



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
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May 18, 2011

FIRST DISTRICT OFFICE
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Chicago, Illinois 60601-3103
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Ms. Susan Frederick Rhodes
Attorney Reg. & Disc. Comm.
One Prudential Plaza
130 E. Randolph Drive, S#1500
Chicago, IL 60601

TODAY THE COURT ENTERED THE FOLLOWING ORDER:

M.R.24472 - In re: Susan Grace Castagnoli. Disciplinary
Commission.

The motion by the Administrator of the Attorney
Registration and Disciplinary Commission to
approve and confirm the report and recommendation
of the Review Board is allowed, and respondent
Susan Grace Castagnoli is disbarred.

Order entered by the Court.

cc: Mr. Kenneth Jablonski, One Prudential Plaza
Susan Grace Castagnoli

FILED

MAY 20 2011

**ATTY REG & DISC COMM
CHICAGO**

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of May, 2011.

Present: Thomas L. Kilbride, Chief Justice
Justice Charles E. Freeman Justice Robert R. Thomas
Justice Rita B. Garman Justice Lloyd A. Karmeier
Justice Anne M. Burke Justice Mary Jane Theis

On the eighteenth day of May, 2011, the Supreme Court entered the following judgment:

In re:

M.R.24472

Susan Grace Castagnoli
1119 North Washington Street
Naperville, IL 60563-2766

Attorney
Registration and
Disciplinary
Commission
07 CH 57

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Review Board is allowed, and respondent Susan Grace Castagnoli is disbarred.

Order entered by the Court.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed the Seal
of said Court, this eighteenth day
of May, 2011.

Carlyn Taft Grosboll

Clerk,
Supreme Court of the State of Illinois

FILED

MAY 20 2011

**ATTY REG & DISC COMM
CHICAGO**

In re Susan Grace Castagnoli
Respondent-Appellant

Commission No. 07 CH 57

Synopsis of Review Board Report and Recommendation
(December 2010)

The Administrator charged Castagnoli with engaging in a fraudulent scheme to obtain unauthorized fees from numerous bankruptcy clients and to hide those fees from the bankruptcy court. The Administrator also charged Castagnoli with acting dishonestly in connection with her representation of an estate.

The Hearing Board found that the Administrator proved all of the charged misconduct and recommended that Castagnoli be disbarred.

Castagnoli contended on review that the Hearing Board's findings of misconduct were against the manifest weight of the evidence and that her due process rights were violated when a new nonlawyer member of the hearing panel was appointed during her hearing. She further asserted that the charges against her should be dismissed or the matter should be remanded for a new hearing.

The Review Board affirmed the Hearing Board's findings of fact and misconduct. It further determined that due process does not require the attendance of all three original panel members for the entirety of a respondent's hearing. The Hearing Board Chair followed proper procedure in requesting the appointment of a new panel member after the original panel member became unavailable.

Because of Castagnoli's pattern of deception for her own financial gain, the harm she caused to her clients, and her failure to acknowledge her misconduct, the Review Board agreed with the Hearing Board that disbarment is necessary in this case to protect the public, the administration of justice, and the integrity of the legal profession.

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

FILED

DEC 30 2016

**ATTY REG & DISC COMM
CHICAGO**

In the Matter of:

SUSAN GRACE CASTAGNOLI,

Respondent-Appellant,

No. 3123234.

Commission No. 07 CH 57

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

This is an appeal by the Respondent, Susan Grace Castagnoli, who the Hearing Board recommended be disbarred for engaging in serious misconduct arising out of her representation of fourteen clients in bankruptcy proceedings and one client in a case in the Circuit Court of Du Page County. Her appeal claims that the Hearing Board's findings of misconduct are against the manifest weight of the evidence and that her due process rights were violated when a new Hearing Board panel member was appointed during the hearing. For the reasons explained below, we recommend that the Hearing Board's findings of misconduct be affirmed and that she be disbarred.

Respondent has been licensed in Illinois since 1979. She is a sole practitioner and handles primarily bankruptcy, real estate, probate and dissolution matters. At the time of the hearing, she was a title insurance company agent and also held a real estate broker's license, an insurance producer's license, and a Series 63 securities license.

THE BANKRUPTCY CLIENTS

Count I relates to her clients Wilfred and Maureen Olsen who engaged Castagnoli to represent them in a chapter 13 bankruptcy proceeding for a \$2,700 fee which was approved by

the United States Bankruptcy Court. During the course of this proceeding their home was refinanced. Unbeknownst to the Olsens, the Respondent charged them an extra \$8,500 fee. This extra fee came to light when the Chapter 13 Trustee Glenn Stearns ("Stearns") discovered an altered refinancing payoff letter and then requested a copy of page 2 of a HUD statement, which reflected the \$8,500 fee and a reduction of the Olsens' payoff amount. This discovery led to a contempt proceeding in the Olsen bankruptcy in which the bankruptcy judge's order found that the Respondent (1) "fraudulently altered the Trustee's payoff letter as part of a scheme to collect an additional legal fee to which she was not entitled," and (2) violated the original fee order. The court noted that "her failure to seek approval of any additional fees is persuasive proof of her fraudulent intent and bad faith." In re Olsen, 04 B 42333, Order Finding Civil Contempt at 5 (Bankr. N.D. Ill. Aug. 8, 2006). The bankruptcy court ordered her to refund to the Olsens the \$8,500 fee and the original \$2,700 fee and to pay Stearns' office \$3,125 as a sanction. It further barred Respondent from practicing in the bankruptcy court for six months and referred the matter to the Executive Committee of the United States District Court for the Northern District of Illinois. At the hearing in this disciplinary proceeding, Respondent invoked her Fifth Amendment privilege against self-incrimination and refused to answer questions about the Olsen matter.

