

Filed October 31, 2018

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case Nos. 12-O-15516; 12-O-15734
	)	(Correlated)
CHANCE EDWARD GORDON,	)	
	)	OPINION AND ORDER
A Member of the State Bar, No. 198512.	)	
_____	)	

This matter involves Chance Edward Gordon’s unsuccessful attempt to avoid the statutory proscription against attorneys receiving advance fees for loan modification services prior to completion of the contracted-for work. Gordon, an attorney admitted only in California, marketed his services nationwide using misleading, false advertising. His operation was extensive, bringing in 11.4 million dollars in fees from more than 2,000 clients. To justify his advance fees, he characterized his work as “Pre-Litigation” activities and his loan modification work as “pro bono” services. In carrying out this ruse, he also violated other laws, and all of his misconduct was surrounded by serious aggravating circumstances. During the investigation of his misconduct, Gordon also engaged in outrageous behavior toward State Bar employees.

The hearing judge found Gordon culpable of six counts of misconduct: (1) moral turpitude; (2) forming a partnership with a non-lawyer; (3) sharing legal fees with a non-lawyer (two counts); (4) false advertising; and (5) failing to comply with laws. The judge also found five factors in aggravation and nominal mitigation. Ultimately, the judge recommended that Gordon be disbarred.

On review, Gordon requests that all six counts be dismissed with prejudice or, in the alternative, that we disqualify the hearing judge and order a new trial. The Office of Chief Trial

Counsel of the State Bar (OCTC) urges that we uphold the hearing judge and recommend that Gordon be disbarred. Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability and discipline determinations. Due to Gordon's serious aggravation and nominal mitigation, we recommend that he be disbarred.

## **I. PROCEDURAL BACKGROUND**

On September 21, 2012, OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in State Bar Case No. 10-O-05509 et al.<sup>1</sup> A second NDC was filed on December 20, 2012, in State Bar Case No. 12-O-14013 et al. The cases in this opinion (12-O-15516; 12-O-15734) were included in the second NDC. The first NDC and the second NDC were ordered consolidated in 2013, but were severed on November 30, 2017. The cases in the first NDC were abated, not dismissed, and remain abated. On December 28, 2017, all of the cases charged in the second NDC were dismissed without prejudice except for the titled case numbers of this opinion. Therefore, only counts 9 through 14 of the second NDC are at issue here. Unlike the typical loan modification case, these counts do not charge misconduct related to individual client matters. Instead, they deal with Gordon's overall loan modification scheme.

Trial was held on August 26, 29, 30, and 31, 2016, and the parties filed posttrial closing briefs. On November 22, 2016, the hearing judge issued her decision.

## **II. LEGISLATION REGULATING LOAN MODIFICATION SERVICES**

In 2009, the Legislature amended the law to regulate an attorney's performance of home loan modification services. California Senate Bill No. 94 (SB 94),<sup>2</sup> which became effective on October 11, 2009, provided two safeguards for borrowers who employ someone to assist with a

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<sup>1</sup> As discussed below, the Consumer Financial Protection Bureau (CFPB) had filed a complaint for permanent injunction against Gordon in United States District Court for the Central District of California in July 2012. (*Consumer Financial Protection Bureau v. Gordon*, CV12-06147.)

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

loan modification: (1) a requirement for a separate notice advising borrowers that it is not necessary to employ a third party to negotiate a loan modification (Civ. Code, § 2944.6, subd. (a));<sup>3</sup> and (2) a proscription against charging pre-performance compensation, i.e., restricting the collection of fees until all contracted-for loan modification services are completed (Civ. Code, § 2944.7, subd. (a).)<sup>4</sup> The intent was to “prevent persons from charging borrowers an up-front fee, providing limited services that fail to help the borrower, and leaving the borrower worse off than before he or she engaged the services of a loan modification consultant.” (Sen. Com. on Banking, Finance, and Insurance, Analysis of Sen. Bill No. 94 (2009–2010 Reg. Sess.) as amended Mar. 23, 2009, pp. 5–6.) At all times relevant to this matter, a violation of either Civil Code provision constituted a misdemeanor (Civ. Code, §§ 2944.6, subd. (c), 2944.7, subd. (b)), which is cause for imposing attorney discipline. (§ 6106.3.)

### III. FACTUAL BACKGROUND<sup>5</sup>

Gordon was admitted to practice law in California on December 7, 1998. Between 2009 and 2012, he partnered with non-lawyer Abraham Michael Pessar to provide loan modification

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<sup>3</sup> Civil Code section 2944.6, subdivision (a), requires that a person attempting to negotiate a loan modification must, before entering into a fee agreement, disclose to the borrower the following information in 14-point bold type font “as a separate statement”:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting [www.hud.gov](http://www.hud.gov).

<sup>4</sup> In relevant part, Civil Code section 2944.7, subdivision (a), provides that “it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to . . . [¶] . . . [c]laim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.”

<sup>5</sup> The facts included in this opinion are based on the trial testimony, documentary evidence, and the hearing judge’s factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

services.<sup>6</sup> Their operation consisted of a sales division, responsible for marketing and selling loan modification services, and a processing division that provided the actual services. The sales representatives were paid on commission and they sold loan modification services to homeowners at a cost of \$2,500 to \$4,500. Before the operation ended, approximately 20 non-attorney processors were doing the loan modification work and over 20 sales representatives marketed the services.

