

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos. **12-O-16426-LMA (13-O-11358;**
) **13-O-11426; 13-O-11820;**
) **13-O-11999; 13-O-12050;**
JONATHAN ADRIEL FRIED,) **13-O-12051; 13-O-12571;**
) **13-O-12889; 13-O-14182;**
) **13-O-14890)**
Member No. 257631,)
) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE**
A Member of the State Bar.) **ENROLLMENT**
)
_____)

Introduction¹

In this contested disciplinary proceeding, respondent Jonathan Adriel Fried is charged with 47 counts of professional misconduct in 11 matters. The charged misconduct includes: (1) violating loan modification law; (2) failing to perform services competently; (3) failing to obey court orders; (4) improperly withdrawing from employment; (5) failing to refund unearned fees (\$31,500); (6) failing to render an accounting; (7) failing to deposit client funds in a trust account; (8) committing acts of moral turpitude by misappropriation; (9) threatening criminal, administrative, or disciplinary charges; (10) misleading a judge; (11) failing to inform client of

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

significant developments; (12) accepting fees from a non-client; (13) failing to respond to client inquiries; and (14) failing to return client file.

This court finds, by clear and convincing evidence, that respondent is culpable of most of the charged allegations of misconduct. Respondent has harmed the public, damaged public confidence in the legal profession, and failed to maintain the high professional standards demanded of attorneys. Based on the serious nature and extent of culpability, as well as the significant aggravating circumstances, the court recommends, among other things, that respondent be disbarred from the practice of law and make restitution.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 11, 2013.

Respondent filed a response on January 8, 2014.

A seven-day hearing was held on April 21-25 and May 1-2, 2014. Supervising Senior Trial Counsel Robert A. Henderson represented the State Bar. Respondent represented himself. The court took this matter under submission on May 2, 2014.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on November 26, 2008, and has been a member of the State Bar of California since that time.

The findings of fact are based on the record and the evidence adduced at trial. After carefully observing and considering respondent's testimony, including, among other things, his demeanor while testifying; the manner in which he testified; the character of his testimony; his interest in the outcome in this proceeding; his capacity to perceive, recollect, and communicate the matters on which he testified; and after carefully reflecting on the record as a whole, the court

finds that much of respondent's testimony lacked credibility and sincerity. (Evid. Code, § 780.)

Other times, respondent's testimony appeared contrived.

For example, respondent's testimony, contradicted by documentary evidence, lacked credibility when he testified that:

- (1) the advanced legal fees were a true retainer;
- (2) the clients did not hire him for a loan modification; and
- (3) the clients only hired him to do a lis pendens.

The State Bar's witnesses were credible and reliable.

Case Nos. 12-O-16426 (Hansen); 13-O-11358 (Gornaia); 13-O-12050 (Sandford); and 13-O-12051 (Trueman)

Facts

The following four client matters (Hansen, Gornaia, Sandford, and Trueman) involved similar misconduct of incompetence and deceit under the guise of rescuing these troubled homeowners from foreclosures and providing them with loan modifications. Each of these clients fell victim to respondent's chicanery.

The Hansens Matter (Counts 1 – 9)

In August 2011, Robert Hansen and Pamela Pesce-Hansen ("Hansens") hired respondent to obtain a loan modification for their home. Respondent told the Hansens that he would help them obtain a loan modification. They entered into a fee agreement on August 14, 2011. The Hansens agreed to pay \$7,500 as advanced attorney fees and \$700 in costs.² On August 11, 2011, the Hansens paid respondent \$4,160 in advance for the loan modification work.

² Respondent argues that the \$7,500 was a non-refundable retainer fee, as designated in the fee agreement. However, the court looks beyond this characterization to determine the obligations of the parties. The attorney-client fee contract did not contain any of the elements necessary to create a true retainer fee: (1) it did not define the term "retainer fee;" (2) it did not expressly state that payment was due even if professional services were not rendered; (3) it did

The fee agreement listed the “Scope of Services” as "to file lawsuit in order to bring awareness of the political, social economic, affects [sic] of lending institutions [sic] refusal to modify home loans under government programs, to prevent a trustee sale for as long as reasonably possible, and in an effort to obtain a loan modification; relating to the property located at 2720 Crestmoor Dr., San Bruno, CA 94066."

On August 17, 2011, respondent filed a complaint in San Francisco County Superior Court, *Hansen v. Countrywide et al.*, case No. CGC-11-513425 (“complaint”).³

On September 26, 2011, the Hansens paid respondent the remaining \$3,340 of the \$7,500 fee in advance for the loan modification work.

Aside from filing the complaint in San Francisco County Superior Court, respondent made no effort whatsoever to obtain a loan modification for the Hansens.

In May 2012, the Hansens received a notice that their house was being sold through foreclosure. On June 13, 2012, respondent emailed the Hansens and told them that he was having the sale “postponed” and needed \$705 in paperwork and filing costs. On June 13, 2012, the Hansens' home went to foreclosure sale.

On June 19, 2012, the Hansens paid respondent the \$705 for costs. Respondent did not deposit the \$705 into an attorney-client trust account.

not set aside blocks of respondent’s time to devote to the Hansens’s case; and (4) it did not specify a period of time when respondent was obligated to turn away other business in order to proceed with the Hansens matter. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950-951.) Thus, the court finds the \$7,500 was an advanced fee and not a true retainer.

³ Respondent filed the complaint in San Francisco County Superior Court even though the property was located in San Mateo County. The complaint was a boilerplate, cookie-cutter complaint that he used for all his “foreclosure defense loan modification” clients.

After respondent filed the complaint in August 2011, he never served the defendants. The court in *Hansen v. Countrywide* issued about nine orders to show cause (OSC) requiring respondent to file a proof of service on the defendants and to appear in court on the following dates: January 6, March 21, May 8, June 25, August 24, October 26, and December 13, 2012; and February 6 and March 28, 2013.

Respondent failed to appear in court on at least four occasions: May 7, 2012; February 5, March 26, and May 14, 2013. The court then sanctioned respondent for his three failures to appear in court in a total amount of \$1,325, as follows:

<i>Date of Sanction Order</i>	<i>Amount</i>
May 8, 2012	\$325
February 6, 2013	\$500
March 28, 2013	\$500

On December 11, 2012, respondent paid the \$325 sanction. But when respondent again failed to appear in court the fourth time and failed to comply with court orders, the court sanctioned respondent on May 16, 2013, by dismissing *Hansen v. Countrywide* in its order dismissing the entire action. The court noted that a less severe sanction would not be effective due to the history of lack of compliance.

