

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case Nos.: **13-O-12312-RAH**  
) (13-O-12367; 13-O-12757)  
**CHAD THOMAS PRATT,** )  
) **DECISION**  
**Member No. 149746,** )  
)  
A Member of the State Bar. )

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**Introduction**<sup>1</sup>

Respondent Chad Thomas Pratt became the owner of a real estate loan modification and litigation firm that extensively used non-attorneys to process cases leading to the filing of meritless lawsuits against lenders in exchange for advanced fees. In two of the three client matters, respondent failed to adequately supervise these non-attorneys, who engaged in the unauthorized practice of law. Respondent was aware of the fact that his non-attorney staff was engaging in the practice of law, but did nothing. He also assisted in filing meritless lawsuits for each of these matters, despite the clients' initial requests that respondent simply assist in modifying their loans. When the relationship with the clients ended, respondent failed to account for the fees he claimed were earned, and failed to refund the unearned fees he received.

The court finds that respondent's misconduct represents a serious breach of his duties as an attorney, and that the public will only be protected by the imposition of a significant period of actual suspension. As such, it is recommended that respondent, among other things, be actually

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<sup>1</sup> 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.

suspended from the practice of law for a minimum period of one year and until he makes full restitution.

### **Significant Procedural History**

The Notice of Disciplinary Charges in this matter was filed on November 19, 2013. Numerous motions were filed and ruled upon prior to trial.<sup>2</sup> Trial commenced on May 6, 2014. Supervising Senior Trial Counsel Eli D. Morgenstern of the Office of the Chief Trial Counsel represented the State Bar of California. Attorney James L. Kellner represented respondent. The matter was submitted for decision on June 20, 2014.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on December 4, 1990, and has been a member of the State Bar of California at all times since that date.

#### **Background facts**

##### **Respondent's Interest in RELC**

Respondent practiced unlawful detainer law in Pasadena, California, since his admission to the State Bar of California in 1990. In or about September 13, 2011, he became associated with Real Estate Law Center (RELC). At that time, he entered into an agreement entitled Association of Counsel Agreement, with Deepak Parwatikar, an attorney who owned Pinnacle Law Center, PC (PLC). By this agreement, respondent agreed to provide litigation services in various types of matters, including mass tort cases. PLC agreed to provide to RELC the following: customer service and legal intake; staff support, including paralegals, legal assistants, and lawyers, as needed; and office space, equipment and supplies, as needed.

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<sup>2</sup> On May 5, 2014, respondent filed a motion entitled "Motion Dismiss Refund." No good cause having been shown, this motion is denied.

Respondent's exact relationship with RELC was the subject of conflicting evidence at trial. At times, he described himself as "the only shareholder, partner, senior partner, everything" at RELC. At other times, he asserted that he was either not the owner or only a part owner of RELC. A fair reading of the evidence, however, indicates that respondent was the owner of the corporation, holding 4,500 shares of stock of RELC, which were apparently issued in September 2011. There was no evidence that anyone else owned any stock during the time respondent owned his 4,500 shares. Respondent surrendered his 4,500 shares at the "organizational meeting" for the corporation that occurred on September 26, 2013, and resigned as Director, Chief Executive Officer, Secretary, and Chief Financial Officer. At this meeting, it was noted that Erikson Davis, Esq., owned 5,000 shares of the corporation, but it is unclear whether he acquired them at the meeting or had done so earlier.

#### **RELC's Business Practices**

RELC was incorporated in August 2011 and was in the business of assisting clients in obtaining loan modifications by challenging consumer and real estate lender practices. RELC used mass joinder lawsuits, individual law suits, or federal regulatory complaints to achieve its goals. Clients were obtained through nationwide advertising using mail and television, as well as "cold calls." Clients were processed by a large administrative intake and sales staff. RELC employed more than 35 non-lawyers to assist in handling the large volume of clients. Although the number varied, there were usually about four attorneys at RELC, including respondent.