The operation took place in several suites in a Los Angeles office building where Gordon and Pessar shared office space. John Gearries acted as the office manager and reported to Gordon and Pessar. Gordon was the only attorney involved in the operation. He prepared, approved, and signed the fee agreements executed by most of the customers. He was also responsible for ensuring that the operation complied with the law. Pessar focused on marketing and managing the day-to-day sales and processing activities. Although Pessar oversaw these functions, Gordon retained final decision-making authority over marketing and provided guidance to the sales and processing departments. Pessar also supervised all banking-related duties. Gordon and Pessar agreed that they would share the revenue from the operation: one-third to Gordon and the remaining two-thirds to Pessar, which he would use to pay himself and to pay marketing and sales force commissions. By the time the operation ended, it had collected advance loan modification fees from approximately 2,300 clients in California and several other states. From January 2010 to July 2012, the operation collected 11.4 million dollars in revenue.

Gordon created his “Pre-Litigation Monetary Claims Program” (Program) in response to the passage of SB 94. In fact, he testified that the “whole point” of creating the Program was to avoid the application of SB 94. Under Gordon’s Program, borrowers would sign a “pro bono” agreement for the operation’s loan modification services in an attempt by Gordon to avoid the

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<sup>6</sup> In an email to Pessar, Gordon refers to the operation with Pessar as their “enterprise.”

prohibition against collecting advance fees under Civil Code section 2944.7, subdivision (a). However, borrowers could only receive the “pro bono” services if they paid for the Program. Gordon compared the Program to a box of Cracker Jack: he said the loan modification was like the “free prize” you got at the bottom of the box.

In 2011, Gordon revised his attorney/client fee agreement to describe the scope of the attorney services provided. Under the agreement, he would provide clients with “custom legal products,” which included a draft demand letter, a qualified written request, and a draft complaint. Gordon created templates for these documents, and the operation processors would fill in the relevant information. However, these documents were of little value to the clients and were not used to obtain loan modifications. These “custom legal products” were usually prepared, if at all, after an application for a loan modification was submitted.

The marketing and telephone scripts for the operation show that sales representatives were selling loan modifications services. The representatives were instructed to ask clients for their mortgage information and then to tell the clients that they could lower their interest rate to two percent or adjust their payments equal to 31 percent of their gross income. However, according to Pessar, clients “frequently complained that they did not receive the loan modifications or the terms that they were promised.”

Marketing for the operation included numerous mail solicitations, internet advertising, and cold calling from the sales division. Gordon approved the marketing materials. When the operation began, they sent out 5,000 to 10,000 mailers per month, but by the time the operation was shut down, they were sending out 10,000 per week. None of the mail solicitations included Gordon’s name. They listed a Washington, D.C. return address, which did not exist; stated in a large font, “NOTICE OF HUD RIGHTS”; and prominently displayed the logos of HUD and the Making Homes Affordable Programs. If consumers called the operation and asked if they were

contacting HUD or a government agency, the sales representatives provided scripted responses that circumvented directly answering the questions. The representatives were directed to respond, “Under HUD (Housing and Urban Development) you have rights as a homeowner. During this conversation I would like to go over those rights with you.” Sales representatives were also scripted to say, “The reason for the call is we have you on President Obama’s Stimulus List.”

Sales representatives marketed the services by telling potential clients that a law firm would represent them in their loan modification. The operation marketed the law firm services in order to gain the clients’ confidence and justify the fees charged. Gordon did not actually perform the loan modification services. He rarely even talked to the clients and usually did so only after they had made complaints to the State Bar.

The sales representatives pressured callers by stating that they had only 72 hours to decide whether to purchase the operation’s services. Sales scripts prompted the representatives to tell potential customers that the law firm stated they were “qualified under federal guidelines,” which was “great news . . . because law firms in such a scrutinized industry will only take on cases they feel . . . 100 percent confident on.” The representatives also told prospective clients that the “operation was a consumer advocate membership organization” to convince them that it was not another loan modification scam. Even if the potential clients did not qualify for loan modification services, Gordon encouraged sales representatives to sign them up anyway because “everyone qualifies” for “custom legal products.”

Gordon repeatedly changed the name of the operation and its websites.<sup>7</sup> He testified that he did so because he “didn’t want to be detected by the Better Business Bureau.” He determined the content of each website, but did not identify himself as the State Bar member responsible for

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<sup>7</sup> The operation’s names included the Gordon Law Firm, Gordon and Associates, National Legal Source, Resource Law Center, Resource Law Group, and Resource Legal Group. The website names included [resourcelawcenter.com](http://resourcelawcenter.com), [nationallegalsource.com](http://nationallegalsource.com), [thereliefnetwork.org](http://thereliefnetwork.org), [resourcelegalgroup.com](http://resourcelegalgroup.com), and [prelitlaw.com](http://prelitlaw.com).

the solicitations. The different iterations of the websites contained identical content, including the same client testimonials. The websites advertised a “Pre-Litigation Research & Investigation Program” where the homeowner would be provided with “prepared, detailed legal documents of illegal conduct engaged in by their particular lender.” The websites stated that an attorney would prepare the documents and “utilize them to construct a lawsuit against your lender” to leverage negotiations with the mortgage lender. The sales scripts reinforced these claims and prompted the representatives to state, “these lawyers are going to want to find weakness in your file and do a forensic investigation on your file.” However, after paying for this program, clients were told that the services did not provide for a forensic audit. Further, the websites referenced “myhud.org,” which was not a government website, but a website owned and operated by Gordon. At first, the operation marketed only in California, but by early 2010, it sent direct mailers to homeowners in several states.

