BEFORE A HEARING OFFICER OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **Ingrid-Joy Warrick,** **Bar No. 019624** Respondent.	No. 06-0943, 07-0703, 07-1545, 07-1837 **HEARING OFFICER'S REPORT**

PROCEDURAL HISTORY

A Complaint was filed in this matter on July 30, 2009. The Hearing Officer was assigned on August 12, 2009. A telephonic Initial Case Management Conference was held on August 24, 2009. The parties submitted a Notice of Settlement on September 2, 2009. The Bar and Respondent submitted a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Tender on October 23, 2009. A Hearing was held on November 9, 2009.

FACTS

GENERAL ALLEGATIONS[1]

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on February 10, 2004.

2. Respondent was associated with an advance funding business, The Alliant Group ("Alliant"), and its owners, from its inception and throughout the pertinent time period.

[1] The facts are found in the Tender of Admissions and Joint Memorandum and in the transcript of the hearing (TR)

Respondent's association with Alliant and its owners included, but was not limited to, the following:

a. Respondent was involved in the creation of the concept that Alliant would provide "advance funding" to individuals involved in, among other things, claiming excess proceeds resulting from the foreclosure sale of their home(s); (TR 5:21 through 6:4)

b. Respondent had a personal, social and/or business relationship with both Rick Rickert ("Mr. Rickert") and Dennis Reardon ("Mr. Reardon"), who founded Alliant and were owners/partners/major participants in Alliant;

c. Respondent had a personal, romantic relationship with Mr. Reardon during 2005 and/or 2006, then remained friends and continued to share a residence with him during the time period covered by the events set forth below; (TR 10:19 through 11:7)

d. Prior to and during the time period covered by the events set forth below, Mr. Reardon had loaned and/or gifted Respondent a large amount of money, up to and/or in excess of two hundred thousand dollars for personal and professional use, the loaned portions of which Respondent has not yet repaid; (TR 11:18 through 12:6)

e. Alliant and/or Mr. Rickert or Mr. Reardon provided Respondent with financial assistance by contributing to, and paying for overhead, administrative or other costs involved in running a non-profit entity founded by Respondent, called REACH for My Home, Inc. ("REACH"). (TR 12:7-16) Respondent served as Executive Director of REACH and provided funding and office space for the operation of REACH. REACH assisted only individuals who still owned their homes, even if the home was subject to foreclosure;

f. Mr. Reardon was a principal in Shamrock Glen, a business opportunity for condo conversions in which Respondent was also participating as an investor. In 2006, a majority of Respondent's income was derived from her work with Shamrock Glen; (TR 13:1-8)

g. Respondent regularly represented Alliant, and/or Mr. Rickert and Mr. Reardon in legal matters to the extent that they were a major client of her law firm; and

h. Respondent received a majority of her excess proceed cases, during the pertinent time period, from Alliant or those employed by and/or acting on Alliant's behalf. (TR 13:19 through 14:11)

COUNT ONE (File no. 06-0943/Butler)

3. In or about February 2006, Respondent began representing Marcelino Evangelista ("Mr. Evangelista") in an effort to obtain for him excess proceeds resulting from the foreclosure sale of his home.

4. Mr. Evangelista came into contact with Respondent through the actions of a friend, Elena Escobedo ("Ms. Escobedo") and a referral from a volunteer at REACH, Respondent's non-profit organization.

5. As Mr. Evangelista's home had already been sold at a foreclosure sale, he was not eligible for assistance from REACH.

6. Respondent did not meet or personally speak with Mr. Evangelista before commencing her representation of him. (TR 17:7)

7. Ms. Escobedo, who had initially consulted REACH on Mr. Evangelista's behalf was instructed to return with Mr. Evangelista.

8. Shortly thereafter, Mr. Evangelista and Ms. Escobedo met with a REACH counselor and a paralegal employed by Respondent; the paralegal was assigned to handle exclusively excess proceed cases.

9. Mr. Evangelista, through contact with an employee of Respondent's or another acting on her behalf, entered into a fee agreement, and retained Respondent for representation. The fee agreement provided for a $2,500 flat fee to Respondent for her services in securing Mr. Evangelista's excess proceeds. (TR 16:10-15)

10. The fee agreement also provided for a separate $2,500 payment to an unnamed "third party provider" if one was utilized in Mr. Evangelista's matter. The fee agreement was silent as to what services such a provider would offer or provide.

11. Based on the information obtained by Respondent's employees or those acting on her behalf, Mr. Evangelista was referred to Alliant, to obtain advance funding while his excess proceeds matter was litigated. (TR 16:5-9; 38:5-12)

12. Pursuant to the fee agreement, Respondent's flat fee was earned upon acceptance of the client's case; in other words, earned upon receipt. The fee agreement, however, lacked any language informing Mr. Evangelista that he might, nonetheless, be entitled to a full or partial refund at the conclusion of the matter or upon termination of Respondent's services.

13. Mr. Evangelista was not made aware of Respondent's relationships to Alliant, Mr. Rickert or Mr. Reardon, any potential and/or actual conflict of interest, he was not advised to seek independent counsel and he was not asked to, nor did he, sign a waiver of any potential and/or actual conflict of interest. Respondent affirmatively asserts that she was negligent in not establishing procedures by which to identify potential conflicts of interest. For purposes of this agreement, the State Bar conditionally does not contest this assertion.