Sales representatives advised prospective clients that attorneys would handle their cases, and even described the lawyers at the firm as experts in bank litigation.<sup>3</sup> In fact, that was not true. Attorneys did not typically get involved in individual clients' cases. Further, respondent

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<sup>3</sup> As an example, according to Susan Murphy, an attorney in respondent's office, clients were told that respondent "took down Countrywide."

was an unlawful detainer attorney and had little or no experience in suing banks regarding loan practices.

After the prospective clients met with the sales representatives and retained the firm, a RELC attorney contacted them to conduct a recorded “compliance” call. During this call, the attorney would ask a predetermined set of questions, for example: whether the non-attorney that spoke to them gave them legal advice; whether any guarantees were given regarding the contemplated litigation; or if they were told to stop paying their mortgage payments. The clients sometimes answered these questions in the negative. The clients that responded in this manner all stated that they felt compelled to respond in this way so that RELC would take on their case and protect their home. Despite their answers to the question, in fact, they *were* given legal advice and guarantees, and they were told to stop making mortgage payments. The questions asked in this “compliance” call were simply to create a record that could cover the improper conduct of RELC’s staff.

The clients did describe improper pressure, the unauthorized practice of law (UPL), and false inducements given to them by the sales personnel. In response to these complaints, some of the compliance attorneys complained to respondent about this improper behavior by his staff. Some of these compliance attorneys warned respondent that the non-attorney staff was acting inappropriately, but respondent ignored their comments.

#### **Case No. 13-O-12312 – The Tormé Matter**

##### **Facts**

Tracy Tormé (Tracy) owned a home in Beverly Hills, California. He and his wife, Robin Tormé (Robin), had refinanced this home in 2007. Unknown to them at the time, the loan they

received was a negative amortization loan.<sup>4</sup> Tracy was disabled as a result of serious kidney problems. Robin cared for him. He received some income from a trust created by his father, who was a famous entertainer. He also had some income from his role as a film producer.

When Tracy learned of the negative amortization characteristic of the loan, he was angry with the lender for not disclosing this fact to them. He felt that the lender acted in a predatory fashion.

In September 2012, he saw an advertisement on television, and called the number for RELC, the company running the advertisement. Tracy spoke with Tanya Zerounian (Zerounian), an attorney at RELC, who suggested he make an appointment to come in to the office. During their conversation, Zerounian emphasized the success that respondent had with suing banks and otherwise touted his outstanding trial skills and record. In fact, respondent did not have an established practice suing banks. Tracy hoped that RELC could renegotiate the loan into a reasonable mortgage. Tracy asked Robin to meet with Zerounian, because it was difficult for him to travel to the office, and further, because Robin handles most of the financial matters for the family.

On September 12, 2012, Robin met with Zerounian at RELC's offices. A non-attorney, John Gearries (Gearries), also participated in the meeting. Gearries attempted to convince Robin to retain the firm to sue their bank. He promised to provide Robin with a list of the successful cases respondent had litigated against banks. He conducted what Robin referred to as a "hard sell." As part of this meeting, Zerounian and Gearries made many representations about respondent's experience, the many cases they had won against banks, and how they planned to

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<sup>4</sup> In a negative amortization loan, the payments on the loan are insufficient to cover the interest, with the result being that the principal balance grows with each payment.

obtain a loan modification for the Tormés in the “new way,” by suing the banks and then forcing them to settle. Many of these representations were not true.

Zerounian recommended that the Tormés file an individual action against the lender. She quoted a cost of \$5,000 plus a monthly fee of \$1,500. She recommended that the Tormés cease making monthly mortgage payments, and use the funds to pay the monthly \$1,500 payment. She further advised Robin that the entire matter would be resolved in a couple months, with a settlement with the bank and a modification of their loan to more favorable terms.

Robin agreed to retain RELC at the initial meeting, with the specific caveat that if the matter was not resolved within two to three months, they would be able to change the terms of their relationship to allow them to participate in a mass-tort lawsuit, with a much smaller monthly fee. With his authorization, Robin signed Tracy’s name to the agreement and Zerounian agreed to the terms added by Robin. Respondent signed the fee agreement on behalf of RELC. The fee agreement referred to the fee as being “NON REFUNDABLE.” The agreement also provided for respondent splitting his fees with PLC and another company, Litigation Compliance Law Center. No one at respondent’s office explained that there would be a split of fees among other law firms or businesses. The Tormés paid \$4,000 a few days after their initial visit, and authorized the balance of \$2,500 to be paid by credit card on October 14, 2012, for a total fee of \$6,500. In addition, they paid RELC \$150 for an “audit.”

