PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

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

A hearing judge found Barry Steven Jorgensen culpable of sharing fees with a non-attorney and of charging and collecting illegal advance fees for loan modification services in one client matter. The judge dismissed charges that Jorgensen collected illegal advance fees in four other client matters and also dismissed a charge that he aided and abetted a paralegal in the unauthorized practice of law (UPL). The judge recommended discipline, including a 30-day actual suspension, after considering one aggravating circumstance (multiple acts) and three mitigating circumstances (no prior record, cooperation, and community service).

OCTC seeks review, arguing that Jorgensen is culpable on all counts, and requests a six-month actual suspension. Jorgensen does not seek review.

Upon independent review of the record (see Cal. Rules of Court, rule 9.12), we find that the hearing judge erred in her culpability analysis; Jorgensen is culpable on all counts. The fees he collected in the five client matters were illegal because all services he provided were for the sole purpose of obtaining a loan modification or other form of loan forbearance, and the law prohibits an attorney from collecting advance fees for such services. Further, Jorgensen clearly aided and abetted UPL. Finally, we find more aggravation than the hearing judge found.

In light of our conclusions, increased discipline is warranted. We recommend that Jorgensen be suspended for six months and until he pays restitution according to proof.

I. PROCEDURAL SUMMARY

Jorgensen was admitted to practice law in California in 1978 and has no prior record of discipline. On April 24, 2014, OCTC filed a seven-count Notice of Disciplinary Charges (NDC). The parties filed a Stipulation of Facts and a Stipulation Regarding Admission of Exhibits. At the three-day trial, OCTC presented witness testimony, including that of three former clients, their family members, and the paralegal with whom Jorgensen shared fees. Jorgensen testified on his own behalf. The hearing judge issued her decision on March 5, 2015, amended on March 6, 2015. The record clearly and convincingly supports the judge's material factual findings,[1] which we adopt, except where noted, and summarize below, supplementing additional facts from the record. (Rules Proc. of State Bar, rule 5.155(A) [great weight given to hearing judge's findings of fact].)

II. LEGALLY YOURS, LLC

Paralegal Andrea Dubois aka Andrea Franchino (Franchino) owned and operated Legally Yours, LLC (Legally Yours). Legally Yours solicited business by sending mailers to people whose properties were in foreclosure. In relevant part, the mailers offered property owners the following: "Your first mortgage . . . may be **RESTRUCTURED** to a 30 year fixed rate mortgage with an interest rate as low as 2%. . . . Even if you have been denied for a loan modification we may be able to help." (Emphasis in original.) When homeowners contacted Legally Yours, they would meet with Franchino or a staff member, and sign a retainer agreement for litigation services.

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[1] Clear and convincing evidence leaves no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

These agreements designated Legally Yours as "Attorney," and provided that Legally Yours would assign clients' legal matters to attorneys it hired. The agreements also stated that Legally Yours maintained supervision of the clients' legal matters, was authorized under a special power of attorney to settle and compromise claims, and required clients to pay attorney fees directly to Legally Yours.

Legally Yours hired attorney Joseph Renteria to represent its clients in foreclosure proceedings. In September 2011, Renteria contacted Jorgensen about making special appearances for him. Later that month, Renteria became ill and could no longer work.

In October 2011, Jorgensen entered into an agreement with Legally Yours whereby it would provide paralegal services for a fee, and allow Jorgensen to operate his law practice without charge out of the business location that Legally Yours leased. Legally Yours hired Jorgensen to assume Renteria's responsibilities for approximately 300 cases.

In the five matters before us, the clients had signed a retainer agreement with Legally Yours as described above. These clients made initial and ongoing payments for attorney fees directly to Legally Yours. From October 2011 to October 2012, Legally Yours paid Jorgensen a monthly salary from the fees it collected. Based on the advice of Jorgensen's counsel, the business was restructured in October 2012, and clients were thereafter instructed to pay fees directly to Jorgensen.

