PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed January 16, 2014

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 11-O-15502 (11-O-16082,
	)	11-O-16524, 11-O-18784, 11-O-19333);
JACK CHIEN-LONG HUANG,	)	11-O-19312 (12-O-10134, 12-O-12540);
	)	12-O-14025 (Cons.)
A Member of the State Bar, No. 242193.	)	
	)	OPINION
	)	

This case illustrates ethical problems that arise when an attorney fails to supervise nonlawyers in a high-volume law practice. The State Bar's Office of the Chief Trial Counsel (State Bar) charged Jack Chien-Long Huang with misconduct in nine client matters involving loan modifications. The hearing judge dismissed all charges in one matter for lack of proof. In the remaining eight, Huang stipulated to and the hearing judge found him culpable of violating loan modification laws and failing to competently perform. In addition to this stipulated misconduct, the judge found Huang culpable of failing to promptly return client files or timely pay funds in two matters. However, in each client matter, the judge dismissed charges that Huang aided and abetted the unauthorized practice of law (UPL), permitted misuse of his name, and committed acts of moral turpitude. The judge recommended discipline including a six-month suspension after considering two factors in aggravation (multiple acts of misconduct and client harm) and four factors in mitigation (no prior record, candor and cooperation, good character, and remorse).

The State Bar seeks review, asserting Huang is culpable of most of the dismissed charges, particularly aiding and abetting UPL. It urges a two-year suspension, continuing until he proves his fitness to practice law in a standard 1.2(c)(1) hearing.[1] Huang supports the hearing judge's recommendation.

Based on our independent review of the record (see Cal. Rules of Court, rule 9.12), we affirm the hearing judge's: (1) dismissal of the charges in one client matter; (2) all but one culpability finding in the eight remaining client matters; and (3) each factor in aggravation and mitigation. The primary contested issue on review is whether Huang is culpable for the dismissed charges of aiding and abetting UPL and, if so, the appropriate level of discipline. We conclude Huang is culpable and also give less weight to his mitigation. Accordingly, increased discipline is warranted. We recommend that Huang be suspended for two years and until he pays restitution and complies with standard 1.2(c)(1).

I. BACKGROUND AND OVERVIEW[2]

A. Loan Modification Laws

Effective October 11, 2009, the law was amended to regulate an attorney's performance of loan modification services. The new provisions supplied two safeguards for borrowers who employ the services of someone to help with a loan modification: (1) a requirement for a separate notice to borrowers in 14-point bold type that it is not necessary to use a third party to negotiate a

[1] As of January 1, 2014, standard 1.2(c)(1) replaced standard 1.4(c)(ii) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. Although this case was submitted for ruling in 2013, the new standard will apply when Huang is eligible to petition to terminate his suspension. However, the new standard does not conflict with the former. All further references to standards are to this source, and references to the earlier version will be designated "former standards."

[2] The facts of this case are based on the parties' stipulations as to facts, admission of documents, and conclusions of law, as well as the trial evidence and the hearing judge's findings. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight on review].)

loan modification (Civ. Code, § 2944.6, subd. (a)); and (2) a proscription against charging pre-performance compensation, i.e., restricting the collection of fees until all loan modification services are completed. (Civ. Code, § 2944.7, subd. (a).) The laws were designed to "prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant." (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009-2010 Reg. Sess.) as amended Mar. 23, 2009, pp. 5-6.) A violation of either Civil Code provision constitutes a misdemeanor (Civ. Code, §§ 2944.6, subd. (c), 2944.7, subd. (b)), and is cause for imposing attorney discipline. (Bus. & Prof. Code, § 6106.3, subd. (a).)[3]

B. Huang Commenced a Loan Modification Practice

After admission to the Bar in 2006, Huang practiced law in his Newport Beach office with another attorney, Angela Wang. In June 2009, Huang met Robert Campoy and Andres Martinez, nonattorneys seeking legal advice about operating their loan modification business, National Mitigation Services (NMS), in Corona, California. Huang told them that the Department of Real Estate was "cracking down" on loan modifications. He advised them about compliance issues.

Months later, the three met again. Campoy and Martinez told Huang that the Orange County District Attorney's Office (OCDA) seized the files of Christopher Diener, an attorney with whom they had associated. The OCDA took computer equipment and approximately 100 of their loan modification files, which it would release only to another attorney willing to assume responsibility for these clients. Since Huang had been experiencing financial problems and wanted to expand his law practice, he decided to take on this role.