In late September 2012, RELC advised the Tormés that Zerounian was no longer with the firm, and that the matter would now be handled by Marilyn Yee (Yee). The Tormés did not hear from Yee for over a month. As a result, Robin began to become concerned that RELC was not going to help them as promised.

From October 2012, Robin began corresponding with Yee by email, demanding that she communicate the information earlier promised, including the list of cases that respondent had

won in litigation with banks. Robin independently researched using the Internet and determined that respondent had lost all but one of his cases against banks. She learned that the one case that he won was an easily proven case. This research increased Robin's anxiety as to the bona fides of respondent's firm.

On December 6, 2012, Yee provided a draft complaint to the Tormés. It was replete with errors and formatting problems. Many of the counts set forth in the complaint were either time-barred, factually incorrect, or improperly pled. After Robin complained about the poor quality, the matter was reassigned to Susan Murphy (Murphy), an attorney at RELC. Murphy told Robin that the complaint was "useless" and that the statute of limitations had passed for many counts. She also advised them that they should not be in litigation, but rather should simply reduce their credit cards and they would be more likely to qualify for a loan modification or refinance. She also advised them to ask for a refund from RELC.<sup>5</sup> Murphy correctly advised the Tormés. The lawsuit drafted by respondent's firm was poorly prepared, unnecessary, and of no value to the Tormés.

On February 27, 2013, the Tormés sent RELC an email with a letter attached, terminating RELC's services and requesting a refund. In March, respondent sent them a letter offering a partial refund of \$1,500, which they refused. No refund was never made, however, and respondent did not provide an accounting to the Tormés. At the time of trial, the Tormés had started to negotiate a modification of their loan with the help of a federal agency.

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<sup>5</sup> Susan Murphy was later fired from RELC. Deepak Parwatikar told her that no one liked her, that she wasn't a "good girl," and that sales personnel called her a "deal crusher."

## **Conclusions**

### ***Count One – 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 preparing a lawsuit which was poorly drafted, factually incorrect, unnecessary, and of no value to the client, respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

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

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 Tormés with an appropriate accounting of the unearned fees upon termination of respondent's employment on February 27, 2013, respondent willfully violated rule 4-100(B)(3).

### ***Count Three – 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 failed to refund any part of the \$6,650 in fees his firm received, despite performing no services of value on behalf of the Tormés, in willful violation of rule 3-700(D)(2).

## **Case No. 13-O-12367 – The Rivera Matter**

### **Facts**

Jesse Rivera (Rivera) was an employee of American Airlines, working as a baggage handler. He injured his head, back, and shoulder in 1994, and thereafter, went on permanent disability. Rivera requires assistance for his day-to-day activities. Linda Logston (Logston) lives with Rivera and takes care of him.



Rivera owned a home in Costa Mesa which secured a Wells Fargo home loan he obtained in 2007. This loan agreement provided for a variable payment amount and the payment was scheduled to increase in July 2012. Rivera received a mailer from RELC stating that he may be entitled to receive a reduction in his interest rate and principal balance.

Rivera called RELC and was referred to non-attorney Steve Shefler (Shefler). Shefler assured Rivera that RELC would be able to modify his loan, reduce the interest rate, and provide him “foreclosure protection.” Later, Shefler advised him that, as an added benefit, Rivera would be entitled to participate in the mass tort case against Wells Fargo. Shefler also told him that respondent would be his attorney, and that respondent was one of the top attorneys in this area of the law. In fact, respondent was not one of the top attorneys in this area of the law.

