

Filed April 17, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case Nos. 09-O-16588 (10-O-02452,
)	10-O-02466, 10-O-02469, 10-O-04902,
)	10-O-04927, 10-O-04931, 10-O-04932,
ADLORE VIRGIL CLARAMBEAU,)	10-O-05548, 10-O-05676, 10-O-09139,
)	10-O-09795, 10-O-09797);
A Member of the State Bar, No. 174540.)	10-O-04920 (11-O-11972, 11-O-14556) (Cons.)
)	
)	OPINION AND ORDER

Respondent Adlore Virgil Clarambeau stipulated to 29 counts of misconduct in 13 loan modification matters and one bankruptcy case. The Office of the Chief Trial Counsel (OCTC) agreed to a 120-day suspension, which the hearing department approved. The Supreme Court returned the stipulation for further consideration in view of the standards for attorney discipline.¹ The hearing judge recommended disbarment after considering victim impact statements that established substantial client harm as aggravation.

Clarambeau appeals but does not contest culpability. Instead, he argues: (1) the judge erred by admitting the victim impact statements; and (2) disbarment is excessive since this is his first discipline case. He requests a maximum two-year suspension. OCTC supports disbarment. After independently reviewing the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge. Clarambeau habitually disregarded his clients' interests; for two years, he collected illegal fees, performed incompetently, and failed to pay over \$35,000 in restitution to 13 clients.

¹ All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, and reflect the modifications to the standards effective January 1, 2014. We note those modifications did not include any substantive changes to the standards relevant to this proceeding.

Moreover, he did not appear at trial to explain his conduct. Under the standards and Supreme Court case precedent, disbarment is the appropriate discipline.

I. PROCEDURAL HISTORY

In January 2012, OCTC and Clarambeau entered into a written stipulation of facts, conclusions of law, and a proposed disposition that recited 29 counts of misconduct in 14 client matters. From 2008 to 2010, Clarambeau: (1) engaged in the unauthorized practice of law (UPL); (2) collected illegal fees; (3) failed to competently perform or return unearned fees; (4) failed to account; and (5) improperly offered a referral fee. The hearing judge approved the stipulation and recommended the stipulated discipline, which included a 120-day actual suspension subject to a two-year stayed suspension and two years' probation. In August 2012, the Supreme Court returned the stipulation to the hearing department for "further consideration of the recommended discipline in light of the applicable attorney discipline standards. (*In re Silvertown* (2005) 36 Cal.4th 81, 89-94; see *In re Brown* (1995) 12 Cal.4th 205, 220.)"²

Thereafter, OCTC moved to modify or withdraw from the stipulation. The hearing judge ruled that the factual and legal conclusions were binding, but OCTC could offer client declarations at trial to establish harm in aggravation. Clarambeau did not seek to withdraw from the stipulated facts or legal conclusions nor did he request interlocutory review of the hearing judge's pretrial order. Following trial, the judge increased the discipline recommendation to disbarment.

II. SEVEN OUT-OF-STATE CLIENT MATTERS

Clarambeau is licensed to practice law only in California. During 2009, he sent marketing materials that offered loan modification services to out-of-state residents, implying he was authorized to practice law in their states. He entered into an "Attorney-Client Fee

² *In re Clarambeau on Discipline* (Aug. 27, 2012) Cal. State Bar Ct. nos. 09-O-16588, et seq.

Agreement” with at least seven out-of-state residents in which he agreed to perform “mortgage modification services,” and he collected between \$1,500 and \$3,700 in legal fees in each case.

The hearing judge found Clarambeau culpable of 14 counts of misconduct in seven out-of-state matters. Clarambeau stipulated to violating two Rules of Professional Conduct in each client matter: (1) rule 1-300(B) for representing out-of-state clients in violation of professional regulations in foreign jurisdictions; and (2) rule 4-200(A) for entering into an agreement for, charging, and collecting illegal fees.³ We adopt the culpability findings and summarize the stipulated details of each client matter in the chart below.