[3] All further references to sections are to the Business and Professions Code unless otherwise noted.

In August 2009, Huang met with representatives from the OCDA and the State Bar. He confirmed that only Diener, not Campoy or Martinez, was the subject of criminal charges. He explained he planned to hire NMS staff to help process the loan modification files. The representatives cautioned him that he must comply with pending loan modification laws or they would "shut him down." Huang assured them he would, and the OCDA released the files to him.

On October 1, 2009, about a week before the new loan modification laws became effective, Huang opened a branch office in Corona under the fictitious business name Jack Law Group to handle loan modification and bankruptcy cases. Campoy and Martinez closed NMS and notified clients that their cases would be processed by Huang's firm. Huang hired Campoy and Martinez as co-managers of the Corona office, along with four to six loan modification processors from NMS.

C. Huang's Office Procedures for Processing Loan Modification Cases

Huang established office procedures at the new Corona branch and used a "Legal Representation Agreement" that provided for "fixed legal fees" ranging from $2,000 to $3,200 for loan modification services. He instructed his staff that: (1) they could not give legal advice or make promises about obtaining a loan modification; (2) only Campoy or Martinez could provide the Legal Representation Agreement to clients; (3) if the bank denied a loan modification application, the case should be referred to Huang; and (4) if a client complained or asked to speak to him, a meeting should be arranged. At times, Huang would meet with staff to go over certain files. He promoted an open-door policy to discuss cases, and reprimanded or terminated employees who did not follow his procedures.

Huang designed the loan modification process to occur in three stages: (1) client intake; (2) compliance; and (3) submission to the bank. If the lender refused to modify the loan, Huang was to meet with the client to discuss other legal strategies such as a short sale, bankruptcy, or

wrongful foreclosure lawsuit. If the lender agreed to consider a loan modification, Martinez would present the potential client with the Legal Representation Agreement and, pursuant to the contract, "fixed legal fees" would be charged. After a processor completed the loan modification package and submitted it to the lender, the client's check was deposited—before all legal services were performed.

However, as discussed below, Huang's procedures were flawed from the start because he created a lay negotiating service where nonlawyers practiced law. His nonattorney staff performed all the loan modification services outlined in his Legal Representation Agreement—they met with clients, gave advice, collected legal fees, prepared the loan modification package, and negotiated with the lender. Huang did not properly supervise his staff's work on loan modification cases.

D. Huang Lost Control of his Corona Law Office

Between 2009 and 2010, Huang's loan modification and bankruptcy practice grew dramatically. His website and radio and television advertisements in English and Spanish attracted many new clients. By September 2011, the Corona office had accepted between 500 and 800 loan modification clients and Huang was depositing $50,000 monthly into his general account. He made Martinez a signatory on the account, increased his staff to 30, and started charging new clients a monthly service fee of $350. Also, his free bankruptcy consultations grew to 30 per month, with 15 filings. Huang spent three to four days per week in the Corona office and attorney Wang moved from the Newport Beach office to work in Corona on a full-time basis.

In March 2011, Huang discovered accounting irregularities and that his employees were violating office procedures. For example, Campoy and Martinez were not permitting clients to meet with Huang and were covering up complaints. By September 2011, Huang realized he had

lost control of the Corona office and decided to close it. On September 6, 2011, he fired his entire staff of 30, including Campoy and Martinez, and instructed them to stop working on files. The employees ignored his demand and continued to work with Campoy and Martinez under a new firm name of "MarCam Law Group," after associating with a new attorney, Charlotte Spadero. When Huang attempted to retrieve his files, Campoy and Martinez released only the bankruptcy cases, changed the locks, and threatened physical violence if he returned.

On September 26, 2011, Huang sent a cease-and-desist letter to Campoy and Martinez, attempting to dissociate himself from them and the Corona office. He also took steps to shut down the website. Huang notified the Riverside County District Attorney's Office and the State Bar, and cooperated with them in describing his activities and relationship with Campoy and Martinez. With the help of his secretary, he reconstructed a partial client list and sent letters informing clients of his status.