Despite the court orders, the defendants were never served and respondent never filed a proof of service with the court. Respondent, by taking no action in *Hansen v. Countrywide*, effectively withdrew from representation of the Hansens.

But respondent did not file a motion to withdraw and did not obtain permission to withdraw from representation of the Hansens.

Furthermore, respondent has not fully paid the court sanctions for his failures to appear in court. He did not inform the Hansens of the monetary sanctions and of the dismissal of the

complaint on May 16, 2013. He also did not inform them that he did not serve the complaint on the defendants in *Hansen v. Countrywide*.⁴

Respondent did not provide an accounting to the Hansens for the \$7,500 in advanced fees.⁵ Respondent has not refunded any portion of the \$7,500 in attorney fees to the Hansens.

Conclusions

*Background on Legislation Regulating Loan Modification (SB 94)*⁶

In 2009, state laws were enacted to protect homeowners facing foreclosures. California legislators sought to curb abuses by “a cottage industry that has sprung up to exploit borrowers who are having trouble affording their mortgages, and are facing default, and possible foreclosure, if they are unable to negotiate a loan modification or any other form of mortgage loan forbearance with their lender.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, pp. 6-7.)

On October 11, 2009, Senate Bill No. 94 (SB 94) became effective, providing two safeguards for borrowers who employ the services of someone to help with a loan modification: (1) a requirement for a separate notice to borrowers that it is not necessary to use a third party to negotiate a loan modification (codified as Civ. Code, § 2944.6);⁷ and (2) a proscription against

⁴ Respondent was not credible when he testified that all his clients knew that he would not serve the complaint on the defendants and that he would get sanctioned as the legal strategy to delay the sale of the house.

⁵ Respondent was not credible arguing that his clients understood that the fee was a non-refundable true retainer.

⁶ The background description of California Senate Bill number 94 (SB 94) is taken from the review department’s opinion in *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 225-226.

⁷ Civil Code section 2944.6 requires that before entering into a fee agreement, a person attempting to negotiate or arrange a loan modification must provide the borrower the following information in 14-point font “as a separate statement:”

charging pre-performance compensation, i.e., restricting the collection of fees until all loan modification services are completed (codified as Civ. Code, § 2944.7).⁸ The new legislation was designed to “prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009 Reg. Sess.) as amended Mar. 23, 2009, p. 7.) A violation of either Civil Code provision constitutes a misdemeanor (Civ. Code, §§ 2944.6, subd. (c), 2944.7, subd. (b)), and is cause for imposing attorney discipline. (§ 6106.3.)

Count 1 - (§ 6106.3 subd. (a) [Violation of Civil Code section 2944.6, subd. (a)]

Section 6106.3, subdivision (a) provides that an attorney’s conduct in violation of Civil Code section 2944.6 or 2944.7 constitutes cause for the imposition of discipline.

Before entering into a fee agreement with the Hansens to perform a mortgage loan modification for a fee, respondent failed to provide the Hansens with the information under the 2944.6 statement in 14-point font as a separate statement, as required under Civil Code section

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. ("The 2944.6 statement.")

⁸ The relevant portion of Civil Code section 2944.7 reads:

(a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

2944.6. Therefore, by violating Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3, subdivision (a), in count 1.

Count 2 - (§ 6106.3 subd. (a) [Violation of Civil Code section 2944.7, subd. (a)(1)]

By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving \$7,500 from the Hansens prior to fully performing each and every service he had been contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, subdivision (a)(1), respondent willfully violated section 6106.3, subdivision (a), in count 2.

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

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

By failing to properly serve Countrywide and other defendants with the summons and complaint, by repeatedly failing to appear in court, and by failing to negotiate with the lender to obtain a loan modification for the Hansens' home, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) in count 3.

Count 4 - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

By failing to file a proof of service on the defendants as imposed by nine court orders in 2012 and 2013; by failing to appear in court on four occasions; and by failing to fully pay the

court sanctions, respondent willfully failed to comply with the court's OSCs and sanction orders in willful violation of section 6103 in count 4.

Count 5 - (Rule 3-700(A)(1) [Withdrawal From Employment Without Court's Permission])

Rule 3-700(A)(1) provides that an attorney must not withdraw from employment in a proceeding without the court's permission if its rules require such permission for the termination of employment.

Respondent took no further action on behalf of the Hansens after filing the complaint and effectively withdrew from employment. Thus, by failing to file a motion to withdraw or obtain the court's permission to withdraw from representation of the Hansens in *Hansen v. Countrywide*, respondent willfully violated rule 3-700(A)(1) in count 5.

Count 6 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund any of the \$7,500 advanced fees paid by the Hansens in count 6.

Count 7 - (Rule 4-100(B)(3) [Failure to Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

By failing to provide the Hansens with an accounting for the \$7,500 in advanced fees, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3) in count 7.

Count 8 - (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received or held for the benefit of clients, including advances for costs and expenses, must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

By failing to deposit the \$705 paid by the Hansens as advanced costs into his client trust account, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of rule 4-100(A) in count 8.

Count 9 - (§ 6106 [Moral Turpitude])

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

Respondent's failure to deposit \$705 in a trust account violated rule 4-100(A), as found in count 8, but there is no clear and convincing evidence that he had misappropriated the funds. His inaction alone does not support a finding that he misappropriated those costs or that his failure constituted acts of moral turpitude under section 6106. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 691.) Thus, count 9 is dismissed with prejudice.

The Gornaia Matter (Counts 10 – 15)

On April 19, 2011, Valerie Gornaia (“Gornaia”) hired respondent to obtain a loan modification for her home. Respondent told Gornaia that he would help her obtain a loan modification.

The fee agreement entered into with Gornaia listed the “Scope of Services” as “to file lawsuit in order to bring awareness of the political, social economic, affects [sic] of lending institutions [sic] refusal to modify home loans under government programs, to prevent a trustee

sale for as long as reasonably possible, and in an effort to obtain a loan modification; relating to the property located at 350 Pine Wood Lane, Los Gatos, CA 98032."