Initially, Shefler stated that RELC would need a \$5,000 retainer. When Rivera advised Shefler that he could not afford that amount, Shefler agreed to reduce it to \$4,000. On July 23, 2012, Rivera signed a retainer agreement with respondent’s firm. Logston attended the meeting at RELC’s offices, and noticed that the retainer was still referenced as \$5,000 in the agreement, so she crossed out the “5” and inserted a “4”, to reflect the proper retainer of \$4,000. Rivera noticed that the retainer did not discuss loan modification, but rather, filing a law suit. Rivera did not question his attorneys on this issue, since he relied on them to determine the best way to obtain the loan modification. Logston questioned Shefler on several clauses in the retainer agreement. In one instance, when she inquired about the waiver of a conflict of interest, he told her “don’t worry about it” and in the other, involving the fee split with PLC, he referred to the language as just legal jargon. Shefler also told Rivera to stop making his next two mortgage payments.

On October 3, 2012, Rivera paid the entire \$4,000 retainer, and also commenced making required monthly \$29.95 “maintenance fees.” He continued making the \$29.95 payments monthly for at least seven months up until he eventually terminated respondent.<sup>6</sup>

Shefler provided legal services to Rivera by negotiating the fee reduction with Rivera, deciding to file a lawsuit instead of the requested loan modification, and interpreting the retainer agreement in response to Rivera’s questions.

Rivera thought that he was retaining respondent as his attorney. However, on several occasions, Rivera tried to reach respondent on the telephone, but was never put through to him. He was only able to speak to either Shefler or staff persons named “Gill” or “Archie.” In fact, Rivera never spoke to respondent during respondent’s entire representation of him.

On Rivera’s birthday, February 28, 2013, his home went into foreclosure. He immediately called RELC and was put on hold again. Rivera kept on trying, and even faxed over the notice informing him of the commencement of the foreclosure. He received correspondence from RELC in March 2013, but these communications were not directly responsive to Rivera’s concern about the pending foreclosure.

On March 9, 2013, by a written letter, Rivera terminated respondent and demanded a refund of his \$4,000 retainer. When he did not get a response, he reiterated these demands in writing on March 19 and 22, 2013. Respondent received all of these letters.

On March 25, 2013, respondent replied to Rivera’s letters, denying any responsibility for Rivera’s problems, but offering a resolution by RELC returning \$2,000 of the \$4,000 paid by Rivera. On May 21, 2013, Rivera responded with his fourth letter, refusing the partial refund, and demanding a refund of the full \$4,000 retainer. Respondent received this letter, but never provided Rivera with a refund of the unearned fees or accounting.

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<sup>6</sup> Rivera’s seven months of payments totaled \$209.65.

On July 8, 2013, respondent filed a complaint in a mass tort case, naming Rivera as one of the 135 plaintiffs. This complaint was filed after Rivera had terminated respondent and was done without Rivera's knowledge or consent. On August 14, 2013, the mass tort case was removed to federal court. Thereafter, respondent dismissed the entire case.

Rivera went to a non-profit organization that has presented Wells Fargo with a loan modification proposal, which, at the time of trial in this matter, was being considered by the bank.

### **Conclusions**

#### ***Count Four – Rule 3-110(A) [Failure to Supervise]***

By failing to adequately supervise Steve Shefler, who offered legal advice to Rivera, respondent willfully violated rule 3-110(A). However, these same facts were relied upon to establish respondent's culpability in Count Five. Therefore, the court assigns no additional weight to Count Four in determining the appropriate discipline. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight given to rule 4-100(A) violation when same misconduct addressed by § 6106].)

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

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law. Respondent aided the unauthorized practice of law, in willful violation of rule 1-300(A), by knowingly allowing Shefler to evaluate Rivera's chances of getting a loan modification, negotiate the fee reduction with Rivera, decide to file a lawsuit instead of the requested loan modification, and interpret the retainer agreement in response to Rivera's questions.

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

By performing no attorney services for Rivera prior to respondent's termination despite Rivera's imminent foreclosure, respondent failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count Seven – § 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. By failing to promptly respond to Rivera's several, reasonable telephonic status inquiries, respondent willfully violated section 6068, subdivision (m).

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

Respondent failed to account for the advanced fees he received after he was terminated by Rivera, in willful violation of rule 4-100(B)(3).