On July 18, 2012, the CFPB filed a complaint in United States District Court for the Central District of California for permanent injunction against Gordon.<sup>8</sup> (*Consumer Financial Protection Bureau v. Gordon*, CV12-06147.) The CFPB alleged that Gordon was “engaged in an ongoing, unlawful mortgage relief scheme that preys on financially distressed homeowners nationwide by falsely promising a loan modification in exchange for an advance fee.” On June 26, 2013, the court granted the CFPB’s motion for summary judgment. The court entered the final judgment and permanent injunction on July 26, 2013. Gordon was prohibited from doing mortgage assistance relief or debt relief work for three years. The court entered a judgment for equitable monetary relief in favor of the CFPB against Gordon for \$11,403,338.63. On April 14, 2016, the United States Court of Appeals for the Ninth Circuit upheld the district

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<sup>8</sup> The complaint was brought against Gordon as an individual and the business names that he had used: Gordon & Associates, The Law Offices of Chance E. Gordon, The Law Offices of C. Edward Gordon, The C.E.G. Law Firm, National Legal Source, Resource Law Center, Resource Law Group, and Resource Legal Group.

court's decision to grant summary judgment in favor of the CFPB (*Consumer Financial Protection Bureau v. Gordon* (2016) 819 F.3d 1179).<sup>9</sup> On May 4, 2018, we took judicial notice of the United States Supreme Court's order in *Consumer Financial Protection Bureau v. Gordon* that denied Gordon's petition for a writ of certiorari. ((2017) 137 S.Ct. 2291.)

#### IV. CULPABILITY<sup>10</sup>

Gordon requests a new trial because he claims that the hearing judge exhibited bias towards him and engaged in judicial misconduct. He contends that the judge "abandoned her duty to remain impartial and instead embroiled herself in the trial." As such, Gordon argues that he was deprived of his fundamental right of due process. We reject these arguments because Gordon has failed to establish that the hearing judge demonstrated bias or that Gordon was specifically prejudiced. (*In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 592 [respondent has burden to clearly establish bias and to show how he was specifically prejudiced].) The hearing judge did not "embroil" herself in the trial. Any questions that she

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<sup>9</sup> The Ninth Circuit remanded the monetary judgment against Gordon for further consideration, however, because the district court may have impermissibly entered the judgment for a time period prior to the effective date of the Consumer Financial Protection Act and Regulation O. Gordon's petition for rehearing en banc was denied by the Ninth Circuit on July 20, 2016.

<sup>10</sup> The culpability determinations in this opinion are based solely on the direct evidence produced at the trial in this matter, including trial testimony and documents that were introduced and not objected to at trial. (Rules Proc. of State Bar, rule 5.104.) As such, we reject Gordon's arguments that his due process rights were violated when certain evidence was admitted at trial. He did not object to most of the exhibits that were admitted. "Where respondent did not object to the admission of evidence, it is well settled that any objection on that point has been waived." (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 857.) Further, our evidentiary rules state, "Any relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(C).) Hearsay evidence must be admitted if it is relevant and reliable. However, it may only be "used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Rules Proc. of State Bar, rule 5.104(D).)

asked were to clarify her own confusion about the testimony. “A trial court has both the discretion and the duty to ask questions of witnesses, provided this is done in an effort to elicit material facts or to clarify confusing or unclear testimony.” (*People v. Cook* (2006) 39 Cal.4th 566, 597.) We find through our independent review of the record that the hearing judge acted properly and that Gordon received a fair trial.

**A. Rules of Professional Conduct, Rule 1-310:<sup>11</sup> Forming a Partnership with a Non-Lawyer [Count 10]<sup>12</sup>**

OCTC charged Gordon with violating rule 1-310 by operating a classic “common enterprise” with a non-attorney (Pessar); commingling finances; using common facilities; sharing employees; sharing physical resources; and acting with a common, singular purpose to unlawfully obtain advance attorney fees from clients for loan modification services. The hearing judge found Gordon culpable, and we agree.

As an overarching argument for why he is not culpable of any of the counts charged in this matter, Gordon asserts that he was not engaging in the practice of law when he provided loan modification assistance to homeowners as a part of the “custom products” he sold. First, he argues that his employees only performed ministerial tasks in preparing the Program documents and, therefore, were not engaged in the practice of law. Second, he insists that because non-attorneys can assist with a loan modification under California law, his actions could not constitute the practice of law.

Gordon also asserts that his and Pessar’s business operations were “separate and distinct from one another.” He argues that he did not pay sales representatives, but paid only Pessar for “providing him with the infrastructure necessary to run his business.” He argues that neither

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<sup>11</sup> All further references to rules are to the Rules of Professional Conduct, unless otherwise noted. Under rule 1-310, “A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law.”

<sup>12</sup> For clarity, we discuss count 9 after addressing counts 10 through 14.

providing infrastructure for the Program nor assisting homeowners with loan modifications is the practice of law.

Gordon's arguments lack merit. The customers were told that they were getting the services of an attorney and that an attorney would handle the loan modifications "pro bono." Gordon did not handle every loan modification nor did he closely supervise the processors' work on client matters. "The practice of law embraces a wide range of activities, such as giving legal advice and preparing documents to secure client rights [citation]." (*In the Matter of Huang* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 296, 304.) In *In the Matter of Huang*, Huang's clients contracted for legal services and case analysis by an attorney, but the work was performed by lay individuals. The work of these non-lawyers constituted the practice of law. (*Ibid.*) Although certain services (such as loan modifications) might be performed by lay people, "it does not follow that when they are rendered by an attorney, or in his office, they do not involve the practice of law." (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 667–668 [even though services might have been performed by other lay individuals or title companies, insurance companies, and brokers, when rendered by attorney's office constitutes practice of law].) When people hire an attorney for services that might otherwise be done by lay people, they do so because they "expect and are entitled to legal counsel." (*Ibid.*) Accordingly, the operation that Gordon's clients contracted for constituted the practice of law.