III. ADVANCE FEES FOR LOAN MODIFICATION SERVICES

A. Loan Modification Laws

On October 11, 2009, Senate Bill No. 94 (SB 94) became effective.[2] The Legislature enacted the law to regulate attorneys' performance of loan modification services. One safeguard prohibits an attorney from collecting any fees until all loan modification services are completed.

[2] SB 94 added sections 2944.6 and 2944.7 to the Civil Code and section 6106.3 to the Business and Professions Code (Stats. 2009, Ch. 630, § 10).

(Civ. Code § 2944.7, subd. (a).)[3] The intent was to "prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant." (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No, 94 (2009-2010 Reg. Sess.) as amended Mar. 23, 2009, pp. 5-6.) A violation of the Civil Code provision constitutes a misdemeanor (Civ. Code § 2944.7, subd. (b)), and is cause for imposing attorney discipline. (Bus. & Prof. Code § 6106.3, subd. (a).)

OCTC charged Jorgensen with violations of Civil Code section 2944.7 (section 2944.7), for charging and collecting fees in five client matters for loan modification or other forms of mortgage loan forbearance services before he had performed each and every service he had been contracted to perform or represented he would perform. The hearing judge dismissed the charges in four matters, reasoning that Jorgensen did not violate the law because he was hired to perform, and did perform, litigation services, rather than loan modification services, and the advance fees he collected were for those litigation services. In one matter (the Garcia matter), the hearing judge found Jorgensen culpable, but only because he received payments for loan modification services after the litigation ended.

As detailed below, the evidence establishes that although the retainer agreements stated that the services were limited to litigation, we find that *all* services Jorgensen agreed to provide, and in fact did provide, in the five client matters were for the sole purpose of obtaining loan modifications or other loan forbearances. Under section 2944.7, Jorgensen was not permitted to collect any advance fees for these loan modification services, and he therefore violated the

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

statute by doing so. There is no evidence that Jorgensen has refunded the illegal fees he collected.

B. The Ramirez Matter—Count One (Case No. 13-O-13309)

1. Facts

Delfino Ramirez (Ramirez) owned two properties in Santa Ana, California, that were in foreclosure—one on S. Linda Way and the other on S. Rene Drive. Ramirez contacted Legally Yours after receiving a flier from the company advertising its mortgage restructuring services. Ramirez testified that because he did not read English or Spanish and had very little formal schooling, his daughter, Otelia, accompanied him to many of the meetings with Legally Yours or she met alone with Franchino. Ramirez testified that Franchino told him Legally Yours would lower his mortgage payment.

Ramirez signed two retainer agreements with Legally Yours before Jorgensen was hired. The first retainer agreement, dated March 1, 2011, provided that Legally Yours was retained for the "sole and limited purpose of litigation" regarding the first mortgage loan secured by the S. Linda Way property, which included defending against any unlawful detainer action. Attorney Sarah Golden signed the agreement as she was working for Legally Yours at the time. The retainer agreement required Ramirez to pay a monthly fee of $750 commencing in March 2011.

The second retainer agreement, dated August 22, 2011, also provided that Legally Yours was hired "for the sole and limited purpose of litigation" related to the first and second mortgages secured by the S. Rene Drive property. It stated that Renteria, or any attorney Legally Yours chose to substitute, would handle the litigation. The agreement required a $4,000 initial fee and a $750 monthly fee commencing October 15, 2011.

Jorgensen began providing legal services to Ramirez beginning in late October 2011. Ramirez did not sign a separate retainer agreement with Jorgensen. Jorgensen sent letters to Ramirez about both properties, thanking him for "selecting Legally Yours for your legal matters," and explaining that he had been retained as the "new attorney in substitution for Joseph R. Renteria."

As to the S. Linda Way property, a civil complaint had been filed by Golden in March 2011 for, among other things, wrongful foreclosure. Thereafter, Renteria, and then Jorgensen, substituted in and continued to litigate the case. In early 2012, the superior court sustained a demurrer to the second amended complaint without leave to amend. The case was dismissed and Jorgensen was unsuccessful in negotiating a loan modification.