<i>Client</i>	<i>State</i>	<i>Agreement Date</i>	<i>Amount Paid</i>	<i>Foreign Jurisdiction Regulation Violated</i>
Mark Erkers Case No. 10-O-05676	Washington	3/18/09	\$2,950	Washington Rules of Professional Conduct, Rule 5.5
Laurie Ferrell Case No. 10-O-02466	Arizona	3/30/09	\$2,850	Arizona Rules of Professional Conduct, Ethical Rule 5.5
Mary Villasin Case No. 10-O-09139	Washington	3/31/09	\$2,950	Washington Rules of Professional Conduct, Rule 5.5
Roy Reyes Case No. 10-O-02452	Hawaii	4/9/09	\$2,950	Hawaii Revised Statutes Section 605-14
Indira Hodzic Case No. 10-O-04932	Nevada	6/19/09	\$1,500	Nevada Rules of Professional Conduct, Rule 5.5
Keith Lee Kwai Case No. 10-O-02469	Hawaii	8/13/09	\$2,950	Hawaii Revised Statutes Section 605-14
Terry Campbell Case No. 10-O-04927	North Carolina	7/31/09	\$3,700	North Carolina Rules of Professional Conduct, Rule 5.5

³ All further references to rules are to the State Bar Rules of Professional Conduct unless otherwise noted.

III. SEVEN CALIFORNIA CLIENT MATTERS

The hearing judge found Clarambeau culpable of 15 counts of misconduct in seven California client matters related to six loan modification cases and one bankruptcy filing. We adopt the culpability findings and summarize the stipulated details of each client matter.

**A. Parga Matter (Case No. 10-O-04902)
Vu Matter (Case No. 10-O-05548)**

In 2009, Monica Parga and Hung Vu each paid Clarambeau \$2,950 to negotiate a home mortgage loan modification and perform related litigation services. After Parga's lender notified her that it could not reach Clarambeau, she called the lender to confirm his representation and to check on the status of her loan modification. A few weeks later, Clarambeau notified Parga he would no longer represent her because she communicated directly with the lender.

Around the same time, Clarambeau also dismissed Vu as a client. About six months into their attorney-client relationship, Vu asked Clarambeau for an update. In response, Clarambeau requested documents, which Vu promptly provided. Clarambeau immediately withdrew from representation, claiming Vu's file had been "canceled for the following reason: Non-compliance."

Shortly after Clarambeau stopped representing Parga and Vu, he sent them each a letter soliciting client referrals and claiming he was "allowed by State Bar rules to pay a modest referral fee for any such referrals." Clarambeau has not refunded any fees to Parga or Vu.

Clarambeau stipulated that in both client matters, he: (1) recklessly failed to competently perform legal services, in violation of rule 3-110(A), by not negotiating and/or obtaining a home mortgage loan modification; (2) failed to promptly refund an unearned advance fee, in violation of rule 3-700(D)(2); and (3) improperly promised a referral fee, in violation of rule 1-320(B).

**B. Prasad Matter (Case No. 10-O-04920)
Waziri Matter (Case No. 10-O-04931)
Clark Matter (Case No. 10-O-09797)**

In 2008, Purnima Prasad paid Clarambeau \$2,200 to negotiate a home mortgage loan modification. An additional payment of \$1,000 was due once he completed his legal services. About a year later, Prasad discovered that Clarambeau never forwarded her paperwork to the lender. Consequently, she herself negotiated with the lender and obtained a loan modification. Clarambeau then terminated his relationship with Prasad and requested the final \$1,000 payment because “a resolution of your loan default was obtained.”

In 2009, Rafiq Waziri paid Clarambeau \$2,950 to negotiate a home mortgage loan modification on a \$955,000 “jumbo” loan. Waziri’s lender did not offer modifications for “jumbo” loans, and so notified Clarambeau twice in 2009 and again in early 2010. However, Clarambeau never informed Waziri of the communications from the lender. Two weeks after the last notification, Clarambeau told Waziri that his “file has been cancelled for the following reason: Lender Disqualification.”

In 2009, Jessica Clark paid Clarambeau \$2,950 to negotiate a home mortgage loan modification. In January 2010, without explanation, Clarambeau notified Clark that her “file has been canceled for the following reason: Non-compliance.” Clarambeau did not refund any of the fees he collected from Prasad, Waziri, and Clark.

Clarambeau stipulated that in these client matters, he: (1) recklessly failed to competently perform legal services, in violation of rule 3-110(A), by not negotiating and/or obtaining a home mortgage loan modification; and (2) failed to promptly refund an unearned advance fee, in violation of rule 3-700(D)(2).

