (NDC-1, count eleven), McDonough matter (ANDC-2, count two), and Mazziotti matter (ANDC-2, count six). The hearing judge found Golden culpable as charged. We agree. Golden negotiated, arranged, and offered to perform a mortgage loan modification or other form of mortgage loan forbearance without providing his clients with the § 2944.6 disclaimer.

**D. Rule 4-100(B)(3): Failing to Render Appropriate Accounting [NDC-1, Counts Two, Four, Six, Eight, Ten, and Thirteen; ANDC-2, Counts Three, Seven, Nine, Eleven, and Thirteen]**

Golden stipulated that he failed to render an appropriate accounting to each of the clients regarding the fees he received from them, following their termination of his employment, in violation of rule 4-100(B)(3). As such, we find Golden culpable as charged in these 11 counts.

**V. GOLDEN'S DEFENSES TO CULPABILITY ARE WITHOUT MERIT**

On review, Golden asserts that we should consider several factors related to his culpability and appropriate discipline. We address his culpability arguments in this section, and those regarding a reduction in his discipline in mitigation.<sup>15</sup>

**A. Litigation Rather than Loan Modification Services**

We reject Golden's argument that he offered litigation services rather than loan modification services. His primary goal was to obtain loan modifications. Civil Code section 2944.7 bars up-front fees for loan modification services. No exception exists for attorneys who plan to file litigation if a loan modification request is denied.

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<sup>15</sup> We have independently reviewed each of Golden's arguments. Those not specifically addressed herein have been considered as lacking in factual and/or legal support. We also reject Golden's request that we "do an electronic search of federal and state appellate courts and lower courts for [Golden's] foreclosure defense cases."

We thus are unpersuaded by Golden’s contentions that his fee agreements were for the “purposes of litigation and foreclosure defense,” and litigation was not intended solely to secure a loan modification. Even if he offered services other than loan modifications (e.g., litigation, short sales, bankruptcy), as he contends on review, the services provided in all 11 client matters were solely or primarily to obtain loan modifications.

As we concluded in *Taylor, supra*, 5 Cal. State Bar Ct. Rptr. 221, “Civil Code section 2944.7, subdivision (a), plainly prohibits *any person* engaging in loan modifications from collecting *any fees* related to such modifications until *each and every* service contracted for has been completed. [Citation.]” (*Id.* at p. 232, italics in original.) Even if the purpose of Golden’s litigation services was not just to obtain a loan modification, his collection of fees before *each and every* service he contracted for was completed violated the statute. (*Id.* at pp. 231–232.)<sup>16</sup>

**B. Allowance for Fees for Litigation as Means to Leverage Loan Modification**

We also reject Golden’s argument that Civil Code section 2944.7, subdivision (a), should not apply to litigation that attempts to obtain a loan modification. Golden contends that the Homeowner Bill of Rights (HBOR) (A.B. 278 (2011–2012 Reg. Sess.); S.B. 900 (2011–2012 Reg. Sess.)) should be read to “allow[] a lawyer to get paid for preparing to litigate and litigating against the client’s lender as a means to leverage a loan modification.” His argument is unpersuasive.

We find no conflict between Civil Code section 2944.7, subdivision (a), which prohibits an *attorney* from charging pre-performance advance fees for litigation related to a loan modification, and the HBOR, which provides that a borrower may receive attorney fees from a *lender*. The remedies provided under the HBOR include (a) injunctive relief potentially available for a borrower still in possession of the home; (b) treble actual damages or \$50,000,

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<sup>16</sup> In response to Golden’s request that we “provide a bright line rule for when foreclosure defense attorneys violate Senate Bill 94 considering all the policy factors involved,” we note that we did so in *Taylor*, and since then, we have reiterated “what is permissible and what is not.”

whichever is greater, if the lender has already sold the home and if the servicer's violation was intentional, reckless, or resulted from willful misconduct; and (c) reasonable attorney fees and costs for a prevailing borrower. However, nothing in the HBOR permits an *attorney* to charge pre-performance fees for litigation related to a loan modification, and none of the HBOR remedies includes the advance fees Golden received or provides support for his argument that he was entitled to such fees.

**C. Reliance on Hearing Department's Order Filed in Case No. 16-TE-14488**

Golden contends that “the proper analysis of the main legal issue” in this matter is included in the Hearing Department's September 23, 2016 order in Case No. 16-TE-14488 denying OCTC's petition for Golden's involuntary inactive enrollment (TE case order). Further, Golden suggests that we consider the hearing judge's “common sense analysis” of SB 94 in that order.<sup>17</sup> We disagree and decline to do so.

