PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed January 13, 2020

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Nos.16-O-11648, (16-O-16181);
	)	16-O-17636 (Consolidated)
PATRICIA RENEE RODRIGUEZ,	)	
	)	
State Bar No. 270639.	)	OPINION
	)	

Patricia Renee Rodriguez appeals a hearing judge's decision finding her culpable of 10 counts of misconduct relating to home loan modification services in three client matters. Specifically, the judge found that, in all three matters, Rodriguez: (1) failed to provide separate statements disclosing that a third-party representative was not necessary for loan modification; (2) charged preperformance fees; and (3) failed to support the laws of the State of California. She also found that Rodriguez failed to render an appropriate accounting in one matter. After assessing two factors in aggravation—multiple acts of wrongdoing and significant harm to clients—the judge found that Rodriguez's conduct was mitigated by good faith, candor and cooperation, and good character. She recommended a one-year probation with conditions, including 30 days' actual suspension.

On review, Rodriguez raises procedural arguments and challenges culpability by emphasizing that she charged and collected preperformance fees in conjunction with valid foreclosure defense litigation. She urges us to assign no aggravation for harm to clients and seeks a dismissal of the charges. The Office of Chief Trial Counsel of the State Bar (OCTC) also appeals. OCTC requests that we assign additional aggravating weight to multiple acts, less

mitigating weight to Rodriguez's candor and cooperation, and no mitigation for good faith. It recommends that Rodriguez's discipline be increased to 90 days' actual suspension.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's culpability and discipline findings with minor modifications, as noted. We find that a 30-day actual suspension is warranted.

I. PROCEDURAL BACKGROUND

OCTC filed a seven-count Notice of Disciplinary Charges (NDC) on March 10, 2017, but the cases were abated. On May 18, 2018, OCTC filed a First Amended NDC charging Rodriguez with 14 counts of misconduct. The cases in this opinion (16-O-11648, 16-O-16181, 16-O-17636) were consolidated and included in the First Amended NDC. On August 13, 2018, the parties filed a Stipulation as to Facts and Admission of Documents (Stipulation). A five-day trial was held, ending on October 25, 2018. Posttrial closing briefs followed, and the hearing judge issued her decision on February 19, 2019.

II. LEGISLATION AND CASE LAW REGULATING LOAN MODIFICATIONS

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),[1] which became effective on October 11, 2009, provided two safeguards for borrowers who employ someone to assist with a 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));[2] and (2) a proscription against charging preperformance compensation, i.e., restricting

[1] 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, §§ 2, 9-10).

[2] 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

the collection of fees until all contracted-for services are completed (Civ. Code, § 2944.7, subd. (a)).[3] The intent of the legislation 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 constitutes a misdemeanor (Civ. Code, §§ 2944.6, subd. (c), 2944.7, subd. (b)), and is cause for imposing attorney discipline (Bus. & Prof. Code, § 6106.3).[4]

Prior to January 1, 2017, 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 Section 2944.6 or 2944.7 of the Civil Code." However, the statute was amended effective January 1, 2017, and the reference to Civil Code section 2944.7 was removed. As we discuss later in this opinion, since the misconduct underlying this matter occurred before the January 1, 2017 amendment, the former version of section 6106.3 applies. (See *In the Matter of Golden* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 574, 580, fn. 6.)

This court first interpreted SB 94 in *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, finding that Civil Code section 2944.7 clearly prohibited attorneys from

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> 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.

[3] 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."

[4] All further references to sections are to the Business and Professions Code in effect prior to January 1, 2017, unless otherwise noted.

collecting any fees in advance of completing all loan modification services. (*Id.* at p. 232.) Then, from 2016 to 2018, we published three cases in which we imposed discipline on attorneys for violations of Civil Code section 2944.7. (See *In the Matter of DeClue* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 437; *In the Matter of Golden*, *supra*, 5 Cal. State Bar Ct. Rptr. 574; and *In the Matter of Gordon* (Review Dept. 2018) 5 Cal. State Bar Ct. Rptr. 610.) In each case, we reiterated our holding in *Taylor* as the basis for determining culpability under SB 94.