As to the S. Rene Drive property, Jorgensen's initial letter to Ramirez informed him that he was conducting a forensic loan audit and evaluating the status of the foreclosure proceedings in order to prepare a complaint for filing. Jorgensen advised that a trustee's sale for the property had been cancelled and all foreclosure activity had ceased. Jorgensen litigated the case, which included filing a lawsuit against the lender and other defendants. A demurrer was filed, and in January 2012, Jorgensen successfully negotiated a loan modification. Ramirez rejected it, however, because the proposed payments were too high.

Between October 6, 2011 and April 8, 2012, Otelia Ramirez paid Legally Yours at least $5,250 in attorney fees.[4]

2. Culpability

The hearing judge dismissed Count One because "there is not clear and convincing evidence that Mr. Ramirez and Respondent contracted for Respondent to perform any services

[4] Otelia Ramirez testified that she also made one or two cash payments of $750 to Legally Yours between November 2011 and April 2012, but could not remember whether she paid once or twice. This testimony does not establish by clear and convincing evidence that she made a cash payment during that time period.

other than the litigation services performed." Jorgensen asserts that charging for or collecting advance fees for foreclosure litigation is not proscribed by section 2944.7. OCTC maintains that the judge and Jorgensen are incorrect because litigation services whose goal is to achieve a loan modification are included under section 2944.7.

We find that Jorgensen is culpable for collecting $5,250 in illegal advance fees from Ramirez in violation of section 2944.7. He undertook all services, including litigation, for the sole purpose of obtaining a loan modification for Ramirez. Testifying generally about his practice, Jorgensen revealed that he would file a complaint as a tactical move to get the lenders to offer a loan modification: "You've got to have a complaint that survives or gets the [lender's] attorney's attention . . . before you can get anything done about a loan mod." Moreover, Ramirez testified he hired Legally Yours to have his mortgage payments lowered.

Contrary to Jorgensen's argument, we did not hold in *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, that section 2944.7 applies only to pure loan modification work and not to litigation work. Litigation services were not at issue in *Taylor*. Instead, we concluded that the statute "plainly prohibits *any person* engaging in loan modifications from collecting *any fees* related to such modifications until *each and every* service contracted for has been completed. [Citation.]" (*Id.* at p. 232, italics in original.) The statute does not specifically exclude litigation services and defines "service" broadly to include "each and every service the person contracted to perform or represented that he or she would perform." Thus, Jorgensen's litigation services, which he provided for the sole purpose of obtaining a loan modification, violated the statute. (*Id.* at pp. 231-232.)

C. The Garcia Matter—Count Two (13-O-13455)

1. Facts

Heriberto and Maria Garcia owned a primary residence in Norwalk, California. The Garcias testified that they contacted Legally Yours to obtain a loan modification after receiving a letter from the company regarding loan restructuring. They signed a retainer agreement on September 27, 2011, which provided that Legally Yours was hired "for the sole and limited purpose of litigation" related to the Norwalk property. The services included litigation related to the first mortgage loan and settlement of the second mortgage. The agreement provided that Renteria, or any licensed attorney Legally Yours chose, would represent them. It also stated that the Garcias would pay an initial fee of $5,000 "for the purpose of litigation" for the property and a monthly fee of $1,200, continuing until "settlement and/or resolution is reached in this case."

On October 28, 2011, Jorgensen explained in a letter to the Garcias that he had been retained to act as their attorney in place of Renteria, effective immediately. The Garcias did not sign a separate agreement with Jorgensen. From September 28, 2011 through September 24, 2012, the Garcias paid $17,395 directly to Legally Yours. From November 5, 2012 until December 21, 2012, the Garcias paid an additional $3,600 in monthly fees to Jorgensen.