Huang testified at his disciplinary trial that he is currently practicing bankruptcy and foreclosure litigation with a "drastically reduced" workload. He explained: "I don't take on anything that I cannot handle." He has made full restitution to most clients on installment payment plans, and filed a lawsuit in 2012 against Campoy and Martinez seeking damages, an accounting, and injunctive relief.

II. UNDISPUTED CULPABILITY IN EIGHT CLIENT MATTERS

The State Bar charged Huang with 49 counts of misconduct based on the complaints of nine loan modification clients. The hearing judge dismissed all five charges in one matter (Zamarripa, Case No. 11-O-19312) for insufficient proof because the client's testimony was not credible.[4] The record supports these dismissals, and we adopt them. The hearing judge found

[4] Those charges were for failure to competently perform, failure to employ means consistent with the truth, failure to communicate, failure to maintain client funds in trust, and moral turpitude by misappropriation.

culpability for 21 counts in the eight remaining client matters. Huang does not contest these findings, and we adopt all but one. We summarize the facts and culpability in these eight client matters.

A. Chinchilla Matter (Case No. 11-O-15502)

In March 2011, Rosa Chinchilla met with Huang's employee, Koretza Kihm, at the Corona office to discuss a possible loan modification. Huang introduced himself to Chinchilla and told her they would take good care of her; he never met with her again or performed any work on her case. Kihm advised Chinchilla that she qualified for a loan modification. As a result, Chinchilla hired Huang and signed a "Legal Representation Agreement" to provide "Mortgage Loan Modification Assistance" and "Mitigation Work" for "fixed legal fees" of $3,000. Huang stipulated he did not provide Chinchilla with a separate statement informing her she need not pay a third party to arrange a loan modification. Chinchilla paid the $3,000 fee. In May 2011, Campoy told Chinchilla that she did not qualify for a loan modification and, instead, should pursue a short sale. A few days later, Chinchilla demanded a full refund. By May 2013, Huang repaid Chinchilla's full fee with interest.

Huang stipulated to the following misconduct: (1) he did not render all services he contracted to perform before he collected fees in violation of section 6106.3; (2) he failed to perform competently by not supervising his nonattorney staff, resulting in their giving of inconsistent legal advice to Chinchilla, in violation of the Rules of Professional Conduct, rule 3-110(A)[5]; and (3) he did not provide a separate statement that it is not necessary to use a third party to negotiate a loan modification in violation of section 6106.3.

[5] All further references to rules are to this source. Rule 3-110(A) provides that an attorney must not "intentionally, recklessly, or repeatedly fail to perform legal services with competence."

B. Smith Matter (Case No. 11-O-16082)

In May 2009, Randy, Roberta, and Susan Smith hired NMS to obtain a loan modification; they paid $1,995 in fees. In August, an NMS representative informed them their lender authorized a trial loan modification, but this was false. In October 2009, the Smiths were told that their case was transferred to Law Offices of Jack Huang, all loan modification documents had been submitted to the lender, and further fees should be paid to Huang. Huang informed the Smiths they owed an additional $1,500 under a "new payment plan," but they refused to pay until the loan modification had been secured. In December 2009, Kelly Yandell, a Huang employee, directed the Smiths to send their lender a cashier's check for $1,603.42 for the trial loan modification. The Smiths sent the check but the lender returned it to Jack Law Group because no trial loan modification had ever been arranged.

In January 2010, Yandell emailed the Smiths a "Legal Representation Agreement" for Jack Law Group for "fixed legal fees" of $2,000 for "Mitigation Work" and/or "Mortgage Restructuring/Modification." The Smiths did not sign the agreement and shortly thereafter received a notice of Trustee's Sale. The Smiths demanded that Martinez return their cashier's check, but he refused unless they paid a $1,500 outstanding balance to Jack Law Group. Huang's office turned the matter over to a collection agency and the Smiths disputed the debt. Eventually, Campoy returned the cashier's check but did not produce the client file the Smiths had requested.

Huang stipulated to the following misconduct: (1) he did not render all services he contracted to perform before he collected fees in violation of section 6106.3; and (2) he failed to perform competently by not performing any services of value and failing to supervised his nonattorney staff resulting in their representing to the Smiths that they had a trial modification when in fact that was not true in violation of rule 3-110(A).