III. FACTUAL BACKGROUND[5]

Rodriguez was admitted to practice law in California on June 1, 2010, and has no prior record of discipline. Between 2014 and 2016, she provided loan modification services in conjunction with foreclosure defense litigation in three client matters. She submitted loan modification applications in all three matters and collected a total of $48,750 in attorney fees. The record establishes that $14,750 of those fees were clearly preperformance fees.[6] As for the remainder, there is no clear and convincing proof that they constituted preperformance fees.

A. Vargas Matter (No. 16-O-11648)

On July 18, 2014, Steve and Janis Vargas (the Vargases) hired Rodriguez to save their home from foreclosure. The retainer agreement authorized Rodriguez to engage in any form of litigation on the Vargases' behalf that she deemed appropriate. It did not reference loan modification services nor did it contain the disclaimer required by Civil Code section 2944.6

[5] The factual background is based on the Stipulation, trial testimony, documentary evidence, and factual and credibility findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A); *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032.)

[6] This total represents the sum of preperformance fees, as alleged in the First Amended NDC, that Rodriguez collected from the three clients.

§ 2944.6 disclaimer). On July 21, the Vargases paid Rodriguez $2,500, and thereafter made monthly payments of $1,500 from August 2014 through February 2015, for a total of $14,000.[7]

On September 4, 2014, Rodriguez submitted a loan modification application to the Vargases' lender. On the next day, September 5, she filed litigation on their behalf in Santa Barbara County Superior Court against the lender and related parties. However, the Vargases' lender sold their home at foreclosure on September 10, 2014, despite a promised postponement due to the loan modification. In the weeks after the sale, Rodriguez unsuccessfully attempted to negotiate with the lender to rescind the foreclosure. On January 12, 2015, she filed a first amended complaint to add causes of action under the California Homeowner Bill of Rights (HBOR) against the lender and related parties. On July 17, she filed a motion to be relieved as the Vargases' counsel, which was granted.

On April 24, 2017, Rodriguez gave the Vargases an accounting of fees paid. Two days before the disciplinary trial, she gave them a check for $4,000.

B. Schmidt Matter (No. 16-O-16181)

Prior to retaining Rodriguez, David Schmidt had initiated litigation against his lender in San Diego County Superior Court to pursue a statutory rescission of his home loan. He wanted Rodriguez to substitute into the pending litigation as new counsel, and hired her on January 18, 2016. He testified that he sought her services to "help us with a TILA [Truth In Lending Act] [loan] rescission" and to assist "with defense litigation against foreclosure." The retainer agreement authorized Rodriguez to engage in any form of litigation on Schmidt's behalf that she deemed appropriate. It did not reference loan modification services nor did it contain the § 2944.6 disclaimer. On January 19, Schmidt paid Rodriguez $2,500 in fees. Then he paid her

[7] As alleged in the First Amended NDC and during the disciplinary trial, $4,000 of the total fees the Vargases paid Rodriguez were designated as preperformance fees. We also note that in January 2015, the Vargases paid Rodriguez $1,000 in addition to their monthly payment. The record is not clear as to the purpose of this extra payment.

$1,750 on February 18, and made monthly payments of $1,500 from March through June, for a total of $10,250.[8]

At the time he retained Rodriguez, Schmidt's home was to be sold at a trustee's sale on February 19, 2016. He told Rodriguez that he did not want a loan modification because he believed it would negatively impact his rescission claim. She explained that a loan modification application was not an acknowledgement of an existing lien but instead could promote settlement with the lender and postpone foreclosure.

On several occasions, Schmidt informed Rodriguez by email that he wanted her to amend the complaint to include a claim for rescission. She agreed to include it and assured him that submitting a loan modification application was his best option. She advised him that his lender would be precluded from continuing with the foreclosure while negotiating a loan modification, a practice called dual tracking that she stated was made illegal by HBOR. (Civ. Code, § 2924.11, subd. (a).)

In her email on February 19, 2016, Rodriguez asked Schmidt to advise her if he did not wish to proceed with the loan modification application. He did not oppose it, and the application was submitted to his lender later that day. Rodriguez substituted as counsel into Schmidt's superior court case and filed a first amended complaint on March 16; however, she did not include the rescission claim due to concern that the statute of limitations had lapsed. She continued to negotiate the loan modification and delayed the foreclosure sale on Schmidt's home. As a result, Schmidt's lender postponed each sale date between February and April 2016, and ultimately canceled the sale on May 6, 2016.

