OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
MAR 11 2013
FILED

BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

In the Matter of a Member of the State Bar of Arizona, **LeslieAnn Haacke,** Bar No. 012734, Respondent.	**PDJ-2012-9116** **REPORT AND ORDER IMPOSING SANCTIONS** [State Bar File Nos. 11-1141, 11-3876, 12-0035]

PROCEDURAL HISTORY

The State Bar of Arizona (SBA) filed its complaint on December 28, 2012. On January 4, 2013, the complaint was served on Respondent by certified, delivery restricted mail as well as by regular first class mail pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge of the Supreme Court of Arizona (PDJ) was assigned to the matter. A notice of default was properly issued on January 30, 2013, given Respondent's failure to file an answer or otherwise defend. Respondent did not file an answer or otherwise defend against the allegations in the complaint and default was properly entered on February 19, 2013. Also on February 19, 2013, a notice of aggravation/mitigation hearing was sent to all parties notifying them that the aggravation/mitigation hearing was scheduled for March 11, 2013, at 9:00 a.m. at 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231. On March 11, 2013, the Hearing Panel, composed of attorney member, Judge Penny Willrich (Retired) and public member, Linda S. Smith, heard argument.

FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint and were deemed admitted by Respondent's default.

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 January 11, 1990.

COUNT ONE (File No. 11-1141/Rubey)

2. Between approximately December 2006 and November 2007, Donald R. Marshall (Marshall), a stockbroker, used a general power of attorney and his authority as co-trustee of the W. Harold and Dorothy L. Simons Trust dated January 17, 1984 (Simons Trust), to control assets of the Simons Trust.

3. During or about October 2007, Ellen Rubey (Rubey), as co-trustee of the Simons Trust,[1] consulted with the law firm of Jennings, Strouss & Salmon (JS&S) regarding her concern that Marshall was mismanaging the Simons Trust and possibly committing elder abuse or exploitation.

4. On or about October 16, 2007, David Brnilovich (Brnilovich), a member of JS&S, sent a letter to Rubey regarding their earlier meeting and the terms under which JS&S would represent her as trustee or co-trustee of the Simons Trust. That letter stated that Respondent, a member of JS&S or "of counsel" to JS&S, would be primarily responsible for representation of Rubey in arbitration proceedings in which she must comply with the procedures of the U.S. Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD), which

[1] All references to actions taken by, or on behalf of, Ellen Rubey were undertaken in her role as trustee or co-trustee of the Simons Trust.

changed its name on July 30, 2007, to the Financial Industry Regulatory Authority (FINRA). That October 16, 2007, letter stated that JS&S would charge Rubey on an hourly fee basis.

5. On or about October 22, 2007, Rubey signed the October 16, 2007, engagement letter from JS&S, indicating she accepted the terms of representation.

6. On or about October 26, 2007, Brnilovich sent another letter to Rubey regarding the hourly fees that JS&S would charge. It also requested that she make an initial advance payment of $5,000.00.

7. On or about October 29, 2007, Rubey signed the October 26, 2007, engagement letter from JS&S, indicating she accepted the terms of representation.

8. During or about the latter half of October 2007, Rubey directed JS&S to file a complaint against the appropriate parties in Maricopa County Superior Court and to seek a temporary restraining order and preliminary injunction against Marshall.

9. On or about November 2, 2007, Brnilovich filed a *Complaint* on Rubey's behalf (*Ellen Rubey, Trustee of the W. Harold and Dorothy L. Simons Trust Dated January 17, 1984 v. Donald R. Marshall and Roselyn Marshall*, Maricopa County Superior Court File No. CV2007-070654). The *Complaint* alleged breach of fiduciary duty, breach of fiduciary duty as attorney-in-fact, and conversion. On that same date, Brnilovich also filed several other documents with the court on Rubey's behalf.

10. On or about November 13, 2007, Brnilovich filed a *First Amended Complaint* on Rubey's behalf in File No. CV2007-070654. The *First Amended Complaint* alleged breach of fiduciary duty, breach of fiduciary duty as attorney-in-fact, and conversion.

11. On or about December 24, 2007, counsel for Donald R. Marshall and Roselyn Marshall (the Marshalls) filed an *Answer* in File No. CV2007-070654.

12. On or about February 8, 2008, Garrett Olexa (Olexa), another member of JS&S, signed and filed a *Second Amended Complaint* on Rubey's behalf in File No. CV2007-070654, which added Fox & Company Investments, Inc., Steve Aloi and Mary L. Wade, as named defendants. Brnilovich and Respondent were also listed as counsel on the *Second Amended Complaint*. The *Second Amended Complaint* alleged negligence, Arizona securities laws violations, breach of fiduciary duty, breach of fiduciary duty as attorney-in-fact, conversion, negligent misrepresentation, and negligent supervision and gross negligence.

13. On or about April 29, 2008, Respondent sent a letter to Rubey informing her that she was leaving JS&S to start her own firm, Roach & Haacke, P.L.L.C., and that Brnilovich and Olexa had requested that she continue to represent her in association with JS&S. In that letter, Respondent stated she would "forward [to Rubey] [her] proposed Engagement Letter for [her] review and signature upon starting with my new firm." Despite Respondent's assurance, Rubey never received an engagement letter from Respondent regarding her fees after leaving JS&S or any written communication from Respondent setting forth the scope of representation and the basis or rate of the fee and expenses for which Rubey would be responsible.

14. Beginning on or about May 16, 2008, Respondent represented Rubey regarding a *Motion to Compel Arbitration* filed by counsel for the Marshalls, a *Motion to Compel Arbitration* filed by counsel for Fox & Company Investments,

Steve Aloi and Mary L. Wade, and an appeal from the Superior Court judge's ruling regarding those motions.

15. On or about July 14, 2008, Respondent filed a *Notice of Change of Law Firm Affiliation and Change of Address* in File No. CV2007-070654. In it, she stated she had left JS&S and joined the law firm of Roach & Haacke, P.L.L.C., effective May 1, 2008.

16. On or about February 2, 2009, Rubey gave Respondent authority to settle the case for $335,000.00.

17. On or about April 24, 2009, Respondent filed a *Notice of Change of Law Firm Affiliation and Address/Contact Information* in File No. CV2007-070654. That notice stated that Respondent had joined the law firm of Haacke & Associates, P.L.L.C., effective October 1, 2008. Respondent failed to communicate in writing to Rubey, upon leaving Roach & Haacke to practice as Haacke & Associates, the scope of representation and the basis or rate of the fee and expenses for which Rubey would be responsible.

18. On or about September 8, 2009, Respondent sent three letters to Rubey. In one letter, she informed Rubey that she was merging Haacke & Associates with Buchalter Nemer, effective September 8, 2009; in another letter she requested authorization to transfer the client file to Buchalter Nemer; and in the third letter, she set forth the terms of Buchalter Nemer's representation of Rubey and stated that Buchalter Nemer would charge Rubey on an hourly fee basis.

19. On or about October 1, 2009, Respondent filed a *Notice of Change of Law Firm* with the Maricopa County Superior Court in File No. CV2007-070654. That notice stated that Respondent had joined the Buchalter Nemer law firm. On that

same date, Respondent mailed a fee agreement/engagement letter to Rubey that confirmed that Buchalter Nemer represented her and stated that Buchalter Nemer would charge her on an hourly fee basis.

20. On or about October 6, 2009, Rubey signed the Buchalter Nemer fee agreement (engagement) letter, signifying that she understood and accepted the terms set forth in the fee agreement (engagement) letter. On that same date, Rubey signed a separate letter authorizing the transfer of the client file to Buchalter Nemer.

21. Between approximately November 2007 and December 2009, Respondent helped represent Rubey regarding a *Motion for Preliminary Injunction* in File No. CV2007-070654 regarding a commercial condominium owned by Donald R. Marshall and a subsequent order to show cause why Stewart Title and Trust of Phoenix, Inc., should not be held in contempt for violating a court order dated December 19, 2007, by distributing funds from the sale of Donald R. Marshall's commercial condominium.

22. On or about February 22, 2010, Respondent sent an email message to Rubey in which she stated she had attached thereto copies of the "combined Buchalter Nemer invoices for the above-referenced matter for the period since I joined the Firm from 9/1/09 through the last billing period/month, 1/31/10, for your attention and payment." That email message also stated she had not yet billed for the fees and costs associated with Haacke & Associates' work on the case and that she would mail "hard copies" of the billing statements to Rubey.

23. On or about June 24, 2010, the parties participated in mediation, during which the case settled for $360,000.00. Rubey, Dorothy L. Simons, attorney C.

Thomas Mason (Rubey's expert witness), Respondent, and others were present for the plaintiffs at the mediation. The settlement agreement signed that day stated that (a) Fox & Company, Inc., or James Moldermaker would pay $10,000.00 to Rubey; (b) Donald R. Marshall would release to Rubey at least $117,000.00 from an escrow account established pursuant to an order in File No. CV2007-070654, which held the proceeds of the sale of his commercial condominium; and (c) QBE (on behalf of Fox & Company Investments, Inc., Mary Wade and Steve Aloi) would pay $233,000.00, which was subject to reduction if the funds from the Marshall escrow account exceeded $117,000.00. Rubey would not have settled the matter for $360,000.00 on June 24, 2010, if Respondent had given her all the information about attorney's fees that were still owed because $360,000.00 would not have compensated the trust for the loss it suffered and all expenses, including attorney's fees, related to the litigation. During the mediation, Respondent failed to fully explain to Rubey and Dorothy Simons all of the terms of the offers she presented to the defendants or the offer that Rubey eventually accepted.

24. During the pendency of File No. CV2007-070654, Rubey directly paid approximately $120,000.00 in attorney's fees to one or more of the law firms.

25. Pursuant to the terms of the settlement agreement, on or about July 28, 2010, a cashier's check in the amount of $118,767.47 was made payable to the "Dorothy L. Simons Trust and the Buchalter Nemer trust account" (which was the amount being held in the Marshall escrow account pursuant to the order in File No. CV2007-070654).