The hearing judge found Huang culpable of two additional violations: rule 4-100(B)(4)[6] for delaying return of the Smiths' cashier's check for a year after they requested it, and rule 3-700(D)(1)[7] for not releasing the Smiths' file to them despite their April 2011 request. We agree. (See *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rtpr. 725, 735 [six-week delay in disbursing client's share of settlement without compelling reason violated rule 4-100(B)(4)]; *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 958 [two-month delay providing file to new attorney violated rule 3-700(D)(1)].)

C. Solarzano Matter (Case No. 11-O-16524)

In August 2010, after hearing a radio advertisement, Efren Solarzano met with Huang's employee, David Preciado, who promised him a loan modification. Huang did not meet with Solarzano at any time nor did he supervise Preciado. Solarzano signed a "Legal Representation Agreement" wherein Huang agreed to provide "Mortgage Restructuring/Modification Assistance" and "Mitigation Work" for "fixed fees" of $2,500. Solarzano paid the fee. Around June 2011, Preciado told Solarzano the lender agreed to accept reduced payments for two years. Solarzano requested the offer in writing, but Preciado would not comply. When Solarzano demanded a full refund, Preciado refused to pay it. In June 2013, Huang repaid Solarzano's fee with interest.

Huang stipulated to the following misconduct: (1) he did not render all services he contracted to perform before he collected fees in violation of section 6106.3; and (2) he failed to perform competently by not supervising his nonattorney staff in violation of rule 3-110(A).

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[6] This rule requires an attorney to promptly "pay or deliver, as requested by the client, any funds, securities, or other properties" in the attorney's possession that the client is entitled to receive.

[7] This rule requires an attorney, upon termination of employment, to promptly release, at the client's request, all client papers and property.

D. Cortez Matter (11-O-18784)

In October 2010, after hearing a radio advertisement, Elvia Cortez consulted with "Araceli," one of Huang's employees, to discuss a loan modification. Arcaceli promised she would be able to obtain the loan modification. Cortez signed a "Legal Representation Agreement" with Huang to provide "Mortgage Restructuring/Modification Assistance" and "Mitigation Work" for "fixed legal fees" of $3,000. Cortez paid the fee in four installments. On January 21, 2011, the day after the final installment was paid, Cortez received a letter from the lender denying her request for a loan modification. In May 2011, Cortez met for the first time with Huang and demanded a full refund. Huang advised her to file for bankruptcy, but she declined. The lender sold her home at a foreclosure sale that month. By May 2013, Huang repaid Cortez's fee with interest.

Huang stipulated to the following misconduct: (1) he did not render all services he contracted to perform before he collected fees in violation of section 6106.3; and (2) he failed to perform competently by not supervising his nonattorney staff in violation of rule 3-110(A).

E. Monroy Matter (11-O-19333)

In September 2010, after hearing a radio advertisement, Santa Monroy consulted with Martinez to discuss a loan modification; she never met with Huang. Monroy signed a "Legal Services Agreement" for Huang to provide "Mortgage Restructuring/Modification Assistance" and "Mitigation Work" for "fixed legal fees" of $3,200. Monroy paid the fee in installments plus an additional $350 "Monthly File Management Fee." In January 2011, Monroy received a letter from the lender denying her request for a loan modification because it had not received all requested documents. In April 2011, Monroy received another letter from the lender notifying her that Huang had not confirmed he represented her. In August 2011, Monroy terminated

Huang's services and demanded a full refund. By May 2013, Huang repaid Monroy's fee with interest.

Huang stipulated to the following misconduct: (1) he did not render all services he contracted to perform before he collected fees in violation of section 6106.3; and (2) he failed to perform competently by not supervising his nonattorney staff in violation of rule 3-110A.

F. Pourtemour Matter (12-O-10134)

In October 2010, after hearing a radio advertisement, Michele Pourtemour met with Preciado and another nonattorney about a possible loan modification. Huang's staff told Pourtemour her case was easy and she should receive a loan modification within two months. She signed a "Legal Representation Agreement" with Huang to provide "Mortgage Restructuring/Modification Assistance" and "Mitigation Work" for "fixed legal fees" of $3,000, payable in four installments. She paid the first installment of $1,500 that day. Huang did not meet with Pourtemour nor did he supervise Preciago or other nonattorneys handling the case.