Jorgensen testified that the goal all along was to obtain a loan modification for the Garcias. He informed the Garcias by letter that he told opposing counsel that "our main goal in this matter is that you be given a modification of your loan so that you can afford the monthly payment." In December 2011, Jorgensen filed a lawsuit against the lenders for, among other things, their failure to refinance the Garcias' loan. In May 2012, Jorgensen advised the Garcias that the court had sustained the lenders' demurrer without leave to amend, but that their financial information would be submitted in hopes of obtaining a more affordable mortgage payment. In an August 2012 letter, Jorgensen reassured the Garcias that the end of the lawsuit "is not the end

of the road, we are currently in the process of collecting your financial information so we can get a review of your loan directly with your lender." The Garcias did not obtain a loan modification during Jorgensen's representation. Maria Garcia testified that Jorgensen stopped working for her because she refused to pay more until the modification was obtained. On April 11, 2013, the Garcias requested a refund.[5]

2. Culpability

The hearing judge concluded, and Jorgensen concedes, that fees the Garcias paid *after* the foreclosure prevention litigation was dismissed in May 2012 were advance fees for loan modification services, and thus violated section 2944.7. On this basis, the hearing judge found Jorgensen culpable and ordered that he pay $8,400 in restitution.

We find that all services Jorgensen provided were for the sole purpose of obtaining a loan modification, including the foreclosure litigation. Under the statute, Jorgensen was not permitted to collect fees until he had fully performed each and every service he contracted or agreed to perform. He is therefore culpable for collecting $20,995 in illegal advance fees from the Garcias in violation of section 2944.7, and must refund the entire amount.[6]

D. The Maldonado Matter—Count Three (13-O-13662)

1. Facts

Angelina and Luis Maldonado contacted Legally Yours after receiving its flier advertising loan restructuring services. Luis Maldonado testified that he hired Legally Yours to obtain a loan modification. On March 19, 2012, the Maldonados executed a retainer agreement with Legally Yours and with Jorgensen, personally. The agreement provided that Legally Yours

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[5] The record does not reflect whether the clients in the other matters discussed herein requested refunds.

[6] We reject Jorgensen's assertion that fees paid by the Garcias before October 2011 were not paid to him. Jorgensen testified, and his ledger shows, that the Garcias paid a total of $20,995 in fees to him.

was hired "for the sole and limited purpose of litigation" related to their first mortgage lien on their primary residence in La Puente, California. The agreement also stated that the Maldonados would pay an initial fee of $5,000 "for the purpose of litigation for the above referenced property," and then pay an "ongoing retainer fee" of $1,200 per month commencing on May 18, 2012 until "settlement and/or resolution is reached in this case." The Maldonados paid Legally Yours $9,295 in fees from March 23, 2012 through August 23, 2012.

By April 18, 2012, Jorgensen had filed a complaint in superior court for, among other things, wrongful foreclosure, fraud, and unfair business practices against the Maldonados' lender. In an August 20, 2012 letter, Jorgensen informed the Maldonados that he told opposing counsel (the lender's attorney) that "the purpose of this law suit [sic] is to have your financial information diligently reviewed in the hopes of getting you into a more affordable payment." The letter further stated that "[o]pposing counsel has agreed to allow us to submit a modification package." The lender ultimately approved the loan modification to settle the case, contingent upon the Maldonados agreeing to dismiss the complaint filed by Jorgensen. The Maldonados testified they were satisfied with the loan modification they received.

2. Culpability

Contrary to the hearing judge's finding that Jorgensen is not culpable, we conclude he violated section 2944.7 as charged. He collected $9,295 in advance fees from the Maldonados for legal services that he admitted in his correspondence to the clients was for the purpose of obtaining a loan modification or other type of loan forbearance. Under these circumstances, he was not permitted to collect fees until he had fully performed each and every service he contracted or agreed to perform, including filing lawsuits against lenders for the sole purpose of obtaining a loan modification.