On July 14, 2016, once Schmidt learned that the amended complaint did not include a rescission cause of action, he immediately terminated Rodriguez and requested a full refund. On

[8] As alleged in the First Amended NDC and during the disciplinary trial, $4,250 of the total fees Schmidt paid Rodriguez was designated as preperformance fees.

April 24, 2017, she provided him with an accounting and a copy of his file. She also paid a partial refund of $4,250 on August 9, 2018, eight days prior to the start of her disciplinary trial.

C. Jones Matter (No. 16-O-17636)

Prior to retaining Rodriguez, Timothy and Stephani Jones (the Joneses) had obtained a loan modification on their home. Timothy Jones testified that they hired Rodriguez to obtain a new loan modification with a principal reduction; their current mortgage (a variable rate, interest-only loan) would soon reset and their payments would increase substantially. On January 8, 2015, the Joneses retained Rodriguez to provide a loan modification along with litigation services and paid her $3,000 in fees. The retainer agreement authorized Rodriguez to engage in any form of litigation on behalf of the Joneses that she deemed appropriate, but did not reference loan modification services nor did it contain the § 2944.6 disclaimer. At the time, the Joneses' home was in default for failing to make mortgage payments for at least a year. They paid Rodriguez $2,000 on February 5, 2015, and made monthly payments of $1,500 from March 2015 through March 2016. When added to the initial $3,000, the Joneses paid a total of $24,500.[9]

Rodriguez submitted a loan modification application to the Joneses' lender on March 11, 2015. On March 19, she filed litigation against the lender and related parties in Placer County Superior Court. The case was later removed to the United States District Court for the Eastern District of California by the lender. On September 7, Rodriguez filed an amended complaint.

The Joneses terminated Rodriguez's services on April 8, 2016. Timothy Jones testified that he requested a full refund from Rodriguez, which she refused. After hiring a malpractice attorney and pursuing a case against Rodriguez, they settled and the Joneses received a full refund plus payment of their malpractice attorney fees.

[9] As alleged in the First Amended NDC and during the disciplinary trial, $6,500 of the total fees the Joneses paid Rodriguez were designated as preperformance fees.

IV. RODRIGUEZ IS CULPABLE OF 10 COUNTS OF MISCONDUCT

OCTC charged Rodriguez with 14 counts of misconduct in three client matters. At trial, the hearing judge granted OCTC's motion to dismiss count five (failure to render accounting) in the Vargases matter, which left 13 counts. The judge found Rodriguez culpable of the following 10 counts: one count each in the Vargas, Schmidt, and Jones matters under section 6106.3, subdivision (a) (failing to provide a separate disclosure statement); one count each in all three matters under section 6068, subdivision (a) (failing to support all laws by accepting preperformance fees, in violation of section 2944.7); one count each in all three matters under rule 4-200(A) of the Rules of Professional Conduct[10] (charging an illegal fee); and one count in the Schmidt matter under rule 4-100(B)(3) (failing to render an appropriate accounting). The judge dismissed with prejudice the counts in each case under section 6106.3, subdivision (a) (charging preperformance fees). We affirm the judge's culpability findings in part, as detailed below. Since the First Amended NDC alleged similar misconduct in each client matter, we group the counts by charged misconduct, rather than by client matter or numerical order.

A. Section 6106.3, subdivision (a): Failing to Provide Required Separate Statement Containing Disclaimer Language (Civ. Code, § 2944.6, subd. (a)) [Counts One—Vargas, Six—Schmidt, and Eleven—Jones]

OCTC charged Rodriguez with three counts of violating section 6106.3, subdivision (a), for failing to provide a separate statement disclosing that third-party negotiators are not required for loan modifications, in violation of Civil Code section 2944.6, subdivision (a). The hearing judge found Rodriguez culpable as charged in all three matters. We agree.

Civil Code section 2944.6, subdivision (a), required Rodriguez to provide a separate disclosure statement, prior to entering a fee agreement with a client, emphasizing that a third-party negotiator was not necessary. (Civ. Code, § 2944.6, subd. (a).) At trial, Rodriguez

[10] All further references to rules are to the Rules of Professional Conduct in effect prior to November 1, 2018, unless otherwise noted.

admitted that she submitted loan modification applications in the Vargas, Schmidt, and Jones matters without providing the mandatory disclosures. Thus, she violated section 6106.3, subdivision (a), and we find her culpable as charged.