14. Mr. Evangelista applied for the services of Alliant, and after a telephone call from Respondent, or those acting in her employ and on her behalf, Alliant provided a loan to Mr. Evangelista. Respondent affirmatively asserts that she did not personally contact Alliant on Mr. Evangelista's behalf, she admits that it was her responsibility to supervise her employees to ensure their conduct complied with her ethical obligations.

15. To obtain Alliant's funding, Mr. Evangelista assigned his rights in his excess proceeds recovery to Alliant, ultimately sacrificing to Alliant approximately, if not in excess of, 50 percent of the excess proceeds recovery to which he was entitled.

COUNT TWO (File No. 07-0703/Wilkerson)

16. On or about December 19, 2006, Brent Mallernee ("Mr. Mallernee") retained Arizona attorney Ralph Wilkerson ("Mr. Wilkerson") for the purpose of recovering excess proceeds resulting from the foreclosure sale of his home.

17. From December 2006 until March 2007, Mr. Wilkerson monitored Mr. Mallernee's matter to determine whether any other liens or claims had been asserted against the excess proceeds.

18. Mr. Wilkerson maintained contact with his client during this time period, keeping Mr. Mallernee advised of the status of the case.

19. On March 13, 2007, during a routine check on the status of Mr. Mallernee's matter, Mr. Wilkerson discovered that Respondent had filed an application for release of the excess proceeds funds in Mr. Mallernee's matter on March 6, 2007. Respondent purported to be acting as Mr. Mallernee's attorney and on his behalf. (TR 68:2)

20. Mr. Mallernee had not met, spoken with or hired Respondent, and had not authorized her to act on his behalf and asked Mr. Wilkerson to take appropriate steps to protect his funds from Respondent. (TR 65:10-24; 71:1)

21. Thereafter, on or about March 13, 2007, Mr. Wilkerson attempted to speak with Respondent, and did speak to Respondent's secretary, Yana, who informed Mr. Wilkerson that according to the file, a third party, Roy Garrett ("Mr. Garrett") had obtained Mr. Mallernee's signature on a contract by which Mr. Mallernee had hired Respondent as his attorney. (TR 63:14 through 64:3)

22. Mr. Garrett was not, and is not, an attorney licensed to practice law in Arizona. Mr. Garrett was an employee of The Alliant Group.

23. Based on information provided to Mr. Wilkerson, Mr. Garrett had gone to Mr. Mallernee's home and had obtained his signature in person on a contract for representation; Mr. Wilkerson later was informed that Respondent must have received the contract for representation (bearing Mr. Mallernee's signature) by mail.

24. Mr. Wilkerson requested a copy of the contract and/or Mr. Mallernee's file, but Respondent's employee declined to provide Mr. Wilkerson a copy of Mr. Mallernee's file.

25. On March 14, 2007, Mr. Mallernee telephoned Respondent's office, and left a voice-mail message in which he asked Respondent to provide him with a copy of the contract by which Respondent purported to represent Mr. Mallernee, providing his e-mail address and a fax number.

26. On or about March 15, 2007, Respondent spoke to Mr. Wilkerson and informed him that she had a contract signed by Mr. Mallernee, but did not provide either Mr. Wilkerson or Mr. Mallernee a copy of the contract.

27. On or about April 2, 2007, Mr. Wilkerson faxed a letter to Respondent, demanding that she withdraw her application for Mr. Mallernee's excess proceeds funds, stating that if she did not he would file a motion to strike her application. Respondent did not respond to Mr. Wilkerson's letter. Respondent affirmatively asserts that during this period of time she was frequently absent from her office due to other business interests and family circumstances. For purposes of this agreement the State Bar conditionally does not contest this assertion.

28. On April 6, 2007, Mr. Wilkerson again contacted Respondent's office and was told that Respondent would not provide any information from Mr. Mallernee's file without a request from Mr. Mallernee. Later that same day, Respondent confirmed her requirement that Mr. Mallernee provide the request/permission to Mr. Wilkerson before she would do so.

29. On or about April 11, 2007, Mr. Mallernee sent by facsimile transmission, a signed, notarized letter to Respondent in which he, among other things, advised Respondent that she was not his lawyer, or to the extent that she believed that she was, she was fired.

30. Mr. Mallernee requested that Respondent withdraw the application she had filed in his matter and that she provide him a copy of any document by which she claimed to be authorized to act as his attorney.

31. Respondent did not promptly provide that information to Mr. Mallernee, nor did she promptly move to withdraw. Respondent affirmatively asserts that her failure to do so was occasioned by her frequent absences from her office, but admits that she should have taken prompt action. (TR 70:5-13) For purposes of this agreement the State Bar conditionally does not contest this assertion.

32. On or about April 16, 2007, Respondent filed an Affidavit of No Objection in Mr. Mallernee's matter and lodged an Order for Release of Excess Proceeds in his matter. The order

lodged by Respondent provided for the release of Mr. Mallernee's funds to Respondent. (TR 28:24 through 29:10) Respondent affirmatively asserts that the Affidavit and Order were prepared by her staff and that she signed them, or permitted them to be signed for her, without sufficiently reviewing the documents. Respondent further admits that she failed in her duty to appropriately supervise her staff so that they did not conduct the unauthorized practice of law. For purposes of this agreement, the State Bar conditionally does not contest these assertions.

