PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed June 8, 2018

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case Nos. 15-O-10933 (15-O-11088;
	)	15-O-11089; 15-O-11125; 15-O-11126;
JEFFREY ALLEN LEWISTON,	)	15-O-11165; 15-O-11166)
	)	
A Member of the State Bar, No. 126827.	)	OPINION
	)	

A hearing judge found Jeffrey A. Lewiston culpable of six counts of the unauthorized practice of law (UPL) in another jurisdiction and seven counts of collecting an illegal fee. The judge found aggravation for multiple acts, significant harm, and the vulnerability of Lewiston's clients. He also found mitigation for Lewiston's lack of prior discipline, cooperation, and good character evidence. Weighing all the circumstances and applying case law, the judge recommended discipline including an actual suspension of six months.

Lewiston appeals, seeking greater weight for mitigation and less for aggravation. He submits that his misconduct should result in a stayed suspension. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and asks that we affirm the hearing judge's findings and discipline recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's findings and discipline recommendation. We affirm all but one of the judge's aggravation and mitigation findings, with adjustments to some of those in the weight assigned.

I. PROCEDURAL BACKGROUND

On December 16, 2015, OCTC filed a 14-count Notice of Disciplinary Charges alleging misconduct in seven cases. In each case, OCTC alleged that Lewiston (1) violated rule 1-300(B) of

the Rules of Professional Conduct[1] by holding himself out as entitled to practice law and entering into legal service agreements in five states where he provided loan modification services when he was not licensed to practice law in those states, and (2) violated rule 4-200(A)[2] by charging and collecting fees for those services in each state where he was not entitled to practice law.

On March 7, 2016, the matter was abated because the Federal Trade Commission (FTC) took possession of Lewiston's client files for its investigation of a loan modification company with which Lewiston was associated. The matter was unabated on March 8, 2017, and a trial was held on June 20, 2017. The parties filed a lengthy stipulation to facts and the admissibility of trial exhibits on June 12, 2017. The hearing judge issued his decision on October 6, 2017.

II. FACTS[3]

A. Background Information

Lewiston was admitted to the practice of law in California on December 12, 1986; he is also admitted to practice law in Michigan. This disciplinary proceeding arises from Lewiston's interactions with former clients in five states: North Carolina, Washington, New York, Illinois, and Georgia. At no time relevant to this proceeding was Lewiston admitted to practice law in any of these states.

In 2012, Lewiston became involved with an already-existing nationwide loan modification business named A to Z Marketing, Inc. (A to Z). On May 15, 2012, he organized and incorporated Top Legal Advocates, P.C. (TLA) as a Michigan "Domestic Profit Corporation"

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[1] All further references to rules are to this source, unless otherwise noted. Rule 1-300(B) provides that "A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction."

[2] Rule 4-200(A) provides that "A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee."

[3] The facts are based on the parties' joint Stipulation as to Facts and Admission of Documents (Stipulation), trial testimony, documentary evidence produced at trial, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

pursuant to Michigan law. TLA was wholly owned by Lewiston, and he was its sole employee. TLA had advertisements sent to individuals throughout the country, offering loan modification services to distressed homeowners (TLA advertisement). When homeowners signed up with TLA, the legal services were almost exclusively provided by non-attorney personnel employed by A to Z, whom Lewiston did not hire, train, or supervise. These non-attorney personnel associated with A to Z would obtain the necessary information from TLA clients, but he did not know how client files were forwarded to A to Z.

Clients who retained TLA were presented with a form contract entitled "Attorney-Client: Mortgage Modification Service Agreement" (MSA).[4] The MSA indicated that those who signed it were retaining an attorney for legal services; it identified TLA as "Attorney" and was signed by Lewiston as "Attorney at Law." The MSA specifically reserved to TLA the option to use other people to assist in performing the work, but this option was limited to performing tasks "*at the direction, supervision and discretion of the Attorney.*" The MSA provided that all work would be under "close attorney supervision," and the client's contact would be through either the attorney or individuals supervised by the attorney. Despite this language, Lewiston did not identify, hire, or supervise any of the affiliated attorneys. He testified that TLA did not require much supervision on his part, and he expected the affiliated attorneys to manage client files. However, he also testified that he did not send client files to those attorneys and that he did not know who did.