The fee agreement was for \$7,500 in attorney fees and \$700 in costs.⁹

On April 19, 2011, Gornaia paid respondent \$2,500 in advance for the loan modification work. Respondent and Gornaia agreed to pay the remaining monies owed in installments. By October 19, 2012, Gornaia had paid respondent the total \$7,500 in attorney fees.

On May 11, 2011, respondent filed a complaint in San Francisco County Superior Court, *Gornaia v. Wells Fargo Home Mortgage*, case No. CGC-11-510893 (the "Gornaia matter").¹⁰ Aside from filing the complaint, respondent made no effort whatsoever to obtain a loan modification for Gornaia. The defendant in the Gornaia matter was never served.

On October 17, 2011, Gornaia emailed respondent and told him that she received a notice that her house was being sold through foreclosure. On October 20, 2011, respondent emailed Gornaia and told her he "would take care of it."

But respondent did not appear at court events set for the Gornaia matter on May 21, July 24, and September 25, 2012.

⁹ Respondent again argues that the \$7,500 was a non-refundable retainer fee, as designated in the fee agreement. As discussed in the Hansens matter, even though the fee was designated in the contract as a "true retainer," the court looks beyond this characterization to determine the obligations of the parties. (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 923 [characterization of a "non-refundable retaining fee" not determinative]; *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757 [fee not a true retainer because no provision to set aside available blocks of time].) Like the Hansens matter, the court finds the \$7,500 was an advanced fee and not a true retainer.

¹⁰ Respondent filed the complaint in San Francisco County Superior Court even though the property was located in Santa Clara County. The complaint was a boilerplate, cookie-cutter complaint that he used for all his "foreclosure defense loan modification" clients including the Hansens above.

On November 8, 2011, respondent misrepresented to the court in the Gornaia matter that the defendant had been served.

On November 17, 2011, the court in the Gornaia matter issued an order to show cause (OSC) requiring respondent to file a proof of service on the defendant. Thereafter, the court issued about six additional OSCs requiring respondent to file a proof of service on the defendant and to appear in court on the following dates: March 21, May 22, July 25, September 28, and November 29, 2012; and January 17, 2013.

Respondent failed to appear in court on at least three occasions: May 21, July 24, and September 25, 2012. The court sanctioned respondent for his three failures to appear in court in a total amount of \$1,050, as follows:

<i>Date of Sanction Order</i>	<i>Amount</i>
May 22, 2012	\$350
July 25, 2012	\$350
September 28, 2012	\$350

The defendant was never served by respondent and he never filed a proof of service with the court. Respondent did not inform Gornaia that he did not serve the complaint on the defendant in her matter.

On October 3, 2012, respondent paid \$350 sanction but he has not fully paid the monetary sanctions imposed by the court in this matter. Respondent did not inform Gornaia of the sanctions imposed by the court.

Respondent did not provide an accounting to Gornaia for the \$7,500 in advanced fees.¹¹

Respondent has not refunded any portion of the \$7,500 in attorney fees to Gornaia.

¹¹ Respondent was not credible when he testified that his client understood that this was a non-refundable true retainer.

Conclusions

Count 10 - (§ 6106.3 subd. (a) [Violation of Civil Code section 2944.6, subd. (a)]

Before entering into a fee agreement with Gornaia to perform a mortgage loan modification for a fee, respondent failed to provide her with the information under the 2944.6 statement in 14-point font as a separate statement, as required under Civil Code section 2944.6. Therefore, by violating Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3, subdivision (a), in count 10.

Count 11 - (§ 6106.3 subd. (a) [Violation of Civil Code section 2944.7, subd. (a)(1)]

By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving \$7,500 from Gornaia prior to fully performing each and every service he had been contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, subdivision (a)(1), respondent willfully violated section 6106.3, subdivision (a), in count 11.

Count 12 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By failing to properly serve Wells Fargo Home Mortgage with the summons and complaint, by repeatedly failing to appear in court, and by failing to negotiate with the lender to obtain a loan modification for Gornaia's home, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) in count 12.

Count 13 - (§ 6103 [Failure to Obey a Court Order]

By failing to file a proof of service on the defendant as imposed by seven court orders in 2012 and 2013; by failing to appear in court on three occasions; and by failing to fully pay the court sanctions, respondent willfully failed to comply with the court's OSCs and sanction orders in willful violation of section 6103 in count 13.

Count 14 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Respondent performed no services of value on behalf of Gornaia and had earned none of the advanced fees paid. Respondent willfully violated rule 3-700(D)(2) by failing to promptly refund any of the \$7,500 advanced fees paid by Gornaia in count 14.

Count 15 - (Rule 4-100(B)(3) [Failure to Maintain Records of Client Property/Render Appropriate Accounts]

By failing to provide Gornaia with an accounting for the \$7,500 in advanced fees, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3) in count 15.

The Sandford Matter (Counts 20 – 26)

On March 8, 2012, Kristi Sandford (“Sandford”) hired respondent to obtain a loan modification for her home. Respondent told Sandford that he would help her obtain a loan modification.

The fee agreement entered into with Sandford listed the “Scope of Services” as “to file lawsuit in order to bring awareness of the political, social economic, affects [sic] of lending institutions [sic] refusal to modify home loans under government programs, to prevent a trustee sale for as long as reasonably possible, and in an effort to obtain a loan modification; relating to the property located at 540 Bret Harte Rd, San Rafael, CA 94901.”

The fee agreement was for \$7,500 in attorney fees and \$605 in costs. On March 8, 2012, Sandford paid respondent \$2,000 in advance attorney fees for the loan modification work.¹²

¹² As discussed in the Hansens and Gornaia matters, the court finds the fees to be advance fees and not a true retainer.

On March 26, 2012, respondent filed a complaint in San Francisco County Superior Court, *Sandford v. Bank of America*, case No. CGC-12-519491 (the “first complaint”).¹³ Also on March 26, 2012, respondent filed a Fee Waiver request on behalf of Sandford.

On March 26, 2012, the court requested more information in support of the Fee Waiver request and set a hearing for April 18, 2012. On April 18, 2012, respondent did not appear at the hearing on the Fee Waiver request. On April 20, 2012, the court denied the Fee Waiver request for failure to attend the April 18, 2012 hearing and for failure to submit the requested additional information.