26. Pursuant to the terms of the settlement agreement, on or about August 3, 2010, Fox & Company Investments, deposited $10,000.00 into Respondent's

trust account ending in 8654. Prior to that deposit, Respondent's trust account had a balance of $26.00.

27. On or about August 4, 2010, Respondent transferred $10,000.00 from her trust account ending in 8654 to her law firm's operating account ending in 4728 by using a debit memo.

28. Between August 6, 2010, and August 12, 2010, the parties to the settlement agreed to an addendum to the settlement agreement, which allowed QBE additional time to calculate and pay its portion of the settlement funds.

29. On or about August 17, 2010, Respondent notified Rubey by letter that she had left Buchalter Nemer effective August 12, 2010, and had returned to Haacke & Associates, P.L.L.C. Respondent failed to communicate in writing to Rubey, upon leaving Roach & Haacke, the scope of representation and the basis or rate of the fee and expenses for which Rubey would be responsible.

30. On or about August 18, 2010, Respondent filed a *Notice of Change of Law Firm Affiliation and Address/Contact Information* in File No. CV2007-070654. That notice stated that Respondent had left Buchalter Nemer and rejoined Haacke & Associates, P.L.L.C., effective August 12, 2010.

31. On or about August 19, 2010, $118,767.47 (the amount of the July 28, 2010, cashier's check made payable to "Dorothy L. Simons Trust and the Buchalter Nemer trust account") was deposited into Respondent's trust account ending in 8654.

32. Pursuant to the settlement agreement, on or about August 20, 2010, Wilson Elser Moskiwitz, on QBE's behalf, deposited $231,232.53 into Respondent's trust account ending in 8654.

33. On or about August 23, 2010, Respondent transferred $10,000.00 from her trust account ending in 8654 to her law firm's operating account ending in 4728.

34. On or about August 30, 2010, Respondent transferred $5,000.00 from her trust account ending in 8654 to her law firm's operating account ending in 4728.

35. On or about September 2, 2010, Respondent disbursed $110,000.00 to Rubey from her trust account ending in 8654. Respondent later referred to that disbursement as an "interim disbursement." On that same date, Respondent disbursed $7,000.00 from her trust account ending in 8654 to her law firm's operating account ending in 4728.

36. On or about September 7, 2010, Respondent filed a *Notice of Voluntary Dismissal with Prejudice* in File No. CV2007-070654. That notice reflected that the *Second Amended Complaint* in File No. CV2007-070654 would be dismissed, as would the appeal of the denial of the motions to compel arbitration.

37. On or about September 13, 2010, Respondent transferred $80,000.00 from her trust account ending in 8654 to her law firm's operating account ending in 4728. On that same date, Respondent disbursed $12,867.34 from her operating account ending in 4728, but the destination of those proceeds is unknown because she used a withdrawal slip.

38. On or about September 14, 2010, Respondent disbursed $50,000.00 from her operating account ending in 4728 to a personal Compass Bank account ending with 7577 that was registered to Respondent and Roy Zumstein (Zumstein), Respondent's husband. On that same date, Respondent disbursed $10,000.00 from

her operating account ending in 4728 to a personal Compass Bank account ending with 6181 that was registered to Respondent and Zumstein.

39. On or about September 17, 2010, Respondent disbursed $693.53 from her trust account ending in 8654 to Buchalter Nemer for fees and/or costs and expenses related to its representation of Rubey.

40. On or about September 21, 2010, Respondent disbursed $71,198.10 from her trust account ending in 8654 to Buchalter Nemer for fees and/or costs and expenses related to its representation of Rubey.

41. On or about September 30, 2010, Respondent disbursed $9,490.05 from her trust account ending in 8654 to JS&S for fees and/or costs and expenses related to its representation of Rubey.

42. On or about October 13, 2010, Respondent disbursed $12,642.00 from her trust account ending in 8654 to JS&S for fees and/or costs and expenses related to its representation of Rubey. On that same date, Respondent disbursed $43,000.00 from her trust account ending in 8654 to her law firm's operating account ending in 4728.

43. On or about October 20, 2010, Respondent disbursed $38,000.00 from her operating account ending in 4728 to a personal Compass Bank account ending with 7577 that was registered to Respondent and Zumstein.

44. On November 22, 2010, Respondent or Zumstein transferred $2,000.00 from a personal Compass Bank account ending in 7577 to an unknown account by using a debit memo.

45. On or about November 26, 2010, Respondent disbursed $975.00 from her trust account ending in 8654 to her law firm's operating account ending in

4728.

46. Respondent's disbursements from her operating account ending in 4728 were primarily for personal purchases and expenses.

47. Although Respondent had agreed to hold $40,000.00 in her trust account pending receipt of an invoice or billing statement from attorney C. Thomas Mason for his work as an expert witness in the case, as of November 26, 2011, there was only $27.32 in Respondent's trust account ending in 8654.

48. On or about December 15, 2010, Rubey sent an email message to Respondent in which she asked for an accounting of the settlement funds and a final payment/distribution of the settlement funds.

49. On or about December 23, 2010, Respondent disbursed $6,000.00 to Rubey from her law firm's operating account ending in 4728. On that same date, Respondent sent Complainant an "interim accounting." The "interim accounting" reflected the following: (a) Respondent had received settlement funds from the defendants totaling $360,000.00; (b) Respondent had disbursed $110,000.00 to Rubey, as trustee, on September 1, 2010; (c) Respondent had disbursed $110,000.00 to herself for fees on September 1, 2010; (d) Respondent had disbursed $693.53 to Buchalter Nemer on September 17, 2010, for costs and expenses; (e) Respondent had disbursed $71,198.10 to Buchalter Nemer for fees; (f) Respondent had disbursed $9,490.05 to JS&S on September 29, 2010, for fees; (g) Respondent had disbursed $12,642.00 to JS&S on September 29, 2010, for fees (that payment, however, was actually made on or about October 13, 2010); (h) Respondent had disbursed $6,000.00 from her operating account to Rubey on December 23, 2010; and (i) $40,000.00 was being held in trust while awaiting a

final invoice from attorney C. Thomas Mason for his work as an expert witness (as set forth above, Respondent failed to hold the $40,000.00 in a trust account).

50. Between December 21, 2010, and January 6, 2011, Respondent or Zumstein transferred $923.45 online from a personal Compass Bank account ending with 7577 to a personal Compass Bank account ending in 6181. Those funds were used to pay for goods or services primarily through the use of a debit card.

51. On January 21, 2011, Respondent or Zumstein transferred $1,000.00 online from a personal Compass Bank account ending in 7577 to Respondent's business (Haacke & Associates) savings account ending in 6261. Those funds were used to provide overdraft protection on Respondent's operating account ending in 4728 between January 26, 2011, and February 18, 2011.

52. Between January 7, 2011, and February 7, 2011, $60.00 was deducted from a personal Compass Bank account ending in 7577 to pay for service charges.

53. On or about February 16, 2011, Rubey sent an email message to Respondent in which she expressed frustration with the various fees and costs incurred. Rubey requested that C. Thomas Mason be paid $40,000.00 from the fees that Respondent had previously paid to JS&S, Haacke & Associates, and Buchalter Nemer. That email message indicated that the various law firms had received approximately $325,000.00 from payments she had made and from Respondent's distribution of the settlement funds.

54. Between October 26, 2010, and February 22, 2011, Respondent or Zumstein transferred $67,134.88 online from a personal Compass Bank account ending in 7577 to Respondent's operating account ending in 4728. Those funds were used to pay for goods or services primarily through the use of a debit card.

55. On or about February 24, 2011, Rubey sent another email message to Respondent in which she stated she had not received a response to her February 16, 2011, email message. In the February 24, 2011, email message, Rubey again requested information regarding distribution of the settlement funds and an itemized statement regarding the $110,000.00 fee that Respondent paid herself from the settlement funds.

56. On or about February 24, 2011, Respondent responded to Rubey's February 16, 2011, email message. Respondent explained that her response was delayed due to a skiing vacation and a need to review the file. Respondent indicated that disbursements were made, but that she was still awaiting C. Thomas Mason's invoice. That was the last communication that Respondent had with Rubey, except for a possible conversation shortly after Respondent's February 24, 2011, email message. Although Rubey had requested an accounting of Respondent's fees, Respondent never provided a final accounting to her.

57. Between September 27, 2010, and February 25, 2011, Respondent or Zumstein directly withdrew $17,000.00 from a personal Compass Bank account ending in 7577.

58. As of February 22, 2012, the balance in Respondent's operating account ending in 4728 was $0.00.

59. At no time did Rubey authorize the payment of $110,000.00 to Respondent for work performed by Respondent or Haacke & Associates.

60. Respondent never provided Rubey with any documentation or fee agreement that indicated that attorney C. Thomas Mason would receive $40,000.00 for his work as an expert witness in the case. As of October 19, 2012, C. Thomas

Mason had not yet submitted a final invoice to Respondent regarding his fee as an expert witness for Rubey. Respondent has never paid C. Thomas Mason his expert witness fee.

61. During all or part of the time set forth above, Respondent (a) failed to maintain funds belonging in whole or part to Rubey, the W. Harold and Dorothy L. Simons Trust, attorney C. Thomas Mason, Jennings, Strouss & Salmon, and Buchalter Nemer separate and apart from her personal and business accounts; (b) failed to maintain, on a current basis, complete records of the handling, maintenance and disposition of all funds, belonging in whole or in part to Rubey, the W. Harold and Dorothy L. Simons Trust, attorney C. Thomas Mason, Jennings, Strouss & Salmon, and Buchalter Nemer; (c) failed to maintain or cause to be maintained an account ledger or the equivalent for Rubey, the W. Harold and Dorothy L. Simons Trust, attorney C. Thomas Mason, Jennings, Strouss & Salmon, or Buchalter Nemer, for which she received funds in trust, which showed (i) the date, amount and payor of each receipt of funds; (ii) the date, amount and payee of each disbursement; and (iii) any unexpended balance; (d) failed to make or cause to be made a monthly three-way reconciliation of her client ledgers, trust account general ledger or register, and her trust account bank statements; (e) failed to retain evidence of all (i) disbursements; (ii) duplicate deposit slips or the equivalent for her trust account that were sufficiently detailed to identify each item; (iii) client ledgers; (iv) trust account general ledger or register; and (v) reports to Ellen Rubey; and (f) failed to maintain a record of all disbursements made from her trust account by check or by electronic transfer.