TLA stopped entering into new contracts in February 2013. In addition, its operations were terminated in late June 2013 when a federal court handling an FTC action against A to Z enjoined TLA from having clients, and the FTC seized TLA's client files and froze its bank accounts.

[4] As discussed further in this opinion, each client signed the standard MSA except Lewiston's Illinois client, Martha Krainyk, who signed a different agreement.

B. North Carolina Client—Case No. 15-O-11165 (Arsenic Matter)

The parties stipulated that Enisa Arsenic (Arsenic), a resident of North Carolina, contacted TLA in May 2012 after receiving the TLA advertisement. Based on representations made by a non-attorney representative of TLA, Arsenic agreed to retain TLA to seek a modification of the mortgage loan on her North Carolina property. On May 18, 2012, she signed the standard MSA. She was never told, and the agreement did not disclose, that Lewiston was not admitted to practice law in North Carolina.

Pursuant to the MSA, on May 18, 2012, Arsenic paid $598. In June 2012, Arsenic learned of complaints against TLA, and she terminated its services. During the time that Arsenic was a client, TLA was not affiliated with any attorney licensed to practice law in North Carolina. She subsequently requested a refund, and after she spoke with two non-attorney affiliates, her request was denied. On June 13, 2012, Arsenic filed a complaint against Lewiston with the North Carolina State Bar's Authorized Practice Committee. In November 2012, Arsenic received a refund of the $598 she had paid.

C. North Carolina Clients—Case No. 15-O-10933 (Kuhr Matter)

The parties stipulated that Robert and Laura Kuhr (the Kuhrs), residents of North Carolina, contacted TLA in September 2012 after receiving the TLA advertisement. Based on representations by Brandon Wolf, a non-attorney acting for TLA, the Kuhrs agreed to retain TLA to seek modifications of two mortgage loans encumbering their North Carolina property.

On September 17, 2012, the Kuhrs signed the standard MSA, and paid TLA $1,800 in attorney fees. At the time the Kuhrs entered into the fee agreement and paid the $1,800, neither Lewiston nor anyone affiliated with TLA was authorized to practice law in North Carolina. The Kuhrs were never told, and the fee agreement did not disclose, that Lewiston was not admitted to

practice law in North Carolina. In October 2012, TLA submitted a loan modification package to Bank of America on behalf of the Kuhrs, and later followed up with conversations with the bank.

On November 15, 2012, TLA entered into a Lawyer Affiliation Agreement with Shayla Richberg, a licensed attorney in North Carolina. The Kuhrs never spoke with Lewiston, Richberg, or any other attorney affiliated with TLA. In November 2012, the Kuhrs terminated the relationship with TLA. They did not request a refund, and none was provided.

D. Washington Clients—Case No. 15-O-11088 (Asido Matter)

The parties stipulated that Jose and Hermie Asido (the Asidos), residents of Washington, received the TLA advertisement in January 2012. On August 2, they contacted TLA and spoke with Dulce Catalan, a non-attorney. Based on Catalan's representations, the Asidos agreed to retain TLA to seek a modification of the mortgage loan on their property in Washington.

On August 3, 2012, the Asidos signed the standard MSA. They were never told, and the agreement did not disclose, that neither Lewiston nor anyone affiliated with TLA was admitted to practice law in Washington. The Asidos paid $3,500 for attorney fees in three installments: $1,750 on August 7; $875 on September 5; and $875 on October 10.

On August 7, 2012, TLA entered into a Lawyer Affiliation Agreement with Shane Lidman, a Washington attorney. The Asidos never spoke with Lewiston, Lidman, or any other attorney affiliated with TLA about their matter, and no evidence indicates that Lewiston, Lidman, or any other attorney ever reviewed or worked on their matter. On August 27, TLA submitted a loan modification application for the Asidos to their lender.