In December 2010, Pourtemour's lender notified her that it was foreclosing on her home. Pourtemour contacted Huang employee, Vanessa Griego, who told her she would arrange for the foreclosure sale to be stopped. Griego contacted the wrong lender, which left Pourtemour to obtain an extension of the foreclosure sale by herself. When Pourtemour complained, Yandell told her the lender approved a permanent loan modification, and instructed her to send a mortgage payment to her lender, which she did. A few days later, the lender foreclosed on Pourtemour's house, denying it had ever approved a loan modification. Huang did not provide Pourtemour with her loan modification file after she requested it. In June 2013, Huang refunded $1,500 to Pourtemour, but he still owes her interest.

Huang stipulated to the following misconduct: (1) he did not render all services he contracted to perform before he collected fees in violation of section 6106.3; and (2) he failed to perform competently by not supervising his nonattorney staff in violation of rule 3-110(A).

The hearing judge also found Huang culpable of violating rule 3-700(D)(1) for not releasing the Pourtemour's file to her despite her repeated requests. We agree.

However, we disagree with the hearing judge's conclusion that Huang violated section 6106.3 by failing to provide a separate statement informing Pourtemour that it is not necessary to use a third party to negotiate a loan modification. The record reveals that Huang provided the separate statement with the Legal Representation Agreement. He is therefore not culpable of this charge, and we dismiss it.

G. Lopez Matter (12-O-12540)

In August 2010, after hearing a radio advertisement, Rodolfo and Lorena Lopez consulted with Araceli Ferrera, one of Huang's employees, to discuss a loan modification. Ferrera promised that Jack Law Group would save their home. She told the couple that their bank confirmed by telephone that they qualified for a loan modification, and Huang would charge $3,000 to handle their case. When they objected to the fee, Ferrera and another nonattorney employee negotiated the fee to $2,500, payable in five monthly installments. Rodolfo Lopez signed a "Legal Representation Agreement" with Huang to provide "Mortgage Restructuring/ Modification Assistance" and "Mitigation Work" for the $2,500 in renegotiated "fixed legal fees."

Between August 2010 and February 2011, the Lopezes requested status updates. Their assigned processor and his manager assured them the application was proceeding well. But in February 2011, the clients were notified their house was scheduled for a Trustee's Sale the

following month. In June 2013, Huang refunded $2,500 to the Lopezes, but still owes them interest.

Huang stipulated to the following misconduct: (1) he did not render all services he contracted to perform before he collected fees in violation of section 6106.3; and (2) he failed to perform competently by not supervising his nonattorney staff in violation of rule 3-110(A).

H. Covarrubias Matter (12-O-14025)

In July 2011, after hearing a radio advertisement, Jesus Covarrubias hired Huang to complete a loan modification. Covarrubias met with nonattorney employee, Juan Sanchez, and paid a $3,000 fee in two $1,500 payments. He later paid an additional $500 to MarCam Law Group and in October 2011 learned that Jack Law Group and/or MarCam Law Group was trying to secure a short sale rather than a loan modification, without his permission. He went to the Corona office and demanded a full refund, but one of Huang's nonattorney staff refused. Covarrubias obtained a loan modification without Huang's assistance in April 2012. By May 2013, Huang refunded the full fee with interest.

Huang stipulated to the following misconduct: (1) he did not render all services he contracted to perform before he collected fees in violation of section 6106.3; and (2) he failed to perform competently by not supervising his nonattorney staff in violation of rule 3-110(A).

III. HUANG AIDED AND ABETTED UPL

The State Bar charged Huang with aiding and abetting UPL in each client matter in violation of rule 1-300(A).[8] The hearing judge found him not culpable. We disagree. Huang aided and abetted UPL by allowing nonattorneys to practice law and by failing to supervise their work.

[8] This rule states "A member shall not aid any person or entity in the unauthorized practice of law."

The practice of law embraces a wide range of activities, such as giving legal advice and preparing documents to secure client rights (*People v. Merchants Protective Corp*. (1922) 189 Cal. 531, 535), as well as negotiating a settlement or agreement (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 603-604 [negotiating settlement with opposing counsel constitutes practice of law]). Huang entered into a "Legal Representation Agreement" with his clients wherein he described the scope of his "Attorney's Duties" and the specific services for which he was entitled to collect "fixed legal fees," including case analysis, financial analysis, package preparation, "live" calls to the lender, negotiation, and follow-up. Under his standard procedures, he was not involved in any case unless his staff consulted him. Thus, in a routine client request for loan modification, Huang knew that nonattorneys performed *all* legal services under his fee agreement. These activities constituted the practice of law. (See *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].)