COUNT TWO (File No. 11-1141/Failure to Respond to Bar Counsel)

62. On or about April 2, 2011, Ellen Rubey submitted a bar charge regarding Respondent's representation of her, as trustee of the W. Harold and Dorothy L. Simons Trust.

63. On or about April 27, 2011, Bar Counsel Tracy Krall sent a letter to Respondent at her address of record with the State Bar in which she directed Respondent to submit a written response to the charges filed by Ellen Rubey. A copy of Rubey's charge was enclosed with the letter. Bar counsel's letter stated in part:

> . . . Your participation in the screening investigation is extremely important, as Bar Counsel will make a recommendation at the end of the investigation as to the disposition of this matter. Pursuant to ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct., you have a duty to cooperate with this investigation. Failure to fully and honestly respond to, or cooperate with, the investigation is, itself, grounds for discipline.
>
> . . . Please submit a written response to the enclosed information, directed to my office, within 20 days of the date of this letter. . . . If you cannot file a timely response, you should contact my office immediately. . . .

64. Respondent contacted the State Bar and was granted a twenty day extension to June 6, 2011, to file her written response.

65. Respondent may have attempted to obtain a second extension of time to file her written response, but if so it was not granted.

66. Respondent failed to submit a written response to bar counsel's letter dated April 27, 2011.

67. On or about June 17, 2011, Bar Counsel Jason Easterday sent a letter to Respondent at her address of record with the State Bar and a Post Office box listed

on Respondent's website. A copy of bar counsel's April 27, 2011, letter was enclosed. Bar counsel's June 17, 2011, letter stated in part:

> Reference is made to my letter dated September 29, 2011[,] advising you of the allegations of Ms. Martin. A copy of that letter is enclosed. It was requested that your response be filed within 20 days of the date of my letter. This office has no record of the receipt of your response.
>
> Pursuant to Rule 47(h) and 55(b)(1)(B), Ariz. R. Sup. Ct., you are hereby given notice that your failure to comply with this request for response **within ten (10) days of the date of this letter** may require the taking of your deposition pursuant to subpoena, or a recommendation to the Attorney Disciplinary Probable Cause Committee for an order of probable cause. Please be further advised that, should your failure to cooperate result in the taking of a deposition pursuant to Rule 47, you "shall be liable for the actual costs of conducting the deposition. . . ." If you fail to comply with an investigative subpoena, you may be subject to contempt proceedings, and could be summarily suspended.
>
> I again refer you to Rule 54(d), and caution you that failure to cooperate with a disciplinary investigation is grounds, in itself, for discipline.
>
> (Emphasis in original).

68. Respondent failed to timely submit a written response as directed by bar counsel in his June 17, 2011, letter. Respondent, however, may have mailed a written response to the State Bar on August 4, 2011. The State Bar, however, did not receive it. Respondent provided an unsigned copy of her August 4, 2011, written response to bar counsel at her deposition sometime later. In the letter from Respondent to bar counsel dated August 4, 2011, Respondent stated that Garrett Olexa, an attorney at JS&S, represented to her that at some time JS&S had stopped billing/collecting for the Rubey case. That was a false, or at least an inaccurate, statement since JS&S never stopped collecting fees regarding the Rubey case and never stopped sending itemized invoices on a monthly basis to Rubey. Also in that letter, Respondent stated she discounted JS&S' fees by $12,642.00 "according to

the terms of the settlement as discussed and authorized by Garrett [Olexa] during the course of the Mediation." That was a false statement since Respondent never discussed the final terms of the settlement with Olexa before agreeing to settle and Olexa never informed Respondent that JS&S would discount its fee. During the mediation, Respondent called Olexa and asked whether he would agree to discount JS&S' fees, but Olexa informed Respondent that he did not have authority to do so.

69. On or about August 5, 2011, State Bar Investigator Mike Fusselman determined that Respondent's address of record with the State Bar was her current address. Fusselman sent an email message to Respondent in which he asked her to contact bar counsel. Fusselman received an automated response that indicated that Respondent was attending to a death in the family and would return on August 1, 2011.

70. Respondent failed to contact bar counsel or Investigator Fusselman, as requested.

71. On or about September 6, 2011, Bar Counsel Jason Easterday called Respondent's phone number on record with the State Bar and left a voicemail message requesting a return call. Respondent failed to return bar counsel's telephone call.

72. As a result of Respondent's failure to respond to communication from bar counsel, Bar Counsel Jason Easterday deposed Respondent on September 27, 2011. Shortly after the deposition, Respondent provided Bar Counsel Easterday with a copy of her August 4, 2011, letter to the State Bar. At or about the same time, Respondent provided some documents to the State Bar that had been requested in the subpoena scheduling her deposition.

73. On or about October 6, 2011, Bar Counsel Jason Easterday sent a letter to Respondent in which he informed her that he had received her letter dated October 4, 2011, along with its enclosures and attachment, but that he still needed various documents he previously requested in a subpoena *duces tecum* dated September 9, 2011, and his letter dated September 28, 2011 (e.g., trust account records, billing statements). Respondent was directed to provide the "subpoenaed and requested material no later than the close of business (5:00 p.m. Arizona time) Wednesday, October 13, 2011." That letter stated in part:

> As you are aware from my previous letters, failure to cooperate with a disciplinary investigation is, in itself, grounds for discipline pursuant to Rule 54(d), Ariz. R. Sup. Ct. The State Bar reserves the right to initiate contempt proceedings based upon the failure to provide subpoenaed material pursuant to Rule 47(h)(4), Ariz. R. Sup. Ct.

74. Respondent failed to respond to bar counsel's October 6, 2011, letter.

75. On or about October 28, 2011, Bar Counsel Jason Easterday sent a follow-up letter to Respondent at her address of record with the State Bar in which he stated that the State Bar had no record of receiving a response from her to his October 6, 2011, letter. Enclosed with that letter was a copy of his October 6, 2011, letter. The October 28, 2011, letter stated in part:

> Pursuant to Rule 47(h) and 55(b)(1)(B), Ariz. R. Sup. Ct., you are hereby given notice that your failure to comply with this request for response within ten (10) days of the date of this letter may require the taking of your deposition pursuant to subpoena, or a recommendation to the Attorney Disciplinary Probable Cause Committee for an order of probable cause. Please be further advised that, should your failure to cooperate result in the taking of a deposition pursuant to Rule 47, you "shall be liable for the actual costs of conducting the deposition. . . ." If you fail to comply with an investigative subpoena, you may be subject to contempt proceedings, and could be summarily suspended.
>
> I again refer you to Rule 54(d), and caution you that failure to cooperate with a disciplinary investigation is grounds, in itself, for discipline.

Please respond to my letter of October 6, 2011, on or before the close of business on Monday, November 7, 2011. If you have any questions, please do not hesitate to contact me.

76. Respondent failed to respond to bar counsel's October 28, 2011, letter.

77. On or about March 9, 2012, Senior Bar Counsel James Lee sent a letter to Respondent in which he informed her that he had been assigned to review the charges against her and to "obtain additional information and documents from [her] so [he] [could] determine an appropriate resolution of this matter." That letter stated, in part:

> Please provide a written response to the following and submit the requested documents by no later than March 23, 2012."
>
> . . . .
>
> I fully expect to receive your written response to the above, along with the requested documents, by no later than March 23, 2012. No extension will be granted absent a compelling reason. Furthermore, you will be responsible for any expenses incurred by additional investigation that is required due to your failure to timely respond to this request (e.g., subpoenas, depositions).

(Emphasis in original).

78. Respondent failed to respond to bar counsel's March 9, 2012, letter.

COUNT THREE (File No. 11-3876/Raskow)

79. On or about February 8, 2011, Stanley and Connie Raskow (the Raskows) were introduced to Respondent by Tim Holt (Holt), their family attorney. The Raskows had concerns about a retirement plan and were aware that Respondent had expertise in securities matters.

80. On or about March 4, 2011, the Raskows hired Respondent to represent them and paid a total fee of $5,000.00. The parties agreed that Respondent would charge a non-refundable fee of $5,000.00 that was earned upon receipt.

Respondent's communication to the Raskows in writing regarding the scope of representation and the basis or rate of the fee and expenses for which they would be responsible failed to simultaneously advise the Raskows that they may nevertheless discharge her at any time, in which event they may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to the criteria in ER 1.5(a). Holt provided Respondent with documents and information regarding the Raskows' retirement plan established pursuant to Section 419 of the Internal Revenue Code.

81. On or about September 28, 2011, Respondent sent an email message to the Raskows in which she stated she was awaiting information from several attorneys so that she could "cut and paste."

82. On or about October 26, 2011, the Raskows sent a certified letter to Respondent stating they believed she was not communicating with them in a meaningful manner, that they were frustrated with her handling of their case, and that they had decided to hire another attorney to represent them. They requested that she return their file as soon as possible because they were concerned about additional delays that could harm their chance of recovery. They also requested a refund of the entire $5,000.00 fee they had paid. The Raskows offered to send a messenger to retrieve the file and refund. Respondent, however, never claimed the certified letter, which was returned to the Raskows on November 16, 2011.

83. On or about November 2, 2011, the Raskows sent a copy of the certified letter to Respondent by regular U.S. mail. Respondent never responded to that letter and never complied with the requests that the Raskows made in the letter.

84. On or about December 5, 2011, Lynda Vescio (Vescio), who represented the Raskows at that time, mailed and faxed a letter to Respondent, requesting the Raskows' file and a refund of the $5,000.00 they had paid. That letter stated the date and time a messenger would retrieve the file and refund. Respondent never responded.