On May 8, 2012, the court ordered the first complaint stricken. Respondent did not tell Sandford that the first complaint had been stricken.

From May 8 to November 14, 2012, respondent did not take any action on behalf of the client.

On November 14, 2012, respondent filed a second complaint in San Francisco County Superior Court, *Sandford v. Bank of America*, case No. CGC-12-526109 (the “second complaint”).

Aside from filing the complaints in San Francisco County Superior Court, respondent made no effort whatsoever to obtain a loan modification for Sandford.

The defendant in the Sandford complaints was never served. Respondent did not inform Sandford that the complaints were never served on defendants.

On May 13, 2013, the court in *Sandford v. Bank of America* issued an OSC as to why the action should not be dismissed for failure to serve the defendant. On July 10, 2013, the court

¹³ Respondent filed the complaint in San Francisco County Superior Court even though the property was located in Marin County. The complaint was a boiler-plate, cookie cutter complaint that he used for all his “foreclosure defense loan modification” clients including Hansen and Gornaia above.

issued another OSC as to why the action should not be dismissed for failure to serve the defendant and ordered respondent to appear in court on September 10, 2013.

On September 12, 2013, the court sanctioned respondent \$400 for failure to appear at the September 10 hearing. To date, respondent has not paid the sanction.¹⁴

On October 31, 2013, the court dismissed the second complaint for failure to file proof of service on the defendants.

Respondent did not provide an accounting to Sandford for the \$2,000 in advanced fees.¹⁵

Respondent has not refunded any portion of the \$2,000 in attorney fees to Sandford.

Conclusions

Count 20 - (§ 6106.3 subd. (a) [Violation of Civil Code section 2944.6, subd. (a)]

Before entering into a fee agreement with Sandford to perform a mortgage loan modification for a fee, respondent failed to provide her with the information under the 2944.6 statement in 14-point font as a separate statement, as required under Civil Code section 2944.6. Therefore, by violating Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3, subdivision (a), in count 20.

Count 21 - (§ 6106.3 subd. (a) [Violation of Civil Code section 2944.7, subd. (a)(1)]

By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving \$2,000 from Sandford prior to fully performing each and every service he had been contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, subdivision (a)(1), respondent willfully violated section 6106.3, subdivision (a), in count 21.

¹⁴ Respondent was not charged for his failure to pay the \$400 court sanction.

¹⁵ Respondent was not credible when he testified that his clients understood that this was a non-refundable true retainer.

Count 22 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to properly serve Bank of America with the summons and complaint, by failing to appear in court, and by failing to negotiate with the lender to obtain a loan modification for Sandford's home, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) in count 22.

Count 23 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondent performed no services of value on behalf of Sandford and had earned none of the advanced fees paid. Thus, respondent willfully violated rule 3-700(D)(2) by failing to promptly refund any of the \$2,000 advanced fees paid by Sandford in count 23.

Count 24 - (Rule 4-100(B)(3) [Failure to Maintain Records of Client Property/Render Appropriate Accounts])

By failing to provide Sandford with an accounting for the \$2,000 in advanced fees, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3) in count 24.

Counts 25 and 26 - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Respondent willfully violated section 6068, subdivision (m), in counts 25 and 26: (1) by not informing Sandford that the fee waiver had been denied; (2) by not informing her that the court ordered the complaint stricken; (3) by not informing Sandford that he had not served the complaint; and (4) by not informing Sandford that the court had issued two OSCs.

The Trueman Matter (Counts 27 – 34)

On October 25, 2011, Brandy Trueman (“Trueman”) hired respondent to obtain a loan modification for her home and save her home from foreclosure. Respondent told Trueman that he would help her obtain a loan modification.

Respondent charged Trueman \$7,500 in attorney fees and \$700 in costs.

On October 25, 2011, Trueman paid respondent \$3,200 in advance for the loan modification work – \$2,500 for attorney fees and \$700 for advanced costs. Respondent did not deposit the \$700 in costs into an attorney-client trust account. At the time, there were no costs regarding the complaint. Respondent expended a maximum of \$410 in costs.

On February 9, 2012, respondent filed a complaint in San Francisco County Superior Court, *Trueman v. California Reconveyance Company*, case No. CGC-11-518142 (the “complaint”).¹⁶ A lis pendens was also filed in this matter on February 9, 2012.

On March 13, 2012, California Reconveyance filed its demurrer to the complaint and a motion to strike the complaint. A hearing on both matters was set for April 17, 2012.

Respondent did not file an opposition to the demurrer or an opposition to the motion to strike. On April 17, 2012, respondent did not appear at the scheduled hearing in *Trueman v. California Reconveyance Company*. On the same day, the court dismissed the Trueman complaint for lack of jurisdiction.

On April 27, 2012, the court's Order Sustaining Defendants' Demurrer to Plaintiff's Complaint was filed. On July 10, 2012, a Notice of Entry of Order was filed.

¹⁶ Respondent filed this in San Francisco County Superior Court even though the property was located in Marin County. The complaint was a boilerplate, cookie-cutter complaint that he used for all his “foreclosure defense loan modification” clients, including the Hansens, Gornaia and Sandford above.

On July 13, 2012, a Motion to Expunge the Lis Pendens was filed by California Reconveyance. On August 17, 2012, the court expunged the lis pendens.

On September 11, 2012, the court's Order Granting Defendants' Motion to Expunge Notice of Action Pending and Attorneys' Fees was filed.

Respondent did not inform Trueman the following: (1) that the court dismissed *Trueman v. California Reconveyance Company et al.* for lack of jurisdiction; (2) that he did not appear at the April 17, 2012 hearing; (3) that the April 27, 2012 Order Sustaining Defendants' Demurrer to Plaintiffs Complaint was filed; (4) that the July 10, 2012 Notice of Entry of Order was filed; (5) that the July 13, 2012 Motion to Expunge Lis Pendens was filed; (6) that on August 17, 2012, the court expunged the lis pendens; and (7) that on September 11, 2012, the Order Granting Defendants' Motion to Expunge Notice of Action Pending and Attorneys' Fees was filed.