On September 12, 2012, Gary Johnson, a non-attorney, submitted the Asidos' workout loan modification package to the lender. In November, Lidman terminated his affiliation with TLA, and the lender denied the loan modification. The Asidos then demanded a full refund from TLA. Lewiston has not returned any fees paid by the Asidos.

E. Washington Clients—Case No. 15-O-11166 (Petty Matter)

The parties stipulated that Damian and Traci Petty (the Pettys), residents of Washington, received the TLA advertisement in October 2012. On October 10, based on representations made by non-attorney representatives of TLA, the Pettys entered into the standard MSA to retain TLA to modify the loan on their property in Washington. They were never told, and the agreement did not disclose, that Lewiston was not admitted to practice law in Washington. The Pettys paid TLA $4,295 in two installments: $2,147.50 on October 10 and $2,147.50 on November 10.

The Pettys did not speak to Lewiston or any other TLA-affiliated attorney. Although the Lawyer Affiliation Agreement between Lidman and TLA became effective on August 7, 2012, Lidman did not supervise the loan modification services TLA provided to the Pettys. They never spoke to Lidman, and he terminated his affiliation with TLA in November 2012.

In August 2013, the Pettys filed a complaint with the Michigan Attorney Grievance Commission. In response, Lewiston refunded the entire $4,295 to the Pettys in 2014.

F. New York Client—Case No. 15-O-11089 (Metelus Matter)

The parties stipulated that Jean Ysalem Metelus (Metelus), a resident of New York, received the TLA advertisement on or before October 2012. Metelus contacted TLA and spoke with Daniel Ysais, a non-attorney individual affiliated with TLA. On October 14, 2012, based on Ysais's representations, Metelus signed the standard MSA to modify the loan on her property in New York. She was never told, and the agreement did not disclose, that Lewiston was not admitted to practice law in New York. Metelus paid TLA $3,000 in three installments: two installments, one for $1,500 and the other for $750, were immediately withdrawn from Metelus's account. By January 1, 2013, Metelus paid the final $750.

At all relevant times, TLA maintained an affiliated attorney relationship with William Goodrich, who was licensed to practice law in New York. However, Metelus never spoke with Lewiston, Goodrich, or any other TLA-affiliated attorney about any substantive issue related to her loan modification matter. Lewiston has not refunded the $3,000 Metelus paid.

G. Georgia Client—Case No. 15-O-11126 (Mueller Matter)

The parties stipulated that Ian Mueller (Mueller), a resident of Georgia, received the TLA advertisement in August 2012. Mueller called TLA, and talked with Catalan. Based on Catalan's representations, Mueller agreed to retain TLA to seek modifications of two mortgage loans encumbering his property in Georgia. On August 28, 2012, Mueller signed the standard MSA to retain TLA to modify the loans on his property in Georgia. He was never told, and the fee agreement did not disclose, that Lewiston was not admitted to practice law in Georgia. Pursuant to the agreement, Mueller paid $3,500 in three installments: $1,750 on August 30; $875 on September 30; and $875 on October 30.

TLA did not have an affiliation agreement with any attorney admitted to practice law in Georgia. The parties stipulated that on or before October 15, TLA submitted a loan modification package to Mueller's mortgage holder, which denied it on December 12. On December 28, 2012, Mueller terminated TLA's representation, and thereafter complained to the State Bar of California. Lewiston has not refunded any fees paid by Mueller.

H. Illinois Client—Case No. 15-O-11125 (Krainyk Matter)

The parties stipulated that Martha Krainyk (Krainyk), a resident of Illinois, received the TLA advertisement, and called TLA in September 2012. Based on representations made by non-attorneys affiliated with TLA, Krainyk agreed to retain TLA for a loan modification of her first mortgage on her Illinois property.

On November 8, 2012, TLA signed a Lawyer Affiliation Agreement with Robert Lawson, an Illinois attorney. Lawson did not supervise or in any way monitor the loan modification services provided to Krainyk. Krainyk never spoke to Lewiston or any other TLA-affiliated attorney about any substantive issue regarding her loan modification. She was never told that Lewiston was not admitted to practice law in Illinois.