B. Section 6068, subdivision (a): Duty to Support All Laws [Counts Three—Vargas, Eight—Schmidt, and Thirteen—Jones]

OCTC charged Rodriguez with three counts of violating section 6068, subdivision (a), for charging and collecting preperformance fees (in violation of Civil Code section 2944.7) prior to completing all contracted-for loan modification services. Section 6068, subdivision (a), provides, it is the duty of an attorney "to support the Constitution and laws of the United States and of this state[,]" and Civil Code section 2944.7, subdivision (a), makes it unlawful to charge or receive any compensation until after the attorney "has fully performed each and every service [he or she] contracted to perform or represented that he or she would perform." The hearing judge found Rodriguez culpable of each count. We agree.

At trial, Rodriguez admitted that she performed loan modification services in all three client matters. She also stipulated to facts establishing that she collected preperformance fees in each client matter. The evidence credibly establishes that she charged and collected at least $4,000 from the Vargases, $4,250 from Schmidt, and $6,500 from the Joneses prior to submitting loan modification applications. Therefore, we find her culpable as charged under section 6068, subdivision (a).

C. Section 6106.3, subdivision (a): Charging Fees Before Completing All Contracted-For Loan Modification Services (Civ. Code, § 2944.7, subd. (a)(1)) [Counts Two—Vargas, Seven—Schmidt, and Twelve—Jones]

OCTC charged Rodriguez with three counts of violating section 6106.3, subdivision (a)(1), by charging and collecting preperformance fees for loan modifications before performing all contracted-for services in the Vargas, Schmidt, and Jones matters, as prohibited by Civil Code section 2944.7. The hearing judge found that OCTC failed to prove a violation of section 6106.3

by clear and convincing evidence[11] and dismissed these three counts. Since the NDC was filed after January 1, 2017, section 6106.3 no longer included the language referencing Civil Code section 2944.7, which prohibited preperformance fees, so the judge concluded that OCTC did not establish Rodriguez's culpability.

OCTC argues that all of Rodriguez's misconduct occurred before January 1, 2017, thus making her culpable for charging and collecting preperformance fees between July 2014 and February 2016 while providing loan modification services. We agree that focusing on the date of misconduct is consistent with our recent opinions on the subject.[12] However, we find these charges to be duplicative of the misconduct underlying our culpability findings in counts three, eight, and thirteen above. While we find Rodriguez culpable for these duplicative counts, we do not assign any additional weight. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight for finding of culpability where same facts support another charge that provides for same or greater discipline].)

D. Rule 4-200(A): Illegal Fee [Counts Four—Vargas, Nine—Schmidt, and Fourteen—Jones]

OCTC charged Rodriguez with three counts of violating rule 4-200(A) by charging and receiving fees for loan modification services before full performance, in violation of Civil Code section 2944.7. The hearing judge found Rodriguez culpable of the charges but assigned no additional weight in culpability because of the essentially duplicative culpability findings under section 6068, subdivision (a). We agree.

Under rule 4-200(A), a lawyer "shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee." As detailed above, during the course of performing loan

[11] 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.)

[12] *In the Matter of Golden*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 580, fn. 6; *In the Matter of Gordon*, *supra*, 5 Cal. State Bar Ct. Rptr.at p. 623, fn. 15.

modification services, Rodriguez charged and collected initial and monthly fees from the Vargases, Schmidt, and the Joneses. This conduct both violated section 2944.7, and is an illegal fee within the meaning of rule 4-200(A). (*Taylor*, *supra*, 5 Cal. State Bar. Ct. Rptr. at pp. 231–232). We affirm the hearing judge's culpability finding but assign no additional weight for the purposes of discipline.

E. Rule 4-100(B)(3): Failing to Render Appropriate Accounting [Count Ten—Schmidt]

OCTC charged Rodriguez with violating former rule 4-100(B)(3) by failing to render an appropriate accounting to Schmidt after her termination in July 2016.[13] Rodriguez requests dismissal and asserts that the hearing judge erroneously ignored her testimony and that of her employee, Andres Balarezo. Both contended that the accounting was delivered to Schmidt in October 2016. The hearing judge found her culpable as charged. We agree.