In February 2013, Trueman received a notice that her house had been sold through foreclosure. On February 12, 2013, respondent emailed Trueman and told her, "Nothing can not be undone, if the property sold you still have the lis pendens that protects your interest." In truth, respondent knew or should have known that the lis pendens had been expunged.

On February 19, 2013, Trueman paid respondent an additional \$5,000 in attorney fees in her desperate attempt to save her already foreclosed home.

In April 2013, Trueman terminated respondent and hired new counsel, TENAX Law Group. On June 7, 2013, TENAX Law Group filed a motion in an attempt to reopen the Trueman matter.

Respondent did not provide an accounting to Trueman for the \$7,500 in advanced fees.¹⁷

Respondent has not refunded any portion of the \$7,500 in attorney fees to Trueman.

¹⁷ Respondent was not credible when he testified that Trueman understood that this was a non-refundable true retainer.

Conclusions

Count 27 - (§ 6106.3 subd. (a) [Violation of Civil Code section 2944.6, subd. (a)]

Before entering into a fee agreement with Trueman to perform a mortgage loan modification for a fee, respondent failed to provide her with the information under the 2944.6 statement in 14-point font as a separate statement, as required under Civil Code section 2944.6. Therefore, by violating Civil Code section 2944.6, subdivision (a), respondent willfully violated section 6106.3, subdivision (a), in count 27.

Count 28 - (§ 6106.3 subd. (a) [Violation of Civil Code section 2944.7, subd. (a)(1)]

By negotiating, arranging or offering to perform a mortgage loan modification for a fee paid by a borrower, and demanding, charging, collecting and receiving \$3,200 from Trueman prior to fully performing each and every service he had been contracted to perform or represented that he would perform, in violation of Civil Code section 2944.7, subdivision (a)(1), respondent willfully violated section 6106.3, subdivision (a), in count 28.

Count 29 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence]

By performing no legal services of value on behalf of Trueman in negotiating with the lender to obtain a loan modification for Trueman's home, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) in count 29.

Count 30 – (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account]

By failing to deposit the \$700 paid by Trueman as advanced costs into his client trust account, respondent failed to deposit funds received for the benefit of a client in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, in willful violation of rule 4-100(A) in count 30.

Count 31 – (§ 6106 [Moral Turpitude])

Respondent's failure to deposit \$700 in a trust account violated rule 4-100(A), as found in count 30. He had spent \$410 in costs. But there is no clear and convincing evidence that he had misappropriated the remaining balance of \$290 of client funds in willful violation of section 6106. Thus, count 31 is dismissed with prejudice.

Count 32 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondent performed no services of value on behalf of Trueman and had earned none of the advanced fees paid in October 2011 (\$2,500) and in February 2013 (\$5,000). Thus, respondent willfully violated rule 3-700(D)(2) by failing to promptly refund any of the \$7,500 advanced fees paid by Trueman in count 32.

Count 33 - (Rule 4-100(B)(3) [Failure to Maintain Records of Client Property/Render Appropriate Accounts])

By failing to provide Trueman with an accounting for the \$8,200 advanced fees (\$7,500) and costs (\$700), respondent failed to render appropriate accounts to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3) in count 33.

Count 34 - (§ 6068, subd. (m) [Failure to Communicate])

Respondent willfully violated section 6068, subdivision (m), in count 34: (1) that the court dismissed *Trueman v. California Reconveyance Company et al.* for lack of jurisdiction; (2) that he did not appear at the April 17, 2012 hearing; (3) that the April 27, 2012 Order Sustaining Defendants' Demurrer to Plaintiffs Complaint was filed; (4) that the July 10, 2012 Notice of Entry of Order was filed; (5) that the July 13, 2012 Motion to Expunge Lis Pendens was filed; (6) that on August 17, 2012, the court expunged the lis pendens; and (7) that on September 11, 2012, the Order Granting Defendants' Motion to Expunge Notice of Action Pending and Attorneys' Fees was filed.

Case No. 13-O-11426 - The Mission National Bank Matter (Count 16)

Facts

On June 22, 2012, the court ordered \$5,000 in monetary sanction against respondent in *Salmasi v. Mission National Bank*, Santa Clara County Superior Court, case No. 1-12-CV-219793.

Respondent has not paid the \$5,000 monetary sanction.

On April 15, 2013, before this NDC was filed, respondent had the ability to pay the \$5,000 monetary sanction, provided a cashier's check in the amount of \$5,000 to the State Bar, and asked the State Bar to forward the check to his opposing counsel.

The State Bar returned the check to respondent with a letter explaining that the State Bar could not act as a go-between in this matter and that respondent should contact opposing counsel directly. Respondent never contacted opposing counsel and has not paid the monetary sanction.

Conclusion

Count 16 - (§ 6103 [Failure to Obey a Court Order])

By failing to pay \$5,000 court sanction, respondent willfully failed to comply with the court's sanction order in willful violation of section 6103 in count 16.

Case No. 13-O-11820 - The Quick Matter (Count 17)

Facts

From August 2011 to March 2012, respondent employed Karma Quick to assist him in his law office and paid her for her assistance. In March 2012, respondent terminated Quick's services.

In April 2012, Quick filed an unemployment insurance claim with the Employment Development Department. Shortly thereafter, respondent learned of Quick's unemployment insurance claim.

In May 2012, respondent telephoned Quick and left a message stating that if Quick did not drop her claim of unemployment, he would defend himself by alleging that she had engaged in the unauthorized practice of law.

In September 2012, Quick filed a complaint in the superior court.

On November 27, 2012, respondent told Quick's attorney that if the complaint was not dismissed, respondent would file a police report alleging that Quick had stolen client files.

Conclusion

Count 17 - (Rule 5-100(A) [Threatening Criminal Charges])

Rule 5-100(A) provides that an attorney must not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

By demanding that Quick drop her unemployment claim and dismiss her complaint in the superior court or face criminal charges of unauthorized practice of law and theft of client files, respondent willfully threatened to present criminal charges in order to obtain an advantage in a civil dispute, in willful violation of rule 5-100(A).

Case No. 13-O-11999 - The Lipton Matter (Counts 18 – 19)

Facts

In February 2013, Craig Lipton ("Lipton") a real estate investor, bought a foreclosed property in San Francisco.

Respondent represented the previous owner, Zeljko Markovic, and filed a motion ex parte seeking a reversal of trustee sale and asking that Lipton not receive the deed from the trustee.