Gordon asserts that he is not culpable under count 10 because a partnership means "an association of two or more lawyers to carry on as co-owners of a continuing business engaged in the practice of law with the sharing of profits and losses." Gordon's definition of partnership is incorrect as a partnership does not have to be between two lawyers. Under the Corporations Code, a partnership is defined as "an association of two or more persons to carry on as co-owners of a business for profit." (Corp. Code, § 16101, subd. (9).) It does not matter whether or not the

persons intend to form a partnership. (Corp. Code, § 16202, subd. (a).) “Generally, a partnership connotes co-ownership in partnership property, with a sharing in the profits and losses of a continuing business. [Citation.]” (*Chambers v. Kay* (2002) 29 Cal.4th 142, 151.)

Gordon’s agreement with Pessar to sell loan modification services to clients constituted a partnership. Pessar did not only “provide infrastructure.” His efforts were a critical part of the operation and he and Gordon acted with a singular purpose—to obtain advance fees for loan modification services. They agreed to carry out this business as a common enterprise while they commingled finances, used common facilities, and shared employees and physical resources. Their business of providing loan modification services constituted the practice of law, which was by Gordon forming a partnership with a non-lawyer in violation of rule 1-310.

**B. Rule 1-320(A): Sharing Legal Fees with a Non-Lawyer [Counts 11 and 12]**

OCTC charged Gordon with two counts of violating rule 1-320(A) by (1) sharing advance attorney fees from clients for loan modifications with Pessar and (2) paying sales representatives commissions based on the amount of those advance attorney fees collected.

Under rule 1-320(A), a lawyer shall not “directly or indirectly share legal fees with a person who is not a lawyer,” except under certain circumstances not applicable here. This rule addresses the risk posed by the possibility of control by a non-lawyer more interested in personal profit than the client’s welfare. (See *In re Arnoff* (1978) 22 Cal.3d 740, 748, fn. 4; *Gassman v. State Bar* (1976) 18 Cal.3d 125, 132; *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615, 624–625.)

Gordon asserts that the fees collected were for his custom legal products, which did not involve conduct constituting the practice of law. Alternatively, he argues that even if the fees were for loan modification services, loan modification does not constitute the practice of law and

those payments could be shared since they were not legal fees. Both arguments fail because, as discussed above, the operation consisted of the practice of law.

Gordon also submits that even if they were legal fees, he did not share them—he compensated Pessar and the sales representatives for the “infrastructure” they provided. This is not the case. Gordon formed a partnership with Pessar where they agreed to share the revenue from the operation: one-third to Gordon and two-thirds to Pessar to pay himself and to pay the sales commissions. The fees that Gordon received from the legal services the operation was marketing were shared with non-lawyers: two-thirds directly to Pessar and commissions indirectly to the sales representatives. This was the plan that Gordon and Pessar devised to share the money coming in from the operation.

We agree with the hearing judge that Gordon violated rule 1-320(A) by sharing advance attorney fees from clients for loan modifications with Pessar (count 11) and by paying sales representatives commissions based on the amount of the advance attorney fees collected (count 12). Accordingly, we find that Gordon is culpable under counts 11 and 12.

**C. Rule 1-400(D)(2): False Advertising [Count 13]**

OCTC charged Gordon with violating rule 1-400(D)(2) by sending a communication or solicitation that contains matter which is false, deceptive, or which tends to confuse, deceive, or mislead the public; by operating numerous websites with different business names; using the same client testimonial interchangeably on different websites; and failing to identify himself as the State Bar member responsible for the communication or solicitation on several websites. Rule 1-400(D)(2) provides that a communication or a solicitation shall not “[c]ontain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public.” (See *In re Morse* (1995) 11 Cal.4th 184, 195

[rule 1-400(D)(2) proscribes misleading advertisements by attorneys].) The hearing judge concluded that Gordon was culpable of violating rule 1-400(D)(2), and we agree.

Gordon changed the name of the operation, and the websites attached to it, numerous times to mislead the public, often without identifying himself as the responsible attorney. He used the same client testimonials on several different websites. He also mailed solicitations that implied that the operation was affiliated with various government entities when it was not. Gordon's communications were misleading in multiple respects and, therefore, a violation of rule 1-400(D)(2).

Gordon argues that rule 1-400(D)(2) does not apply to his conduct because he was advertising for "purely non-legal services." As discussed above, Gordon was advertising for legal services and, therefore, this argument is without merit.<sup>13</sup>

**D. Business and Professions Code Section 6068, Subdivision (a):<sup>14</sup> Failing to Comply with Laws [Count 14]**

OCTC charged Gordon with a violation of section 6068, subdivision (a), for accepting advance attorney fees for residential mortgage loan modification services, in violation of section 6106.3 and the Mortgage Assistance Relief Services Rule (MARS Rule), 16 Code of Federal Regulations part 322 (recodified as 12 C.F.R. § 1015). Prior to January 1, 2017,

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<sup>13</sup> Alternatively, he maintains that even if his advertising was for legal services, the State Bar was required to give him 72 hours' notice to withdraw the advertisements under Business and Professions Code section 6158.4, subdivision (b)(2). Section 6158.4 allows any person to file a complaint with the State Bar for false, misleading, or deceptive legal advertising. Under subdivision (b)(2), if the State Bar determines that substantial evidence exists to support such a claim, the lawyer is given 72 hours to withdraw the advertising. No evidence was presented that such a complaint was filed with the State Bar necessitating notice and the opportunity to withdraw. Further, the civil enforcement action provided for under section 6158.4 is completely separate from Gordon's duty under the Rules of Professional Conduct not to use deceptive or misleading advertising.