Krainyk paid $750 in attorney fees on both January 5 and 7, 2013. On January 16, she signed a "Attorney-Client: Mortgage Loan Audit and Analysis Service and Fee Agreement," in which TLA agreed to review, analyze, and audit her mortgage loan documents and prepare a report regarding possible regulatory violations, for a flat fee of $1,500. However, on February 13, March 6, and March 8, 2013, Krainyk made three additional $750 attorney fee payments. On March 4, 2014, Krainyk filed a complaint with the Michigan Attorney Grievance Commission. Krainyk has not requested, and Lewiston has not repaid, any fees paid by Krainyk.

III. LEWISTON IS CULPABLE ON ALL COUNTS EXCEPT ONE

Based on the Stipulation, trial testimony, and exhibits introduced at trial, the hearing judge found Lewiston culpable of six counts of UPL in another jurisdiction, in violation of rule 1-300(B), and seven counts of collecting an illegal fee, in violation of rule 4-200(A). The judge's culpability findings for UPL were based on Lewiston's practice of law in North Carolina, Washington, New York, and Georgia, when doing so violated the statutes of those states.[5] The judge further found that the fees charged and collected by Lewiston for clients in those states were illegal under rule 4-200(A).

[5] Section 84-4 of the North Carolina General Statutes provides that it is unlawful for any person "except active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law . . . to hold out . . . themselves, as competent or qualified to give legal advice or counsel . . . ." Section 2.48.170 of the Revised Code of Washington provides, "No person shall practice law in this state . . . unless he or she shall be an active member [of the state bar] . . . ." New York Consolidated Laws, Judiciary Law section 478 provides, "It shall be unlawful for any natural person . . . to hold himself or herself out to the public as being entitled to practice law . . . without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath." Georgia Code section 15-19-51, subdivision (a), provides, "It shall be unlawful for any person other than a

As for the Krainyk matter, the hearing judge found that the record did not contain clear and convincing evidence[6] to prove UPL by Lewiston in Illinois.[7] However, as with the other clients, the judge found that Lewiston was culpable for collecting illegal fees.[8] We adopt these unchallenged findings as supported by the record, and focus on the issues Lewiston raises on review: aggravation, mitigation, and level of discipline.

IV. AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5[9] requires OCTC to establish aggravating circumstances by clear and convincing evidence; standard 1.6 requires Lewiston to do the same to prove mitigation. The hearing judge found three aggravating circumstances and three mitigating circumstances, and we affirm all but one with different weights assigned to those affirmed.

A. Aggravation

1. Multiple Acts (Std. 1.5(b))

The hearing judge found that Lewiston's multiple acts of misconduct constituted an aggravating circumstance, but assigned no weight. On review, Lewiston challenges this finding in aggravation, arguing that he did not engage in multiple acts because his misconduct stemmed solely from his operation of TLA. OCTC submits that Lewiston's multiple acts are a serious

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duly licensed attorney at law . . . [t]o hold himself out to the public . . . as being entitled to practice law . . . ."

[6] 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.)

[7] The parties stipulated to facts that the hearing judge found to be "scant, confusing and contradictory." We agree with the judge regarding those facts.

[8] Chapter 705, Act 205, section 1, of the Illinois Compiled Statutes provides that "[n]o person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney . . . ."

[9] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

aggravating factor and asks that we affirm the hearing judge's finding. We reject Lewiston's argument and find that he engaged in repeated acts of misconduct by entering into six agreements that constituted UPL and collecting illegal fees from seven clients. We assign moderate aggravation for these 13 acts of misconduct. (See *In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 260 [aggravation for multiple acts for 12 acts of UPL across nine states]; *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 317 [24 counts of misconduct assigned significant weight in aggravation].)