The hearing judge concluded that Rodriguez did not provide an appropriate accounting until April 2017, nine months after Schmidt terminated her services on July 14, 2016. We agree, and also defer to the hearing judge's findings of fact, which relied in part on the credibility assessments of Schmidt, Rodriguez, and Balarezo, all of whom testified at trial. (Rules Proc. of State Bar, rule 5.155(A) [factual findings entitled to great weight]; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280 [hearing judge's credibility findings entitled to great weight].) Thus, Rodriguez is culpable of violating rule 4-100(B)(3).

V. RODRIGUEZ'S DEFENSES AND PROCEDURAL CHALLENGE

Rodriguez urges that we consider her various defenses to culpability. We have examined her arguments and dismiss them for lack of merit.[14]

[13] Rule 4-100(B)(3) provides that "an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property."

[14] We have independently reviewed each of Rodriguez's arguments. Those not specifically addressed herein have been considered and rejected as lacking in legal authority.

A. Litigation Exception and HBOR Foreclosure Defense

We reject Rodriguez's argument that Civil Code section 2944.7 does not apply to loan modification work combined with "valid litigation." She argues that the statute's legislative history proves that it was not intended to "prevent attorneys from charging advance fees for bringing legitimate litigation." In *Taylor*, we found that the statute clearly prohibited collecting any fees in advance of completing all loan modification services. (*Taylor, supra*, 5 Cal. State Bar Ct. Rptr. 221.) Then, in *DeClue*, *supra*, 5 Cal. State Bar Ct. Rptr. 437—involving an attorney who filed litigation while negotiating loan modifications and collecting preperformance fees—we found that the attorney's conduct violated Civil Code section 2944.7, even though loan modification was not specified in the retainer agreements, because he charged clients initial and monthly fees prior to completing the loan modification services. (*Id.* at. pp. 443–444.)

Rodriguez asserts she held a good faith belief that by incorporating litigation strategies under HBOR into her foreclosure defense practice, she would not "run afoul of Civil Code sections 2944.6 and 2944.7." HBOR allows a court to award reasonable attorney fees from the lender to a prevailing borrower; however, there is no exception allowing an attorney to collect preperformance fees for providing loan modification services. (Civ. Code, § 2920.7, subd. (e)(4); *Golden, supra*, 5 Cal. State Bar Ct. Rptr. at p. 586 ["no conflict between Civil Code section 2944.7, subdivision (a), which prohibits an *attorney* from charging pre-performance advance fees for litigation related to a loan modification, and the HBOR, which provides that a borrower may receive attorney fees from a *lender*"].)

B. Loan Modification Was Not Sole or Primary Purpose of Litigation

Next, Rodriguez argues that, unlike the attorney in *Taylor*, she never operated nor advertised her services as a loan modification practice. She also asserts that her litigation practice is distinct from the misconduct found in *DeClue* and *Golden* because "she did not file

litigation for the sole or primary purpose of obtaining loan modifications." Our holding in *Taylor* did not limit culpability to attorneys "operating a loan modification practice," and we held that the statute "plainly prohibits *any person* engaging in loan modifications from collecting *any fees* related to such modifications until *each and every* service contracted for has been completed." (*Id*. at p. 232, original italics.) And even if her practice was structured differently than in *DeClue* and *Golden*, this does not vitiate the simple fact that she violated the statute by charging and collecting preperformance fees prior to completing all loan modification services.

C. Ambiguity

Rodriguez also maintains that she should not be found culpable because the language of Civil Code section 2944.7 is ambiguous. She consulted with other attorneys, researched the statute and case law, and reviewed State Bar advisories. She contends that none of those resources led her to believe that the Civil Code section 2944.7 prohibition against collecting advance fees applied to her. These arguments are also not persuasive.