As a result of the Olsen case, Stearns began to look at other bankruptcy cases Respondent handled between the period May 19, 2004, and March 28, 2006. Count II of the Complaint addressed 13 other cases in which Respondent charged bankruptcy clients additional fees for refinancing without approval of the bankruptcy court. The clients were Shirl L. Healey, John J. Rosa, Monica Sanjurjo, Michael and Andrea Frees, Michelle and Mark Kline, Thomas and Karen Eaves, Donald and Shirley Wells, Randy Reusch, Lori and Christian Federman,

Kimberle Andreas, Robert and Barbara Rowe, Lloyd Meinke, and Irene Cegin. The additional fees Respondent took ranged from \$300 to \$7,500 and totaled \$37,028.53. In each case, Respondent failed to submit to the Trustee the second page of the HUD statement that showed her fee.

Stearns' office did not have the resources to file motions in all 13 cases to recoup the improper fees, but did so in the Andreas and Cegin cases. As with the Olsen matter, the bankruptcy court found Respondent in civil contempt for violating the Bankruptcy Code and Federal Rules of Bankruptcy Procedure and ordered her to repay the fees. In re Andreas/In re Cegin, Nos. 03 B 39826, 04 B 37642, Order and Memorandum Opinion (Bankr. N.D. Ill. Aug. 23, 2007).

The Respondent testified at the hearing in this case that the thirteen clients identified in Count II knew she was charging an extra fee. The Hearing Board did not find the testimony credible. Eleven of the thirteen clients testified. Only one said Respondent might have mentioned a fee, but did not disclose the amount. The other ten testified that they did not learn of the fee until at or after the closing. Because they were in danger of losing their homes, they did not question the fees for fear of jeopardizing the closing.

The Hearing Board found that Respondent knew she was not entitled to additional fees without the bankruptcy court's approval and purposely tried to hide the fees from the bankruptcy court. Respondent provided no reasonable explanation for her failure to comply with the provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure requiring her to disclose her fees to the bankruptcy court (11 U.S.C. § 329(a), Federal Rule of Bankruptcy Procedure 2016(b)). As in the Olsen matter, both the bankruptcy court and the Hearing Board

found that Respondent undertook a fraudulent scheme to obtain unauthorized fees from many of her clients.

Respondent argues that the Hearing Board's findings of misconduct on Counts I and II were against the manifest weight of the evidence. The Administrator bears the burden of proving misconduct by clear and convincing evidence. In re Ingersoll, 186 Ill.2d 163, 710 N.E.2d 390 (1999). We will not disturb the Hearing Board's findings unless they are against the manifest weight of the evidence. In re Winthrop, 219 Ill.2d 526, 542, 848 N.E.2d 961 (2006). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. Winthrop, 219 Ill.2d at 542, 848 N.E.2d 961.

Respondent asserts that the Administrator did not present clear and convincing evidence that she knew prior to the bankruptcy court's contempt finding that she was required to obtain approval for additional fees she charged for assisting clients with refinancing their mortgages. This assertion is contradicted by Respondent's own fee agreements. The plain language of Respondent's various agreements with her clients detailed in the Hearing Board's report amply support the Hearing Board's finding that Respondent was required to seek court approval for any additional fees related to the bankruptcy proceedings.

Respondent also contends that the refinancing services she provided for her Chapter 13 clients were not covered by her fee agreements. As the bankruptcy court noted, Respondent's clients refinanced their mortgages to take advantage of favorably low interest rates "in order to lower their monthly mortgage payments and pay off their confirmed plans early." In re Andreas/In re Cegin, Nos. 03 B 39826, 04 B 37642, Memorandum Opinion at 8 (Bankr. N.D. Ill. Eastern Div. Aug. 23, 2007). Respondent does not dispute that this was the case. Indeed, several of Respondent's clients testified that it was Respondent who suggested refinancing as a

means of paying off their bankruptcy obligations. Accordingly, like the Hearing Board, we reject Respondent's contention that her refinancing fees were unrelated to her clients' bankruptcy proceedings.

With respect to the finding that she attempted to hide her improper fees by submitting only the first page of the HUD statement to the Chapter 13 Trustee, Respondent asserts that the evidence showed that she was never required to submit the full statement. We disagree. The only evidence supporting Respondent's contention is her own uncorroborated assertion. The payoff letters sent to Respondent from the Chapter 13 Trustee's office state that the Trustee must receive a copy of the RESPA/HUD I statement. Some of the payoff letters indicate in bold capital letters, "A FULL AND LEGIBLE COPY OF THE HUD I STATEMENT MUST BE SUBMITTED TO THE TRUSTEE AFTER THE CLOSING." Stearns testified that his office uses the HUD statement to track the proceeds of a refinance. The second page of the HUD statement lists the various fees included in the settlement charges at closing, including attorney fees. While the first page of the HUD identifies the total amount of settlement charges, it is impossible to tell from the first page alone precisely where the funds allocated to settlement charges went. Respondent's contention that she was told that she need only submit the first page of the HUD statement is both illogical and unsupported by the evidence.

Without any citation to authority, Respondent also argues that the Hearing Board gave too much weight to the bankruptcy court's contempt findings. We disagree. The bankruptcy court's findings and orders were directly related to the allegations of misconduct, and the Hearing Board was entitled to determine how much weight to give this evidence. The orders were not the only evidence the Hearing Board relied upon and nothing in the record indicates that they were given undue weight.

Finally, Respondent asserts that the Hearing Board did not apply the Bankruptcy Code properly. She does not provide any authority or explanation for this argument. The record does not reveal any misapplication of the Bankruptcy Code. The Hearing Board cited Respondent's fee agreements and the sections of the Code relied upon by the bankruptcy court as the basis for its civil contempt findings. This was a straightforward analysis and appropriate.