Case No. 16-TE-14488 was an abbreviated proceeding in which the principal issue was whether OCTC established “exigent circumstances” sufficient to justify enrolling Golden involuntarily inactive before a formal disciplinary proceeding. As the Supreme Court made clear in *Conway v. State Bar* (1989) 47 Cal.3d 1107, 1119, “Any subsequent disciplinary proceedings are just that—subsequent, and separate, proceedings. *Neither the involuntary inactive enrollment order itself nor any of the findings made in those proceedings is binding or has any probative value in the formal disciplinary case.*” (Italics added, footnote omitted.) In addition, the TE case order does not fulfill the requirements of collateral estoppel; it was not a final decision on the

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<sup>17</sup> OCTC argues that the TE case order, attached as an exhibit to Golden's opening brief, is not admissible. We disagree and take judicial notice of it. (See Rules Proc. of State Bar, rule 5.156; Evid. Code, § 452, subd. (d).) We further note that upon Golden's request during trial—to which OCTC did not object—the hearing judge stated that she would make the TE case order part of the record in this matter.

merits. (See *Basurto v. Imperial Irrigation Dist.* (2012) 211 Cal.App.4th 866, 877, citing *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

**D. Reliance on Information from State Bar**

Golden’s arguments that he relied on information provided by the State Bar in a flyer regarding SB 94, and that OCTC purportedly agreed in 2013 that his services did not violate SB 94, are also unavailing. Golden cannot rely on the opinion of another lawyer or of State Bar employees as a defense to a professional misconduct charge. The Supreme Court has held that “no employee of the State Bar can give an attorney permission to violate the Business and Professions Code or the Rules of Professional Conduct. An opinion of a fellow attorney is likewise no defense to wrongdoing . . . .” (*Sheffield v. State Bar* (1943) 22 Cal.2d 627, 632.) And, regardless, in 2013—*before* Golden committed much of his misconduct—this court issued *Taylor*, which made clear that Civil Code section 2944.7, subdivision (a), does not specifically exclude litigation services and defines “service” broadly to include “each and every service the person contracted to perform or represented that he or she would perform.”

**E. Ambiguity**

On review, Golden argues that the language of Civil Code section 2944.7 is ambiguous and should be interpreted to allow attorneys to charge and receive fees for litigation services. We disagree. We have found that the statute “plainly prohibits *any person* engaging in loan modifications from collecting *any fees* related to such modifications until *each and every* service contracted for has been completed. [Citation.] We find nothing ambiguous about the statute’s language . . . .” (*Taylor, supra*, 5 Cal. State Bar Ct. Rptr. at p. 232.)

## VI. AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct<sup>18</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence.<sup>19</sup> Golden has the same burden to prove mitigation. (Std. 1.6.)

### A. Aggravation

#### 1. Multiple Acts of Wrongdoing (Std. 1.5(b)); Pattern of Misconduct (Std. 1.5(c))

The hearing judge found that Golden committed multiple acts of misconduct that evidence a pattern of misconduct under standard 1.5(c). We need not reach the issue of whether his misconduct constituted a pattern but we find him culpable of 25 counts of misconduct in 11 client matters during a more than five-year period. We assign significant weight in aggravation under standard 1.5(b) to his recurring violations.

#### 2. Overreaching (Std. 1.5(g))

The hearing judge correctly found that unilaterally taking his clients' \$2,500 in settlement funds in the Mazziotti matter demonstrates Golden's overreaching and warrants significant consideration in aggravation. (Std. 1.5(g).) We find additional overreaching in Golden's withdrawal from Arellano's representation in July 2013 without informing Arellano—who continued to make monthly fee payments—until January 2014 that his case had been closed. Like the judge, we find that Golden's overreaching warrants significant consideration in aggravation.

#### 3. Uncharged Misconduct (Std. 1.5(h))

“Although evidence of uncharged misconduct may not be used as an independent ground of discipline” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35 (*Edwards*)), it may be considered in

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<sup>18</sup> All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

<sup>19</sup> Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

aggravation if the respondent's due process rights are not violated. (See *id.* at pp. 35–36.) As the hearing judge noted, this matter involves a different situation than in *Edwards*.

Golden *stipulated* to conduct constituting uncharged misconduct. This misconduct included using a fee agreement that did not include the § 2944.6 disclaimer in three client matters (the Bartlett, Arellano, and Kessler matters). Like the hearing judge, we find that Golden's uncharged misconduct was elicited for a relevant purpose and was based on his own representations.<sup>20</sup> Further, as previously noted, the judge granted OCTC's motion to conform the charges to the proof at trial, including the facts in the Stipulation. We affirm the judge's assignment of nominal weight in aggravation for Golden's uncharged misconduct.