85. On or about December 12, 2011, Vescio called Respondent and left a voice-mail message.

86. On or about December 13, 2011, Vescio mailed and faxed another letter to Respondent, again stating the date and time a messenger would retrieve the Raskows' file and refund. On that same date, Respondent sent an email message to Vescio stating that she had mailed the file and that an accounting would follow.

87. On or about December 14, 2011, Vescio sent an email message to Respondent inquiring when she had mailed the file. In response, Respondent informed Vescio that she had mailed the file on December 9, 2011. Respondent, however, did not mention the refund.

88. On or about December 22, 2011, Vescio sent another email message to Respondent in which she stated she had not received the file and offered to send a messenger to retrieve it.

89. On or about December 26, 2011, Respondent responded, stating that she was out of town and would not return to the Phoenix area until January 3, 2012, and that Vescio should contact her after that date, at which time Respondent would hand-deliver the file and go over the case with Vescio.

90. On or about January 5, 2012, a member of Vescio's staff left a voice-mail message for Respondent.

91. On or about January 9, 2012, a member of Vescio's staff left another voice-mail message for Respondent.

92. On or about January 10, 2012, Respondent sent an email message to Vescio seeking to schedule a time that she could deliver a copy of what she had previously mailed and to discuss with her the work she had performed for the Raskows. A meeting was set for January 20, 2012, at 4:00 p.m.

93. On January 20, 2012, at 1:48 p.m., Respondent sent an email message to Vescio stating she had to cancel the meeting due to a family medical emergency out-of-state, but that she had arranged for the file to be delivered to Vescio.

94. On or about January 24, 2012, Respondent emailed from out-of-state a draft complaint to Vescio.

95. As of January 30, 2012, Vescio had not received the Raskows' file or an accounting of fees from Respondent.

96. During Respondent's representation of the Raskows, she failed to diligently represent them; failed to adequately communicate with them, including a failure to keep them apprised of the status of their case and failure to respond to letters and/or return telephone calls; and failed to provide them at the conclusion of representation with (a) the documents that they and/or Holt had given to her; (b) the file she maintained on their behalf; (c) a refund of unearned fees, which the Raskows assert is $5,000.00; or (d) a statement or invoice documenting any work she had performed on their behalf.

COUNT FOUR (File No 11-3876/Failure to Respond to Bar Counsel)

97. On or about January 30, 2012, Stanley and Connie Raskow (the Raskows) filed a charge against Respondent with the State Bar asserting, among

other things, that she failed to diligently represent them, failed to adequately communicate with them, and, at the conclusion of representation, failed to provide them with the documents that they or their family attorney had previously given to her, the file she maintained on their behalf, or a refund unearned fees.

98. On or about March 19, 2012, Senior Bar Counsel James Lee sent a letter to Respondent at her address of record with the State Bar in which he directed Respondent to submit a written response to the charges filed by the Raskows. A copy of the Raskows' written charges was enclosed with the letter. Bar counsel's letter stated in part:

> . . . . Your participation in the screening investigation is extremely important, as Bar Counsel will make a recommendation at the end of the investigation as to the disposition of this matter. Pursuant to ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct., you have a duty to cooperate with this investigation. Failure to fully and honestly respond to, or cooperate with, the investigation is, itself, grounds for discipline.
>
> . . . Please submit a written response to the enclosed information, directed to my office, within 20 days of the date of this letter. . . . If you cannot file a timely response, you should contact my office immediately. . . .

99. Respondent failed to submit a written response to the State Bar regarding the charges, as directed by bar counsel in his letter dated March 19, 2012.

100. On or about April 19, 2012, Senior Bar Counsel James Lee sent another letter to Respondent at her address of record with the State Bar. A copy of bar counsel's March 19, 2012, letter was enclosed. Bar counsel's April 19, 2012, letter stated in part:

> Reference is made to my letter dated March 19, 2012[,] advising you of the allegations of Ms. Raskow. A copy of that letter is enclosed. It was requested that your response be filed within 20 days of the date of my letter. This office has no record of the receipt of your response.

> Pursuant to Rule 47(h) and 55(b)(1)(B), Ariz. R. Sup. Ct., you are hereby given notice that your failure to comply with this request for response **within ten (10) days of the date of this letter** may require the taking of your deposition pursuant to subpoena, or a recommendation to the Attorney Disciplinary Probable Cause Committee for an order of probable cause. Please be further advised that, should your failure to cooperate result in the taking of a deposition pursuant to Rule 47, you "shall be liable for the actual costs of conducting the deposition. . . ." If you fail to comply with an investigative subpoena, you may be subject to contempt proceedings, and could be summarily suspended.
>
> I again refer you to Rule 54(d), and caution you that failure to cooperate with a disciplinary investigation is grounds, in itself, for discipline.

(Emphasis and ellipsis in original).

101. Respondent failed to submit a written response to the State Bar regarding the Raskows' charges, as directed by bar counsel in his letter dated April 19, 2012.

COUNT FIVE (File No. 12-0035/Bedrick)

102. In or about 2010, P. Vincent Mehdizadeh (Mehdizadeh) obtained a patent for a biometric medicine vending machine that could confirm the identity of a person attempting to use it. Mehdizadeh, who is the chief executive officer of Prescription Vending Machines, Inc. (PVA), d/b/a Medicine Dispensing Systems, Inc. (MDS), assigned the patent to PVA.

103. At some point in time, Mehdizadeh and Dr. Bruce Bedrick (Bedrick), who is the chief executive officer of Kind Clinics, L.L.C. (Kind Clinics), agreed to work together to offer consulting services and access to PVA's vending machines to persons and entities that wished to attempt to obtain a license for a medical marijuana dispensary that the Arizona Department of Health Services intended to issue following passage of Arizona Proposition 203. Persons and entities that wished

to obtain a marijuana dispensary license and establish a dispensary could hire Bedrick, Mehdizadeh, Kind Clinics, PVA and MDS (hereafter collectively referred to as "Consultants") individually or with other investors. Consultants' fee for attempting to obtain a dispensary license and set up a dispensary was $250,000.00. Those fees included, among other things, attorney's fees, real estate costs, realtor fees, Consultants' consulting fees, permitting fees, application fees, interior construction costs, furniture, computer hardware and software, and a dispensing machine. Interested persons and entities were required to make an initial payment in or about January 2011. The payments made by Consultants' clients were to be placed into an escrow account from which payments were to be made as instructed by Consultants. Consultants intended to refund unexpended funds to those clients whose efforts to obtain a dispensary license were unsuccessful.

104. Beginning in or about November 2010, Bedrick, who had known Respondent for approximately 15 years, began communicating with Respondent regarding legal services she could provide to Consultants. Discussions centered on drafting agreements that Consultants could use with persons and entities who desired to enter into a consulting relationship with them. In or about November or December 2010, Respondent began providing legal advice to Consultants. Respondent, however, never communicated to Consultants in writing the scope of representation and the basis or rate of the fee and expenses for which Consultants would be responsible.

105. On or about December 28, 2010, Bedrick, on behalf of Kind Clinics, signed an engagement letter that reflected that Ridenour, Hienton & Lewis (RH&L)

was "engage[d] as counsel to Haacke & Associates ('Haacke') in connection with Kind Clinics." The engagement letter stated that the scope of RH&L's engagement was to provide documentation services to Respondent for Kind Clinics and to be available to provide other legal advice. The engagement letter additionally stated that Respondent would "remain as lead Arizona counsel to Kind Clinics." The engagement letter set forth RH&L's fees. Respondent explained to Consultants that she would work with Robert J. Hackett (Hackett), an attorney at RH&L, and well as others at the firm, regarding preparation of consulting agreements that Consultants could use with their clients. Although Respondent was ostensibly RH&L's client (according to the engagement letter), Mehdizadeh paid an initial $10,000.00 fee to Hackett against which hourly charges were to be billed. Bedrick and Mehdizadeh, in both their individual capacities and their corporate capacities, reasonably believed that Respondent, Hackett and RH&L represented Consultants' interests. Furthermore, Hackett provided at least one memorandum to Bedrick and Mehdizadeh that reflected it was subject to attorney-client privilege.

106. The bank initially selected to serve as the escrow agent for the funds paid by Consultants' clients declined the request to do so. Thereafter, but during the period of time that Respondent was representing Consultants, Respondent offered to serve as the escrow agent for funds paid by Consultants' clients. Consultants accepted Respondent's offer.

107. Respondent asked Hackett to draft an escrow agreement to be signed by: (a) Bedrick on Kind Clinic's behalf; (b) an agent on MDS' behalf; (c) Consultants' clients; and (d) Respondent as the escrow agent. Hackett, Respondent and Darrell Husband (Husband), an attorney in Hackett's law office, prepared an

initial escrow agreement for Consultants' use and thereafter made various changes to it. Consultants informed Respondent that she would be paid a flat fee of $3,000.00 for acting as escrow agent for all of their clients. As escrow agent, Respondent was responsible for opening a bank account to hold the escrow funds and issuing checks when authorized by Consultants.

108. On January 19, 2011, Hackett's assistant, Carol Ewing, sent an email message to Respondent, which stated, "In accordance with the engagement letter, this is to request that you ask Dr. Bedrick and/or Mr. Mehdizadeh to forward to our firm an additional $10,000 retainer payment within the next few days."

109. One of the initial drafts of the escrow agreement drafted by Hackett, Respondent and Husband, stated:

> The Company hereby agrees to pay the Escrow Agent an advance payment for ordinary services rendered hereunder (the "Escrow Fee") which shall be calculated in accordance with the Escrow Agent's fee schedule attached as Exhibit B. The Company further agrees to pay the Escrow Agent reasonable fees, which shall be agreed upon between the Parties, for any services in addition to those provided for herein to the extent that the Company has expressly requested such extraordinary services and has been made aware of their cost in advance of their performance. The Escrow Fees shall not exceed $________ without the prior written consent of the Company.