C. Ramirez Matter (Case No. 11-O-14556)

In 2010, Conrado Ramirez paid Clarambeau \$1,400 to represent him in a bankruptcy case. Clarambeau filed a Chapter 7 bankruptcy petition on behalf of both Ramirez and his wife, contrary to Ramirez's explicit instructions to file only on his behalf. The petition was dismissed for, among other things, failure "to file all the documents required" by the applicable rules and regulations. A few months later, Clarambeau filed a second Chapter 7 bankruptcy petition on behalf of Ramirez only. This petition was also dismissed for, among other things, failure "to file all the documents required" by the applicable rules and regulations. Ramirez wrote to Clarambeau, notified him he was fired, and demanded a full refund. Clarambeau has not repaid any fees to Ramirez.

Clarambeau stipulated that he: (1) recklessly failed to competently perform legal services, in violation of rule 3-110(A), by failing to file the required documents in the bankruptcy case; and (2) failed to promptly refund an unearned advance fee, in violation of rule 3-700(D)(2).

D. Perez Matter (Case No. 11-O-11972)

In 2009, Lupe Perez paid Clarambeau \$5,950 to negotiate a loan modification on three properties. Twice in 2009, Perez asked Clarambeau for a "bill statement itemized." In 2010, Clarambeau responded that the "file has been cancelled for the following reason: Requested by client." Perez again requested an itemized bill. Clarambeau did not provide an accounting of the \$5,950 in fees. Clarambeau stipulated that he violated rule 4-100(B)(3) by failing to render an appropriate accounting to Perez regarding all funds coming into his possession.⁴

⁴ The hearing judge dismissed all charges in case nos. 09-O-16588 and 10-O-09795 as part of the stipulation.

IV. AGGRAVATION AND MITIGATION

OCTC must establish aggravation by clear and convincing evidence.⁵ (Std. 1.5.)

Clarambeau has the same burden to prove mitigating circumstances. (Std. 1.6.)

A. Aggravation

The hearing judge found two factors in aggravation: multiple acts of wrongdoing constituting habitual disregard of client interests and significant client harm. We agree and assign these factors significant weight in aggravation.

Clarambeau committed multiple acts of misconduct, which the hearing judge determined “could be viewed as a pattern; however, at the very least, it constitutes a habitual disregard of his clients’ interests.”⁶ Clarambeau concedes he committed multiple acts, but disputes they constitute a pattern or habitual disregard of client interests since his misconduct “occurred during a short period of time (i.e., less than two years) during the height of the loan modification crisis.” His argument lacks merit. In 14 client matters, he collected illegal fees, performed incompetently, improperly offered a referral fee, failed to refund fees, or failed to account. Such evidence, along with Clarambeau’s failure to pay restitution, proves a lengthy pattern of habitually disregarding his clients’ interests. (See *Phillips v. State Bar* (1989) 49 Cal.3d 944, 953 [pattern of misconduct demonstrating habitual disregard of clients’ interests found where attorney repeatedly failed to perform services and comply with court orders]; *Farnham v. State*

⁵ Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

⁶ Former standard 1.2(b)(ii) states that multiple acts of wrongdoing *or* a pattern of misconduct is an aggravating circumstance. The new standards specify these as separate aggravating circumstances. (Std. 1.5(b) [multiple acts] and 1.5(c) [pattern of misconduct].) Since the hearing judge evaluated multiple acts and pattern of misconduct under the former standards as one aggravating factor, we also consider them as one for discipline purposes.

Bar (1988) 47 Cal.3d 429, 446 [deliberate and habitual disregard of clients' interests found where attorney persistently refused to perform services for which he accepted fees].)

Clarambeau also caused "significant financial and emotional harm to many clients." (Std. 1.5(f).) In fact, seven victim impact statements detailed vast harm, including bankruptcies, foreclosures, and feelings of being deceived. To illustrate, Keith Lee Kwai of Hawaii stated that the house he lost in foreclosure "had sentimental value that cannot be quantified by dollars and cents." Tiffany Campbell from North Carolina explained: "The biggest harm this whole thing caused was to our credit." And Roy Reyes of Hawaii bemoaned: "Because of the lies and the misleading of CaliLaw group, Mr. Clarambeau and his staff we not just lost our home it had put me and my family in financial ruins with our creditors." (*Sic.*)