33. The contract by which Respondent purported to have been retained by Mr. Mallernee was signed pursuant to a contract with Alliant, for advance funding. Respondent's services were included in the contract, although Mr. Mallernee and Respondent had never met, talked or communicated directly prior to Respondent's undertaking legal action in Mr. Mallernee's matter.

34. By letter dated April 17, 2007, Respondent directly contacted Mr. Mallernee, informing him, among other things that should he discharge her as his attorney, she would be entitled to her entire flat fee of $2,500, and any fees he might pay to another attorney would be duplicative. Respondent affirmatively asserts that she was not ultimately paid for her representation of Mr. Mallernee.

35. Prior April 17, 2007, Respondent had initiated no contact with Mr. Mallernee, never spoke to him personally and failed to ensure that he was kept apprised of the status of his matter or provided any information to which he would have been entitled as her client. Respondent affirmatively asserts that Mr. Mallernee was an out-of-state client she believed to live in Wisconsin.

36. Respondent took her direction in Mr. Mallernee's case from Alliant.

37. Mr. Mallernee was not informed by Respondent of her connection with Alliant and/or its principals, or of any actual or potential conflict of interest that might arise and impact Respondent's representation of his interests.

38. Respondent affirmatively asserts that she withdrew from her representation of Mr. Mallernee within ten (10) days after sending a FedEx letter to Mr. Mallernee at his last known addresses in Colorado and Wisconsin outlining her concern regarding the delay that might occur should she withdraw from his case. For purposes of this agreement, the State Bar does not dispute this assertion.

39. Based on information and belief, during and between the years 2005 and 2008, Respondent obtained numerous clients through direct solicitation of those clients by non-lawyer employees or those employed by businesses with which Respondent had an on-going legal and/or business relationship including but not limited to Alliant. In the alternative, Respondent represented these clients having never met them or communicated with them, and knowing that a non-lawyer had entered into representation and fee agreements with these clients in her absence and on her behalf. These clients included, but were not limited to, the clients listed in Exhibit "A" attached hereto. (TR 72:25 through 74:6)

COUNT THREE (File No. 07-1545/Rickert)

40. Mr. Rickert is not an Arizona attorney. Mr. Rickert is not a licensed attorney in any state in the United States. (TR 78:9)

41. Beginning in 2005, and until approximately August 2007, Respondent was frequently absent from her law office due to a number of factors, including by not limited to other business ventures including work on Shamrock Glen and a serious family illness. (TR 13:1-8; 39:17 through 42:8; 90:10-22)

42. During Respondent's absence from her office, Mr. Rickert, who was an authorized signer on Respondent's trust and operating accounts, and another employee of Alliant and Respondent, conducted legal business on behalf of Respondent in her absence. (TR 86:1-16)

43. Mr. Rickert reported to the State Bar information tending to show that Respondent's client trust account had not been appropriately managed during Respondent's frequent absences from her law office. (TR 79:7-25)

44. Based on the information provided by Mr. Rickert, an examination of Respondent's client trust account was conducted.

45. Although all records requested of Respondent were not provided, the State Bar's examination revealed the following acts by Respondent, or by those authorized to act on her behalf: (TR 82:4 through 83:21)

a. Respondent converted client funds when check number 1149 in the amount of $2,590.10 was disbursed from the trust account on June 27, 2006, for the benefit of client Cooper when the balance held in trust for that client was $2,515.10.

b. Respondent converted client funds when check number 1250 in the amount of $851.79 was disbursed from the trust account on December 13, 2006, for the benefit of client Emmitt when the balance held in trust for that client was $0.00. A deposit to cover that disbursement was not made until the following day.

c. Respondent converted client funds when check number 1251 in the amount of $1,165.80 was disbursed from the trust account on December 15, 2006,

for the benefit of client Emmitt when the balance held in trust for that client was $1,155.80.

d. Respondent converted client funds when check number 1096 in the amount of $12,913.02 was disbursed from the trust account on January 24, 2006, for the benefit of client Harwood when the balance held in trust for that client was $12,883.02.

e. Respondent failed to record all transactions promptly and completely.

f. Respondent converted client funds by failing to maintain her own funds in the client trust account for the purpose of paying bank service charges, specifically when on June 15, 2006, the trust account was debited $19.00 for a new check order charge.

g. Respondent failed to maintain adequate internal controls, and/or failed to record all transactions promptly and completely as required, as follows:

(1) Respondent converted client funds as set forth above;

(2) A non-cash deposit correction of $2,000.00 was debited from the account on May 11, 2006, and was not reflected on the general ledger of the account;

(3) A deposit of $100.00 to the trust account made on May 25, 2006, was not reflected on the general ledger or on any client ledger;

(4) A deposit of $100.00 made on July 19, 2006, was not reflected on the general ledger or on any client ledger;

(5) Respondent did not maintain an administrative funds/bank charges ledger or any record of personal funds maintained in the trust

account serving as administrative funds or to cover bank charges to the account.

h. Respondent failed to conduct, or cause to be conducted, a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and trust account bank statement as required. Respondent affirmatively asserts that during this time she entrusted others to correctly perform the actions listed above due to her personal circumstances and failed to adequately supervise them to ensure that their conduct comported with her ethical obligations. For purposes of this agreement, the State Bar conditionally does not contest this assertion. Respondent admits that she was responsible for ensuring that those actions were appropriately performed pursuant to the trust account rules and guidelines.