Respondent is a "knowledgeable and very experienced Chapter 13 practitioner" who represented many clients in the bankruptcy court for over twenty years. Andreas/Cegin, Nos. 03 B 39826, 04 B 37642, Memorandum Opinion at 13-14. The Hearing Board found that, as an experienced bankruptcy attorney, Respondent was well aware of the rules pertaining obtaining additional fees yet she attempted to manipulate the system to gain fees to which she was not entitled. For all of the foregoing reasons, we reject Respondent's contentions of error as to Counts I and II and conclude that the manifest weight of the evidence amply supports the Hearing Board's findings of fact that her misconduct constituted overreaching; exertion of undue influence; breach of her fiduciary duties; charging excessive fees, in violation of Rule 1.5(a) of the Rules of Professional Conduct; making false statements of material fact to a third-person that she knew or reasonably knew was false, in violation of Rule 4.1(b); engaging in conduct involving dishonesty, deceit, fraud or misrepresentation, in violation of Rule 8.4(a)(4); engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5); and engaging in conduct that tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 770.

THE EVELYN BOOTH MATTER

Count III involves Respondent's representation of Evelyn Spencer Booth ("Evelyn") and her estate. In connection with this matter the Hearing Board found that

Respondent engaged in deceitful conduct prejudicial to the administration of justice in violation of Rules 8.4(a)(4) and 8.4(a)(5) and Supreme Court Rule 770. Respondent began representing Evelyn in a divorce proceeding in November 2003. Evelyn committed suicide on January 22, 2004. Respondent possessed a copy of Evelyn's will, which named her husband, Richard Booth ("Booth"), as executor of Evelyn's estate and provided a life estate for Booth in Evelyn's Glendale Heights residence.

After Evelyn's death, her two sons by a previous marriage, Brian and David Elwart, engaged Respondent to represent them in connection with Evelyn's estate. In this capacity she arranged for Evelyn's home to be sold on April 15, 2004, for \$165,000. Respondent took a fee of \$32,500 from the sales proceeds. At the hearing in this matter she testified that this fee constituted payment for her representation of Evelyn's estate.

Before the sale of the house, David Trent, Booth's attorney, wrote to Respondent seeking information about Evelyn's estate. In response she never disclosed the provision in Evelyn's will or that the home was being sold.

In June 2004 a probate matter was started by Booth related to Evelyn's estate. On September 9, 2004, Trent filed a motion on Booth's behalf to obtain possession of the residence, not knowing that someone else had purchased it. Respondent filed a response to the motion, arguing that Booth should be removed as executor of the estate. Respondent appeared in court in response to Trent's motion and never advised the court that Evelyn's residence had been sold. Respondent also told the court that she did not represent the Elwarts. On September 13, 2004, the court granted Booth possession of the residence.

Booth and his attorney ultimately discovered that a family was living in the house. At the hearing in this matter Respondent attempted to explain what happened. She testified that

Evelyn executed a quitclaim deed prior to her death conveying her residence to her sons. Respondent claimed that she kept the deed in her office until the closing, when she gave it to the title company. The deed was never recorded. Respondent produced only an unsigned copy of the deed. Respondent's testimony about the existence of the quitclaim deed was contradicted by the warranty deed Respondent prepared at the time of closing on the sale of the house. It identified the owner of the property as Evelyn's estate. Additionally, David Elwart signed an affidavit on April 17, 2004, prepared by Respondent, which stated that Evelyn was the sole owner of the house. Based on this evidence and its observations of Respondent while testifying, the Hearing Board characterized Respondent's testimony about the quitclaim deed as a "blatant fabrication."

Respondent argues that the Hearing Board's finding that she acted dishonestly was predicated on an improper finding that Booth was entitled to a life estate in Evelyn's residence. Contrary to Respondent's representation, the Hearing Board specifically stated that the circuit court would decide the issue of whether Booth was entitled to a life estate. In re Castagnoli, 07 CH 57 Hearing Board Report at 48. Moreover, the finding that Respondent acted dishonestly was not based upon a finding that Booth had a life estate, but upon (1) Respondent's knowledge of the contents of Evelyn's will and the fact that Booth's interest in the residence was at issue in the circuit court proceedings, (2) her knowledge of and involvement in the sale of Evelyn's residence, and (3) her failure to advise Booth, Trent, and the circuit court of the sale. Respondent does not dispute any of the foregoing evidence. Consequently, Respondent has failed to establish that the Hearing Board's findings as to Count III are against the manifest weight of the evidence and therefore we affirm them.

THE APPOINTMENT OF A NEW PANEL MEMBER

Respondent claims she was deprived of due process when the Clerk of the Commission ("Clerk") appointed a new panel member in this matter at the request of the Hearing Board Chair. This request was made because the original panel member became unavailable after the first two days of Respondent's hearing.

On April 14, 2009, the Chair informed the parties via telephone conference that Ellen L. Johnson, the nonlawyer member of the panel, would not be able to attend the remainder of the hearing. The Chair asked the parties if they would like to proceed with two panel members or have the Clerk appoint a new panel member. Respondent's counsel objected to both options and moved for a mistrial. The Chair recommended that Respondent file a written motion for a mistrial, continued the hearing date, and requested the appointment of a new panel member.

Respondent filed her written motion for a mistrial on April 20, 2009. The Chair denied Respondent's motion for a mistrial. On April 21, 2009, the Clerk appointed a new panel member. When the hearing resumed on May 21, 2009, the Chair advised the parties that the new panel member had reviewed the transcripts and exhibits from the first two days of the hearing. Respondent made an oral motion for a mistrial, which was denied. The hearing concluded on May 21, 2009.

Respondent asserts that the continuation of the hearing with a new panel member violated her due process rights. The Administrator asserts that the Chair followed proper procedure. The decision whether to grant a motion for mistrial lies within the Chair's discretion. We will not disturb the Chair's decision absent an abuse of discretion. In re Borzeka, 99 CH 111 (Review Board, June 13, 2003) at 7, petition for leave to file exceptions allowed, No. M.R. 18891 (Sept. 24, 2003).