<sup>14</sup> All further references to sections are to the Business and Professions Code unless otherwise noted. Under section 6068, subdivision (a), it is the duty of an attorney to "support the Constitution and laws of the United States and of this state."

section 6106.3 provided, “It shall constitute cause for the imposition of discipline of an attorney within the meaning of this chapter for an attorney to engage in any conduct in violation of sections 2944.6 or 2944.7 of the Civil Code.”<sup>15</sup> The hearing judge found that Gordon violated section 2944.7 when he accepted advance attorney fees for loan modification services and, therefore, violated section 6106.3.<sup>16</sup>

Gordon asserts that count 14 did not charge him with a violation of Civil Code section 2944.7, which the hearing judge found, and, therefore, he cannot be culpable. However, when this count was charged, section 6106.3 stated that a violation of Civil Code section 2944.7 shall constitute cause for the imposition of discipline. As such, Gordon’s argument lacks merit. (See *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 231–232 [violation of § 6106.3 for charging advance fees for loan modification services in violation of Civ. Code, § 2944.7].)

When Gordon accepted advance attorney fees for loan modification services, he violated Civil Code section 2944.7 and, hence, section 6106.3. Therefore, we find him culpable under count 14.

**E. Section 6106: Moral Turpitude [Count Nine]**

OCTC charged Gordon with a violation of section 6106, alleging that he committed acts involving moral turpitude, dishonesty, or corruption by engaging in a nationwide loan modification operation with a non-attorney (Pessar); by falsely representing to potential clients that the offered services would be performed by licensed attorneys; and by engaging in an aggressive sales and marketing scheme for the purpose of collecting illegal advance attorney fees

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<sup>15</sup> Effective January 1, 2017, the statute was amended so that the reference to Civil Code section 2944.7 was removed. However, since all of the misconduct underlying this matter occurred before January 1, 2017, we find that the former version of section 6106.3 applies.

<sup>16</sup> The hearing judge did not find Gordon culpable of a MARS Rule violation as charged in count 14 because the MARS Rule violation as alleged did not comply with rule 5.41(B)(1) of the Rules of Procedure of the State Bar. We agree.

and exploiting vulnerable, desperate homeowners for personal gain. Section 6106 is violated when an attorney commits “any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . .” A violation of section 6106 constitutes a cause for disbarment or suspension. “An attorney’s practice of deceit involves moral turpitude. [Citations.]” (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 888; see also *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 936.)

The hearing judge found that Gordon’s marketing materials and the sales representatives indicated to potential clients that a lawyer would be working on their behalf. However, Gordon delegated these tasks to the non-attorney processors. The judge found that these false representations constituted moral turpitude and dishonesty in willful violation of section 6106. We agree because it was Gordon’s established practice to deceive clients and, therefore, his misconduct involved moral turpitude.

Gordon argues that no evidence proved that he approved any script directing sales representatives to tell potential clients that they were hiring an attorney. This is not the case. Gearries and Pessar testified that Gordon had the final say as to the sales representatives’ scripts, and the employees were instructed to tell clients that their cases were being handled by a law firm.

Gordon asserts that he operated under the honest belief that what he was doing was legal and, therefore, there can be no finding of moral turpitude. This contention is meritless. We find clear and convincing evidence<sup>17</sup> that Gordon is culpable under count nine because he represented to clients and potential clients that an attorney would handle their loan modification and other litigation services. He knew that these representations were false and, therefore, committed an act of moral turpitude in violation of section 6106.

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<sup>17</sup> 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.)

We also find that Gordon is culpable of committing moral turpitude under count nine by engaging in the operation with Pessar to collect illegal advance attorney fees to exploit vulnerable homeowners by using an aggressive marketing scheme. The sales representatives were instructed to inform clients that they were getting a lawyer who was not afraid to sue the banks, when, in fact, suing the banks was not included in the “Pre-Litigation” services. Gordon misled consumers to believe that the operation was affiliated with various government entities. He changed the names of the operation and the websites several times to distance himself from past complaints. Further, he failed to identify himself on several websites as the attorney responsible for the solicitations. He aggressively marketed his “custom legal products,” when in fact he was offering loan modification services. Clients had to pay advance fees before any loan modification work was done, in violation of SB 94. These actions demonstrate that Gordon committed misconduct involving moral turpitude.

## **V. AGGRAVATION AND MITIGATION**

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct<sup>18</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Gordon has the same burden to prove mitigation. (Std. 1.6.)

### **A. Aggravation**

#### **1. Multiple Acts of Wrongdoing (Std. 1.5(b))**

In aggravation, the hearing judge found that Gordon committed multiple acts of misconduct. We find him culpable of six counts of misconduct and assign substantial weight in aggravation. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 13 [substantial weight in aggravation where over 300 clients were affected]; *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555 [repeated and similar acts of

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<sup>18</sup> All further references to standards are to this source.

misconduct warrant serious aggravation]; see also *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

## **2. Overreaching (Std. 1.5(g))**

The hearing judge correctly found that Gordon’s procedures for dealing with complaining clients constituted overreaching. When clients complained to the State Bar, he directed the staff to send them a “Notice of Client’s Right to Arbitrate” and draft civil complaints against the clients to intimidate them. The draft complaints alleged that clients were engaging in extortion, that they were required to arbitrate, and that Gordon had completed the necessary work to earn his fee. Those complaints were sent to several clients who complained about Gordon’s loan modifications to the State Bar. “The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed . . . is in a superior position to exert unique influence over the dependent party.” (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Gordon exploited his position as an attorney and attempted to intimidate his clients. The Supreme Court has long recognized that the right to practice law “is not a license to mulct the unfortunate.” (*Recht v. State Bar* (1933) 218 Cal. 352, 355.) Gordon attempted to do just that when he sought to keep his clients from complaining to the State Bar. We assign substantial weight for Gordon’s overreaching.