46. During this period, Respondent failed to exercise adequate or reasonable supervision of non-lawyers acting on her authority and/or on her behalf. This lack of supervision included, but is not limited to, the fact that Mr. Rickert began operating a personal (non-law-related) business from Respondent's office during her absence.

COUNT FOUR (File No. 07-1837/Schaeffer)

47. During a period of time between 2005 and 2007, David Schaeffer ("Mr. Schaeffer") was employed by Respondent to work as a non-lawyer assistant in her law practice as well as with REACH. (TR 85:1-10)

48. During the same period of time, Mr. Schaeffer was also employed by Alliant. Mr. Schaeffer's work with Alliant included directly soliciting clients for Alliant. Respondent was aware of the nature of Mr. Schaeffer's work with Alliant. (TR 85:11-25)

49. During the same period of time, which included late 2005 until August 2007, Respondent was frequently absent from her office due to other business commitments and family issues.

50. Mr. Schaeffer's job duties through his work for Alliant included directly soliciting clients to be represented by Respondent. Respondent affirmatively asserts that she did not instruct Mr. Schaeffer to solicit clients for her law office through his work with REACH, but admits that this occurred due to her lack of adequate supervision of Mr. Schaeffer while in her employ. For purposes of this agreement, the State Bar conditionally does not contest Respondent's assertion that Mr. Schaeffer was not instructed to solicit clients for her law office.

51. Mr. Schaeffer, on more than one occasion, acted on Respondent's behalf in agreeing that Respondent would represent individual clients notwithstanding the fact that Respondent had never met nor spoken to the prospective client.

52. Once a client agreed to be represented by Respondent, Mr. Schaeffer would prepare pleadings and other documents, sign them on Respondent's behalf and/or file pleadings Respondent had not reviewed or approved. (TR 86:1-16)

53. Mr. Schaeffer then continued to be involved in the representation of the individual clients, frequently without adequate supervision by Respondent.

54. For his services, Mr. Schaeffer was paid by Respondent 20% of the profits from each case he initiated, including 20% of the legal fee. For purposes of this agreement, the State Bar conditionally agrees that Mr. Schaeffer's allegation about payment might not be proven by clear and convincing evidence.

CONDITIONAL ADMISSIONS/CONCLUSIONS OF LAW

Respondent conditionally admits that her conduct, as described above, violated Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.2, 1.4, 1.5, 1.7, 1.8, 1.15, 1.16, 4.2, 5.3, 5.5, 5.7, 7.3 and 8.4(a) and (d), and Rules 43 and 44, Ariz.R.Sup.Ct. Based on these admissions and the evidence at the hearing the Hearing Officer concludes that the Bar has established the violations by clear and convincing evidence. Some of the misconduct is described in more detail below:

ER 1.2 (Allocation of Authority between Client and Lawyer) and ER 1.4 (Communication) go together in this case. (TR 19:1-18) Respondent was not meeting and conferring with the clients. She was letting non-lawyers run her law practice. ER 1.5(d)(3) and ER 1.16 were violated when Respondent had a fee agreement with Mr. Evangelista in Count One that called for a fee "earned upon receipt", but Respondent's written fee agreement did not contain the language that if the client terminated her services the client may be entitled to a refund of the unearned portion of the fee. ER 1.16(d) was violated when Respondent did not comply with Mr. Mallernee's requests for a copy of the contract the client signed purportedly stating that the client was retaining Respondent's legal services.

ER 1.7(a) (2) (Conflict of Interest) was violated when Respondent's clients who were receiving funds from Alliant (sometimes receiving 50% of what their excess proceeds were worth) were not told of Respondent's relationship with Alliant and its principals Rick Rickert and Dennis Reardon. (TR 38:20 through 39:16; 42:12-19) The Bar was careful to note that Respondent had no direct financial stake in Alliant. (TR 25:22 through 26:8) But Respondent had an indirect interest and connection to Alliant in so many ways that her clients were entitled to know of her connections before deciding to (in some cases) give up 50% of their excess proceeds to Alliant to get fast cash; 1) She had a past personal relationship with Mr. Reardon, (TR 10:19 through 11:7) 2) She still lived in the same residence with Mr. Reardon, (TR 11:8-17) 3) Mr. Reardon had loaned and gifted Respondent $200,000 to basically

support her law office and Respondent had not repaid the loan in total, (TR 11:18 through 12:6) 4) Mr. Reardon and Mr. Rickert were responsible for funneling to Respondent 90% of her legal work through their excess proceeds business, Alliant, 5) employees of Respondent's law offices were also working for Alliant and were referring her clients to Alliant for "advance funding" (another name for making money from the clients who were financially strapped and who could not wait for the six months it might take in court for the Excess Proceeds case to conclude, so the clients were vulnerable to assigning their excess proceeds claim to Alliant in exchange for quick payment of only 50% of the value of those proceeds. An analogy can be made with companies who look for people who settled their personal injury claims and initially agreed to receive periodic payments. These companies offer the injured people less money than the present value of their future payments), (TR 85:11-15, 6:5 through 8:3) 6) the offices of Respondent's organization REACH and the offices of Alliant were in the same building with Alliant in the back office, (TR 31:23 through 32:8) 7) Mr. Rickert and Mr. Reardon were major clients of Respondent's law practice, (TR 13:19 through 14:1) 8) Mr. Rickert was an authorized signer on Respondent's trust account and was the administrator in Respondent's law office when she was absent for most of the one and a half year period of the events in this matter. (TR 78:9-17)