On February 27, 2013, respondent was copied on an email from Lipton where Lipton stated: "I received the trustee's deed in the mail and will record and forward a copy."

Respondent knew that Lipton did not want the sale reversed but that Lipton would not oppose his ex parte motion to reverse the sale because Lipton believed that those motions rarely are granted.

On March 8, 2013, respondent filed a declaration in San Francisco County Superior Court, *Markovic v. Countrywide, et al.*, case No. CGC-12-524577 (Markovic complaint), and stated: "3. Buyers attorney has indicated that he does not object to a reversal of the sale, stating that they buy 10 of these a month and could move onto the 'next one.' 4. The trustee for Bank of America (Recontrust) indicates that property sold to 3rd party, 3rd party states they have not received the trustee deed."

On March 25, 2013, respondent was advised by David Estes in an email that: "the sworn statement of yours that buyer's attorney told you that he did not object to a reversal of the sale was not conveyed by either Ed Singer or me; I am not aware of any other buyer attorneys. Making an untruthful statement and not responding to any phone calls or messages to correct an incorrect filed statement is a legitimate concern to Mr. Lipton."

Respondent did not retract his statements to the court filed on March 8, 2013, in the Markovic complaint. He misrepresented to the court that the buyer's attorneys did not object to the reversal of the sale and that the buyer did not have the trustee deed.

Conclusions

Counts 18 (§ 6068, subd. (d) [Seeking to Mislead a Judge]) and 19 (§ 6106 [Moral Turpitude])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

By filing a declaration under penalty of perjury based upon false representations that the buyer's attorney did not object to a reversal of the sale and that the third party had not received the trustee deed, respondent sought to mislead the judge in willful violation of section 6068, subdivision (d), in count 18 and respondent clearly and convincingly committed acts involving moral turpitude in willful violation of section 6106 in count 19.

But because the two charges are based in large part on the same misconduct, count 18 is hereby dismissed as duplicative. (*Bates v. State Bar* (1990) 51 Cal.3d 1056 [little, if any, purpose is served by duplicate misconduct allegations].) Respondent is culpable of violating section 6106 in count 19.

Case No. 13-O-12571 - The Mazzamuto Matter (Count 35)

Facts

Respondent represented James Mazzamuto in *Mazzamuto v. Wachovia Mortgage*, U.S. District Court, Northern District, case No. 3:10-cv-02851-WHA (Mazzamuto action). On September 7, 2010, the court in the Mazzamuto action issued an order to show cause, requiring respondent to show why the action should not be dismissed for failure to prosecute or why defendant's motion to dismiss should not be treated as unopposed and granted.

Respondent did not respond to the order to show cause.

On September 15, 2010, the court dismissed the Mazzamuto action.

On November 1, 2010, the court issued an order to appear at hearing, requiring respondent to appear at a hearing on November 18, 2010.

In November 2010, the court in the Mazzamuto action issued an order directing respondent to pay \$7,000 in attorney fees to Wachovia Mortgage. Respondent has not paid the \$7,000 to Wachovia.

On November 23, 2010, the court ordered that a copy of its order be sent to the State Bar of California for investigation of respondent. The Court also ordered that a copy of the court's order be sent to the Northern District's Standing Committee on Professional Conduct.

In November 2012, the Standing Committee on Professional Conduct recommended that this matter be closed because respondent had complied with the Committee's requirements for an informal resolution to the matter.

Conclusion

Count 35 - (§ 6103 [Failure to Obey a Court Order])

By failing to respond to the court's order to show cause, by failing to appear in court, and by failing to pay \$7,000 to opposing side as ordered by the court, respondent willfully failed to comply with the court's orders in the Mazzamuto action in willful violation of section 6103 in count 35.

Case No. 13-O-12889 - The Stoll Matter (Counts 36 – 41)

Facts

In November 2012, Christopher Stoll hired respondent to represent him in a marital dissolution matter. Respondent's contract with Stoll listed the "Scope of Services" as: "to finalize the dissolution of marriage of Christopher Stoll."

On November 20, 2012, Cynthia Stoll, Stoll's mother, paid respondent a total of \$3,000 in attorney fees. Respondent did not obtain Stoll's signed written consent to the payment of attorney fees by his mother.

Respondent did not substitute into or file any documents in *In re the Marriage of Stoll*, case No. 10FL01681 (Stoll matter). Respondent did not inform Christopher Stoll that he did not substitute into his marital dissolution matter.

On April 2, 2013, a request to enter default was filed in the Stoll matter. On May 1, 2013, default was entered. The court ordered: (1) Dissolution of marriage; (2) Legal and physical custody of one minor to Andrea Stoll; and (3) Child support of \$481 per month, 50% of child care, and 50% of the cost of health insurance for the minor child payable by Stoll.

On May 30, 2013, judgment was entered in the Stoll matter.

Respondent never informed Christopher Stoll that he would not perform in the Stoll matter. Respondent did not respond to efforts to communicate by Christopher Stoll or by Cynthia Stoll on behalf of her son, Christopher. He also did not respond to efforts to communicate by Martin Poyama on behalf of Christopher.

Respondent did not provide an accounting to Christopher Stoll for the \$3,000 in advanced fees provided by Cynthia Stoll. Respondent did not refund any portion of the \$3,000 in advanced fees paid.

Conclusions

Count 36 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to finalize Stoll's marital dissolution matter and allowing a default to be entered, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) in count 36.

Count 37 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondent performed no services of value on behalf of Stoll and had earned none of the advanced fees paid. Thus, respondent willfully violated rule 3-700(D)(2) by failing to promptly refund any of the \$3,000 advanced fees paid by Cynthia Stoll in count 37.

Count 38 - (Rule 4-100(B)(3) [Failure to Maintain Records of Client Property/Render Appropriate Accounts])

By failing to provide Stoll with an accounting for the \$3,000 in advanced fees, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3) in count 38.

Count 39 - (Rule 3-310(F) [Avoiding Representation of Adverse Interest])

Rule 3-310(F) provides that an attorney must not accept compensation for representing a client from one other than the client unless (1) there is no interference with the attorney's independence of professional judgment or with the client-lawyer relationship; (2) information relating to representation of the client is protected under section 6068, subdivision (e); and (3) the attorney obtains the client's informed written consent.