E. The Herrera Matter—Count Four (13-O-13665)

1. Facts

On September 18, 2011, Michael Herrera executed a retainer agreement with Legally Yours. The agreement provided that Legally Yours was hired "for the sole and limited purpose of litigation" related to Herrera's property in Moreno Valley, California, and that Renteria, or any other licensed attorney that Legally Yours chose, would represent him. The litigation services included litigation related to the first mortgage loan, and the retainer provided that Herrera would pay an initial fee of $5,000 "for the purpose of litigation for the above referenced property," and an "ongoing retainer fee" of $1,000 per month commencing November 5, 2011, until "settlement and/or resolution is reached in this case."

On October 28, 2011, Jorgensen wrote a letter—as he had done in other client matters—explaining that he had been retained as the new attorney in place of Renteria and had filed a lawsuit on his behalf. Herrera did not sign a separate agreement with Jorgensen. Between September 16, 2011 and April 17, 2012, Herrera paid Legally Yours $10,645 in fees.

In March 2012, Jorgensen updated Herrera about the status of the civil complaint and his efforts to obtain a loan modification. He told Herrera that his "loan modification package" had been submitted to the lender. On April 25, 2012, the bank sent Herrera a letter accepting him for a trial loan modification plan, and Herrera later obtained a loan modification.

2. Culpability

The hearing judge found Jorgensen not culpable because he accepted fees for foreclosure litigation, and the loan modification was negotiated as a settlement of the litigation. We find Jorgensen culpable as charged because he collected approximately $10,645 in illegal advance fees for loan modification services. As noted, because we find that all litigation work Jorgensen

performed was for the sole purpose of obtaining a loan modification or other type of loan forbearance from the outset of the litigation, his actions violate section 2944.7.

F. The Sanchez Matter—Count Five (13-O-13744)

1. Facts

Consuelo Sanchez de Uribe (Sanchez) signed a retainer agreement with Legally Yours on September 10, 2011 with respect to her primary residence in Riverside, California. The agreement provided that Legally Yours was hired "for the sole and limited purpose of litigation" related to the property and that Renteria, or any other licensed attorney that Legally Yours chose, would represent her. The services included litigation related to the first mortgage loan and settlement of the second mortgage. The retainer provided that Sanchez would pay an initial fee of $4,500 "for the purpose of litigation for the above referenced property," and an ongoing retainer fee of $1,000 per month for the first two months, commencing on October 24, 2011, and $1,200 per month thereafter until "settlement and/or resolution is reached in this case."

On October 28, 2011, Jorgensen wrote to Sanchez explaining that he had been retained as the new attorney in place of Renteria, and had filed a complaint on her behalf. Sanchez did not sign a separate agreement with Jorgensen. From September 9, 2011 through August 24, 2012, Sanchez paid Legally Yours $15,450 in advance fees.

Jorgensen sent several letters to Sanchez updating her on the status of the lawsuit he had filed. In one letter, he stated that he had spoken with "opposing counsel (your lender's attorney) and informed him that the purpose of this law suit [sic] is to have your financial information diligently reviewed in the hopes of getting you into a more affordable payment." Another letter, dated May 31, 2011, reflected that Jorgensen had commenced efforts to obtain a loan modification for Sanchez while continuing to litigate the foreclosure issues. He advised her that the lender had agreed to allow him to submit a loan modification package, which he did.

Sanchez stopped communicating with Jorgensen in February 2013, and no loan modification was obtained.

2. Culpability

We find Jorgensen culpable as charged for collecting $15,450 in illegal advance fees for loan modification services. The hearing judge concluded that Jorgensen was not culpable, reasoning that he did not demand or receive fees from Sanchez for loan modification services after the contracted-for litigation ended. Jorgensen admitted at trial, however, that litigation services were a tactic he used to obtain a loan modification, and he attempted to obtain a loan modification throughout the litigation. Just as in the other client matters, we find that all litigation was for the sole purpose of obtaining a loan modification or other type of loan forbearance. Thus, no advance fees were permitted under section 2944.7.