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

Respondent performed no services of value for Rivera, but failed to refund \$4,209.65 in unearned fees, in willful violation of rule 3-700(D)(2).

**Case No. 13-O-12757 – The Pickerell Matter**

**Facts**

Michele Pickerell (Pickerell) immigrated to the United States from Brazil 23 years ago, went to Rutgers University for her bachelor's degree, and then went to nursing school. She is a nurse at a hospital in Baldwin Park, California. She owns her own home, but after divorcing her husband in 2013, she had troubles making her mortgage payments and needed to modify the terms of the loan. She contacted RELC, spoke with Gearries, and was referred to Chris Hiller

(Hiller), a non-attorney employee of RELC. She made an appointment to meet with Hiller, which occurred in January 2013.

Hiller advised Pickerell that he had looked up her home and determined that the house was in foreclosure with a sale scheduled by the lender, Ocwen. He advised Pickerell that Ocwen would not agree to a “short” sale of the house, and that she needed a restraining order to stop the sale. He informed her that respondent would handle the restraining order. He also said that respondent was an expert in preventing foreclosures. This was not true. He told her that the firm’s success rate was very high and that it would take just a few months, but she was going to win. By advising her that she needed a restraining order and guaranteeing the time frame and the likelihood of success of the lawsuit, Hiller provided legal advice to Pickerell.

On January 16, 2013, Pickerell signed a retainer agreement, calling for a “non-refundable” retainer fee in the amount of \$6,000 and monthly fees of \$2,000 for as long as the litigation would last. Hiller told Pickerell to stop paying her mortgage payment.

Pickerell paid the \$6,000 in advanced attorney fees in two installments on January 17 and February 17, 2013.

Hiller had read a commercial foreclosure report that stated “Projected Sale Date 2/22/13” and understood this to mean that the date had been set. In fact, there was no pending foreclosure sale date. When Pickerell learned of this fact from her real estate broker, she notified Hiller, and also advised him that her lender was offering her a loan modification. In response, Hiller simply sent her a copy of the foreclosure report with the “projected” date.

Respondent did not do any work on the Pickerell matter. A staff attorney, Tala Rezai (Rezai), was assigned to the case. When Pickerell met with Rezai, she told Pickerell that Hiller was incorrect in guaranteeing the success of the lawsuit against the lender. Rezai prepared a complaint and sent a copy to Pickerell on March 7, 2013. The lawsuit was lengthy, but was not a

viable complaint. Many of the facts alleged did not apply to Pickerell's facts. The claims as to the securitization of the loan were not viable claims. Much of the complaint was comprised of boilerplate-type allegations.

On March 12, 2013, Pickerell terminated respondent's firm. On March 18, 2013, respondent wrote Pickerell a letter denying any wrongdoing, but offering to refund \$1,000 of the \$6,000 retainer. This resolution was refused by Pickerell's new attorney, Jonathan Neilsen, in a letter dated March 28, 2013. Respondent has not refunded any amount of the retainer, and has not provided an accounting of the unearned fees.

### **Conclusions**

#### ***Count Ten – Rule 3-110(A) [Failure to Supervise]***

By failing to adequately supervise Hiller, who offered legal advice to Pickerell, respondent willfully violated rule 3-110(A). However, these same facts were relied upon to establish respondent's culpability in Count Eleven. Therefore, the court assigns no additional weight to Count Ten in determining the appropriate discipline.

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

Respondent aided the unauthorized practice of law, in willful violation of rule 1-300(A), by knowingly allowing Hiller to advise Pickerell that she needed a restraining order and guarantee the success of the lawsuit.

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

Respondent failed to perform legal services with competence by filing a meritless lawsuit containing false allegations and improper legal theories, in willful violation of rule 3-110(A).

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

Respondent failed to account for the advanced fees he received after he was terminated by Pickerell, in willful violation of rule 4-100(B)(3).

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

Respondent performed no services of value for Pickerell, but failed to refund \$6,000 in unearned fees, in willful violation of rule 3-700(D)(2).