In essence, Huang created a lay negotiating service that permitted nonlawyers to practice law and elevated profit above the clients' interests. When attorneys employ such a practice, they are culpable of aiding and abetting UPL. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 520 [attorney aided and abetted UPL by relying on nonattorneys to prepare and file client documents]; *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615, 625 [attorney aided UPL by permitting nonlawyer staff to accept clients in his name and conduct negotiations with little or no input from him].) Clearly, the clients contracted with the "Jack Law Group" and paid "fixed legal fees" for legal services and case analysis by an attorney; instead the work was performed by lay individuals. Huang's lack of oversight provided fertile ground for his employees to engage in UPL and make misrepresentations to his clients. "Although [loan modification] services might lawfully have been performed by . . . brokers, and

other laymen, it does not follow that when they are rendered by an *attorney, or in his office,* they do not involve the practice of law. People call on lawyers for services that might otherwise be obtained from laymen because they expect and are entitled to legal counsel." (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 667-668, italics added.) By delegating all the work on loan modification cases to nonattorney staff, Huang failed to "competently evaluate the client's claim and represent the client appropriately." (*In the Matter of Bragg, supra,* 3 Cal. State Bar Ct. Rptr. at p. 626.) Accordingly, we find he violated rule 1-300(A) in all eight client matters.[9]

IV. AGGRAVATION AND MITIGATION

The State Bar must establish aggravating circumstances by clear and convincing evidence[10] (former std. 1.2(b)), and Huang has the same burden to prove those in mitigation (former std. 1.2(e)). The parties do not contest the hearing judge's aggravation findings that Huang committed multiple acts of misconduct and caused significant client harm. Nor do they contest the findings in mitigation that Huang has no prior record of discipline, proved good character, displayed remorse, and was cooperative. We adopt these factors in mitigation and aggravation and reject Huang's request for additional mitigation for his good faith interpretation

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[9] The State Bar also charged Huang in each client matter with: (1) permitting Campoy and Martinez to misuse his name in violation of section 6105; and (2) moral turpitude in violation of section 6106 for misleading clients into believing he ran the loan modification practice. The hearing judge dismissed these charges, which we adopt; the State Bar conceded at oral argument that the section 6105 charge is duplicative of the rule 1-300(A) violation (aiding and abetting UPL), and we find insufficient proof of the moral turpitude charge.

We further agree with the hearing judge's dismissal of three counts of failing to communicate in violation of section 6068, subdivision (m) in the Smith, Pourtemour, and Covarrubias matters since Huang was unable to access client contact information after being locked out of his office. (See *In the Matter of Kaplan* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 509 [attorney not culpable for failing to communicate where there was evidence that secretary hid client letters for four months]; *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622 [for ethical violation to be willful, there must be proof of intent to commit act or omission].)

[10] 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.)

of loan modification laws. Overall, we find that the aggravation slightly outweighs the mitigation given the minimal weight we assign to Huang's three and one-half years of discipline-free practice and his limited good character evidence.

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, to preserve public confidence in the profession, and to maintain high professional standards for attorneys. (Former std. 1.3.) Ultimately, we balance all relevant factors 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.) To determine the proper discipline, our Supreme Court instructs us to follow the standards "whenever possible." (*Id.* at p. 267, fn. 11.)

Former standards 2.4(b) (failure to perform services) and 2.10 (encompassing aiding and abetting UPL and violating loan modification laws) apply to Huang's most serious misconduct.[11] These standards call for reproval to suspension depending on the extent of the misconduct and the degree of client harm. Huang's conduct was serious and the harm to his clients was significant. He disregarded loan modification statues that "provided fair notice to [Huang] that he must not collect any up-front fees for loan modification services." (*In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 236.) Moreover, he harmed clients by collecting unauthorized legal fees and depriving them of their money when they were financially vulnerable.

Given the broad range of discipline suggested by the standards (reproval to suspension), we look to case law for guidance. (See, e.g., *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) Our research reveals no single decision that addresses Huang's varied misconduct.