Supreme Court Rule 753(c)(2) provides for Hearing Board panels of three and allows two of the three panel members to conduct hearings.¹ Commission Rule 201 is similar, allowing a quorum of two panel members to conduct hearings.²

The issue Respondent raises appears to be one of first impression. We begin by noting that neither Supreme Court Rule 753(c)(2) nor Commission Rule 201 requires that three panel members be present for each hearing. The Supreme Court Rule and Commission Rule both contemplate that panel members may be absent at times. Given this recognition that absences occur, we conclude that the applicable rules do not support Respondent's contention that a party may insist upon the presence of all three original panel members on every hearing day. The practical implications of Respondent's interpretation also weigh against her. The disciplinary system's resources and efficiency would be substantially burdened if a Chair were required to declare a mistrial every time a panel member was unavailable for part of a hearing.

Within the context of these rules, the record reflects that Respondent's rights were protected. First, the Chair sought to comply with Rule 753(c)(2) by requesting the appointment of a new panel member. A quorum consisting of the Chair and the second lawyer member were present for the entire hearing. The new nonlawyer panel member reviewed all of the transcripts and exhibits before the hearing reconvened.

Respondent contends that review of the transcripts and documentary evidence is not an acceptable substitute for personally observing the witnesses. We agree that, ideally, all three panel members would hear all of the evidence. However, due process does not require it. In this matter, Respondent was afforded a reasonable opportunity to be heard. She was represented by counsel, allowed to appear, testify, and cross-examine witnesses and availed

herself of the established system for review. See In re Witte, 99 Ill.2d 301, 309, 458 N.E.2d 484 (1983).

It bears noting that our Supreme Court reviews each disciplinary case and makes the final decision on discipline based on the transcripts of proceedings and documentary evidence. See In re Winthrop, 219 Ill.2d 526, 543, 848 N.E.2d 961 (2006). While the Supreme Court defers to the Hearing Board's findings of fact and credibility, it is not bound by them and may make its own findings on these issues. See Winthrop, 219 Ill.2d at 543, 556-558, 848 N.E.2d 961. The Supreme Court has also held that the Missouri Supreme Court's practice of conducting *de novo* review of a disciplinary case based on the written record does not violate a respondent's due process rights. See Witte, 99 Ill.2d at 309, 458 N.E.2d 484. While we do not discount the importance of the trier of fact's observation of witnesses, there is simply no basis in the case law or the applicable rules for granting a new hearing when one of the three original panel members is unable to complete the hearing.

Respondent cites the Supreme Court's observation in Smith v. Freeman, 232 Ill.2d 218, 902 N.E.2d 1069 (2009) that, generally, "due process entitles a litigant to have all the evidence submitted to a single judge who can see the witnesses testify and, thus weigh their testimony and judge their credibility." Smith, 232 Ill.2d at 223, 902 N.E.2d 1069.³ However, Smith does not apply to the case before us, Smith involved a bench trial in a civil matter. Disciplinary proceedings are neither civil nor criminal in nature and emanate from the Supreme Court's inherent authority to regulate the practice of law. See In re Samuels, 126 Ill.2d 509, 522, 535 N.E.2d 808 (1989). In addition, unlike the civil proceeding in Smith, the evidence in this matter was presented not to a single judge but to a three-person panel. Two of the original panel members heard all of the evidence. Because Smith does not address this situation or the unique

nature of disciplinary proceedings, we do not believe the observation made in that case is controlling.

Further, we do not agree with Respondent that the Review Board's decision in In re Sebela, 92 CH 577 (Review Board, Nov. 29, 1994), requires a remand for a new trial. In Sebela, the respondent objected that there were only two panel members present when his hearing commenced. Sebela asked for the hearing to be continued until a third panel member could be appointed, but the Chair elected to proceed with only two members. The Review Board concluded that absent both parties' consent it was a violation of Supreme Court Rule 753 to proceed without a three-member panel. In so holding, the Review Board noted as follows:

Although the Rule provides that a three-member panel can proceed with only two members present, the two-person quorum presupposes the existence of a third panel member. In many situations the third member, although absent from the hearing, would be able to review the record and participate in discussions concerning the decision. Thus, we see a clear distinction between a panel comprised of only two panel members and a three-member panel in which one member is absent.

Sebela, 92 CH 577, Review Board Report and Recommendation at 6. Unlike Sebela, Respondent had a three-person panel present on every day of her hearing. The reason for the remand in Sebela was that there was never a third panel member. This was not the case in the matter before us. On the contrary, the Review Board's reasoning in Sebela---that an absent third panel member could review the record and participate in discussions regarding the panel's decision---supports the procedure that the Chair followed in this case.

For all of the foregoing reasons, we conclude that the appointment of a new panel member for the last day of Respondent's hearing did not violate Supreme Court Rule 753(c)(2) or Respondent's due process rights. Therefore, the Chair did not abuse his discretion in denying Respondent's motion for a mistrial.

SANCTIONS

Turning to the sanction, the Administrator asks us to adopt the Hearing Board's recommendation of disbarment. Respondent asks for a remand or dismissal. The purpose of a disciplinary sanction is not to punish an attorney who has committed misconduct, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. *In re Spak*, 188 Ill.2d 53, 67-68, 719 N.E.2d 747 (1999). We seek to recommend discipline that is consistent with sanctions imposed in other cases for similar misconduct but must base our recommendation on the particular facts and circumstances of this case, including the nature of the misconduct and the aggravating and mitigating factors. *In re Timpone*, 157 Ill.2d 178, 197, 623 N.E.2d 300 (1993). The Hearing Board's recommendation is advisory. *In re Ingersoll*, 186 Ill.2d 163, 178, 710 N.E.2d 390 (1999).

The need to protect the public, the profession, and the courts from Respondent's deceptive and fraudulent conduct is obvious in this case. Respondent repeatedly deceived clients and the courts for her own financial gain. On the record before us, we have no confidence that Respondent would refrain from similar misconduct in the future.