The conflict was that Respondent's close business associates, friends, house mates, creditors and even law office administrators, Mr. Reardon and Mr. Rickert were running an excess proceeds business (Alliant) which would make a profit if they got the foreclosed-on homeowner (Respondent's client) to give up a greater percentage of his excess proceeds claim. Respondent testified that she was involved in creating the concept for Alliant around advanced funding. But according to Respondent she wanted the homeowner to get 80%, not 50% of the excess proceeds. When she found out that Alliant was paying her clients only 50% she severed her connections with Mr. Rickert and Alliant. (TR 8:12

through 10:9) Unfortunately, if one of her clients had a dispute with Alliant, Respondent's connections to Alliant and its principals might have affected Respondent's ability to effectively represent the client. Respondent testified that she did not think Mr. Rickert would react negatively if she had disagreed with him over the amount of excess proceeds he was paying her clients. (TR 56:10-21) However, when on the advice of her counsel she severed her ties with Mr. Rickert he responded by reporting her to the Bar for trust account violations. (TR 79:7-25)

In truth Respondent was making money on excess proceeds cases handed to her by Alliant, and without Respondent having to really represent any client. The clients were solicited by non-lawyers, signed to representation agreements by non-lawyers, forms to be filed in court were prepared by non-lawyers, and even disbursements from Respondent's trust account were made by Mr. Rickert. Respondent had no incentive to end this source of business by cutting her ties with Alliant. In Exhibit A, 83 clients of Respondent are listed who were directly solicited by others (Alliant) between 2005 and 2007. (51:20 through 52:21)

ER 1.15 and Rules 43 and 44 were violated by Respondent's failures to keep client funds safe caused by her trust account violations. Again, these violations were a result of Respondent allowing others to run her law practice.

ER 5.3 was violated by Respondent not appropriately supervising non-lawyer assistants. Mr. Rickert was not trained to maintain the correct records for the trust account. Other employees were not trained to notify clients of Respondent's connections to Alliant.

ER 8.4(a) was violated in conjunction with other violations by Respondent's use of non-lawyers to violate the ERs. Respondent violated 5.5 (Unauthorized Practice of Law) by basically letting Mr. Schaeffer act as an attorney in her place. She violated ER 7.3 (Solicitation) by having Alliant representatives solicit clients for her at trustee sales. (TR 72:25 through 74:6)

CONDITIONAL DISMISSALS

There are no conditional dismissals.

RESTITUTION

None.

ABA STANDARDS

In determining the appropriate sanction, consideration was given to the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") and Arizona case law.

The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying these factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. The court and commission consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990); *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276 (1994). In determining an appropriate sanction, both the court and the commission consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *In re Tarletz,* 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

Duty Violated

In Counts One and Two Respondent violated her duties to the respective clients by not meeting or conferring with the clients personally. In all the Counts Respondent violated her duty to the profession by permitting non-lawyers to solicit clients for her and to run her law practice.

Mental State

Respondent has admitted only to being negligent in not recognizing a conflict with Alliant and in permitting others to run her law practice. Respondent may have been negligent in her obligation to supervise non-lawyers who she left in charge of her practice. This negligence may be more easily understood in the case of Respondent's need to be away from her law practice to attend to her seriously ill mother. But Respondent chose to be away from her law office to spend more time at the Shamrock Glen project. She knew she needed to attend to this condominium conversion project because it was her major source of income. (TR 13:10-13; 90:10-22)

The Hearing Officer agrees with the parties that much of the misconduct in the instant matter resulted from Respondent's continuing failure to adequately supervise non-lawyer assistants in her employ, and working on her behalf or for her benefit, as well as her failure to avoid conflicts of interest based on business and personal relationships. *Standard* 7.2 provides that "(s)uspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system." The Commentary to *Standard* 7.2 explains that suspension is appropriate even when a lawyer does not intentionally abuse the professional relationship by engaging in deceptive conduct, but does engage in a pattern of improper conduct. Respondent knew she was not supervising her law practice. She was spending substantial time with her ill mother and supervising her investment interest in Shamrock Glen. (TR 13:1-18; 39:17 through 42:8) Respondent testified that for a year and a half from about November, 2005 through February, 2007 she was absent regularly from her law office. She would be in the law office once every ten days or two weeks. (TR 40:24 through 42:8)

Injury

The Bar has not alleged that Respondent's conduct actually injured a client. Respondent testified that when she learned Mr. Evangelista had sold his excess proceeds claim to Alliant for 50% of the proceeds she was upset. She said that if she knew Mr. Evangelista was contemplating taking 50% for his proceeds she would have told him to go to a different company that would have paid him more. (TR 57:1-9) However, the potential for injury from a conflict was discussed above in the Conclusions of Law section. Another potential for injury was to the funds of other clients when Respondent's trust account was overdrawn for certain clients. The Bar has not identified any specific client whose funds were affected by this misconduct.