[11] As of January 1, 2014, standard 2.5 replaces standard 2.4, and standard 2.15 replaces standard 2.10. Since this case was submitted for ruling in 2013, former standards 2.4 and 2.10 apply. However, the new standards do not conflict with the former ones.

However, individual cases guide us on aspects of Huang's wrongdoing, including violation of loan modification laws,[12] aiding and abetting UPL,[13] and failing to competently perform.[14]

Overall, we view Huang's culpability, mitigation, and aggravation to be most analogous to *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411. The attorney in *Jones* was suspended for two years because he failed to competently perform, formed a partnership with nonlawyers, split fees with them, and aided and abetted UPL in more than 350 personal injury cases over two years. (See *id.* at p. 420.) Jones's lack of supervision allowed "a nonlawyer to operate a large-scale personal injury practice" involving illegal and fraudulent practices. (*Id*. at p. 415.) The misconduct was aggravated by multiple acts and significant harm to medical lienholders, and was mitigated by good character, community activities, objective steps taken to make the lienholders whole, and full cooperation with the State Bar and other authorities. (*Id.* at p. 419.)

Like the attorney in *Jones,* Huang implemented office procedures so he could run a high-volume loan modification practice with little or no personal involvement. As we concluded in *Jones*, "inadequate supervision . . . made possible exactly what transpired here." (*In the Matter of Jones*, *supra,* 2 Cal. State Bar Ct. Rptr. at p. 420.) Huang's employees accepted clients for

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[12] *In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. 221 (six-month suspension for eight counts of charging pre-performance loan modification fees and one count of failing to provide loan modification separate statement; aggravated by client harm, multiple acts, no remorse and mitigated by good character).

[13] *In the Matter of Bragg, supra*, 3 Cal. State Bar Ct. Rptr. 615 (one-year suspension for incompetent performance, fee splitting with nonlawyer, moral turpitude, violation of agreement in lieu of discipline, and disobedience of court order; aggravated by uncharged misconduct involving aiding UPL and mitigated by good character, community service, and remedial changes in office procedure).

[14] *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468 (two-year suspension for failing to competently perform, communicate, account, maintain client funds in trust and moral turpitude for permitting nonlawyers to conduct initial client interviews, prepare retainers and negotiate settlements; aggravated by prior private reproval, multiple acts, client harm, uncharged misconduct involving fee splitting, no rehabilitation or effort to atone for wrongdoing and mitigated by cooperation).

representation, directed them to pursue loan modifications, promised them successful outcomes, advised other remedies such as a short sale, negotiated legal fees, and even made misrepresentations. Although Huang claims he was not aware of much of his employees' conduct, his operation was designed to fail since he rarely, if ever, managed client cases despite his agreement to provide his legal services. Nor did he approve or supervise his staff's work. Our Supreme Court has acknowledged that while "an attorney cannot be held responsible for every detail of office procedure, he must accept responsibility to supervise the work of his staff." (*Vaughn v. State Bar* (1972) 6 Cal. 3d 847, 857].)

Given 28 counts of misconduct in eight client matters, aggravating factors that slightly outweigh mitigation, and guidance from comparable case law, we recommend the discipline urged by the State Bar—that Huang be suspended for two years, continuing until he completes restitution and satisfies standard 1.2(c)(1). A lesser discipline would not protect the public, the courts, or the legal profession.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Jack Chien-Long Huang be suspended from the practice of law for three years, that execution of that suspension be stayed, and that Huang be placed on probation for three years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first two years of the period of his probation, and remain suspended until the following conditions are satisfied:

    a. He pays 10% interest to Michele Pourtemour that accrued on the principal amount of $1,500 from October 20, 2010 (or reimburses the Client Security Fund to the extent of any payment from the Fund to Michele Pourtemour, in accordance with Business and Professions Code section 6140.5) and pays 10% interest to Rodolfo and Lorena Lopez that accrued on the principal amount of $2,500 from August 21, 2010 (or reimburses the Client Security Fund to the extent of any payment from the Fund to the Lopezes, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof to the State Bar Office of Probation in Los Angeles; and,

b. He provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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

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

4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation 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.

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.)

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 Huang has complied with all conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Huang be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of his actual suspension in this matter 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).)

RULE 9.20

We further recommend that Huang 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

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, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.