The perpetration of a fraud upon the court "is conduct of such a serious nature as to warrant disbarment." *In re Holstein*, 06 CH 39 (Hearing Board, Aug. 14, 2007), approved and confirmed, No. M.R. 22063 (Jan. 23, 2008) quoting *In re Bell*, 147 Ill.2d 15, 38-39, 588 N.E.2d 1093 (1992). See also *In re Brill*, 04 CH 79 (Review Board, Feb. 15, 2007), petition for leave to file exceptions denied, No. M.R. 21587 (May 18, 2007); *In re Ingersoll*, 186 Ill.2d 163, 710 N.E.2d 390 (1999). Respondent engaged in a fraudulent scheme to evade the bankruptcy court's fee orders and also deceived the circuit court in the Booth matter. This conduct warrants disbarment.

The financial harm that Respondent caused her bankruptcy clients, all of whom were in precarious financial positions, is an aggravating factor that further supports disbarment, as is Respondent's failure to accept responsibility for her misconduct and to express remorse (see *In re Samuels*, 126 Ill.2d 509, 531, 535 N.E.2d 808 (1989)). Similar to the Hearing Board, we give little weight to Respondent's evidence in mitigation. Her character witnesses were social friends who did not testify about Respondent's reputation in the legal community. Moreover, their positive character testimony was outweighed by Respondent's untruthful testimony in this proceeding. Respondent's testimony about her past *pro bono* and volunteer activities is similarly insignificant compared to her egregious misconduct.

The respondent in *Holstein* was disbarred for, among other things, filing a false fee petition in the bankruptcy court for the purpose of collecting unearned fees, forging his deceased wife's signature on the signature card for his firm's client trust account and naming her as a signatory. Like *Holstein*, Respondent perpetrated a fraud upon the court for her own gain but her fraudulent activities were even more extensive than *Holstein's*.

The attorney in *In re Braner*, 115 Ill.2d 384, 504 N.E.2d 102 (1987), represented a husband whose wife suffered brain damage in a car accident and was confined to a nursing home. Without advising the court that his client's wife was mentally incompetent, Braner obtained a divorce for his client and also obtained a conveyance of the wife's interest in half of the marital residence. We agree with the Hearing Board that Braner supports disbarment in this case.

Respondent has demonstrated that her clients' interests and her ethical responsibilities take a back seat to her own financial interests. Respondent fabricated documents, withheld material information, and testified falsely when it suited her purposes.

Based on this misconduct and Respondent's refusal to recognize her wrongdoing, we have no reason to believe that she is willing to conform her conduct to the Rules of Professional Responsibility. Under these circumstances, disbarment is the only sanction that will adequately protect the public, the reputation of the legal profession, and the administration of justice. Accordingly, we recommend that Respondent be disbarred. While Respondent has made restitution to some of the clients named in the second amended complaint, it appears from the record that she has not returned all of her excessive fees. Restitution is one of the conditions that must be satisfied should Respondent seek reinstatement in the future. See Supreme Court Rule 767(f); In re McClurkin, 06 RT 3006 (Review Board Jan. 6, 2009), No. M.R. 21325 (March 16, 2009).

CONCLUSION

We recommend that the Hearing Board's findings of fact and misconduct be affirmed and that Respondent, Susan Grace Castagnoli, be disbarred.

Respectfully submitted,

Gordon B. Nash, Jr.
Terrence V. O'Leary
Thomas A. Zimmerman, Jr.

Dated: 30 December 2010

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¹ Supreme Court Rule 753(c)(2) provides: The Hearing Board may act in panels of not less than three members each, as designated by the Commission. The Commission shall also designate one of the lawyer members of each panel as chairperson. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision.

² Commission Rule 201 provides: The Hearing Board shall act in panels composed of two lawyers and one nonlawyer. The Commission will designate one of the lawyer members as Chair of the panel. Two members of the panel shall constitute a quorum. The Administrator and

the respondent may consent to a hearing before one member of the panel; however, the concurrence of two members of a panel shall be necessary to a decision. In the absence of the Chair at a hearing, the remaining lawyer member shall serve as the acting chair. The decision of the panel shall be the decision of the Hearing Board.

³ Smith involved a bench trial in which the judge recused himself after the close of evidence. The case was decided on the basis of the appellant having consented to a successor judge deciding the case on a review of the transcripts.

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

SUSAN GRACE CASTAGNOLI,

Respondent-Appellant,

No. 3123234.

Commission No. 07 CH 57

CERTIFICATION

I, Kenneth G. Jablonski, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board in the above entitled cause of record filed in my office on December 30, 2010.

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

SUSAN GRACE CASTAGNOLI,

Respondent-Appellant,

No. 3123234.

Commission No. 07 CH 57

**PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD**

I, Andrea L. Watson, on oath state that I served copies of the Report and Recommendation of the Review Board on the Respondent-Appellant listed at the address shown below by regular and certified mail, by depositing it with proper postage prepaid, in the U.S. Mailbox located at 130 East Randolph Drive, Chicago, Illinois on December 30, 2010, at or before 5:00 p.m. At the same time, copies were mailed to the Hearing Panel, Review Board and delivered to Counsel for the Administrator-Appellee.

Susan Grace Castagnoli
Respondent-Appellant
Law Office of Susan G. Castagnoli P.C.
1119 North Washington Street
Naperville, IL 60563-2766

Kenneth G. Jablonski,
Clerk

By: Andrea L. Watson
Deputy Clerk

Subscribed and sworn to before me
this 30th day of December, 2010.

Josephine G. Laco
Notary Public



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FILED

DEC 30 2010

**ATTY REG & DISC COMM
CHICAGO**

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

FILED

NOV - 6 2009

**ATTY REG & DISC COMM
CHICAGO**

In the Matter of:

SUSAN GRACE CASTAGNOLI,

Attorney-Respondent,

No. 3123234.

Commission No. 07 CH 57

REPORT AND RECOMMENDATION OF THE HEARING BOARD

INTRODUCTION

The hearing in this matter was held on January 14, and 15, and May 21, 2009, at the Chicago offices of the Attorney Registration and Disciplinary Commission ("ARDC") before a Hearing Board Panel consisting of Keith E. Roberts, Jr., Chair, Harvey N. Levin, and Robert Wilson.* James A. Doppke appeared on behalf of the Administrator of the ARDC. Respondent appeared and was represented by Ronald J. Broida and Joseph K. Nichele.