Respondent's failure to consider whether a conflict existed, or to accurately determine whether a conflict existed, in her representation of clients who had compromised their claims or had taken loans from Alliant, implicates *Standard* 4.3. *Standard* 4.32 provides that suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to the client the possible effect of that conflict; *Standard* 4.33 provides that reprimand (censure in Arizona) is appropriate for negligence in determining whether the representation of a client may be materially limited by the lawyer's own interests, or whether the representation will adversely affect another client.

The Commentary to *Standard* 4.32 cites an example of conduct similar to Respondent's in discussing a situation in which a lawyer arranged for one client who he had represented for years, to loan another client money. The lawyer failed to tell the recipient client that the loan might be usurious, and therefore unenforceable, or that the lawyer had received a finder's fee from the recipient client for arranging the loan. *See*, *Standard* 4.32 Commentary, p. 31, *citing In re Boyer,* 295 Or. 624, 669 P.2d 326 (1983). By contrast, the Commentary to *Standard* 4.33 states that

reprimand (censure in Arizona) is appropriate when a lawyer engages in a single instance of misconduct where the lawyer has merely been negligent. As there were multiple instances in the instant case of this conduct, *Standard* 4.32 appears more appropriate to the instant matter than does *Standard* 4.33.

Respondent was Alliant's attorney for a long period of time, received many clients from or through Alliant, had personal relationships with the principals and had accepted a large amount of money as a loan from one of the principals. Respondent's on-going relationships with Alliant and its principals created an actual or potential conflict of interest when Respondent represented clients who had received litigation advances from Alliant and/or had assigned rights in their excess proceeds to Alliant. Respondent did not advise those clients of the actual or potential conflict, did not obtain waivers and failed to adequately identify the nature of the actual or potential conflict. Respondent has asserted that she was negligent in determining whether she had a conflict and served the clients as was beneficial to them. The Commentary to the relevant *Standards* and the fact that this conduct was repeated with many clients over an extended period of time makes it clear that *Standard* 4.32 provides the appropriate sanction (suspension) in the instant matter.

The Hearing Officer agrees with the parties that based on the above the appropriate range of sanctions for Respondent's misconduct is suspension. In determining the length of suspension, the Hearing Officer and the parties considered the aggravating and mitigating factors, as well as proportional case law and the specific facts and circumstances of this matter.

Aggravating Factors:

The Hearing Officer agrees with the parties' conditional stipulation that the following aggravating factors apply:

Standard 9.22(b) Selfish or dishonest conduct.

Respondent's conduct was selfish in that Respondent's absence from her law office both physically and in the lack of supervision was due to her desire to engage in other business opportunities. Although Respondent was also contemporaneously dealing with an emergency family medical crisis, she chose to be absent for extended amounts of time for other reasons as well.

Standard 9.22(c) Pattern of misconduct.

Respondent's misconduct falls into a pattern both in the repetition relating to the conflicts of interest, her acceptance of clients who had been directly solicited, and her failure to adequately supervise non-lawyers working in her employee or in ways that benefited her practice and created risk for her clients.

Standard 9.22(d) Multiple offenses.

The conduct in this matter occurred with multiple clients and individuals over an extended period of time.

Mitigating Factors:

Standard 9.32(c) Personal or emotional problems.

Respondent was experiencing significant stress in her life during 2006 and 2007, due to an emergency family medical situation.

Standard 9.32(d) Timely good faith effort to rectify the consequences of misconduct.

This mitigating factor pertains particularly to Count Three. When Respondent returned to her practice and realized what had been occurring, she closed the office in which Mr. Rickert had been conducting non-law-related business and closed the bank accounts to which he had access.

Standard 9.32(e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. She has been cooperative with the State Bar prior to the filing of the complaint. She was voluntarily deposed in this matter.

Standard 9.32(l) Remorse.

Respondent has voluntarily ceased the practice of law, closing her law office in late 2009. Respondent's remorse is further evidenced by her willingness to accept responsibility for her misconduct and enter into this agreement for discipline by consent.

PROPORTIONALITY ANALYSIS

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994) (quoting *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142 Ariz. 604, 615, 691 P.2d 695 (1984).

In re Struthers, 179 Ariz. 216, 877 P.2d 789 (1994) dealt with circumstances similar to those in the instant matter. Struthers was disbarred after he was found to have committed over 140 violations of the Rules of Professional Conduct. Although Struther's misconduct was more serious than the misconduct in the instant matter because the type of misconduct is similar, the reasoning of the Court is instructive. Struthers was found to have, among other violations, abdicated his duty to supervise non-lawyer employees, shared fees with non-lawyers and failed to act with reasonable diligence and promptness in representing clients including failing to give clients access to their files after the termination of the representation.

Struthers had been retained by a debt collection agency to handle cases in which the agency was seeking to collect overdue child support payments. After the agency dissolved, the circumstances of which included one of the principals falsely holding himself out as a lawyer, Struthers converted the business into a law practice. The former principals of the business became

Struthers' legal assistants and continued the business, causing Struthers to maintain a very high caseload. Although Struthers was nominally "in charge" his staff ran his office, conducting client interviews and the collections practice. As a result of this practice, many formalities of a law firm were abandoned and the violations arose. The specific violations included trust account violations (ER 1.15, Rule 43 and 44) and violations relating to supervision on non-lawyer assistants (ER 5.3).