(Blank space in original).

110. A January 20, 2011, draft of the escrow agreement stated:

> The Company hereby agrees to pay the Escrow Agent an advance payment for ordinary services rendered hereunder (the "Escrow Fee") which shall be calculated in accordance with the Escrow Agent's fee schedule attached as Exhibit B. The Company further agrees to pay the Escrow Agent reasonable fees, which shall be agreed upon between the Parties, for any services in addition to those provided for herein to the extent that the Company has expressly requested such extraordinary services and has been made aware of their cost in advance of their performance. The Escrow Fees shall not exceed **$5,000.00** without the prior written consent of the Company.

(Emphasis added to show modification).

111. A January 26, 2011, draft of the escrow agreement stated:

> The Company hereby agrees to pay the Escrow Agent an advance payment for ordinary services rendered hereunder (the "Escrow Fee") which shall be calculated in accordance with the Escrow Agent's fee schedule attached as Exhibit B. **Such fees shall be payable for each Applicant who has signed a Consulting Agreement.** The Company further agrees to pay the Escrow Agent reasonable fees, which shall be agreed upon between the Parties, for any services in addition to those provided for herein to the extent that the Company has expressly requested such extraordinary services and has been made aware of their cost in advance of their performance. The Escrow Fees shall not exceed $5,000.00 **per Applicant** without the prior written consent of the Company.

(Emphasis added to show modifications).

112. On January 27, 2011, Hackett sent an email message to Respondent and two members of his staff in which he stated: "Leslie, I am adding language to the Escrow Agreement that the Escrow Fees in Exhibit B are payable to the Escrow Agent for each Applicant who signs a Consulting Agreement. If that is not consistent with your objectives, please let me know as soon as possible." That email message was not "copied," or otherwise provided to Consultants. It was not until Consultants discharged Respondent, Hackett and RH&L and received a copy of the file maintained on their behalf by Hackett that they first saw Hackett's January 27, 2011, email message to Respondent. Respondent has never provided Consultants with the file that she maintained on their behalf.

113. Also on January 27, 2011, Respondent responded by email to Hackett regarding his email message from earlier that day. Respondent's email response stated, "Per our discussions yesterday, that is consistent (to make sure there is sufficient compensation for administration, accounting services, etc.)." Consultants were not "copied" on Respondent's email message response to Hackett and did not

receive a copy of the modified escrow agreement. As a result, Consultants never had an opportunity to review or comment on the proposed change that required every client to pay an escrow fee. When Consultants subsequently signed escrow agreements with their clients, they were unaware that they contained language requiring each client to pay an escrow agent fee.

114. Bedrick, Mehdizadeh, 36 of Bedrick and Mehdizadeh's clients and Respondent signed escrow agreements that identified Respondent as the escrow agent. That business transaction was not fair and reasonable to Consultants given the lack of notification of changes made to the agreement and the limited amount of work that Respondent would have to perform as escrow agent. Neither the escrow agreement nor any other document advised Consultants in writing of the desirability of seeking the advice of independent counsel. Furthermore, Respondent failed to obtain Consultants' informed consent to the business transaction and failed to state whether Respondent was representing Consultants regarding the transaction.

115. Respondent provided input to Hackett regarding the drafting of various documents for Consultants, participated in conference calls with Hackett, and at times acted as a communication liaison between Consultants and Hackett. Consultants did not hire independent counsel regarding the escrow agreement because they believed Respondent was acting in their best interests.

116. During March and April 2011, Consultants transferred a total of $1,350,000.00 to Respondent as follows:

(a) On March 11, 2011, $25,000.00 was transferred to Respondent.

(b) On March 14, 2011, $1,190,000.00 was transferred to Respondent.

(c) On March 24, 2011, $120,000.00 was transferred to Respondent.

(d) On April 7, 2011, $15,000.00 was transferred to Respondent.

117. On or about April 13, 2011, Mehdizadeh and MDS used a cashier's check to pay $10,000.00 in legal fees to RH&L (that was the second $10,000.00 payment to RH&L).

118. On or about April 18, 2011, Mehdizadeh and MDS used a cashier's check to pay $6,000.00 in legal fees to RH&L to settle a dispute regarding outstanding fees.

119. Between April and October 2011, Respondent issued approximately 20 checks from the escrow account at Consultants' direction.

120. On several occasions, Consultants asked Respondent to submit an invoice for her escrow services so they could authorize the payment of $3,000.00 to her from the escrow account. The following is an example.

(a) On July 15, 2011, Mehdizadeh sent an email message to Respondent that stated in part: "Don't you ever want to get paid for your services? I feel like we are freeloading!!? Lol"

(b) A short time later on July 15, 2011, Respondent responded by email to Mehdizadeh's email message stating: "Just back from vacation and Utah dealing with health issues with both my parents. Will get on it. And thank you. Lol."

121. Respondent advised Consultants that she would submit an invoice to them for payment regarding her escrow agent duties, but she never provided one.

Based upon the lack of an invoice or billing statement from Respondent regarding her escrow agent duties, Consultants never authorized any payment to Respondent from the escrow account.

122. At some point in time, Respondent confirmed to Bedrick or Mehdizadeh or one of Consultant's attorney creditors that she had paid $30,000.00 to the attorney in September 2011. Neither the attorney nor his/her firm, however, received the funds. Respondent failed to provide Consultants with an explanation for the non-payment other than to state that it was a banking error and that she had sent the payment through her bank's "online bill-pay" feature. Consultants later learned that the escrow account at Respondent's bank had been depleted of funds a number of weeks prior to the alleged payment to the attorney in September 2011.

123. During late November 2011, Consultants became concerned that Respondent had ignored repeated requests for an accounting of work she had performed as an escrow agent so they could authorize payment to her from the escrow account.

124. On December 10, 2011, Bedrick or Mehdizadeh sent an email message to Respondent terminating her employment as escrow agent and counsel for Consultants because of a breach of trust. That email message identified the only four deposits that had been made to the escrow account and the disbursements from the escrow account. That email message identified payments from the escrow account totaling $1,190,277.43, and stated that the balance in the escrow account should have been $159,722.57, plus interest payments of approximately $1,000.00. That email message asked Respondent to remit a check to MDS for

$157,722.57 by December 14, 2011 ($159,722.57 plus $1,000.00 interest, minus $3,000.00 for Respondent's escrow agent fee).

125. Respondent responded to the December 10, 2011, email message by claiming $160,000.00 in escrow agent fees. She claimed that the modified escrow agreement signed by Bedrick, Mehdizadeh, Consultants' clients and herself stated that each "applicant" (i.e., client) was required to pay a separate $3,000.00 escrow agent fee pursuant to Exhibit B to the escrow agreement.

126. Consultants later learned that Hackett and Respondent had modified the escrow agreement, without their knowledge, to state that Respondent would receive an escrow agent fee from each person or entity that hired Consultants.

127. Thirty-six of Consultants' clients paid funds to Complainants, which were transferred to the escrow account.

128. On December 28, 2011, Consultants demanded that Respondent send them a letter stating there was at least $51,722.57, plus interest, in the escrow account ($159,722.57 minus $108,000.00 (36 clients times $3,000.00)). Respondent failed to respond to that request.

129. At some point in time, Consultants demanded that Respondent return $159,722.57 to them, along with an accounting of the funds that were in or had passed through the escrow account. Respondent failed to do so.

130. Between approximately December 2010 and December 2011, Respondent provided legal advice to Consultants. Between approximately March 2011 and December 2011, Respondent also acted as the escrow agent for funds paid by Consultants' clients.

131. Regarding communication, Hackett at times relied upon Respondent to communicate with Consultants. On other occasions, Hackett communicated directly with Consultants, and, on occasion, Consultants or their staff communicated directly with Hackett. At times, Hackett and others at RH&L communicated directly with Respondent without "copying" Consultants.

COUNT SIX (File No. 12-0035/Failure to Respond to Bar Counsel)

132. On or about January 6, 2012, Consultants filed a charge against Respondent with the State Bar asserting, among other things, that she had altered an escrow agreement to require the payment of $5,000.00 in escrow fees for each of Consultants' clients, failed to comply with ER 1.8(a) when entering into a business arrangement with Consultants, charged unreasonable escrow fees, and misappropriated at least $51,722.57 from escrow funds she was holding on behalf of Consultants and their clients.

133. On March 16, 2012, Senior Bar Counsel James Lee sent a letter to Respondent at her address of record with the State Bar in which he directed Respondent to submit a written response to the charges filed by Consultants. A copy of Consultants' charges was enclosed with the letter. Bar Counsel's letter stated in part:

> . . . Your participation in the screening investigation is extremely important, as Bar Counsel will make a recommendation at the end of the investigation as to the disposition of this matter. Pursuant to ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct., you have a duty to cooperate with this investigation. Failure to fully and honestly respond to, or cooperate with, the investigation is, itself, grounds for discipline.
>
> . . . Please submit a written response to the enclosed information, directed to my office, within 20 days of the date of this letter. . . . If you cannot file a timely response, you should contact my office immediately. . . .

That March 16, 2012, letter from bar counsel also directed Respondent to provide various documents for all bank accounts into which funds were deposited, all bank accounts from which funds were disbursed, and all intermediate bank accounts through which funds were transferred (into or out of) on behalf of Bedrick or any other party related to Bedrick. It stated that at a minimum, the request pertained to any trust account(s) (including client trust accounts), Respondent's operating account(s) into which client or third-party funds were deposited or disbursed at any time, and all escrow accounts into which client or third-party funds were deposited or disbursed at any time.

134. Respondent failed to submit a written response to the State Bar regarding the charges or provide any documents, as directed by bar counsel in his letter dated March 16, 2012.