PLEADINGS

On June 14, 2007, the Administrator filed a two-count Complaint pursuant to Supreme Court Rule 753(b). On December 18, 2007, the Administrator filed a three-count first amended Complaint. On December 5, 2008, the Administrator filed a three-count second amended Complaint, in which the Administrator alleged that Respondent engaged in overreaching and undue influence, charged excessive fees, engaged in dishonest conduct when representing numerous bankruptcy clients, and engaged in dishonest conduct when representing clients in an estate matter. Respondent filed an Answer to the second amended Complaint, admitting some of the factual allegations, denying some of the factual allegations, and denying all allegations of misconduct.

THE EVIDENCE

The Administrator presented the testimony of 14 witnesses, including Respondent, and Administrator's exhibits 17 through 84, 86, and 88 were admitted into evidence. Respondent testified on her own behalf, presented the testimony of five witnesses, and presented Respondent's exhibits 1 through 25 which were admitted into evidence.

Count I

Admitted Facts

On November 15, 2004, Respondent, on behalf of Wilfred and Maureen Olsen, filed a Chapter 13 bankruptcy case in the Northern District of Illinois. The Olsens paid Respondent a fee of \$2,700 for her representation for the entire matter. On June 23, 2005, Respondent filed a motion to refinance the Olsens' residence. On July 8, 2005, the bankruptcy court granted the motion and ordered that the bankruptcy trustee be paid in full from the refinance proceeds, after payment of any mortgages, liens and costs.

Testimony of Glenn Stearns

Glenn Stearns has been the Chapter 13 bankruptcy trustee for the Eastern Division of the Northern District of Illinois for nine years. (Tr. 34-35). Any Chapter 13 bankruptcy filed in the Eastern Division is assigned to Stearns' office. One of his functions is to make sure the debtors and their plan comply with the provisions of the Bankruptcy Code. If there is compliance, he will recommend confirmation. After a case is confirmed, he is involved in managing the distribution of the money. (Tr. 35-36).

In all cases, the attorney representing the debtors submits a fee application, which is ruled on by the bankruptcy court when the case is confirmed. (Tr. 36-37). The trustee can object to the fee application if he thinks the fees were not earned or are excessive. (Tr. 37). For the past

five or six years, the majority of attorneys use a model retention agreement. (Tr. 37-38). The model agreement prescribes a maximum flat attorney's fee, and if the trustee believes the attorney performed the agreed upon work, he will not object to the fee. (Tr. 38). Currently in the model agreement, the attorney's fee through the conclusion of the case is \$3,500. (Tr. 38). An attorney can get fees beyond the \$3,500 if he or she files a motion and proves that there were extraordinary circumstances to justify the fee. The bankruptcy court must approve any additional fees. (Tr. 39-40).

On November 15, 2004, Respondent and her clients, the Olsens, executed a model retention agreement which provided for a \$2,700 flat fee through the conclusion of the case. (Tr. 40-42; Adm. Ex. 1). The fee agreement contained two options: option A which was a flat fee through confirmation, and option B which was a flat fee through case closing. Respondent and the Olsens agreed to option B which specifically provided "Any attorney retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor on all matters arising in the case unless otherwise ordered by the court." (Adm. Ex. 1 at 4). On January 13, 2005, Respondent filed an application for compensation for representing the Olsens. (Tr. 42-43; Adm. Ex. 2). On May 13, 2005, the bankruptcy court entered an order awarding Respondent fees in the amount of \$2,700. (Tr. 44-45; Adm. Ex. 3).

Subsequently, Respondent filed a motion to refinance real estate in the Olsen matter. (Tr. 46-47; Adm. Ex. 4). Until recently, it was a common practice for a debtor to refinance his house to pay off the Chapter 13. When a motion to refinance is filed, the trustee will review it, audit the file, and when appropriate, send a pay off letter to the debtor's attorney. (Tr. 47-48). On July 8, 2005, the bankruptcy court entered an order allowing the Olsens to refinance their house, and ordering them to pay the trustee with the proceeds. (Tr. 48-49; Adm. Ex. 5).

On July 19, 2005, Stearns's office issued a pay off letter, stating that the amount needed by the Olsens to pay off the Chapter 13 was \$50,910, if paid by August 30, 2005. The Olsens were required to give the trustee "a full and legible copy of the HUD 1 statement" from the real estate closing. (Tr. 50-51; Adm. Ex. 6). The trustee requires the HUD statement to track the proceeds from the refinance. (Tr. 51-52). On March 14, 2006, the trustee's office issued a revised pay off letter to the Olsens. At that time, the pay off amount was \$34,270, if paid by April 15, 2006. (Tr. 53; Adm. Ex. 7).

Later in March 2006, after the Olsens completed their refinance, Stearns's office received a check from the title company in the amount of \$26,164, a copy of a pay off letter purportedly issued by his office, and the first page of the HUD statement. The pay off letter appeared to be an altered copy of the pay off letter his office issued on July 19, 2005. The letter had no date, the pay off amount had been changed to \$26,164, and the date of the pay off had been changed to April 30, 2006. Stearns concluded that the letter had not been issued by his office. (Tr. 56-59, 67; Adm. Ex. 8). After reviewing these documents, Stearns contacted the title company and the mortgage lender and obtained the second page of the HUD statement. (Tr. 59-61). The second page revealed that Respondent received \$8,500 in attorney's fees at the closing. (Tr. 61; Adm. Ex. 9). Stearns did not know why Respondent charged the fees. (Tr. 93-95). There were no orders from the bankruptcy court authorizing Respondent to take any additional fees from the refinance. (Tr. 68-69). The bankruptcy court must approve attorney's fees charged for services relating to the bankruptcy. Refinancing transactions are related to the bankruptcy. (Tr. 86-89). Based on the information he received, Stearns sent a letter to the Olsens informing them that their Chapter 13 had not been paid in full.