**Aggravation<sup>7</sup>**

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

On February 11, 2014, the Supreme Court issued Order No. S215044 (State Bar Court case no. 12-O-16642) suspending respondent from the practice of law for one year, stayed, and placing respondent on probation for two years, including a 30-day period of actual suspension.<sup>8</sup> Here, respondent stipulated to failing to deposit a client's settlement check in a client trust account, commingling funds in his client trust account, and failing to maintain complete records of all client funds. In aggravation, respondent committed multiple acts of misconduct. In mitigation, respondent had no prior record of discipline and cooperated with the State Bar by entering into a stipulation.

Considering the nature and chronology of respondent's record of discipline, the court notes that the present matter stems from misconduct occurring before the imposition of discipline in respondent's prior discipline. Accordingly, the aggravating force of respondent's prior discipline is somewhat diminished, as it is not an indication of respondent's unwillingness or inability to conform to ethical norms following the imposition of discipline. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619; and *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

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<sup>7</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

<sup>8</sup> The court takes judicial notice of the pertinent Supreme Court Order regarding this prior discipline, admits it into evidence, and directs the Clerk to include a copy in the record of this case.

**Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)**

Respondent is culpable of multiple acts of misconduct in three separate matters.

**Failure to make restitution (Std. 1.5(i).)**

No restitution was paid in any of the matters. While respondent offered some partial refunds, his former clients requested full refunds. Consequently, none of the unearned fees were repaid.

**Significant Client Harm (Std. 1.5(f).)**

Respondent's misconduct resulted in significant harm to his clients. Respondent deprived his clients, who respondent knew or should have known were in financial distress, of the monies they paid him in advanced attorney fees. In addition, respondent's non-attorney employee advised Rivera to stop making mortgage payments. When Rivera's home subsequently went into foreclosure, respondent and his firm took no suitable action to alleviate Rivera's natural fear and anxiety.

**Mitigation**

Respondent bears the burden of providing mitigating circumstances. (Std. 1.6.) No mitigating circumstances have been established by clear and convincing evidence.

**Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v.*



*State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.1 provides that the primary purposes of disciplinary proceedings are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards; and the preservation of public confidence in the legal profession. This standard also provides that rehabilitation can “be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline.”

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors.

In this case, the standards provide for the imposition of a minimum sanction of actual suspension. (Standards 2.5(b) and 2.15.) 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 2.15 states that suspension not to exceed three years or reproof is appropriate for a violation of the Business and Professions Code or the Rules of Professional Conduct not otherwise specified in the Standards.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in a talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be suspended for a minimum of two years. Respondent, on the other hand, argued that, in the event the court found culpability, no actual

suspension was warranted. In determining the appropriate level of discipline, the court also looks to the case law for guidance. The range of discipline imposed in cases focusing on client abandonment and failure to communicate is extremely broad, ranging from six months' actual suspension to disbarment. (*In re Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 960.)

In support of its recommendation, the State Bar cited, among other cases, *Bernstein v. State Bar* (1990) 50 Cal.3d 221; and *In the Matter of Brockway*, *supra*, 4 Cal. State Bar Ct. Rptr. 944. In *Bernstein*, an attorney received a five-year stayed suspension with a two-year actual suspension for misconduct involving three client matters. In each matter the attorney failed to competently perform, failed to return client files and failed to return unearned fees. There were no factors in mitigation. In aggravation, the attorney was previously disciplined for misappropriation,<sup>9</sup> clients were harmed, and the attorney displayed indifference toward rectification as well as a lack of candor.

In *Brockway*, the attorney abandoned four clients and failed to competently perform, failed to communicate, failed to provide accountings, failed to refund unearned fees, failed to return client files, and improperly agreed to withdraw a State Bar complaint. The Review Department found no mitigation, but did find aggravation due to a prior record of discipline,<sup>10</sup> multiple acts of misconduct, significant client harm, a failure to atone for the consequences of his behavior, and additional uncharged misconduct involving an act of moral turpitude due to overreaching. The Review Department noted that where four to six clients have been abandoned or suffered from incompetent representation, the discipline has typically included a two-year

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<sup>9</sup> The attorney's prior discipline resulted in, among other things, a 30-day period of actual suspension.