2. Significant Harm (Std. 1.5(j))

The hearing judge found that Lewiston's conduct significantly harmed his clients because each entered into, and paid fees pursuant to, a legal services agreement with an attorney who was not licensed to provide those services, and each never had the benefit of being represented by a licensed attorney. Lewiston argues that this aggravating factor was not proved by clear and convincing evidence because the complaining witnesses did not testify at trial. However, the parties stipulated that Lewiston did not return the payments he received in five of the seven client matters, which total $15,500. This level of economic harm clearly qualifies under standard 1.5(j) as significant harm (see *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 77 [depriving client of $5,500 paid to attorney for work not performed equates to significant harm]), to which we assign moderate weight in aggravation.

3. High Level of Vulnerability of Victims (Std. 1.5(n))

The hearing judge assigned aggravation because Lewiston's clients were "distressed homeowners" and thus "highly vulnerable." Lewiston argues that there is no clear and convincing evidence that his clients were particularly vulnerable. OCTC submits only that the agreements signed by Lewiston's clients clearly state that the mortgage loan to be modified is "secured by Client's residence." We agree with Lewiston that insufficient evidence exists in the

record to clearly and convincingly demonstrate that his clients were, in fact, distressed when they sought his services. (See *Conservatorship of Wendland*, *supra*, 26 Cal.4th at p. 552.)

B. Mitigation

1. No Prior Record of Discipline (Std. 1.6(a))

The hearing judge found significant mitigation for Lewiston's 26 years of discipline-free practice. Lewiston and OCTC do not challenge the hearing judge's finding. Standard 1.6(a) provides that mitigation may be assigned for absence of prior discipline over many years "coupled with present misconduct, which is not likely to recur." (*In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 749 [25 years of discipline-free practice entitled to considerable mitigation].) We agree that mitigation is warranted for Lewiston's many years of discipline-free practice, but diminish the weight the judge assigned to this factor.

We disagree with the hearing judge's conclusion that Lewiston is "highly unlikely" to repeat his misconduct. As noted by the judge, Lewiston engaged in serious misconduct, which only ceased when the TLA files and accounts were impounded by the FTC. Even more relevant is the fact that he has failed to provide restitution to most of the clients involved, with no explanation, despite testifying that he now knows his actions were wrong. Given these facts, Lewiston has failed to prove by clear and convincing evidence that he would refrain from future misconduct if similar circumstances arose. Thus, we do not find that his actions in these client matters were aberrational. Accordingly, Lewiston is not entitled to full weight in mitigation for his years of discipline-free practice, and instead we assign moderate weight. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long-term discipline-free practice is most relevant where misconduct is aberrational].)

2. Good Faith Belief (Std. 1.6(b))

Lewiston submits that he is entitled to some mitigation for his good faith belief that he was compliant with the rules of professional conduct for the states in which his clients resided and owned property. We disagree. Standard 1.6(b) provides mitigation for a respondent's "good faith belief that is honestly held and objectively reasonable." We find that it was not objectively reasonable for Lewiston to believe that he was compliant with the ethical rules in those states when he made no effort to confirm that the attorneys associated with TLA were actually involved in his clients' cases, and, additionally, he never had an affiliated attorney in Georgia. Further, he testified that he did not know how the affiliated attorneys received client matters after the initial MSA was executed, and that he did not supervise those attorneys. Under these circumstances, Lewiston did not have an objective good faith belief that he was following the rules of professional conduct. (See *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 427 ["it is [not] appropriate to reward respondent for his ignorance of his ethical responsibilities"].)

3. Cooperation (Std. 1.6(e))

The hearing judge found that Lewiston is entitled to only limited mitigation for his cooperation with the State Bar. Even though he entered into an extensive stipulation of facts, he did not stipulate to culpability. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive mitigation given to those who stipulate to facts and culpability].) We find moderate mitigation because Lewiston stipulated to an extensive factual stipulation involving multiple clients, along with the admission of 41 OCTC exhibits, which saved OCTC time at trial. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts mitigating if relevant and assisted prosecution of case].)