## **3. Indifference toward Rectification/Atonement (Std. 1.5(k))**

The hearing judge found indifference toward rectification or atonement because Gordon continued to collect advance fees for loan modifications services despite cease and desist orders from several states. We agree and find that Gordon stopped only when a temporary restraining order terminated his operation in July 2012.

The record shows that Gordon has not accepted responsibility for his misconduct. Even after his operation was shut down by the CFPB, he continued to insist that his conduct was legal. “The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Gordon is unable to recognize the wrongfulness of his misconduct—he failed to even consider whether his actions were appropriate. While he has the right to defend himself vigorously, his arguments “went beyond tenacity to truculence.” (*In re Morse, supra*, 11 Cal.4th at p. 209.) His indifference warrants substantial consideration in aggravation. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380 [ongoing failure to acknowledge wrongdoings instills concern that attorney may commit future misconduct].)

#### **4. Lack of Cooperation (Std. 1.5(l))**

The hearing judge found lack of cooperation for Gordon’s failure not only to cooperate with OCTC, but also for his threats against OCTC employees. Below, we include excerpts from Gordon’s correspondence with State Bar employees to demonstrate the severity of his actions.<sup>19</sup>

On November 4, 2012, Gordon sent an email to Craig von Freymann, an OCTC investigator, and Erin Joyce, an OCTC prosecutor, directing that if von Freymann wanted to further contact Gordon, he could do so “through three two minute rounds which will be officiated by a professional boxing referee.” Two weeks later, Gordon sent another email to von Freymann, stating:

Corrupt investigator...corrupt prosecutor...a Kangaroo court...what a joke. The funny thing is that you people think that you will “close the book” on me and never have to answer for what you have done and what you are doing to me. But your smarter than that, aren’t you Craig? Hated enemies know each other better than best friends...and you know that I will pursue you and your agency until I get

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<sup>19</sup> Any errors in the quoted excerpts are from the original correspondence.

my “pound of flesh”...whether I am an inactive attorney, disbarred attorney, whatever...right Craig?

On December 11, 2012, Gordon included von Freymann in an email where Gordon wrote:

I want each and everyone [*sic*] of you to know beyond a reasonable doubt that you are going to answer for what you have done . . . . [¶] You will never “close the book” on me until justice is served. Trust me. As much as you are monitoring and tracking me, I am doing the same to all of you, and will continue to do so even if you leave your current position for the private sector. You’re not the only ones that know how to make life hell. [¶] You have stained the name of my family whose male ancestors fought in the Revolutionary War. Justice will be served. Believe it.

On December 20, 2012, Gordon emailed Joyce and von Freymann, and welcomed them to forward his previous emails to “the corrupt, fat-ass Judge Platel if [they] so desire.” He went on to say:

Craig, you have until the end of the year to agree to a time and place for us to have our three round match. 8 ounce gloves. Three two minute rounds. Let’s just get it over with Craig. You illegally destroyed my business and screwed up my life. You can’t just think I’m going to let it go, are you? Once we are done with the bout, [then] I’m done with the issues I have with you. Let’s just get it done. [¶] I will be refiling the lawsuit that was dismissed without prejudice. I will win this thing or at least make the cost of your victory so high that you will wish you had just left me alone.

Later that day, Gordon sent another email that included Joyce and von Freymann as recipients, stating (in all capital letters):

HOW LONG DO YOU BELIEVE YOU CAN ENGAGE IN THIS ABUSIVE LAWLESSNESS BEFORE I BEGIN ENGAGING IN LAWLESSNESS TOO? IS THAT WHAT YOU [AND] YOUR AGENCIES WANT? ANARCHY? [¶] YOUR [*sic*] NOT FOLLOWING YOUR OWN RULES, YET YOU EXPECT ME TO DO SO. PACK UP YOUR MUTUAL CIRCUSES AND GO HOME OR THINGS ARE GOING TO GET REAL NASTY AFTER THE FIRST OF THE YEAR.

On January 14, 2013, Gordon included Joyce in an email that said, “Hell of a Job ladies! Good looking out for the public!” He also stated, “Don’t blame me when all this garbage you

have perpetuated pours out of the Courts, and into the streets.” He then included a quote from Justice Brandeis:

If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that the end justifies the means – to declare that the government may commit crimes – would bring terrible retribution.

He then ended the email, “It would appear that this is where we are headed!”

On January 24, 2013, he included Joyce in another email that stated:

I just want you and every single one of the other arrogant assholes that are behind this bullshit crusade to wrongfully and illegally trample on my rights so that I can be unfairly removed from the profession, that I have dedicated the rest of my life to getting justice and avenging what has been wrongfully done to me by you, Von Freymann, and everyone else behind this campaign of terror. [¶] You idiots can stick your noses in the air all you want, but the worse you can do is have me disbarred...and once you do that, it will not be the end but rather the beginning of you and everyone else involved having to deal with the monumental unprecedented payback that will be enacted upon all of you and that will pale in comparison to what you have done to me. [¶] Count on it. Go adopt another cat to calm yourself if you need to. Watch it happen...because it will.

On February 20, 2013, Gordon again referenced getting his “pound of flesh” when he wrote an email to Joyce:

Are you people really this stupid that you think that continuing to blatantly violate my rights and smack me across the face is going to resolve this? Do you think getting me disbarred will end this? Do you think getting my lawsuits dismissed will end this? [¶] You helped ransack and destroy my business...do you really think I’m going to let that go without getting my pound of flesh? [¶] Idiots.