First, contrary to her contention, we have previously found that the language of Civil Code section 2944.7 is not ambiguous. (*Taylor*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 232; see also *Golden*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 587.) Second, her statement that she consulted with colleagues in the field is no defense to culpability. (*Sheffield v. State Bar* (1943) 22 Cal.2d 627, 632 [opinion of "fellow attorney" no defense to wrongdoing].) Rodriguez further points out that the only published case at the time, *Taylor*, did not address an attorney with a litigation practice. But given the broad construction of the word "service" under section 2944.7—"each and every service the person contracted . . . or represented that he or she would perform"—and our unequivocal rule in *Taylor* prohibiting the collection of *any fees* before full performance, her argument fails. Rodriguez chose an unreasonable interpretation of

Civil Code section 2944.7 that not only ignored the statute's plain language but also disregarded our published case law.

D. Exclusion of Expert Witness

Finally, Rodriguez proclaims that the hearing judge abused her discretion by excluding Rodriguez's expert without explanation. We disagree. Hearing judges are accorded wide latitude to determine relevant evidence, and prejudice must be established before a party is entitled to relief. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241; Rules Proc. of State Bar, rule 5.104(F)].) Rodriguez's expert intended to proffer testimony on "the historical context leading to the enactment of SB94" and the "custom and practice in the field [regarding] mortgage loan modification." She provided no support that an expert was necessary to discuss legislative history when the statute and legislative record are available and, most importantly, when this court has already made findings in several cases involving the statute. (*Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1146–1147 [trier of fact may exclude expert testimony when attorney's performance is so clearly contrary to established standards].) Rodriguez also failed to specify any actual prejudice she suffered. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 469 [attorney must show specific prejudicial effect].) Accordingly, we find that the hearing judge did not abuse her discretion by excluding this expert testimony.

VI. AGGRAVATION AND MITIGATION

Standard 1.5[15] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Rodriguez has the same burden to prove mitigation. (Std. 1.6.)

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

A. Aggravation

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

The hearing judge found Rodriguez's multiple violations to be an aggravating factor. Rodriguez does not challenge this finding, and we assign moderate weight. (*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. Significant Harm (Std. 1.5(j))

The hearing judge found that Rodriguez's misconduct caused significant financial harm to all three clients. (Std. 1.5(j) [significant harm to client, public, or administration of justice is aggravating circumstance].) Rodriguez exploited her fiduciary duty by illegally collecting preperformance fees without a § 2944.6 disclaimer while her clients were suffering serious financial problems which resulted in foreclosure of their homes. We therefore assign substantial aggravating weight.

Rodriguez contends that no harm resulted because (1) the clients deliberately sought her for litigation services; (2) she refunded $4,250 to Schmidt and $4,000 to the Vargases; and (3) her efforts saved the Joneses' home from foreclosure. We disagree. Rodriguez failed to inform her clients that they did not need to hire counsel, and then collected at least $14,750 in preperformance fees when they were in desperate financial circumstances. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 [substantial harm where attorney's misconduct deprived client of funds at time of desperate need]; see also *Beery v. State Bar* (1987) 43 Cal.3d 802, 813 [abuse of fiduciary relationship when trusted party exerts unique influence over dependent party]; *Taylor*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 235–236 [attorney took advantage of clients' financial desperation and exploited his fiduciary position by

charging up-front fees for loan modification services].) Thus, we find that the harm Rodriguez caused her clients warrants substantial aggravation.

B. Mitigation

1. No Mitigation for No Prior Record (Std. 1.6(a))

Standard 1.6(a) offers mitigation where there is an "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur." The hearing judge did not afford Rodriguez any mitigation for discipline-free practice. We agree. Since Rodriguez was admitted to practice in June 2010, she had been practicing just four years before her misconduct began in mid-2014. Therefore, we conclude that she is not entitled to any mitigation credit. (*In the Matter of Hertz, supra*, 1 Cal. State Bar Ct. Rptr. at p. 473 [no mitigation where attorney had practiced only four years prior to misconduct].)

2. No Mitigation for Good Faith (Std. 1.6(b))

An attorney may be entitled to mitigation credit if she can establish a "good faith belief that is honestly held and objectively reasonable." (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) The hearing judge found that Rodriguez was entitled to significant mitigation for her good faith belief that she diligently took actions that she honestly thought would delay foreclosure. Rodriguez argues that her good faith belief that SB 94 did not apply to her should serve as a complete defense to all charges. OCTC argues that Rodriguez is not entitled to any good faith mitigation because her beliefs were objectively unreasonable.