#### **4. Significant Harm (Std. 1.5(j))**

The hearing judge properly found that Golden's misconduct significantly harmed his clients. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) Golden deprived his financially distressed clients of the funds they paid him in illegal advance fees. In addition, Golden and his employees advised some of his clients to stop making their mortgage payments, which served to worsen their already bad financial situations. We are unpersuaded by Golden's contentions on review that he obtained "good results, not just modifications, but also cash settlement in many of the cases." Like the judge, we find that the significant harm Golden caused his clients warrants substantial consideration in aggravation.

#### **5. Indifference (Std. 1.5(k))**

The hearing judge found that Golden's actions demonstrate his indifference toward rectification or atonement for the consequences of his misconduct. (Std. 1.5(k).) We agree. Despite the Civil Code's plain language, the established case law, the State Bar's investigation, and the present proceedings, Golden continues to operate his law firm in a similar fashion. His

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<sup>20</sup> As noted by the hearing judge, OCTC should have charged this misconduct in an NDC, as OCTC was or should have been aware of these violations before filing the NDCs.

attitude reveals a lack of understanding of his ethical responsibilities as an attorney. Like the judge, we find that his indifference warrants considerable weight in aggravation because his lack of insight makes him an ongoing danger to the public and the legal profession. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [lack of insight causes concern attorney will repeat misconduct]; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [law does not require false penitence but does require respondent to accept responsibility for acts and come to grips with culpability].)

#### **6. Failure to Make Restitution (Std. 1.5(m))**

Golden's misconduct is also aggravated by his failure to make restitution. (Std. 1.5(m).) He collected over \$283,000 in illegal advance fees in 11 client matters, and, to date, he has only refunded \$7,500 of the fees he received from Arrellano. Golden still owes over \$278,000 to his clients. We accord this factor significant weight in aggravation. (*In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, 445 (*DeClue*).)

### **B. Mitigation**

#### **1. No Prior Record (Std. 1.6(a))**

Mitigation is available where no prior record of discipline exists over many years of practice, coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) Golden was admitted to practice law in January 1993, and his misconduct began in November 2010. The hearing judge found that Golden's approximately 17 years of discipline-free practice warrants significant consideration in mitigation.<sup>21</sup> We disagree.

While over 17 years of discipline-free practice could warrant significant weight in mitigation (*Hawes v. State Bar* (1990) 51 Cal. 3d 587, 596 [more than 10 years of discipline-free practice is significant mitigation]), we do not assign such weight because Golden's misconduct was

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<sup>21</sup> In light of our culpability findings above, we find unpersuasive Golden's assertion that he had "25 years . . . without any prior disciplinary action."

not aberrational or unlikely to recur. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur].) Given that he committed similar, serious misconduct in 11 client matters over more than a five-year period, we do not view his misconduct as aberrational. (*In the Matter of Wenzel* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 380, 386 [conduct not found aberrational where multiple acts were committed and attorney had time to reflect before each subsequent act].) Considering Golden's indifference toward rectification and that he continues to operate his firm in a similar fashion, we do not find that his misconduct is unlikely to recur.

We thus assign minimal mitigating weight to Golden's over 17 years of discipline-free practice. (See *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, 395, 398–399 [minimal weight afforded for 22 years of discipline-free practice where misconduct, which included filing 82 fraudulent bankruptcy petitions, “was most serious, involved intentional dishonesty, and continued over three and a half years,” and was not proven aberrational].)

## **2. Cooperation with State Bar (Std. 1.6(e))**

The hearing judge found that Golden entered into an extensive stipulation regarding facts, admissibility of evidence, and culpability, and that such cooperation with the State Bar preserved court time and resources, warranting significant mitigation credit. We agree and assign this factor significant weight. (Std. 1.6(e) [spontaneous candor and cooperation to State Bar is mitigating]; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation given to those who admit culpability and facts].)

## VII. DISCIPLINE<sup>22</sup>

Our disciplinary analysis begins with the standards, which, although not binding, are guiding and entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow them whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law to determine the proper discipline. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.18 is the most severe, providing that disbarment or actual suspension is the presumed sanction for a violation of the Business and Professions Code not otherwise specified in another standard.<sup>23</sup>

The hearing judge considered the applicable standards and case law (namely, *Taylor*), balanced the aggravating and mitigating factors, and recommended discipline including a one-year actual suspension continuing until Golden pays restitution. At trial, Golden argued that his discipline should not include any period of actual suspension. On review, he contends that “upholding the [Hearing Department’s] ruling would appear to render an extreme, unjust result.” At trial, OCTC sought a one-year actual suspension to continue until Golden pays restitution and proves his rehabilitation, fitness to practice, and present learning and ability in the law. On review, OCTC requests that we affirm the judge’s discipline recommendation.

As did the hearing judge, we look to *Taylor*. *Taylor* received a six-month actual suspension for charging pre-performance loan modification fees in eight client matters and

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<sup>22</sup> The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.)