135. On April 16, 2012, Senior Bar Counsel James Lee sent another letter to Respondent at her address of record with the State Bar. A copy of bar counsel's March 16, 2012, letter was enclosed. Bar counsel's April 16, 2012, letter stated in part:

> Reference is made to my letter dated March 19, 2012[,] advising you of the allegations of Dr. Bedrick. A copy of that letter is enclosed. It was requested that your response be filed within 20 days of the date of my letter. This office has no record of the receipt of your response.
>
> Also enclosed is a copy of Dr. Bedrick's April 6, 2012 (and disk) letter supplying additional information. Please respond to Dr. Bedrick's April 6, 2012, letter AND the bar charge I sent to you on March 16, 2012.
>
> Pursuant to Rule 47(h) and 55(b)(1)(B), Ariz. R. Sup. Ct., you are hereby given notice that your failure to comply with this request for response **within ten (10) days of the date of this letter** may require the taking of your deposition pursuant to subpoena, or a recommendation to the Attorney Disciplinary Probable Cause Committee for an order of probable cause. Please be further advised that, should your failure to cooperate result in the taking of a

> deposition pursuant to Rule 47, you "shall be liable for the actual costs of conducting the deposition. . . ." If you fail to comply with an investigative subpoena, you may be subject to contempt proceedings, and could be summarily suspended.
>
> I again refer you to Rule 54(d), and caution you that failure to cooperate with a disciplinary investigation is grounds, in itself, for discipline.

(Emphasis and ellipsis in original).

136. Respondent failed to submit to the State Bar a written response regarding the charge or any documents, as directed by bar counsel in his letter dated April 16, 2012.

CONCLUSIONS OF LAW

Respondent failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted the Hearing Panel finds by clear and convincing evidence that Respondent violated the following:

Count One: By engaging in the conduct set forth in Count One, Respondent violated the following:

a. ER 1.2(a) by failing to adequately communicate with Ellen Rubey and Dorothy Simons during the mediation regarding the attorneys' fees and expert witness fees that had not yet been paid;

b. ER 1.4(a)(2) by failing to adequately communicate with Ellen Rubey and Dorothy Simons during the mediation regarding the attorneys' fees and expert witness fees that had not yet been paid;

c. ER 1.4(a)(4) by failing to respond to Ellen Rubey's email messages in which she asked for information regarding distribution of the settlement

funds and an itemized statement regarding the $110,000.00 fee that Respondent paid herself from the settlement funds;

d. ER 1.5(a) by charging an unreasonable fee for the work she performed for Ellen Rubey, as trustee of the Simons Trust;

e. ER 1.5(b) by failing, when practicing as Haacke & Associates, to communicate in writing to Ellen Rubey the scope of representation and the basis or rate of the fee and expenses for which Rubey would be responsible;

f. ER 1.15(a) by failing to hold in her trust account that portion of the settlement funds that were to be used to pay attorney C. Thomas Mason, who was an expert witness;

g. ER 8.4(b) by committing theft (by failing to safeguard or hold in her trust account the funds she was supposed to hold until attorney C. Thomas Mason submitted an invoice or billing statement for his services as an expert witness);

h. ER 8.4(c) by falsely stating in her December 23, 2010, interim accounting to Ellen Rubey that she was still holding $40,000.00 in trust for payment to attorney C. Thomas Mason;

i. Rule 43(a), Ariz. R. Sup. Ct., by failing to maintain funds belonging in whole or part to Ellen Rubey; the W. Harold and Dorothy L. Simons Trust; attorney C. Thomas Mason; Jennings, Strouss & Salmon; and Buchalter Nemer separate and apart from her personal and business accounts (e.g., she transferred funds from her trust account, where they

should have been maintained, to an operating account and/or an "escrow" account);

j. Rule 43(b)(2)(A), Ariz. R. Sup. Ct., by failing to maintain, on a current basis, complete records of the handling, maintenance and disposition of all funds, belonging in whole or in part to Ellen Rubey; the W. Harold and Dorothy L. Simons Trust; attorney C. Thomas Mason; Jennings, Strouss & Salmon; and Buchalter Nemer;

k. Rule 43(b)(2)(B), Ariz. R. Sup. Ct., by failing to maintain or cause to be maintained an account ledger or the equivalent for Ellen Rubey; the W. Harold and Dorothy L. Simons Trust; attorney C. Thomas Mason; Jennings, Strouss & Salmon; and Buchalter Nemer, for which she received funds in trust, showing (a) the date, amount and payor of each receipt of funds; (b) the date, amount and payee of each disbursement; and (c) any unexpended balance;

l. Rule 43(b)(2)(C), Ariz. R. Sup. Ct., by failing to make or cause to be made a monthly three-way reconciliation of client ledgers, trust account general ledger or register, and trust account bank statements;

m. Rule 43(b)(2)(D), Ariz. R. Sup. Ct., by failing to maintain evidence of all (a) disbursements; (b) duplicate deposit slips or the equivalent for her trust account that were sufficiently detailed to identify each item; (c) client ledgers; (d) trust account general ledger or register; and (e) reports to Ellen Rubey; and

n. Rule 43(b)(5), Ariz. R. Sup. Ct., by failing to maintain a record of all disbursements made from her trust account by check or by electronic transfer.

Count Two: By engaging in the conduct set forth in Count Two, Respondent violated the following:

a. ER 8.1(b) by knowingly making a false statement of material fact in connection with a disciplinary matter and knowingly failing to respond to a lawful demand for information from bar counsel; and

b. Rule 54(d)(2), Ariz. R. Sup. Ct., by failing to promptly respond, or respond at all, to one or more requests for information and/or documents made by bar counsel during the State Bar's screening investigation into her representation of Ellen Ruby.

Count Three: By engaging in the conduct set forth in Count Three, Respondent violated the following:

a. ER 1.2(a) by failing to abide by the Raskows' decisions concerning the objectives of representation and, as required by ER 1.4, failed to consult with the Raskows regarding the means by which they were to be pursued;

b. ER 1.3 by failing to act with reasonable diligence and promptness in representing the Raskows;

c. ER 1.4 by (i) failing to promptly inform the Raskows of any decision or circumstance with respect to which their informed consent, as defined in ER 1.0(e), was required by the Rules of Professional Conduct; (ii) failing to reasonably consult with the Raskows about the means by which

their objectives were to be accomplished; (iii) failing to keep the Raskows reasonably informed about the status of their case; (iv) failing to promptly comply with reasonable requests for information; and (v) failing to explain the matter to the Raskows to the extent reasonably necessary to permit them client to make informed decisions regarding the representation;

d. ER 1.5(a) by charging or collecting an unreasonable fee for the work she performed for the Raskows;

e. ER 1.5(d)(3) by failing to simultaneously notify the Raskows, in her communication to the Raskows in writing regarding the scope of representation and the basis or rate of the fee and expenses for which they would be responsible, that they may nevertheless discharge her at any time, in which event they may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to the criteria in ER 1.5(a);

f. ER 1.15(d) by failing to promptly deliver to the Raskows the funds (i.e., the unearned fees) and other property (e.g., documents that they or their family law attorney had previously provided to Respondent and the file she maintained on the Raskows' behalf), which they were entitled to receive;

g. ER 1.16(d) by failing to take steps to the extent reasonably practicable to protect the Raskows' interests at the termination of representation by failing to surrender documents and property that the Raskows were entitled to receive and which they had requested (e.g.,

documents that they or their family law attorney had previously provided to Respondent and the file she maintained on the Raskows' behalf) and failing to refund any advance payment of the fee that had not been earned; and

h. ER 8.4(d) by engaging in conduct prejudicial to the administration of justice (e.g., causing delay in getting the Raskows' legal issues resolved).

Count Four: By engaging in the conduct set forth in Count Four, Respondent violated the following:

a. ER 8.1(b) by knowingly failing to respond to a lawful demand for information from bar counsel (i.e., a disciplinary authority) in connection with a disciplinary matter; and

b. Rule 54(d), Ariz. R. Sup. Ct., by refusing to cooperate with officials and staff of the State Bar, who were acting in the course of their duties; failing to furnish information or respond promptly to any inquiry or request from bar counsel made pursuant to the Supreme Court rules for information relevant to pending charges or matters under investigation concerning her conduct, and failing to assert a ground for refusing to do so; and failing to furnish in writing, when requested by bar counsel, a full and complete response to inquiries and questions.

Count Five: By engaging in the conduct set forth in Count Five, Respondent violated the following:

a. ER 1.4(a) by failing to adequately communicate with Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending

Machines, Inc., and Medicine Dispensing Systems, Inc. (e.g., failing to reasonably and promptly inform, failing to reasonably consult, failing to promptly comply with reasonable requests for information);

b. ER 1.4(b) by failing to explain matters to the extent reasonably necessary to permit Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., to make informed decisions regarding the representation;

c. ER 1.5(a) by charging an unreasonable fee for the escrow agent work she performed for Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., Medicine Dispensing Systems, Inc., and/or any of their clients;

d. ER 1.5(b) by failing to communicate to Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., in writing the scope of representation and the basis or rate of the fee and expenses for which they would be responsible for legal work performed on their behalf;

e. ER 1.7(a) by representing Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., when there was a significant risk that her representation of them would be materially limited by her personal interests (e.g., Respondent's personal interest in receiving $3,000.00 from each person/entity that agreed to allow her to act as an escrow agent conflicted with those persons'/entities' interest in paying a single

$3,000.00 flat fee for acting as escrow agent for all persons/entities whose funds were deposited into the escrow account);

f. ER 1.8(a) by (1) entering into a business transaction with Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., when the transaction and terms on which she acquired an ownership, possessory, security or other pecuniary interest adverse to them was not fair and reasonable; (b) failing to advise Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., in writing of the desirability of seeking, and given a reasonable opportunity to seek, the advice of independent legal counsel regarding the transaction; and (c) failing to obtain from Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., informed consent in a writing signed by them regarding her role in the transaction, including whether she was representing them regarding the transaction;

g. ER 1.15(d) by failing to promptly deliver to Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., the escrow funds they were entitled to receive and failed to provide an accounting of her fees as requested;

h. ER 1.16(d) by failing to take steps to the extent reasonably practicable to protect Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind

Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., and their clients' interests at the termination of representation by failing to surrender property which they were entitled to receive (e.g., the file that Respondent maintained on their behalf) and which they had requested (e.g., funds that should have been in the escrow account);

i. ER 8.4(b) by committing a criminal act (theft, A.R.S. §13-1802(A), a class 2 felony) that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects (by disbursing to herself at least $51,722.57 more than the $108,000.00 that she claimed she was owed for her escrow agent fees and by disbursing to herself $3,000.00 per person/entity as escrow agent fees rather than a total of $3,000.00 in escrow agent fees for all persons/entities); and

j. ER 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation (e.g., Respondent falsely informed Dr. Bruce Bedrick, P. Vincent Mehdizadeh, Kind Clinics, Prescription Vending Machines, Inc., and Medicine Dispensing Systems, Inc., that she had made a $30,000.00 payment to a particular attorney, and made a misrepresentation by omission when she failed to inform them that she had changed the language of the escrow agreement (i.e., by failing to inform them of the changes made to the escrow agreement, Respondent led them to believe that the agreement continued to entitle her to only one payment of $3,000.00 for acting as escrow agent)).