On April 2, 2013, Gordon emailed Joyce:

God, how on Earth does you or anyone in your agency involved in my case believe that they are going to avoid serious backlash from all this?! 42 years old does not make me an old man...I’ve got the rest of my life to get my revenge.:) [¶] Idiots.

On May 1, 2013, Gordon emailed Joyce:

Who do I serve with my D.C. lawsuit and subsequent subpoenas? Starr Babcock ignored my last correspondence and the State Bar and its agents will evade service at the office. Would I just serve you at your home in the valley, Jayne Kim at her home in Marina Del Rey and Craig at his home in Huntington Beach?

. . . [¶] . . . You guys need to start putting your heads together as to how you will try and reverse some of the harm you've done to me. I'm definitely not letting any of this go, and very soon I will be in a strong enough position economically to really focus on addressing it. A good starting point might be to stay your prosecution of me. However, if your office continues to be stoic on this point, than don't be shocked when face with the resulting consequences.

On May 9, 2013, Gordon ramped up his harassment of Joyce, writing an email to her stating:

I want you to know one thing in no uncertain terms Erin...I will find out what is most sacred to you in this world...and I will destroy it...just like you have done to me...and I am going to do the same to every single person that is behind what has been done to me. [¶] You may think that what I am saying is just words...but it's not...what I'm telling you will be accomplished and fulfilled...no matter how long it takes, nor how hard it is for me to accomplish...I promise you..and I put that promise on the lives of my two children.

As the hearing judge found, Gordon's emails did not appear to be empty threats considering what he posted on Facebook. On his Facebook timeline, Gordon compared his situation to former police officer Christopher Dorner, who committed a series of murders in 2013, and wrote, "Transparency needs to be woven into all of these agencies. If this doesn't happen, no one should be surprised if blood is shed in the future." In addition, near the time the CFPB action was initiated, Gordon posted a picture of himself holding a gun captioned, "Troubled times lie ahead..."

Joyce and von Freymann took this information to the Los Angeles Superior Court. On May 17, 2013, the court issued a Temporary Restraining Order against Gordon limiting his access to OCTC offices and his contact with Joyce and her minor children. On June 6, 2013, the court issued a Workplace Violence Restraining Order After Hearing against Gordon, which extended the restraining order until June 6, 2016, and added von Freymann as a protected person under the restraining order. At the hearing in this matter, Gordon stated that he "probably" overreacted, but that Joyce instigated his reaction.

Gordon's behavior went beyond lack of cooperation into repeated threats and harassment. We agree with the hearing judge that Gordon's behavior toward these OCTC employees was reprehensible and constitutes extremely serious aggravation.

#### **5. Significant Harm (Std. 1.5 (j))**

The hearing judge found that Gordon's actions significantly harmed his clients by "improperly depriving them of precious funds while they faced foreclosure." She stated that this financial harm warranted "some consideration" in aggravation. We agree that Gordon significantly harmed his clients, but we assign substantial weight in aggravation because he exploited his clients' financial desperation and deprived them of funds through illegal fees. In addition, Gordon encouraged his employees to tell clients to stop communicating with their lenders and stop paying their mortgage while they were paying Gordon's fees. This resulted in clients being pushed to the brink of foreclosure.

#### **B. Mitigation**

The hearing judge found that Gordon did not offer any evidence in mitigation. However, the judge gave nominal weight for Gordon's 11 years of discipline-free practice. Absence of a prior record of discipline over many years, coupled with present misconduct that is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).) Given Gordon's complete lack of insight into his misconduct, we cannot view his misconduct as unlikely to recur. We agree with the hearing judge and also assign only nominal mitigation credit. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long discipline-free practice is most relevant where misconduct is aberrational and unlikely to recur].)

## VI. DISCIPLINE<sup>20</sup>

Our disciplinary analysis begins with the standards, which, although not binding, are guiding and entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow them whenever possible. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law to determine the proper discipline. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

In analyzing the applicable standards, we first determine which standard specifies the most severe sanction for the at-issue misconduct. (Std. 1.7(a) [most severe sanction must be imposed where multiple sanctions apply].) Here, standard 2.11 is the most severe, providing that disbarment or actual suspension is the presumed sanction for an act of moral turpitude.<sup>21</sup>

The hearing judge considered the applicable standards and also relied on the case law for guidance. Specifically, the hearing judge looked to *In the Matter of Huang, supra*, 5 Cal. State Bar Ct. Rptr. 296. Huang supervised a high-volume loan modification practice, discovered accounting irregularities, and learned that employees were disregarding office procedures, preventing clients from meeting with Huang, and covering up client complaints. (*Id.* at p. 300.) He realized he had lost control of the law office and fired his entire staff. He received a two-year actual suspension, continuing until payment of restitution for violating loan modification laws, failing to supervise non-lawyers, and aiding and abetting the unauthorized practice of law, among other charges. He received aggravation for multiple acts of misconduct and causing

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<sup>20</sup> 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.)

<sup>21</sup> Standard 2.12 also provides for disbarment or actual suspension for a violation of section 6068(a). Standard 2.8, which provides that actual suspension is the presumed sanction for sharing legal fees with a non-lawyer, also applies.

significant client harm. In mitigation, he displayed remorse, cooperated with OCTC, demonstrated good character, and had no prior record of discipline.

Comparing Huang's actions to Gordon's, the hearing judge decided that disbarment was appropriate for Gordon. Huang had "blown the whistle" on his own operation and even reported it to the district attorney's office. Huang exhibited remorse and cooperated with OCTC. However, Gordon showed no such remorse while contending that his involvement with the operation did not involve the practice of law and that all charges against him should be dismissed. Combined with Gordon's threats to his clients and OCTC employees, the hearing judge held that his conduct was "completely unacceptable and clearly demonstrate[d] a high likelihood of recidivism and a considerable threat to the public." As such, she recommended Gordon's disbarment.