<sup>23</sup> Standard 2.2(b), which provides that suspension or reproof is the presumed sanction for a violation of rule 4-100(B)(3), also applies.

failing to provide the required disclosures in one case. Multiple acts of wrongdoing, significant client harm, and lack of remorse aggravated his misconduct, and Taylor proved one mitigating circumstance—good character. Like Golden, Taylor failed to fully refund the illegally collected fees. We also find guidance in *DeClue, supra*, 5 Cal. State Bar Ct. Rptr. 437, in which we recommended a six-month actual suspension continuing until payment of restitution. DeClue illegally charged and collected advance fees for loan modifications in two client matters, and he proved no mitigation while his misconduct was aggravated by a prior record of discipline, significant harm to his clients, failure to pay restitution, and uncharged misconduct.

Golden's misconduct is more serious and extensive than was either Taylor's or DeClue's. Further, the amount of Golden's illegally collected advance fees dwarfs those involved in *Taylor* or *DeClue*. And, as in those cases, the mitigation we assigned for lack of a prior record and for cooperation is greatly outweighed by aggravation for multiple acts of wrongdoing, overreaching, uncharged misconduct, significant client harm, indifference, and failure to make restitution.

An appropriate sanction should fall within the range the applicable standard provides unless the net effect of the aggravating and mitigating circumstances demonstrates that a greater or lesser sanction is needed to fulfill the primary purposes of discipline. (Std. 1.7.) To deviate from the applicable standard, we must state clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons for departure from standards].) We find Golden's request for no actual suspension to be unsupported. Instead, we affirm the hearing judge's recommended one-year actual suspension continuing until Golden makes restitution of all the fees he collected illegally. In addition, we recommend that he remain suspended until he proves his rehabilitation, fitness, and learning in the law. This recommendation will allow Golden the opportunity to gain insight into—and show he is no longer indifferent to—his misconduct, and will, at the same time, protect the public, the courts, and the legal profession.

## VIII. RECOMMENDATION

For the foregoing reasons, we recommend that Stephen Rawliegh Golden be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for three years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first year of his probation, and remain suspended until the following conditions are satisfied:
  - a. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles:
    - (1) Joshua McDonough in the amount of \$35,117 plus 10 percent interest per year from November 18, 2010;
    - (2) Tim Mazziotti and Suzanne Wells Schurman in the amount of \$51,000 plus 10 percent interest per year from August 28, 2012;
    - (3) Tim Mazziotti and Suzanne Wells Schurman in the amount of \$2,500 plus 10 percent interest per year from February 8, 2016;
    - (4) Doris Johnson Bennett in the amount of \$18,150 plus 10 percent interest per year from December 4, 2014;
    - (5) Jonathan Bartlett in the amount of \$17,623.06 plus 10 percent interest per year from September 6, 2013;
    - (6) Raymond and Suzanne Schneiders in the amount of \$37,422.29 plus 10 percent interest per year from February 24, 2014;
    - (7) Oscar Arellano in the amount of \$18,250 plus 10 percent interest per year from September 4, 2012;
    - (8) Bo and Grace McCarthy in the amount of \$13,500 plus 10 percent interest per year from January 15, 2014;
    - (9) Robert Garcia in the amount of \$4,950 plus 10 percent interest per year from July 30, 2014;
    - (10) Adrienne Kessler in the amount of \$41,599.60 plus 10 percent interest per year from August 2, 2012;
    - (11) Felice Soule in the amount of \$32,000 plus 10 percent interest per year from September 30, 2012; and

- (12) Cherie Adams in the amount of \$6,250 plus 10 percent interest per year from March 4, 2014.
- b. He provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
  3. 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 his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
  4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation case specialist to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation case specialist either in person or by telephone. During the period of probation, he must promptly meet with the probation case specialist as directed and upon request.
  5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 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, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, as to whether he is complying or has complied with the conditions contained herein.
  7. Within one year after the effective date of the discipline herein, he 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 he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

## **IX. PROFESSIONAL RESPONSIBILITY EXAMINATION**

We further recommend that Stephen Rawliegh Golden be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter, or during the period of his actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

## **X. RULE 9.20**

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

## **XI. COSTS**

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

HONN, J.

WE CONCUR:

PURCELL, P. J.

STOVITZ, J.\*

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

**Case Nos. 14-O-06366 (15-O-10090; 15-O-10686; 15-O-11035;  
15-O-11090; 15-O-11237); 16-O-10260 (16-O-10597;  
16-O-10896; 16-O-11152; 16-O-11971) (Consolidated)**

*In the Matter of*

**STEPHEN RAWLIEGH GOLDEN**

Hearing Judge

**Hon. M. Lucy Armendariz**

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