By failing to obtain Stoll's informed written consent to accept payments for legal fees from his mother, respondent willfully violated rule 3-310(F) in count 39.

Counts 40 and 41 - (§ 6068, subd. (m) [Failure to Communicate])

Respondent willfully violated section 6068, subdivision (m), in counts 40 and 41: (1) by failing to inform Stoll that he had not filed a substitution of attorney form in the Stoll matter; and (2) by failing to communicate with Stoll, Cynthia Stoll or Martin Poyama, regarding the Stoll matter.

Case No. 13-O-14182 - The Khare Matter (Counts 42 – 46)

Facts

Respondent represented Khare International. On January 5, 2013, respondent received \$4,000 in attorney fees from Dilip Khare for representation of Khare International.

On February 11, 2013, respondent filed a complaint in *Khare International, LLC v. Avis Rent A Car System, Inc.*, case No. 1-13-CV-240969 (the Khare matter).

On March 26, 2013, Avis Rent A Car System (Avis) filed a demurrer to the complaint. Hearing on the demurrer was set for April 30, 2013. Respondent did not file a response to the demurrer.

On April 30, 2013, the court adopted its tentative ruling granting the unopposed demurrer. The demurrer was sustained without leave to amend.

On May 17, 2013, judgment in favor of Avis was filed in the Khare matter.

On June 7, 2013, notice of entry of order sustaining demurrer without leave to amend and notice of entry of judgment in favor of Avis were filed in the Khare matter.

Respondent did not inform Khare (1) that a demurrer had been filed on March 26, 2013; (2) that he did not file a response to the demurrer; (3) that the court adopted its tentative ruling granting the unopposed demurrer; (4) that judgment in favor of Avis was filed; and (5) that notice of entry of order sustaining demurrer without leave to amend and notice of entry of judgment in favor of Avis were filed.

Respondent did not substitute out of the Khare matter. He did not file a motion to withdraw.

Respondent has not refunded any portion of the \$4,000 paid in attorney fees by Dilip Khare for Khare International, LLC. Respondent has not provided Khare International, LLC with an accounting of the \$4,000 paid in attorney fees.

On May 10, 2013, Khare asked respondent for his client file. Respondent did not provide Khare International, LLC with the file.

Conclusions

Count 42 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Other than filing a complaint in the Khare matter, respondent intentionally, recklessly, or repeatedly failed to perform any other legal services with competence in willful violation of rule 3-110(A) in count 42.

Count 43 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondent performed no services of value on behalf of Khare International and had earned none of the advanced fees paid. Thus, respondent willfully violated rule 3-700(D)(2) by failing to promptly refund any of the \$4,000 advanced fees paid by Dilip Khare in count 43.

Count 44 - (Rule 4-100(B)(3) [Failure to Maintain Records of Client Property/Render Appropriate Accounts])

By failing to provide Khare with an accounting for the \$4,000 in advanced fees, respondent failed to render appropriate accounts to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3) in count 44.

Count 45 - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

Respondent willfully violated rule 3-700(D)(1) by failing to return the client file to Khare when he asked for it on May 10, 2013, in count 45.

Count 46 - (§ 6068, subd. (m) [Failure to Communicate])

Respondent willfully violated section 6068, subdivision (m), in count 46 by failing to inform his client: (1) that a demurrer had been filed on March 26, 2013; (2) that he did not file a response to the demurrer; (3) that the court adopted its tentative ruling granting the unopposed demurrer; (4) that judgment in favor of Avis was filed; and (5) that notice of entry of order sustaining demurrer without leave to amend and notice of entry of judgment in favor of Avis were filed.

Case No. 13-O-14890 - The Moosavi Matter (Count 47)

Facts

Respondent represented Seyedeh Moosavi in *Moosavi v. Marin Conveyancing Corp. et al.*, Marin County Superior Court, case No. CIV 1002633 (Moosavi matter).

Respondent was ordered to appear at a hearing on October 15, 2010 in the Moosavi matter. He failed to appear at the hearing.

On October 15, 2010, respondent was sanctioned \$149 for his failure to appear at the hearing. The sanction was to be paid by November 16, 2010.

Respondent has not paid the \$149 sanction to Marin County Superior Court as ordered on October 15, 2010, in the Moosavi matter.

Conclusion

Count 47 - (§ 6103 [Failure to Obey a Court Order])

By failing to pay \$149 court sanction in the Moosavi matter, respondent willfully failed to comply with the court's sanction order in willful violation of section 6103 in count 47.

Aggravation¹⁸

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

Respondent's multiple acts of misconduct in 11 client matters are an aggravating factor, including (1) violating loan modification law; (2) failing to perform services competently; (3) failing to obey court orders; (4) improperly withdrawing from employment; (5) failing to refund unearned fees (\$31,500); (6) failing to render an accounting; (7) failing to deposit client funds in a trust account; (8) threatening criminal, administrative, or disciplinary charges; (9) misleading a judge; (10) failing to inform client of significant developments; (11) accepting fees from a non-client; (12) failing to respond to client inquiries; and (13) failing to return client file.

Pattern of Misconduct (Std. 1.5(c).)

Respondent's multiple violations also demonstrate a pattern of misconduct. "Only the most serious instances of repeated misconduct over a prolonged period of time could be characterized as demonstrating a pattern of wrongdoing." (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149, fn. 14, citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367.) Here, respondent's 47 counts of misconduct in 11 client matters from 2010 through 2013 depict an endless course of incompetence, failure to obey court orders, failure to return unearned fees, failure to render an accounting, failure to communicate, and deceit towards troubled distressed homeowners.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent harmed the clients and administration of justice. His failure to obey court orders required the courts to repeatedly sanction him, wasting valuable judicial time and resources. His failure to return unearned fees and failure to perform services clearly harmed his

¹⁸ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, effective January 1, 2014.

clients, especially the four homeowners who were facing foreclosures. The vulnerable clients were desperate to keep their homes and respondent took advantage of their misfortune. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813 [parties in a fiduciary or confidential relationship do not deal on equal terms because trusted person is in superior position to exert unique influence over dependent party].) Facing foreclosure, these distressed homeowners fell prey to respondent and were further victimized by paying thousands of dollars in fees when they could have been paying that money toward their mortgages.