The Court found that Struthers had virtually abandoned the supervision of his office to non-lawyers notwithstanding his knowledge of serious improprieties they had been accused of in the past, including control of his client trust account. The Court rejected Struthers' argument that he had no indication of dishonesty even if their record keeping was not adequate.

The misconduct in *Struthers* was more serious than the misconduct in the instant matter, meriting disbarment. The Court found that Struthers had embarked on a premeditated scheme. In the instant matter Respondent's assertions that her actions although improper were more a result of relying on the wrong people and a lack of realization of the ethical implications of her actions, although not fully credited by the State Bar do weigh on the recommended sanction. The non-lawyer assistants Struthers trusted had prior track records of questionable conduct. Respondent has explained that the non-lawyers she trusted had previously been reliable employees, co-workers or partners in other dealings. There is similarity, however, due to the failure by both respondents to meet their obligations relating to supervision. The facts and circumstances in the instant matter show that a lesser sanction of suspension is appropriate.

The Hearing Officer recognizes that the conflict with Alliant might not have been readily apparent to Respondent. However, the conflict would have become more obvious if Respondent had taken the time to learn that Alliant was taking 50% of the client's excess proceeds. If she had taken the client's side and advised the client not to contract with Alliant, but to go with another excess

proceeds entity she might well have lost her major source of business. She responds that these people were not her clients when they were signing contracts with Alliant to sell their excess proceeds for 50 cents on the dollar. The problem is that some of the clients actually came to Respondent's office or REACH first, and were then referred to Alliant for "advance funding". Once they signed for the "funding" they were referred back to Respondent's law office because Alliant could not get the excess proceeds unless an attorney filed an Excess Proceeds case in Superior Court. Respondent was basically letting Alliant use her law license to get the client's excess proceeds and she was being paid a fee for her forms and her office staff time. Mr. Rickert of Alliant was administering Respondent's trust account because Respondent's staff would get the Superior Court judge to sign an Order for Distribution of Excess Proceeds that would direct that the funds go to Respondent's trust account. (TR 71:4 through 72:24) Since Alliant was frequently the assignee of these funds it would make sense to Respondent and Mr. Rickert to have Mr. Rickert manage the money that was going to be his.

In *In re Allen*, SB-00-0025-D (2000), Allen was suspended for thirty (30) days after using client information gained during representations for estate planning to identify potential investors for a timber harvest secure loan program; Allen had a business relationship with investment solicitors for this program. Allen invited clients to attend informational meetings about the loan program and failed to, among other things, disclose his relationship with the investment solicitors. He then failed to inform the clients that their investments might have been mishandled. Although not directly on point with the facts in the instant matter, this case is similar in that Respondent's staff made referrals to Alliant and Respondent's connection with Alliant was not explained to the client. The essence of the conflict of interest in this matter is that Respondent's personal interests could have materially limited her representation, as Allen's did in his matter.

Similarly, in *In re Groh*, SB-08-0095-D (2008), Groh engaged in a conflict of interest with clients in that his representation was materially limited by his personal interests and participated in the unauthorized practice of law by allowing non-lawyers to review and execute trust documents for clients. Groh failed to supervise the non-lawyers he permitted to have access to his clients and their files, and revealed confidential information about the clients. Groh was suspended for two (2) years, and ordered to participate in probation for 2 years upon reinstatement.

The cited cases support the sanction of suspension in this matter. Although two of the cited cases resulted in suspensions for periods longer than recommended in this matter, all of the cases serve to establish the range of reasonable sanction for similar misconduct. The recommended sanction in the instant matter, a 90-day suspension, fits within the range of proportional sanction and takes into account the specific facts and circumstances of this case.

Although the Hearing Officer considered rejecting the agreement of the parties because Respondent had no prior discipline, the unique circumstances of this matter warrant a 90 day suspension. In assessing Respondent at the hearing, this Hearing Officer developed the impression that practicing law was not really what Respondent wanted to do. She passed the Bar in 1998, but waited five years to practice law. Her main field of endeavor is real estate, i.e. Shamrock Glen. She apparently set up a law office because she was informed by the Bar that if she did not become an active lawyer within five years of passing the Bar examination she would have to take the Bar examination again. She thought she had worked hard in law school for her degree and that she should not lose all that hard work. However, she said that practicing law was more her mother's idea than her own idea. (TR 34:5-15; 96:5 through 97:7) Certainly the way she let others run her law practice from November 2005 through April 2007 would indicate that in addition to helping her mother she had more significant interests than practicing law. Respondent has now closed her law

office, but she remains an active member of the Bar. (TR 96:9-15) The sanction is appropriate for these circumstances.

RECOMMENDATION

Based on the *Standards* and case law, the Hearing Officer agrees with the parties' belief that in this matter, a ninety (90) suspension is within the range of appropriate sanction in this case and will serve the purposes of lawyer discipline. The sanction will serve to protect the public, instill confidence in the public, deter other lawyers from similar misconduct, and maintain the integrity of the Bar. The Hearing Officer and the parties were mindful in reaching this recommendation that Respondent has already closed her law office and has stopped practicing law.

The objective of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Recognizing it is the prerogative of the Disciplinary Commission and the Supreme Court to determine the appropriate sanction, the Hearing Officer and the parties assert that the objectives of discipline will be met by the imposition of the proposed sanction of a 90 day suspension and the payment of costs and expenses of these proceedings.