Stearns communicated with Respondent through e-mails. (Tr. 70-71; Adm. Ex. 15). In the first e-mail, sent April 17, 2006, Stearns asked Respondent why she altered the pay off letter. Respondent replied by stating that she "corrected the math" because the Olsens were making payments that were deducted from their paychecks. Stearns knew this was incorrect because the payroll deductions were \$2,500 per month, and there were not \$8,000 in outstanding payroll deductions. (Tr. 71-72). Also, if the pay off letter had been incorrect, Respondent should have contacted Stearns and requested a corrected letter. (Tr. 72).

Based on this information, on May 19, 2006 Stearns's office filed a rule to show cause in the bankruptcy court to hold Respondent in contempt of court and for damages. (Tr. 65-66, 73-74; Adm. Ex. 16). On August 8, 2006, the bankruptcy court issued an order finding civil contempt against Respondent for violating the court's July 8, 2005, order which awarded her fees. (Tr. 77; Adm. Ex. 13). The court specifically found that Respondent "knew, based on the fee order entered May 13, 2005, which she had prepared and her experience in chapter 13 cases, that she was not entitled to any additional fees in this case." The court further found that Respondent "fraudulently altered the Trustee's pay off letter as part of a scheme to collect an additional legal fee to which she was not entitled." (Adm. Ex. 13 at 5). On August 28, 2006, the bankruptcy court entered an order imposing sanctions against Respondent. The order required Respondent to pay the trustee \$3,125, and the Olsens \$8,500 from the refinance fees, and \$2,700 for the bankruptcy fees. The court also barred Respondent from appearing in the bankruptcy court in Joliet for six months, and recommended that the District Court permanently remove her from the list of attorneys authorized to practice in the district. (Tr. 77-78; Adm. Ex. 14).

The Olsens ultimately paid the Chapter 13, and on May 25, 2006, \$1,279.34 was refunded to them by the trustee's office. (Tr. 98-99; Resp. Ex. 18).

Testimony of Jeanine Laushot

Jeanine Laushot was the office manager for Stears' office for six years. During that time, she was responsible for issuing pay off letters in Chapter 13 cases. (Tr. 102-104). She prepared and signed the two pay off letters in the Olsen matter. (Tr. 105-107; Adm. Exs. 6, 7). Laushot did not prepare the third, undated, pay off letter. Although her signature appears on that letter, she did not prepare that letter. She noted that the pay off date and amount were in a different font than her letters, and the letter was undated. (Tr. 108-109; Adm. Ex. 8). Laushot never told Respondent that it was permissible to submit only the first page of the HUD statement to the trustee's office. (Tr. 665-66).

Testimony of Susan Kirk-Velez

Susan Kirk-Velez worked for Respondent as a paralegal from June 2005 to June 2006. She would order pay off letters, and file the letters after Respondent reviewed them. Kirk-Velez worked on bankruptcy cases for Respondent, including the Olsen case. (Tr. 110-13). She ordered the pay off letters for the Olsens. After the Olsens refinanced, a pay off letter from the trustee's office was on her desk so she could distribute funds to the trustee's office. She noticed, however, the amount of the pay off on that letter was different from the amount on the letter she initially received from the trustee's office. (Tr. 114-17; Adm. Exs. 7, 8). It appeared that the original amount had been changed and the date had been deleted. White out was visible on the letter. (Tr. 117-18, 123-24; Adm. Ex. 8). Kirk-Velez did not change the letter, and there were only two others in the office, Respondent and another paralegal. (Tr. 117-18).

Testimony of Wilfred Olsen, Jr.

Wilfred Olsen, Jr. hired Respondent to represent him in a Chapter 13 bankruptcy. (Tr. 125-26). At that time, Olsen was unemployed and behind on his mortgage payments. (Tr. 151-

52). Respondent represented the Olsens in one Chapter 13, but they fell behind on the payments, and it was dismissed. Subsequently, their house was going into foreclosure, and Respondent agreed to represent them in a second Chapter 13 for \$2,700, and in the foreclosure for \$1,000. Olsen paid Respondent \$3,400 toward her fees. (Tr. 127-31, 152-53; Adm. Ex. 1). Respondent filed a Chapter 13 on behalf of the Olsens in November 2004. The Chapter 13 plan was confirmed, and the Olsens began making payments. (Tr. 128-30).

In the summer of 2005, they fell behind on the Chapter 13 payments, and Respondent discussed the possibility of refinancing their house. (Tr. 131-32). Olsen understood that the proceeds from the refinance would pay everything, including the Chapter 13, but not their student loans. (Tr. 131-32, 140-41).

At that time, Respondent did not indicate that she would charge attorney's fees for the refinance, and the Olsens did not agree to pay a fee. (Tr. 132-33, 138, 154-57, 166). Respondent first informed the Olsens of her \$8,500 fee at the closing on the refinance, and it was on the closing documents. When Olsen questioned the fee, Respondent stated that she did not work for free. Respondent did not explain how she determined the amount of the fee, or provide the Olsens with an itemized bill. (Tr. 133-38; Adm. Ex. 9). Olsen was unaware of any services Respondent preformed for him other than the bankruptcy and refinancing, and was unaware of any outstanding fees for the bankruptcy. (Tr. 135, 138-39). The Olsens signed the HUD statement, which showed Respondent's \$8,500 fee, because they wanted to save their house and did not think they had a choice. (Tr. 139-40, 155-57).

A few days after the closing, Respondent told Olsen that the Chapter 13 had not been paid off because there was something wrong about the numbers. She told him that the trustee's office always gets the math wrong, and she had to make an adjustment. She also stated that the

amount on the pay off letter was incorrect and she corrected it. (Tr. 142-43). Olsen was surprised by what Respondent told him, and he was concerned that he would have to continue paying the trustee. (Tr. 143). After further proceedings in the bankruptcy court, Olsen received two checks in the amounts of \$8,500 and \$2,700. By that time, Olsen had paid the Chapter 13. Respondent made one of the payments on the Olsens' behalf in the amount of \$2,500. She did not tell them they would have to repay her. (Tr. 144, 158, 167).