We find guidance in the *Huang* decision, but also look to other loan modification cases. In *In the Matter of Golden* (Review Dept., May 30, 2018, 14-O-06366 (15-O10090; 15-O-10686; 15-O-11035; 15-O-11090; 15-O-11237); 16-O-10260 (16-O-10597; 16-O-10896; 16-O-11152; 16-O-11971) Cons.) 5 Cal. State Bar Ct. Rptr. \_\_\_\_,<sup>22</sup> Golden was culpable of 25 counts of misconduct related to home loan modification services, including 14 violations of section 6106.3 for charging pre-performance fees, in violation of Civil Code section 2944.7, subdivision (a)(1) (11 counts) and failing to provide a separate statement disclosing that a third-party representative was unnecessary for loan modifications, in violation of Civil Code section 2944.6, subdivision (a) (3 counts). In addition, Golden stipulated to, and was found culpable of, 11 counts of failing to render an appropriate accounting. The court found several factors in aggravation: multiple acts of wrongdoing, overreaching, uncharged misconduct, significant harm

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<sup>22</sup> On July 6, 2018, the Review Department filed an order granting OCTC's request for publication in *Golden*. And on September 17, 2018, Golden sought review in the Supreme Court.

to his clients, indifference for lack of understanding of his ethical duties, and failure to make restitution. Golden received minimal mitigating credit for his lack of a prior record and significant mitigating credit for cooperating by entering into an extensive stipulation regarding facts, admissibility of evidence, and culpability. Golden was actually suspended for one year and until he makes restitution and proves his rehabilitation and fitness to practice law.

We also look to *In the Matter of Taylor, supra*, 5 Cal. State Bar Ct. Rptr. 221. There, we first concluded that Civil Code section 2944.7 clearly prohibited collecting any fees in advance of completing all loan modification services. (*Id.* at p. 232.) Taylor received a six-month actual suspension and until he makes restitution for charging pre-performance loan modification fees in eight client matters and failing to provide the required disclosures in one case. Multiple acts of wrongdoing, significant client harm, and lack of remorse aggravated his misconduct, and Taylor proved one mitigating circumstance—good character. He also failed to fully refund the illegally collected fees.

*In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437 also provides guidance as it involves an attorney who illegally charged and collected advance fees for loan modifications in two client matters. DeClue received a six-month actual suspension and until payment of restitution. He proved no mitigation while his misconduct was aggravated by a prior record of discipline, significant harm to his clients, failure to pay restitution, and uncharged misconduct.

While the loan modification cases discussed above provide guidance, this case is unique. Due to the scope of Gordon's scheme and the egregious aggravation, our recommendation may go beyond the discipline recommended in a typical loan modification case. (See *In re Morse, supra*, 11 Cal.4th at p. 207 [scope of attorney's misconduct necessitated court go beyond recommendations in other false advertising disciplinary cases].)

First, the counts in this matter do not involve specific client matters like those mentioned above. We must consider Gordon's operation as a whole and the illegal scheme that he devised. The "practice and procedure" of the operation involved Gordon's employees selling the services of an attorney while the legal work was done by non-attorneys. (*Vaughn v. State Bar* (1972) 6 Cal.3d 847, 858 ["practice and procedure" of law firm may evidence attorney misconduct].) Second, Gordon's operation was extensive and nationwide. He had over 2,000 clients from several states and collected fees in excess of 11 million dollars. Further, he was notified by the attorneys general of North Carolina, Connecticut, and Florida that his loan modification scheme was fraudulent. The CFPB also filed an action against him. Yet, Gordon continued to mislead the public through his websites and marketing "pro bono" loan modification services. At several points, Gordon had the opportunity to consider whether his actions were appropriate. Instead of doing so, he displayed an extreme inability to recognize the wrongfulness of his actions. (*In re Morse, supra*, 11 Cal.4th at p. 209 [arguments cannot go beyond tenacity into truculence].) His hostility is further evidenced in his threatening correspondence with State Bar employees, which led them to seek a restraining order.

Looking to all of the relevant factors, it is clear that disbarment is appropriate and necessary to protect the public, the courts, and the profession. The aggravation here was egregious, especially due to Gordon's threats. Gordon is culpable of a loan modification scheme where he lied to clients that an attorney would provide services to them and he illegally charged advanced fees while he formed a partnership with a non-lawyer, shared fees with non-lawyers, and deceptively advertised. The underlying misconduct and his behavior in defending himself in this disciplinary proceeding requires disbarment as we do not believe that Gordon can be deterred from future wrongdoing merely by suspension. Like Morse, Gordon has refused to heed the several different authorities that identified his illegal scheme. His extensive operation and

the practices he employed demonstrate the harm that he has caused. The facts here go beyond a typical loan modification case and we must distinguish it as such with our discipline recommendation. Although the greatest sanction that we have imposed in a somewhat comparable loan modification case has been two years of actual suspension, *Huang* and other loan modification cases are less instructive due to the nature of this matter and Gordon's actions. Accordingly, Gordon should be disbarred.

#### **VII. RECOMMENDATION**

For the foregoing reasons, we recommend that Chance Edward Gordon be disbarred from the practice of law and that his name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Gordon 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.

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

#### **VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

The order that Chance Edward Gordon be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective November 25, 2016, will

remain in effect pending consideration and decision of the Supreme Court on this recommendation.

HONN, Acting P. J.

WE CONCUR:

McGILL, J.

STOVITZ, J.\*

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\* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.