4. Extraordinary Good Character (Std. 1.6(f))

The hearing judge assigned modest mitigation for Lewiston's good character testimony. (Std. 1.6(f) [mitigation for extraordinary good character attested to by wide range of references in legal and general communities, who are aware of full extent of misconduct].) Lewiston argues that he is entitled to significant mitigation. OCTC submits that the hearing judge properly limited the weight of this factor and was perhaps "generous" in granting modest mitigation. Lewiston offered testimony from two witnesses—an attorney and a former client—and presented declarations from three additional witnesses—an insurance broker, a family member who is also an attorney, and a CPA. However, the witnesses who submitted declarations did not have knowledge of the full extent of Lewiston's misconduct, and none were aware that he has not made restitution to most of his clients. We find that Lewiston is only entitled to limited mitigation for good character. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support not significant mitigation because witnesses did not know details of misconduct].)

V. ACTUAL SUSPENSION OF SIX MONTHS IS WARRANTED[10]

Our analysis begins with the standards, which " 'promote the consistent and uniform application of disciplinary measures,' " and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91, citations omitted; std. 1.1.) Although we are not strictly bound by the standards, the Supreme Court instructs us to follow them whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) If we deviate, we must articulate clear reasons for doing so. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced

[10] 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. (Std. 1.1.)

consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The hearing judge considered standard 1.7(a), which provides that the most severe sanction must be imposed when a member commits two or more acts of misconduct. Here, similar sanctions are called for by both standards 2.19 and 2.3(b). Standard 2.19 applies to UPL in another jurisdiction and provides for suspension (not to exceed three years) or reproval for violations of the rules not specifically addressed by the other standards. Standard 2.3(b) provides for suspension or reproval for entering into an agreement for, charging, or collecting an illegal fee for legal services. Balancing the aggravating and mitigating factors, the judge found that the appropriate discipline included an actual suspension of six months, to continue until Lewiston pays restitution.

The hearing judge considered the cases submitted by OCTC, but found them distinguishable, and made his recommendation based on a balance of all factors. On review and at trial, Lewiston suggests that a period of stayed suspension is appropriate. On review, OCTC submits that we should affirm the hearing judge's six-month discipline recommendation, including payment of restitution, though it sought a one-year actual suspension at trial.

We agree with the hearing judge that his recommended discipline is appropriate and that "more than minimal discipline is warranted due to the nature of the misconduct, its scope, and the distressing nature of Respondent's participation in it." Lewiston engaged in serious misconduct—promising to provide legal services to homeowners who sought his help when he was not authorized to provide those services. After his clients signed the MSAs with TLA, Lewiston provided almost no services to them and did virtually nothing to ensure that the contracted services would be provided as promised. He did not adhere to the terms of the MSA since he did not supervise the non-attorneys who almost exclusively did the work for the clients,

nor did he supervise TLA-affiliated attorneys or ensure that they were actually providing services to TLA clients. His claim that he was involved in reviewing his clients' matters is not supported by the evidence. Specifically, he made no affirmative attempts to review client files, and testified only that he would look at a file "once a month or so" when he was sent one by a paralegal who worked for Goodrich, the attorney affiliated in New York.

The crux of Lewiston's misconduct was contracting with clients to provide services when he was not entitled to provide those services in the states in which the clients resided, and charging and collecting illegal fees for those services. We note at the outset, in determining the discipline to recommend, that no case authority squarely addresses the facts we have in this case.

Lewiston argues that two cases, *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, and *Chasteen v. State Bar* (1985) 40 Cal.3d 586, support his request for a stayed suspension. In *Mason*, an attorney was found culpable of UPL as a result of undertaking three separate acts of practicing law in one client matter just after he had begun a period of suspension for an earlier disciplinary matter, along with culpability for moral turpitude for knowingly practicing law while on suspension. (*Mason*, 3 Cal. State Bar Ct. Rptr. at p. 642.) Additionally, the court found one factor in aggravation (prior record) and one factor in mitigation (pro bono activities). (*Id*. at pp. 642-643.) Based on this record, the attorney was actually suspended for 90 days. (*Id*. at p. 644.) In *Chasteen*, notably a pre-standards case, an attorney received a 60-day actual suspension for engaging in UPL in two client matters while he was suspended for not paying his bar dues and failing to act competently, commingling, and misappropriating funds. (*Chasteen*, at pp. 592-593.) While both cases involved a charge of UPL, as does this case, neither case reflects the true gravamen of the case before us. Lewiston failed to make any real effort to ensure that TLA was legally able to offer the services it provided

to multiple homeowners in other states, resulting in the collection of illegal fees and in unsupervised non-attorneys providing the services to at least seven clients in five states.