On review, Clarambeau argues the victim impact statements were inadmissible at trial because the stipulation stated there were no aggravating circumstances. His argument lacks merit. The stipulation provides that the parties are bound by the factual stipulations "even if conclusions of law or disposition are rejected or changed by the Supreme Court." In a pretrial ruling, the hearing judge announced that she would admit client declarations to prove harm and would make aggravating findings as appropriate. After the ruling, Clarambeau did not challenge the stipulation or ask to be relieved from it, nor did he seek interlocutory review of the judge's evidentiary ruling. Further, rule 5.107(B) of the Rules of Procedure of the State Bar mandates that victim impact statements be admitted once culpability is found, a legal principle Clarambeau's counsel conceded at trial: "The victim impact statements -- I recognize that Rule 5.107 basically permits almost an absolute right of the victims to submit victim statements." Clarambeau offers no authority, nor do we find any, that bars the hearing judge from making additional (or fewer) *legal* findings in aggravation, mitigation, or as to culpability when

reevaluating a stipulation the Supreme Court has returned for further consideration of the recommended discipline.

Clarambeau also argues he was not given adequate time to review the victim statements and could not cross-examine the declarants. We disagree. The State Bar timely provided the victim statements to Clarambeau's counsel on January 18, 2013 — one week after the hearing judge's pretrial ruling and four days before trial. As to cross-examination, Clarambeau did not make a proper request for it. (Rules Proc. of State Bar, rule 5.107(B) ["Upon the member's showing of good cause, the Court may require the Office of the Chief Trial Counsel to produce the victim(s) at the mitigation/aggravation phase of the hearing for purposes of cross-examination by the member".]) However, we strike three victim impact statements received a week *after* the trial concluded since neither Clarambeau nor his attorney had a chance to review or respond to them at trial.

B. Two Factors in Mitigation

The hearing judge found two factors in mitigation: no prior discipline record and cooperation. We agree.

First, the hearing judge gave significant weight to Clarambeau's 14-year record of discipline-free practice. (Std. 1.6(a) [mitigation for absence of discipline over many years where conduct not serious].) However, we assign it only limited weight because the misconduct was serious. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [discipline-free practice most relevant where serious misconduct is aberrational and unlikely to recur].) Having failed to address his restitution obligations or prove he is rehabilitated, his discipline-free record does not persuade us that he will abide by his ethical obligations in the future.

Second, the hearing judge correctly gave consideration to Clarambeau's cooperation with OCTC for entering into a stipulation. (Std. 1.6(e); *In the Matter of Johnson* (Review Dept. 2000)

4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded to those who willingly admit culpability as well as facts].)

The stipulation also listed a third mitigating factor: “Respondent explains that he had an honest, but mistaken, belief” he could perform out-of-state loan modifications and collect referral fees. The hearing judge ruled in her pretrial order that OCTC could refute this factor since the “use of the word explains is an indication that the State Bar has not entirely bought into respondent’s belief.” Despite being served with a notice to appear for trial, Clarambeau was not present and his attorney offered no evidence. His failure to appear and explain his actions is of serious concern.⁷ We therefore agree with the hearing judge in assigning no weight to this factor since it is not supported by any evidence. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [good faith mitigation credit requires that attorney prove belief was honestly and reasonably held].)

V. DISCIPLINE DISCUSSION

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 look to the standards and decisional law for guidance. (*In re Silverton, supra*, 36 Cal.4th 81, 91.) Applying these principles, we recommend that Clarambeau be disbarred.

While several standards apply in this case, standard 2.5(a) is most apt because it directly addresses Clarambeau’s pattern of disregarding client interests. It is also the most serious

⁷ Clarambeau’s counsel informed the hearing judge that he could not reach Clarambeau to have him participate by telephone: “Mr. Clarambeau is in Tennessee. He doesn’t have the money to fly out here. He told me that he was willing to participate by phone. I told him I didn’t know if the Court would permit that. I called him about 1:00 o’clock to see if he still wanted to participate. He did not answer, and I sent him an email and he hasn’t responded.”