Respondent has yet to provide full refunds of the clients' much needed funds to the Hansens, Gornaia, Sandford, Trueman, Stoll, and Khare. Furthermore, respondent's inaction resulted in the dismissals of several of his clients' cases.

Indifference Toward Rectification/Atonement (Std. 1.5(g).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Instead, respondent contended, among others, that he had engaged in political conduct with the purpose of preserving communities throughout the Bay Area, that he had earned the fees, that he had obeyed court orders, and that, basically, he had committed no wrongdoing. He claimed that “[his] political conduct in the legal arena was for the protection of those susceptible to the intrusion of foreign government backed financial institutions trying to destroy the American Way of Life.”

Failure to Make Restitution (Std. 1.5(i).)

Respondent failed to return unearned fees of a total of \$31,500 to six clients.

Mitigation

No Prior Record (Std. 1.6(a).)

Standard 1.6(a) provides that absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious, may be considered as mitigating factor.

Respondent was admitted in 2008 and his misconduct began shortly thereafter in 2010. His lack of a prior record in two years of practice is clearly not a mitigating factor. And his present wrongdoing is egregious.

Extreme Emotional/Physical/Mental Difficulties (Std. 1.6(d).)

Under standard 1.6(d), mitigating circumstances, shown by clear and convincing evidence, may include extreme emotional difficulties or physical or mental disabilities suffered by the respondent at the time of the misconduct and established by expert testimony as directly responsible for the misconduct and the respondent established that the difficulties no longer pose a risk that he will commit misconduct.

Here, respondent testified that he suffered emotional difficulties when his wife broke her back and he had to care for their baby son. But because there is no clear and convincing evidence to establish a causal connection between respondent's misconduct and his emotional difficulties, it did not constitute mitigating evidence. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160 [Attorney was not afforded mitigating credit for extreme emotional difficulties he suffered as a result of his father's death and the prospective loss of the family home because he failed to establish a causal nexus between those emotional difficulties and his misconduct].)

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, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that, when a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

However, standard 1.7(b) provides that if aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities in the future.

In this case, the standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2(b), 2.5, 2.7, 2.8(a), 2.14, and 2.15 apply in this matter.

Standard 2.2(b) provides that suspension or reproof is appropriate for violation of rule 4-100.

Standard 2.5(a) provides that disbarment is appropriate for failing to perform legal services, demonstrating a pattern of misconduct. Standard 2.5(b) provides that actual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern of misconduct.

Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law.

Standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the attorney's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a) – (h).

Standard 2.14 provides that disbarment or suspension is appropriate for any violation of a provision of Article 6 of the Business and Professions Code, not specified in these standards.

Finally, standard 2.15 provides that suspension not to exceed three years or reproof is appropriate for violations of any provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards.

The State Bar urges that respondent be disbarred from the practice of law for his pattern of misconduct under standard 2.5(a). (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

Respondent argues that his disciplinary matter should be dismissed because he is not culpable of any misconduct.

In *Valinoti*, the attorney was suspended for five years, stayed, and placed on probation for five years with an actual suspension of three years for his misconduct in nine immigration client matters. Even though he had no prior record, his misconduct was excessive and repeated during a period of more than two years, which included the failure to perform, client abandonments, acts of moral turpitude, aiding and abetting nonattorneys in the unauthorized practice of law, failure to properly manage his office, misrepresentations to the State Bar, and lack of remorse.

Here, the court finds that respondent's misconduct is more egregious than that of the attorney in *Valinoti*. Respondent began and continued a course of extensive misconduct that rose to the level of a "serious pattern of misconduct involving recurring types of wrongdoing." (*Garlow v. State Bar* (1988) 44 Cal.3d 689, 711.) There are no compelling mitigating circumstances. Instead, there is a pattern of repeated violations by respondent of his professional obligations two years after his admission to the bar from 2010 through 2013, to the detriment of his clients. Respondent has no recognition of his wrongdoing and denies that he had preyed on vulnerable and distressed homeowners. He has failed to return unearned fees of \$31,500 to six clients; he had been sanctioned by the court for more than \$14,000 in six client matters for his repeated failures to appear in court and obey court orders; and he had continuously failed to perform services competently.

Consequently, respondent had flagrantly breached his fiduciary duties. It is clear that strong steps must be taken to protect the public from future professional misconduct on his part.

“In a society where the use of a lawyer is often essential to vindicate rights and redress injury, clients are compelled to entrust their claims, money, and property to the custody and control of lawyers. In exchange for their privileged positions, lawyers are rightly expected to exercise extraordinary care and fidelity in dealing with money and property belonging to their clients. [Citation.] Thus, taking a client’s money is not only a violation of the moral and legal standards applicable to all individuals in society, it is one of the most serious breaches of professional trust that a lawyer can commit.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221.)

Accordingly, having considered the egregious nature and extent of the misconduct, the aggravating circumstances, as well as the case law and the standards, this court concludes that it is both appropriate and necessary to recommend that respondent be disbarred from the practice of law under standard 2.5(a) and for the protection of the public, the profession, and the courts, maintenance of high professional standards, and preservation of public confidence in the legal profession. Accordingly, the court so recommends.

Recommendations

It is recommended that respondent **Jonathan Adriel Fried**, State Bar Number 257631, be disbarred from the practice of law in California and respondent’s name be stricken from the roll of attorneys.

Restitution

It is also recommended that respondent Jonathan Adriel Fried be ordered to make restitution to the following payees:

- (1) **Robert Hansen and Pamela Pesce-Hansen** in the amount of \$7,500 plus 10 percent interest per year from May 1, 2011;
- (2) **Valerie Gornaia** in the amount of \$7,500 plus 10 percent interest per year from October 19, 2012;

- (3) **Kristi Sandford** in the amount of \$2,000 plus 10 percent interest per year from March 8, 2012;
- (4) **Brandy Trueman** in the amount of \$7,500 plus 10 percent interest per year from February 19, 2013;
- (5) **Cynthia Stoll** in the amount of \$3,000 plus 10 percent interest per year from November 20, 2012; and
- (6) **Dilip Khare** in the amount of \$4,000 plus 10 percent interest per year from January 5, 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

It is further recommended that respondent 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.

Costs

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

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule

5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court