IV. AIDING AND ABETTING UPL AND FEE-SHARING

A. Aiding and Abetting UPL (Count 6)

OCTC charged Jorgensen with violating rule 1-300(A) of the Rules of Professional Conduct[7] for aiding and abetting UPL in the five client matters by knowingly allowing Franchino to: (1) provide legal advice; (2) evaluate legal needs; and (3) set legal fees relating to loan modification services. The hearing judge found Jorgensen not culpable because Franchino "credibly testified that she did not draft the foreclosure defense complaints and did not set the legal fees for the services provided to the complaining witnesses."[8] The judge also found that OCTC did not rebut Franchino's testimony and "proffered no evidence in support of its rule 1-300(A) charging allegations." We disagree.

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[7] All further references to rules are to this source unless otherwise noted. Rule 1-300(A) provides that "[a] member shall not aid any person or entity in the unauthorized practice of law."

[8] OCTC's argument that timecards show that Franchino and other paralegals drafted the complaints is unsupported by the record.

Whether Legally Yours set the fees or paralegals drafted complaints is not wholly dispositive in this case. To determine Jorgensen's culpability for UPL, the entire pattern of conduct as charged in the NDC must be examined. Legally Yours, a paralegal service entered into agreements to furnish others with legal services and identified itself in those agreements as "Attorney." (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [UPL includes merely holding out as entitled to practice].)[9] In addition, Legally Yours, not Jorgensen, controlled the supervision of the clients' cases, evaluated the legal needs of the clients, and undertook decision-making regarding legal matters. The agreements permitted Legally Yours to hire attorneys to work on the client cases, specified that Legally Yours would maintain supervision of the client's legal matter, reserved to Legally Yours the right to make tactical and procedural decisions, and granted to Legally Yours a special power of attorney to settle client claims. (*Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 543 [activity constitutes practice of law if it involves application of legal knowledge and technique]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 603-604 [negotiating settlement with opposing counsel constitutes practice of law].)[10] Legally Yours engaged in UPL.

Jorgensen aided and abetted this UPL for a year. As a salaried employee of Legally Yours, he provided certain services for its clients, thereby helping non-lawyers carry out the business of practicing law. Moreover, under the agreement, he was precluded from performing

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[9] Section 6450, subdivision (b)(1), provides that a paralegal cannot give legal advice, and section 6451 provides in relevant part that it is unlawful for a paralegal to perform services for a consumer except under direction and supervision of an attorney.

[10] While Legally Yours is defined as "Attorney" in the opening paragraph of the retainer agreements, we note that later provisions state: "Legally Yours, LLC . . . is not licensed to give legal advice," and "[a]ttorney employs LEGALLY YOURS, LLC for paralegal services." Even if we were to conclude that the reference to Legally Yours as "Attorney," was careless drafting, other provisions stated unequivocally that Legally Yours reserved the exclusive right to make tactical decisions, supervise the cases, and settle claims—actions that clearly constitute the practice of law. (*Morgan v. State Bar, supra,* 51 Cal.3d at pp. 603-604.)

the essential duties of an attorney, such as supervising the case or settling client matters. Instead, he assisted Legally Yours in performing these duties. (See *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar. Ct. Rptr. 615, 625 [attorney aided UPL by permitting non-lawyer staff to accept clients in his name and conduct negotiations with little or no input from him].)

We reject Jorgensen's argument that he is not culpable of UPL because he was ignorant of the relationship between Legally Yours and its clients before he commenced work for them. Jorgensen agreed to replace Renteria and did so knowing that Legally Yours had contracted with the clients to render legal services to them. Further, he wrote to the clients thanking them for choosing Legally Yours for their legal matters and in the Ramirez, Garcia, Herrera, and Sanchez matters, he informed them he was substituting in for Renteria. In the Maldonado matter, Jorgensen personally executed the retainer agreement and therefore knew firsthand that Legally Yours had contracted with the clients to perform services that involved the practice of law. Jorgensen was obligated to disavow the agreements and prepare new retainer agreements designating himself as the attorney and reserving to himself all the rights and responsibilities of an attorney.