Count Six: By engaging in the conduct set forth in Count Six, Respondent violated the following:

a. ER 8.1(b) (Bar Disciplinary Matters) by knowingly failing to respond to a lawful demand for information from bar counsel (i.e., a disciplinary authority) in connection with a disciplinary matter; and

b. Rule 54(d), Ariz. R. Sup. Ct. (Grounds for Discipline), by refusing to cooperate with officials and staff of the State Bar, who were acting in the course of their duties; failing to furnish information or respond promptly to any inquiry or request from bar counsel made pursuant to the Supreme Court rules for information relevant to pending charges or matters under investigation concerning her conduct, and failing to assert a ground for refusing to do so; and failing to furnish in writing, when requested by bar counsel, a full and complete response to inquiries and questions.

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* (*Standards*) are "a useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard* 3.0.

Duties Violated:

Respondent violated her duty to her clients by violating ER 1.2(a), ER 1.3, ER 1.4 (various sub-parts), ER 1.5(a), (b) & (d)(3), ER 1.7(a), ER 1.8(a), ER 1.15(a) & (d), ER 1.16(d), ER 8.4(b) & (c), and Rules 43(a), Ariz. R. Sup. Ct.

Respondent violated her duty to the public by violating ER 8.1(b), ER 8.4(b), ER 8.4(c), and Rule 54(d), Ariz. R. Sup. Ct., when she engaged in conduct that adversely affected the public's perception of lawyers and the legal profession. Respondent did so by engaging in criminal activity, displaying a willingness to lie to her clients, and failing to explain her conduct during the State Bar's investigation or the formal disciplinary proceeding.

Respondent also violated her duty owed as a professional by violating ER 1.2(a), ER 1.5(a), ER 1.15(d), ER 1.16(d), (b) & (d)(3), ER 8.1(b), and Rules 43(a), 43(b)(2)(A), (B), (C) & (D), 43(b)(5), and 54(d), Ariz. R. Sup. Ct., when she failed to comply with special duties imposed upon her as a lawyer (i.e., those duties that did not concern her "basic responsibilities in representing [her] clients, serving as an officer of the court, or maintaining the public trust." *ABA Standards for Imposing Lawyer Sanctions*, II. Theoretical Framework, p.6). In this case, Respondent failed to properly use her trust account or maintain appropriate trust account records, and failed to respond to the State Bar's inquiries during its investigation and failed to participate in the formal disciplinary proceeding.

Mental State and Injury:

Respondent engaged in most of—if not all—of the misconduct with a knowing or intentional state of mind.

Respondent violated her duty to her clients, thereby implicating *Standards* 4.11, 4.31(a) and 4.61. *Standard* 4.11 states, "Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." *Standard* 4.31(a) states:

> Disbarment is generally appropriate when a lawyer, without the informed consent of client(s): (a) engages in representation of a client

> knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client.

Lastly, *Standard* 4.61 states, "Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client." In these cases, Respondent converted client property, engaged in a conflict of interest, and lied to a client regarding the use of funds held in trust.

Respondent violated her duty to the public, thereby implicating *Standard* 5.1. *Standard* 5.11 states:

> Disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses.

In this matter, Respondent committed theft, pursuant to A.R.S. §13-1802(A)(2), by utilizing trust funds for her own purpose without authorization. Therefore, *Standard* 5.11(a) is applicable.

Respondent also violated her duty to the legal system and her duty owed as a professional, which implicates *Standard* 7.0. *Standard* 7.1 states, "Suspension 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." In the instant case, Respondent failed to substantively respond to most of bar counsel's inquiries during the State Bar's investigation into the charges submitted by

three of her former clients and failed to participate in the disciplinary proceeding.

Aggravating and Mitigation Factors

The Hearing Panel finds the following aggravating and mitigating factors are supported by reasonable evidence.[2]

Aggravating Factors:

Standard 9.22(b) – dishonest or selfish motive. Respondent misappropriated $40,000.00 in the Rubey matter by expending those funds when she knew she was required to maintain them in her trust account pending receipt of an accounting or billing statement from attorney C. Thomas Mason. Respondent also acted dishonestly and selfishly when she modified, without Dr. Bedrick or Mr. Mehdizadeh's knowledge, the terms of the escrow agreement in a way that financially benefited her at her clients' expense.

Standard 9.22(c) - a pattern of misconduct. Respondent engaged in repeated violations of certain rules (*e.g.*, ER 1.4, ER 1.5, and ER 8.1(b)) during her representation of three unrelated clients and the State Bar's screening investigations.

Standard 9.22(d) – multiple offenses. Respondent violated a number of distinct ethical rules and Supreme Court rules on a number of occasions during her representation of three clients.

Standard 9.22(e) – bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency.

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[2] Factors that may aggravate or mitigate the presumptive sanction "need only be supported by reasonable evidence." *In re Abrams*, 227 Ariz. 248, 252 ¶27, 257 P.3d 167, 171 (2011) (quoting *In re Peasley*, 208 Ariz. 27, 36 ¶36, 90 P.3d 764, 773 (2004)).

Respondent failed to respond to nearly all of the requests for information sent to her by bar counsel and failed to file an answer to the formal complaint.

Standard 9.22(g) - refusal to acknowledge the wrongful nature of her conduct. Respondent has failed to acknowledge to her clients or the State Bar that she understands that her conduct was inappropriate and unethical.

Standard 9.22(h) - vulnerability of the victim.[3] Respondent was aware that Dorothy Simons, the beneficiary of the W. Harold and Dorothy L. Simons Trust dated January 17, 1984, was elderly and needed and/or wanted the settlement funds (less reasonable attorney's fees and costs) to utilize prior to her death. Furthermore, as a beneficiary of a trust, Ms. Simons relied upon Respondent to promptly provide the trust with funds she obtained on its behalf.

Standard 9.22(i) - substantial experience in the practice of law. Respondent was admitted to practice law in Utah on October 3, 1989, and was admitted to practice law in Arizona on January 11, 1990.

Standard 9.22(j) - indifference to making restitution. Respondent is aware that she misappropriated $40,000.00 in the Rubey matter and, based upon her own statement, inappropriately retained at least $51,000.00 in the Bedrick/Mehdizadeh matter, but has made no effort to make restitution to anyone.

Mitigating Factors:

Standard 9.32(a) - absence of a prior disciplinary history; and

[3] "A victim's vulnerability turns not on a person's educational background or work experience, but rather on the situation." *In re Shannon*, 179 Ariz. 52, 69, 876 P.2d 548, 565 (1994).

Standard 9.32(j) – delay in disciplinary proceedings. The charge that resulted in State Bar File No. 11-1141 was received by the State Bar on April 12, 2011; the charge that resulted in State Bar File No. 11-3876 was received by the State Bar on December 8, 2011; and the charge that resulted in State Bar File No. 12-0035 was received by the State Bar on January 6, 2012. Although there was some delay in the disciplinary proceedings, there was no apparent harm. Therefore, this mitigation factor is given little weight.

PROPORTIONALITY

In the past, the Supreme Court has consulted similar cases in an attempt to ensure there is some degree of proportionality between the sanction to be imposed and sanctions imposed in similar cases. *See In re Struthers*, 179 Ariz. 216, 226, 877 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept of proportionality review is "an imperfect process because no two cases are ever alike." *In re Owens*, 182 Ariz. 121, 127, 893 P.2d 1284, 1290 (1995).

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. *See In re Peasley*, 208 Ariz. 27, 35 ¶33, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983).

Attorney John F. Giles, Jr. (Giles) was disbarred and ordered to pay restitution and the State Bar's costs as a result of his conduct as a trustee. *In re Giles*, PDJ-2011-9023 (2011). The trust beneficiaries wished to transfer the trust's funds to a new, successor trust, but Giles failed to transfer the trust's assets. The

beneficiaries retained counsel to have Giles removed as trustee. The court removed Giles as trustee and ordered him to provide the trust's records and funds to the new trustee. Giles, however, provided only a portion of the records that he was ordered to provide. Giles subsequently provided voluminous records at his scheduled deposition. During the deposition, Giles admitted that he had used the trust's funds for his benefit (records provided by Giles revealed that he had used $1,730.58 in trust funds to pay his office rent, $1,097.51 to pay his secretary, and withdrew $11,900.00 via teller cash withdrawals). Giles also failed to respond to bar counsel during the State Bar's investigation. Giles failed to file an answer to the formal complaint, so the allegations were deemed admitted by default. Giles violated ER 3.4(c), ER 8.1(b), ER 8.4(b), (c) & (d), and Rules 53(c), (d) & (f), Ariz. R. Sup. Ct. (2010). Aggravating factors included a dishonest or selfish motive, multiple offenses, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of his conduct, substantial experience in the practice of law, indifference to making restitution, and illegal conduct. The only factor in mitigation was absence of a prior disciplinary record.