SANCTION

The Hearing Officer recommends the following sanction:

1. Respondent shall be suspended for a period of 90 days [2]

2. Respondent shall pay all costs incurred by the State Bar in bringing these disciplinary proceedings. An Itemized Statement of Costs and Expenses is attached as Exhibit "B,"

[2] In a telephonic conference with counsel on December 7, 2009, the parties agreed that the suspension could begin at the time of the Judgment and Order.

and incorporated herein. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court and the Disciplinary Clerk's Office in this matter.

DATED this 10th day of December, 2009

Hon. Jonathan Schwartz/NM
Jonathan H. Schwartz
Hearing Officer 6S

Original filed with the Disciplinary Clerk
this 10th day of December, 2009.

Copy of the foregoing mailed
this 10 day of December, 2009, to:

Craig D. Henley
Respondent's Counsel
The Law Office of Craig D. Henley PLLC
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Mesa, AZ 85206

Roberta Tepper
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: Deann Baker

EXHIBIT A

Exhibit A

Upon information and belief, between 2005 and 2007, Respondent represented the following clients who had been directly solicited by others on her behalf knowing or having information that reasonably should have led her to believe that they had been directly solicited by another:

- Roberta K. Latham
- Consuelo Medrano
- Robin Cooper
- Miguel Torres
- William P. Murphy
- Tom Lerch
- Luis Solis
- Joley Nelson
- Michelle Eichberger
- Don Hall
- Fay Levison
- Wilfrido Ramirez
- Jermaine Jones Cocio Hernandez
- Martin Aguilar
- Dennis Schirro
- Freddie J. Ortega
- Peggy Linscott
- Lois Tiedemann
- Mariana Ortiz

- William R. Murphy
- Linda Burtaine
- Don Doral
- Deborah A. Orcutt
- Bryan Maddox
- Ken and Rosalie Wisniewski
- Porfirio Garcia
- Delfonta T. and Lawrence Richmond
- Patricia A. Christiansen
- Michael V. and Sharron C. De Alba
- James Tapia Jr.
- Maria Mata
- Jennifer R. Crutchfield
- Jesus Mata
- Apryl R. Lehmer
- Michael L. Wilson
- Gerardo Hernandez de Santiago
- Armando Ochoa
- Angelino Huertos Naranja
- Francisco M. Zapata
- Richard Houpe
- Brenda Arbuckle
- Mary H. Arlet
- Ezequiel Avena Lizde Jiminez
- Scott Benzee

- Peddals Adams
- Louis A. Garcia
- Patricia S. Whitmore
- Paul R. McDonald
- Mitchell A. Perrin
- Tony and Kathryn Davis
- Thomas Byrd
- Servando Carrillo
- Lorraine Cates
- Bernardo Cortes
- Thomas and Irma Denny
- Steven G. Tolman
- Francisco Ortiz
- Steven Tolman
- Megan M. Monks
- Priscilla A. Martinez
- Ruben M. Romero
- Alfred R. Freeman and Renae Freeman
- Dennis Pogroszewski
- Jose T. Vega
- Lee Burgeles
- Charles L. Baldwin and Melissa Baldwin
- Clifford N. Kronk IV
- Timothy Bulzing
- Tracy Mitchell

- Miguel Felix
- Leobardo Leon
- Anabel Navarro
- Traci D. Aspinall
- Julie Arais
- Francisco Moreno
- Russell Gutierrez
- Diane Pena/Oscar Ledezma
- Wilmar H. Schmidt III
- Lois L. Bishop
- Ericka Hunter
- Christian Toting
- Cheryl Koetzle
- Thomas Koetzle

EXHIBIT B

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Ingrid-Joy Warrick, Bar No. 019624, Respondent

File No(s). 06-0943, 07-0703, 07-1545 and 07-1837

Administrative Expenses

The Board of Governors of the State Bar of Arizona with the consent of the Supreme Court of Arizona approved a schedule of general administrative expenses to be assessed in disciplinary proceedings. The administrative expenses were determined to be a reasonable amount for those expenses incurred by the State Bar of Arizona in the processing of a disciplinary matter. * An additional fee of 20% of the general administrative expenses will be assessed for each separate file/complainant that exceeds five, where a violation is admitted or proven.

General administrative expenses include, but are not limited to, the following types of expenses incurred or payable by the State Bar of Arizona: administrative time expended by staff bar counsel, paralegals, legal assistants, secretaries, typists, file clerks and messengers; postage charges, telephone costs, normal office supplies, and other expenses normally attributed to office overhead. General administrative expenses do not include such things as travel expenses of State Bar employees, investigator's time, deposition or hearing transcripts, or supplies or items purchased specifically for a particular case.

General Administrative Expenses for above-numbered proceedings = **$1200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

02/08/08	Computer investigation	$17.50
02/10/08	Atwood Reporting Service, Deposition of Ingrid-Joy Warrick	$892.50
02/12/08	Travel and mileage for service of subpoena on Respondent	$49.14
12/15/08	Review file and reconstruct trust account	$245.00
12/16/08	Reconstruct trust account and issue summary of findings	$140.00

Total for staff investigator charges $1,344.14

TOTAL COSTS AND EXPENSES INCURRED ***$2,544.14***

Sandra E. Montoya

Sandra E. Montoya
Lawyer Regulation Records Manager

10-19-09
Date