OCTC argues that two cases provide better guidance than the cases offered by Lewiston. In *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437, DeClue was found culpable of illegally charging and collecting advance fees for loan modification services in two client matters and received discipline that included a six-month actual suspension. In recommending that suspension, this court determined that such was appropriate as DeClue had been suspended previously for the same conduct in two client matters, caused significant harm by collecting the illegal fees, failed to make restitution of $11,500, and was culpable of uncharged misconduct that consisted of illegally aiding and abetting UPL and failing to supervise non-attorney staff. (*Id*. at pp. 444-445.)[11]

We find that, upon application of standards 2.3(b) and 2.19, the decisional law in *DeClue*, and a balancing of the factors in aggravation and mitigation, a six-month actual suspension, continuing until Lewiston makes restitution, is appropriate in this case. Like DeClue, Lewiston effectively abdicated control of his responsibilities related to his loan modification business. He failed to ensure that any properly licensed TLA-affiliated attorneys worked on the client matters, which, like DeClue, led to Lewiston's UPL and, consequently, his collecting fees to which he was not legally entitled. As did DeClue, Lewiston caused significant harm to his clients and has failed to make restitution. Accordingly, we find this level of discipline is the minimum necessary to protect the public, the courts, and the legal profession.

[11] In *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, this court recommended a two-year actual suspension where the attorney was culpable of forming a law partnership with a non-lawyer, aiding the non-lawyer in UPL, dividing legal fees with the non-lawyer, failing to act competently, and breaching his fiduciary duties that amounted to moral turpitude. Because this case involved a number of charges not present in the case at bar, and due to the fact that this misconduct spanned a two-year period involving hundreds of clients and hundreds of thousands of dollars in attorney fees, we believe that that the case does not offer any helpful guidance in determining the appropriate discipline for Lewiston's misconduct.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Jeffrey Allen Lewiston be suspended from the practice of law for two years, that execution of that suspension be stayed, and that he be placed on probation for two years on the following conditions:

1. He must be suspended from the practice of law for a minimum of the first six months of his probation and remain suspended until:

    a. He makes restitution to Robert and Laura Kuhr in the amount of $1,800 plus 10 percent interest per year from September 17, 2012 (or reimburses the Client Security Fund to the extent of any payment from the Fund to the Kuhrs, 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 makes restitution to Jose and Hermie Asido in the amount of $3,500 plus 10 percent interest per year from October 10, 2012 (or reimburses the Client Security Fund to the extent of any payment from the Fund to the Asidos, 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

    c. He makes restitution to Ian Mueller in the amount of $3,500 plus 10 percent interest per year from October 30, 2012 (or reimburses the Client Security Fund to the extent of any payment from the Fund to Ian Mueller, 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

    d. He makes restitution to Jean Ysalem Metelus in the amount of $3,000 plus 10 percent interest per year from January 1, 2013 (or reimburses the Client Security Fund to the extent of any payment from the Fund to Jean Ysalem Metelus, 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

    e. He makes restitution to Martha Krainyk in the amount of $3,750 plus 10 percent interest per year from March 8, 2013 (or reimburses the Client Security Fund to the extent of any payment from the Fund to Martha Krainyk, 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

    f. If he remains suspended for two years or longer, he must provide proof to the State Bar Court of his rehabilitation, fitness to practice, and present 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 case specialist to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation case specialist either in person or by telephone. During the period of probation, he must promptly meet with the probation case specialist 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.)

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.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Jeffrey Allen Lewiston 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 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).)

VIII. RULE 9.20

We further recommend that Jeffrey Allen Lewiston comply with rule 9.20 of the California Rules of Court and 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 matter.

IX. 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.

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.