Attorney Raul Garza Jr. (Garza) was disbarred and ordered to pay restitution based upon his representation of a number of clients. *In re Garza*, SB-09-0026-D (2009). Garza failed to adequately communicate with or diligently represent his clients. Garza received advance payment for legal services, but thereafter failed to provide any legal services. Garza also failed to adhere to rules and guidelines governing the handling of his client trust account and converted client funds. In addition, Garza failed to timely respond to some of bar counsel's inquiries during

the State Bar's investigation into the charges of misconduct. Garza failed to file an answer to the formal complaint, so the allegations were deemed admitted by default. Garza violated ER 1.2(a), ER 1.3, ER 1.4 (various sub-parts), ER 1.5(a), ER 1.15, ER 1.16(d), ER 3.2, ER 3.4(c), ER 4.1(a), ER 4.4(a) & (c), ER 8.1(b), ER 8.4(b), (c), (d) & (e), and Rules 32(c)(3), 43(d)(1)(A), 44(a) & (b)(4), and 53(d) & (f), Ariz. R. Sup. Ct. Aggravating factors included a dishonest motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency, refusal to acknowledge the wrongful nature of his conduct, substantial experience in the practice of law, and indifference to making restitution. The only factor in mitigation was absence of a prior disciplinary record.

Attorney Lise Witt (Witt) was disbarred based upon fraudulent conduct that involved the theft of public funds and her felony conviction for violating Title 18 U.S.C. §1347, Health Care Fraud. *In re Witt*, SB-06-0131-D (2006). During a four-year period, Witt fraudulently billed Medicare for services not provided. Witt violated ER 8.4(b) & (c) and Rule 53(h), Ariz. R. Sup. Ct. Aggravating factors included dishonest or selfish motive and a pattern of misconduct. Factors in mitigation included absence of a prior disciplinary record, full and free disclosure to a disciplinary board or cooperative attitude toward the proceedings, character or reputation, imposition of other penalties or sanctions, and remorse.

In addition to the foregoing cases, the Supreme Court of Arizona has stated that disbarment is appropriate in cases where lawyers have commingled client funds with their own and converted client funds. In *In re Moore*, 110 Ariz. 312, 518 P.2d 562 (1974), the Court stated:

> The commingling of a client's funds with an attorney's is a violation of the Code of Professional Responsibility [the predecessor of the Rules of Professional Conduct]. Rule 29(b) of the Rules of the Supreme Court provide that such a violation is grounds for disbarment, suspension or censure.
>
> When such commingling is also accompanied by a conversion of the client's funds this Court has had no hesitancy in ordering disbarment of an attorney responsible for such acts.

Id. at 315, 518 P.2d at 565. Attorney Moore was disbarred for diverting and commingling approximately $71,000.00 that belonged to an estate for which he was executor, a portion of which he converted for his own use. Moore repaid the estate $25,500.00, but only after he was threatened with legal action. In an unrelated case, the Arizona Supreme Court disbarred attorney Jacob Daniel Davis for commingling settlement proceeds with his own and converting them to his own use. *In re Davis*, 129 Ariz. 1, 628 P.2d 38 (1981).

RESTITUTION

The Hearing Panel finds that an order of restitution is appropriate and supported by a preponderance of the evidence.[4] Restitution in the following amounts is warranted.

1. Respondent failed to hold $40,000.00 in trust on Ellen Rubey's behalf, as co-trustee of the W. Harold and Dorothy L. Simons Trust dated January 17, 1984, for payment to attorney C. Thomas Mason. Therefore, restitution to Ellen Rubey, as trustee of the Simons Trust, in the amount of $40,000.00 is appropriate.

[4] "Restitution and the amount thereof must be proven by a preponderance of the evidence." Rule 60(a)(6), Ariz. R. Sup. Ct.

2. Respondent's work for Stanley and Connie Raskow was without value. Therefore, restitution to the Raskows in the amount of $5,000.00 is appropriate.

3. The fee charged by Respondent for services as an escrow agent for Dr. Bruce Bedrick and P. Vincent Mehdizadeh was unreasonable not only based upon the amount of work performed but also because she modified the escrow agent fee set forth in the escrow agreement without Dr. Bedrick or Mr. Mehdizadeh's knowledge. A reasonable fee for Respondent's services as an escrow agent is $1,500.00. Dr. Bedrick and Mr. Mehdizadeh both requested that restitution based upon the excess funds retained by Respondent $159,722.57 minus $1,500.00 reasonable escrow agent fee) be evenly split between them. Therefore, restitution to Dr. Bedrick in the amount of $79,111.29 is appropriate.

4. Restitution to Mr. Mehdizadeh in the amount of $79,111.28 is appropriate.

CONCLUSION

The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender." *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966). It is also the purpose of lawyer discipline to "deter similar conduct by other lawyers." *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993) (citing *In re Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990)). It is also a goal of

lawyer regulation to protect and instill public confidence in the integrity of individual members of the State Bar. *In re Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994) (citing *In re Loftus*, 171 Ariz. 672, 675, 832 P.2d 689, 692 (1992)).

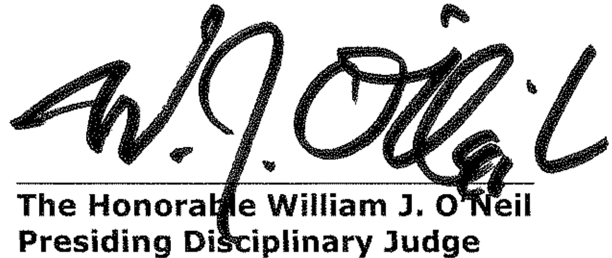
The Hearing Panel has made the above findings of fact and conclusions of law, and determined an appropriate sanction using the facts deemed admitted, the ABA *Standards*, the aggravating factors, the mitigating factors, and the goals of the attorney discipline system. Therefore,

IT IS ORDERED:

1. Respondent shall be disbarred from the practice of law effective 30 days from the date of this Report and Order;
2. Respondent shall pay restitution as follows:
   a. $40,000.00 to Ellen Rubey, as trustee of the W. Harold and Dorothy L. Simons Trust dated January 17, 1984;
   b. $5,000.00 to Stanley and Connie Raskow;
   c. $79,111.29 to Dr. Bruce Bedrick; and
   d. $79,111.28 to P. Vincent Mehdizadeh; and
3. Respondent shall participate in fee arbitration through the State Bar of Arizona with Ellen Rubey, trustee of the W. Harold and Dorothy L. Simons Trust dated January 17, 1984, and pay any award within 30 days of its entry.

4. Respondent shall pay costs of these proceedings in accordance with Rule 60, Ariz.R.Sup.Ct.

DATED this 11th day of March, 2013.



The Honorable William J. O'Neil
Presiding Disciplinary Judge

CONCURRING:

Judge Penny Willrich (Retired), Attorney Member

Linda Sue Smith, Public Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 11th day of March, 2013.

Copies of the foregoing mailed/emailed
this 11th day of March, 2013, to:

LeslieAnn Haacke
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PO Box 26945
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arizdiva@azbar.org
Respondent

Copy of the foregoing hand-delivered/emailed
this 11th day of March, 2013, to:

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Sandra Montoya
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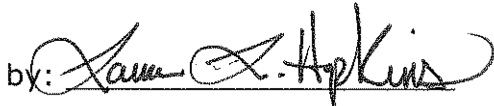
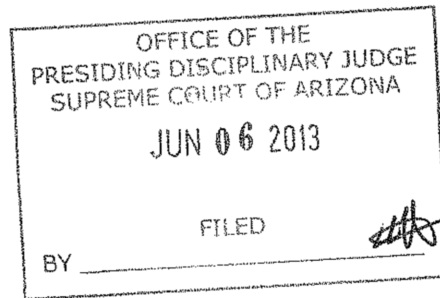
by: 



**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **LESLIEANN HAACKE,** **Bar No. 012734** Respondent.	**PDJ-2012-9116** **AMENDED** **FINAL JUDGMENT AND ORDER** [State Bar File Nos. 11-1141, 11-3876, 12-0035] **FILED JUNE 6, 2013**

This matter having come on for an aggravation/mitigation hearing before a Hearing Panel of the Supreme Court of Arizona and a decision in this matter having been duly rendered on March 11, 2013, and Respondent thereafter having filed a Notice of Appeal and an untimely request for stay pending the appeal, which was denied by separate Order on April 11, 2013, and ultimately the appeal deemed abandoned and dismissed by Order of the Presiding Disciplinary Judge filed May 24, 2013, now accordingly:

IT IS HEREBY ORDERED that Respondent, **LeslieAnn Haacke**, is disbarred for her conduct in violation of the Arizona Rules of Professional Conduct, **effective April 10, 2013.** Ms. Haacke is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the court. Ms. Haacke shall immediately comply with the requirements relating to notification of

clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Ms. Haacke shall pay restitution as follows:

1. $40,000.00 to Ellen Rubey, as trustee of the W. Harold and Dorothy L. Simons Trust dated January 17, 1984;
2. $5,000.00 to Stanley and Connie Raskow;
3. $79,111.29 to Dr. Bruce Bedrick; and
4. $79,111.28 to P. Vincent Mehdizadeh.

IT IS FURTHER ORDERED that Respondent shall immediately participate in fee arbitration through the State Bar of Arizona with Ellen Rubey, trustee of the W. Harold and Dorothy L. Simons Trust dated January 17, 1984, and pay any award within 30 days of its entry.

IT IS FURTHER ORDERED that no further disciplinary action shall be taken in reference to the matters that are the subject of the charges upon which this Judgment and Order of Disbarment are based.

IT IS FURTHER ORDERED that Respondent pay costs and expenses to the State Bar of Arizona in the amount of $2,982.10. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 6th day of June 2013.

/s/*William J. O'Neil*

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 6th day of June, 2013.

Copies of the foregoing mailed/emailed
This 6th day of June 2013, to:

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Respondent

and

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Respondent's Alternate Address

and

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by: MSmith