We further reject Jorgensen's argument that OCTC's Opening Brief regarding its UPL argument "goes far afield of the allegations set forth in the NDC." OCTC's contentions are consistent with the charge, and we have considered only those facts that support the charged misconduct.

We conclude that clear and convincing evidence establishes that Legally Yours engaged in UPL, and that Jorgensen aided and abetted that UPL. In doing so, he undermined the well-established public policy that "California prohibits the unlawful practice of law . . . to afford protection against persons who are not qualified to practice the profession." (*Gerhard v. Stephens* (1968) 68 Cal.2d 864, 918.)

B. Fee-Sharing (Count 7)

Jorgensen stipulated that he shared legal fees with Franchino in each of the five client matters, in violation of rule 1-320(A).[11] We adopt the hearing judge's finding that Jorgensen is culpable as charged in Count 7 for fee sharing.

V. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[12] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Jorgensen to meet the same burden to prove mitigation.

A. Aggravation

1. Multiple Acts

The hearing judge found, and Jorgensen concedes, he committed multiple acts of wrongdoing. (Std. 1.5(b) [multiple acts of wrongdoing constitute circumstance in aggravation].) Although the judge did not state the weight to be assigned to this factor, we find Jorgensen's multiple acts substantially aggravate this case because he engaged in various types of misconduct in five client matters, including violating loan modification laws, aiding and abetting UPL, and engaging in fee-sharing.

2. Significant Harm

Although the hearing judge did not find this factor, OCTC requests aggravation for significant harm to the client, the public, or the administration of justice. (Std. 1.5(j).) We assign substantial aggravating weight because Jorgensen exploited his clients' financial

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[11] Rule 1-320 (A) provides, with certain exceptions not relevant here, "[n]either a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer."

[12] All further references to standards are to this source. The standards were revised and renumbered effective July 1, 2015. Because this request for review was submitted for ruling after that date, we apply the revised version of the standards.

desperation and his fiduciary position by charging and collecting advance fees in violation of section 2944.7, and by not providing refunds. (*Matter of Taylor*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 235 [significant harm where attorney repeatedly charged up-front fees for loan modification services from financially desperate clients and failed to provide refunds]; *Beery v. State Bar* (1987) 43 Cal.3d 802, 813 [parties in fiduciary or confidential relationship do not deal on equal terms because trusted person is in superior position to exert unique influence over dependent party].)

B. Mitigation

1. No Prior Record of Discipline

Jorgensen may receive mitigation if he proves he has no prior record of discipline over many years of practice coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) He practiced law for 33 years without discipline. Because his misconduct in the five client matters essentially involved a single issue—his interpretation of section 2944.7—we find, like the hearing judge, that his lengthy discipline-free record merits substantial mitigating credit. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational].)

2. Cooperation

The hearing judge found that Jorgensen's stipulation to culpability for one count of sharing fees "warrants consideration in mitigation." (Std. 1.6 (e) ["spontaneous candor and cooperation displayed to the victims of the misconduct or to the State Bar"].) We agree and assign Jorgensen moderate mitigating weight for stipulating to some facts and some culpability. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

3. Pro Bono Work and Community Service

Jorgensen is entitled to mitigation credit if he proves he engaged in pro bono work or community service. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) The hearing judge assigned "some mitigation" for Jorgensen's credible testimony about his volunteer work with a youth radio station. Jorgensen testified that he works for a Newport Beach nonprofit public radio station, which he started and built five or six years ago. He spends five to 10 hours a week working for the station, hosts a two-hour program every Sunday, and attends all the events. Jorgensen also noted that the station hosted a Christmas party for underprivileged children, and works directly with the mayor to help the community and the children. We agree with the hearing judge that Jorgensen is entitled to limited mitigating credit for his brief description of his volunteer service. (See *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little mitigation for minimal testimony regarding pro bono activities].)