We find OCTC's argument persuasive. Even if Rodriguez believed her litigation practice did not run afoul of SB 94, it was objectively unreasonable for her to charge and collect preperformance fees for loan modification in light of the clear language of the statute coupled with our rejection of a similar good faith argument in *Taylor*. (*Taylor, supra*, 5 Cal. State Bar. Ct. Rptr. at p. 232.) We therefore assign no mitigation credit for good faith.

(*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331 [attorney's honest belief not mitigating because belief was unreasonable].)

3. Cooperation with State Bar (Std. 1.6(e))

Standard 1.6(e) provides that mitigation may be assigned for spontaneous candor and cooperation with the State Bar. Before trial, Rodriguez stipulated to certain facts on the charged counts in the three client matters, as well as the admission of documents. Since she stipulated only to facts that were easily proven, and not to any culpability, we assign moderate mitigation for her cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

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

Rodriguez is entitled to mitigation if she establishes "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge found that Rodriguez established good character and afforded significant mitigating weight. We agree and assign substantial weight to this factor.

Fourteen character references—six attorneys, three friends, four clients, and one clergy member—presented testimony and declarations attesting to Rodriguez's exceptional character. These references, representing a broad spectrum of the community, described her as trustworthy, supportive, responsible, professional, and dedicated. The six attorneys included peers and colleagues with impressive positions in the legal community. Four attorneys testified at trial on her behalf. All six attorneys affirmed Rodriguez's exemplary moral character, strong work ethic, and commitment to serve others. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in maintaining the honest administration of justice"]; *In the Matter of Davis* (Review

Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant weight given to testimony of three witnesses who had broad knowledge of attorney's good character, work habits, and professional skills].)

5. Restitution (Std. 1.6(j))

Restitution is a mitigating circumstance if it is "made without the threat or force of administrative, disciplinary, civil or criminal proceedings." (Std. 1.6(j).) The hearing judge did not assign mitigation for restitution. We agree. Although Rodriguez paid the Vargases and Schmidt for a *portion* of the fees she collected, she did so just days prior to this disciplinary trial, and the remaining fees lacked proof as to their categorization. Further, the Joneses only received a refund after initiating a legal malpractice claim against Rodriguez. (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution paid under threat or force of disciplinary, civil, or criminal proceedings does not have any mitigating effect].)

VII. DISCIPLINE

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.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

Several standards apply here.[16] Standard 1.7(a) directs that when multiple sanctions apply, the most severe shall be imposed. Since Rodriguez's most serious ethical violations result from collecting preperformance fees for loan modification work, we apply standards 2.18 and 2.12(a), which are the most severe and provide for disbarment or actual suspension.

The hearing judge considered the applicable standards and case law, relying primarily on *Taylor*. After balancing the aggravating and mitigating factors, she recommended discipline including a one-year stayed suspension with 30 days' actual suspension, which is within the range provided by standard 2.18. In *Taylor*, the attorney received a six-month actual suspension and until he makes restitution for charging preperformance 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. (*Taylor*, *supra*, 5 Cal. State Bar Ct. Rptr. at pp. 232–235.)

DeClue, *supra*, 5 Cal. State Bar Ct. Rptr. 437 also provides guidance as it involved an attorney who illegally charged and collected advance fees for loan modifications in two client matters. DeClue also received a six-month actual suspension and until payment of restitution. (*Id*. at p. 446.) He proved no mitigation, and his misconduct was aggravated by a prior record of discipline, significant harm to his clients, failure to pay restitution, and uncharged misconduct. (*Id*. at pp. 444–445.)

While the loan modification cases discussed above provide some guidance, no case is directly analogous to Rodriguez's circumstances. As OCTC correctly points out, Rodriguez's

[16] Standard 2.3(b) provides that the presumptive sanction for charging or collecting an illegal fee is suspension or reproval. The other applicable standards are standard 2.12(a), which provides for disbarment or actual suspension for violations of section 6068, subdivision (a), and standard 2.18 which provides that "[d]isbarment or actual suspension is the presumed sanction for any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in the Standards."

misconduct is less serious and warrants less discipline. Her primary argument on review is that she genuinely believed that her actions would not violate Civil Code sections 2944.6 and 2944.7. As stated above, Rodriguez is not entitled to credit for good faith because her beliefs were objectively unreasonable. While we acknowledge that the total amount she collected in preperformance fees—at least $14,750—was not as much as in other cases, her actions nonetheless violated the law.