because it suggests disbarment: “Disbarment is appropriate for failing to perform legal services with clients, demonstrating a pattern of misconduct.” (Std. 2.5(a).)⁸ In addition, the California Supreme Court has recognized that “ “[h]abitual disregard by an attorney of the interests of clients is grounds for disbarment. . . . Even when such neglect is grossly negligent or careless, rather than willful and dishonest, it is an act of moral turpitude and professional misconduct, justifying disbarment.” ’ ’ ” (*Farnham v. State Bar, supra*, 47 Cal.3d 429, 446 [disbarment for seven instances of abandonment with prior disciplinary record]; *In re Billings* (1990) 50 Cal.3d 358 [disbarment for 18 matters involving abandonment, harm to clients, UPL, and conviction for driving under the influence causing injuries].) We reject cases Clarambeau offers to support a suspension rather than disbarment because they are distinguishable — not one involves a similar serious pattern of misconduct along with a total failure to pay *any* restitution to financially distressed clients.

Nor is Clarambeau’s case similar to our only published opinion involving multiple violations of California loan modification laws, *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221. In *Taylor*, we recommended a six-month suspension continuing until the attorney made full restitution. But that case is far less serious than Clarambeau’s case because it involved eight clients rather than 14, nine culpability findings rather than 29, and \$14,350 in unpaid restitution rather than \$35,250. Further, the attorney in *Taylor* did not commit similar additional misconduct present in this case: UPL, performing incompetently, failing to return unearned fees, and improperly requesting a referral fee.

Stated simply, Clarambeau’s misconduct was serious, prolonged, and harmful to clients. Further, the aggravation (multiple acts and client harm) far outweighs the mitigation (no prior record and cooperation), and his misconduct did not arise from “dramatic misfortune or personal

⁸ Standard 1.7(a) provides that the most severe sanction must be imposed if more than one applies.

stress which could excuse an otherwise diligent practitioner's errors." (*In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, 16.) In fact, we have no clear understanding of the reasons for Clarambeau's serious misconduct because he failed to appear at trial. When an attorney shows such indifference to his professional license, he is not entitled to any leniency. (See Rules Proc. of State Bar, rule 5.82(A) [court will recommend disbarment for defaults].) Given 29 counts of misconduct in 14 client matters and his failure to repay more than \$35,000 in illegal fees, we believe Clarambeau should undergo the evaluation process of a reinstatement proceeding following disbarment before he is allowed to practice law again.

VI. RECOMMENDATION

We recommend that Adlore Virgil Clarambeau be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

We further recommend that he make 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) Mark Erkers in the amount of \$2,950 plus 10 percent interest per year from April 1, 2009;
- (2) Laurie Ferrell in the amount of \$2,850 plus 10 percent interest per year from April 8, 2009;
- (3) Mary Villasin in the amount of \$2,950 plus 10 percent interest per year from April 6, 2009;
- (4) Roy Reyes in the amount of \$2,950 plus 10 percent interest per year from July 1, 2009;
- (5) Indira Hodzic in the amount of \$1,500 plus 10 percent interest per year from July 1, 2009;
- (6) Keith Lee Kwai in the amount of \$2,950 plus 10 percent interest per year from July 1, 2009;

- (7) Terry Campbell in the amount of \$3,700 plus 10 percent interest per year from October 20, 2009;
- (8) Monica Parga in the amount of \$2,950 plus 10 percent interest per year from September 25, 2009;
- (9) Hung Vu in the amount of \$2,950 plus 10 percent interest per year from July 1, 2009;
- (10) Purnima Prasad in the amount of \$2,200 plus 10 percent interest per year from January 8, 2009;
- (11) Rafiq Waziri in the amount of \$2,950 plus 10 percent interest per year from September 1, 2009;
- (12) Jessica Clark in the amount of \$2,950 plus 10 percent interest per year from October 7, 2009; and
- (13) Conrado Ramirez in the amount of \$1,400 plus 10 percent interest per year from October 18, 2010.⁹

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

We further recommend that Clarambeau be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

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

VII. ORDER

When the hearing department recommended disbarment, it ordered Clarambeau involuntarily enrolled as an inactive member of the State Bar as required under Business and

⁹ The dates set for interest to begin accruing are taken from the stipulation's restitution agreement. We do not order restitution to Perez as the stipulation fails to establish whether or not Clarambeau returned any portion of the fee he collected from her.

Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1). The involuntary inactive enrollment became effective on April 19, 2013. Clarambeau has remained on involuntary inactive enrollment since that time and will remain on involuntary inactive enrollment pending the final disposition of this proceeding.

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.