VI. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession. (Std. 1.1.) We balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) We also look to the standards and decisional law for guidance in recommending the appropriate discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 91; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

Several standards apply here. Standard 2.18 instructs that disbarment or actual suspension is the presumed sanction for collecting illegal fees in violation of section 6106.3.[13] Standard 2.8 recommends actual suspension for sharing fees with a non-lawyer, and

[13] Standard 2.18 provides that "[d]isbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in the Standards."

standard 2.19 recommends suspension not to exceed three years or reproval for aiding UPL. We apply standard 2.18 because Jorgensen's most serious ethical violations result from collecting advance fees for loan modification work. (Std. 1.7(a) [most severe sanction must be imposed]; see *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628 [applying standard most relevant to gravest aspect of attorney's misconduct].)

Given the broad range of discipline suggested by standard 2.18, we look to the guiding case law addressing violations of loan modification laws: *In the Matter of Taylor*, *supra,* 5 Cal. State Bar Ct. Rptr. 221. Taylor was culpable of charging pre-performance loan modification fees in eight matters and one count of failing to provide the required loan modification disclosures. His misconduct was aggravated by multiple acts of misconduct, significant client harm, and lack of remorse; his single mitigating factor was good character. He was suspended for six months and ordered to pay restitution of about $15,000.

Jorgensen's misconduct is as serious as Taylor's. Jorgensen charged pre-performance fees totaling more than $60,000 in five client matters, in violation of loan modification laws. He has issued no refunds even though at least one client has requested it. While Taylor had more aggravation and less mitigation than Jorgensen, given the overall misconduct and the amount of restitution Jorgensen owes, we find *Taylor* instructive as to the proper level of discipline. Further, Jorgensen's mitigation, when weighed against the aggravation, does not establish that a more lenient sanction is warranted. (Rules Proc. of State Bar, title IV, Part B [presumed sanction is starting point for imposition of discipline; may be adjusted up or down depending on mitigating and aggravating circumstances].) We recommend the discipline urged by OCTC, which is consistent with our decision in *Taylor*—a six-month actual suspension.[14] We also order

[14] We note that Jorgensen is culpable of other serious misconduct involving aiding and abetting UPL and sharing fees in five client matters. (See *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 326-328 [sharing fees with non-lawyer is serious

that his suspension continue until he pays restitution in full. (*Coppock v. State Bar* (1988) 44 Cal.3d 665, 685-686 [restitution order appropriate to compensate victims of wrongdoing, discourage dishonest and unprofessional conduct, protect the public and further integrity of profession, and encourage high professional standards of conduct].)

VII. RECOMMENDATION

We recommend that Barry Steven Jorgensen be suspended from the practice of law for two years, execution stayed, and that he be placed on probation for two years on the following conditions:

1. He is suspended from the practice of law for a minimum of the first six months of probation, and he will remain suspended until the following requirements are satisfied:

    a. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:

        (1) Delfino Ramirez in the amount of $5,250 plus 10 percent interest per year from April 8, 2012;

        (2) Heriberto and Maria Garcia in the amount of $20,995 plus 10 percent interest per year from December 21, 2012;

        (3) Angelina and Luis Maldonado in the amount of $9,295 plus 10 percent interest per year from August 23, 2012;

        (4) Michael Herrera in the amount of $10,645 plus 10 percent interest per year from April 17, 2012;

        (5) Consuelo Sanchez de Uribe in the amount of $15,450 plus 10 percent interest per year from August 24, 2012; and

    b. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of rehabilitation, fitness to practice and present learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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misconduct generally resulting in actual suspension of six months to two years, but recommending 60-day actual suspension for Smithwick due to significant mitigation].)

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.

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

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

5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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

VIII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Jorgensen be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter, or

during the period of his suspension, whichever is longer, and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

IX. RULE 9.20

We further recommend that Jorgensen 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.

X. COSTS

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

PURCELL, P. J.

WE CONCUR:

EPSTEIN, J.

HONN, J.

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 10, 2016, I deposited a true copy of the following document(s):

OPINION FILED MAY 10, 2016

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

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

ALLEN BLUMENTHAL, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 10, 2016.

Jasmine Guladzhyan
Case Administrator
State Bar Court