OCTC urges a minimum 90-day period of actual suspension as appropriate. It cites multiple cases, including illegal and unconscionable fee cases. (See, e.g., *Caviello v. State Bar* (1953) 41 Cal.2d 273 [attorney suspended for 30 days for collecting illegal fee above statutory limit in one case]; *In the Matter of Harney, supra*, 3 Cal. State Bar Ct. Rptr. 266 [six months' actual suspension for collecting illegal fee and for grossly negligent misrepresentation]; *In the Matter of Van Sickle, supra*, 4 Cal. State Bar Ct. Rptr. 980 [90-day actual suspension for charging and collecting unconscionable fees and improperly entering into business transaction with client].) OCTC argues that Rodriguez's conduct warrants the same level of discipline received by the attorney in *Van Sickle*. However, Van Sickle was found culpable of collecting an *unconscionable fee* rather than an illegal fee.[17] Therefore, we do not find this case helpful as to the proper level of discipline.

Although the seriousness of Rodriguez's misconduct is somewhat comparable to *Caviello*, which involved an attorney's collection of an illegal fee above a statute's limit, it is much less than in *Harney*, where the attorney collected a fee that was $266,850 in excess of the legal limit. Like the attorneys in *Taylor* and *DeClue*, Rodriguez collected preperformance fees in clear violation of Civil Code section 2944.7. Her misconduct involved fewer clients than in

[17] While the charging of illegal and unconscionable fees are both disciplinable under rule 4-200, the sanctions provided by the standards are more severe for unconscionable fees (minimum six-month actual suspension under standard 2.3(a)), compared with illegal fees (reproval or suspension under standard 2.3(b)).

Taylor, but more than the two clients in *DeClue*. The mitigation we assigned to her cooperation and good character, while notable, is neither compelling nor does it predominate over her misconduct and aggravation. Thus, given the range of case law involving similar or worse acts of attorney misconduct and considering all relevant factors, we affirm that 30 days' actual suspension is necessary to impress upon Rodriguez the seriousness of her misconduct, to protect the public and the courts, and to maintain the integrity of the legal profession.

VIII. RECOMMENDATION

We hereby recommend that Patricia Renee Rodriguez, State Bar No. 270639, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for one year with the following conditions:

1. **Actual Suspension.** Rodriguez must be suspended from the practice of law for the first 30 days of her probation.

2. **Review Rules of Professional Conduct.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Rodriguez must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to her compliance with this requirement, to the State Bar Office of Probation in Los Angeles (Office of Probation) with her first quarterly report.

3. **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions.** Rodriguez must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of her probation.

4. **Maintain Valid Official State Bar Record Address and Other Required Contact Information.** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Rodriguez must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has her current office address, email address, and telephone number. If she does not maintain an office, she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Rodriguez must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

5. **Meet and Cooperate with Office of Probation.** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Rodriguez must schedule a meeting with her assigned probation case specialist to discuss the terms and conditions of

her discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, she may meet with the probation case specialist in person or by telephone. During the probation period, Rodriguez must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court.** During her probation period, the State Bar Court retains jurisdiction over Rodriguez to address issues concerning compliance with probation conditions. During this period, she must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to her State Bar record address, as provided above. Subject to the assertion of applicable privileges, Rodriguez must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. **Quarterly and Final Reports**

a. Deadlines for Reports. Rodriguez must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Rodriguez must submit a final report no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Rodriguez must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether she has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Rodriguez is directed to maintain proof of her compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of her actual suspension has ended, whichever is longer. She is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. **State Bar Ethics School.** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Rodriguez must submit to the Office of Probation satisfactory evidence of completion of the State Bar 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 she will not receive MCLE credit for attending this session. If she provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Rodriguez will nonetheless receive credit for such evidence toward her duty to comply with this condition.

9. **Commencement of Probation/Compliance with Probation Conditions.** 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 probation period, if Rodriguez has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

IX. MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Rodriguez be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If she provides satisfactory evidence of the taking and passage of the above examination after the date of this opinion but before the effective date of the Supreme Court's order in this matter, she will nonetheless receive credit for such evidence toward her duty to comply with this requirement.

X. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs

assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.