<sup>10</sup> The attorney's prior discipline resulted in, among other things, a three-month period of actual suspension. His prior misconduct included a \$500 misappropriation in one matter and his acquisition of an interest adverse to that of his client in another matter.

period of actual suspension. (*Id.* at p. 961.) Accordingly, the court determined that the appropriate disciplinary recommendation was a five-year suspension and five years of probation on conditions including that the attorney must remain suspended for two years and until he has complied with former Standard 1.4(c)(ii).<sup>11</sup>

In support of a lesser discipline, respondent cited *Matthew v. State Bar* (1989) 49 Cal.3d 784. In *Matthew*, the attorney was found culpable of failing to timely perform legal services in three client matters. In two of these matters, the attorney also failed to return unearned fees. In aggravation, the attorney demonstrated indifference toward rectification of or an atonement for the consequences of his misconduct. Additionally, his misconduct caused harm to his clients. In mitigation, the attorney had no prior record of discipline, however, this was not considered to be a “weighty mitigating factor,” due to the attorney’s brief legal career. (*Matthew v. State Bar, supra*, 49 Cal.3d at p. 792.) The California Supreme Court ordered that the attorney be suspended for three years, stayed, with three years’ probation, including a 60-day actual suspension.

The court also found some guidance in *In the Matter of Peterson* (1990) 1 Cal. State Bar Ct. Rptr. 73. In *Peterson*, a defaulting attorney received a three-year stayed suspension with one-year actual suspension for misconduct involving three clients. The attorney failed to perform and improperly withdrew in each matter, and failed to cooperate with the State Bar investigations. Although the attorney had no prior record of discipline, this was not considered a mitigating factor since the attorney practiced only six years before his misconduct commenced.

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<sup>11</sup> Due to the revision of the Rules of Procedure of the State Bar of California, former Standard 1.4(c)(ii), has been revised, effective January 1, 2014, as Standard 1.2(c)(1).

In aggravation, the matter involved client harm, multiple acts of wrongdoing, indifference toward rectification, and a lack of candor and cooperation.

Like *Peterson*, the present matter involved three client matters. And while the present case is not a default, it is aggravated somewhat by respondent's prior record of discipline, and also aggravated by other factors in aggravation. While the present matter involved less mitigation than *Peterson*, it is encouraging to the court that respondent surrendered his stock in RELC and is no longer engaging in the behaviors that spawned the present proceeding. Considering the totality of the circumstances, the court finds that a level of discipline similar to *Peterson* is appropriate.

Therefore, the court recommends, among other things, that respondent be suspended from the practice of law for three years, that execution of that period of suspension be stayed, and that he be placed on probation for three years, including a minimum period of actual suspension of one year and until respondent makes restitution.

### **Recommendations**

It is recommended that respondent Chad Thomas Pratt, State Bar Number 149746, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>12</sup> for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first year of probation, and respondent will remain suspended until the following requirement(s) are satisfied:

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 proof to the State Bar's Office of Probation in Los Angeles:

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<sup>12</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- (1) Tracy Tormé in the amount of \$6,650 plus 10 percent interest per year from February 27, 2013;
  - (2) Jesse Rivera in the amount of \$4,209.65 plus 10 percent interest per year from March 9, 2013;
  - (3) Michele Pickerell in the amount of \$6,000 plus 10 percent interest per year from March 12, 2013; and
  - (4) If respondent remains suspended for two years or more as a result of not satisfying the preceding requirements, he must also provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
  3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
  4. Respondent 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, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's 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.
  5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
  6. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person

or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.<sup>13</sup>

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

### **Multistate Professional Responsibility Examination**

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because he has already been ordered to do so in Order No. S215044.

### **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. Failure to do so may result in disbarment or suspension.

### **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.

Dated: September \_\_\_\_\_, 2014

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RICHARD A. HONN  
Judge of the State Bar Court

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<sup>13</sup> It is not recommended that respondent attend Ethics School, as he has already been ordered to do so in Order No. S215044.