The Olsens "thought the world of her [Respondent]," and "totally trusted her." (Tr. 145). However, after the refinance, they felt taken advantage of, and their experience has negatively affected their opinion of attorneys. (Tr. 146). After the refinance, the Olsens were unable to make the mortgage payments, filed another Chapter 13, and ultimately lost their house. Respondent did not represent the Olsens in that bankruptcy. (Tr. 146-48, 158-59).

Testimony of Respondent

Respondent testified that if asked questions relating to Count I, she would invoke her 5th amendment rights and decline to answer any questions. (Tr. 503). She stated generally, that she disagreed with Ms. Laushot's testimony regarding whether more than the first page of the HUD statement was required to be sent to the trustee's office. (Tr. 671).

Count II

Admitted Facts

Between 2001 and 2006, Respondent represented individual and joint debtors in at least 13 bankruptcy matters. These clients were Shirl Healy, John Rosa, Monica Sanjurjo, Michael and Andrea Frees, Michelle and Mark Kline, Thomas and Karen Eaves, Donald and Shirley Wells, Randy Reusch, Lori and Christian Federman, Kimberle Andreas, Robert and Barbara Rowe, Lloyd Meinke, and Irene Cegin. Respondent owed fiduciary duties to all of these debtors

which required her to act with the highest degree of honesty and loyalty, to avoid placing her own interests above their interests, and to exercise the utmost good faith and fair dealings with respect to them.

In each of the 13 cases, Respondent entered into fee agreements with her clients. The fee agreements contained estimates of the fees she expected to charge each client, and further stated that "[i]f additional services are needed, there will be an extra charge as outlined in this retainer agreement. These fees will be billed to you on a monthly basis and are due and payable only if a Federal Court Judge of competent jurisdiction approves the additional fees or if your case fails and is dismissed." The retainer agreements of two clients, Healy and Sanjurjo, further provided that Respondent agreed to provide various services including, to "[p]repare, file, and serve necessary motions to buy or sell property and to incur debt."

The retainer agreements of six clients (the Eaves, the Wellses, Reusch, the Federmans, Andreas, the Rowes, Meinke and Cegin) were entitled "Model Retention Agreement." That agreement provided that the client agreed to pay Respondent an amount of fees as compensation for her services either through the time that a Chapter 13 plan was confirmed, or through the time that the case was concluded. The agreement also provided that regardless of how the client paid the fee, Respondent was permitted to apply to the court in writing for additional compensation "in extraordinary circumstances, such as extended evidentiary hearings or appeals." Through the agreement Respondent also agreed to "[p]repare, file and serve necessary motions to buy or sell property and to incur debt."

In each of the 13 cases, the bankruptcy court entered orders allowing Respondent to receive fees pursuant to fee applications filed by Respondent as follows:

	Case Name	Case Number	Fees Requested in Application (total)	Date of Order Allowing Application	Refinancing Closing Date	Fees to Respondent from Refinancing Proceeds
1.	In re Healy	03 B 16706	\$3,455.50	4/27/2004	5/19/2004	\$2,500
2.	In re Rosa	02 B 21162	\$3,116	12/6/2002	12/23/2004	\$2,500
3.	In re Sanjurjo	03 B 5736	\$2,995	2/6/2004	7/21/2004	\$4,200
4.	In re Frees	02 B 15683	\$3,417.50	1/22/2003	1/14/2005	\$2,500
5.	In re Kline	01 B 34316	\$1,823	3/27/2002	3/8/2005	\$2,500
6.	In re Eaves	04 B 28560	\$2,700	11/5/2004	12/23/2004	\$666.53
7.	In re Wells	04 B 4528	\$2,700	5/19/2004	3/8/2005	\$2,500
8.	In re Reusch	03 B 43812	\$2,700	1/28/2004	7/20/2005	\$7,500
9.	In re Federman	03 B 38210	\$2,700	8/19/2004	8/23/2005	\$1,750
10.	In re Andreas	03 B 39826	\$2,700	12/16/2003	8/24/2005	\$3,500
11.	In re Rowe	04 B 25714	\$2,700	12/10/2004	8/25/2005	\$300
12.	In re Meinke	04 B 7348	\$2,700	6/4/2004	3/27/2006	\$1,350
13.	In re Cegin	04 B 37642	\$2,700	2/4/2005	3/28/2006	\$5,262

In each of these cases, Respondent filed motions on behalf of her clients, requesting that the court grant them leave to refinance their residences; those motions were granted, and the clients refinanced their residences. Although Respondent's clients used a portion of the proceeds from the refinancing to pay their Chapter 13 plans, in each case Respondent additionally received fees derived or paid from the refinancing proceeds.

At no time prior to receiving the funds derived from her clients' refinancing proceeds did Respondent file any application or other document with the bankruptcy court seeking leave of the court to receive compensation in an amount in excess of the amounts allowed by the court's orders, or otherwise disclosing that she had received any additional compensation from her clients.

Testimony of Glenn Stearns

Stearns also investigated other bankruptcy cases in which Respondent was the attorney of record that involved a refinance. (Tr. 63-64). In the 13 cases within the previous two years in

which Respondent was the attorney, all of them involved the same lender and Respondent submitted only one page of the HUD statement to the trustee. (Tr. 64, 79). Stearns obtained copies of the second page of the HUD statements in the other cases, and found that in each case, Respondent had taken attorney's fees at the closing, averaging \$2,711. (Tr. 64-65). Stearns did not know why the fees were charged, and did not know how much time Respondent spent representing her clients. (Tr. 93-96).

Stearns also reviewed the court docket for each case and determined that Respondent had been awarded fees by the bankruptcy court based on the Model Retention Agreement, and had not requested additional fees. In four of the cases, Stearns filed motions in the bankruptcy court to recoup the additional fees, and prevailed in two of the cases. (Tr. 79-84, 100; Adm. Ex. 62). Stearns's office did not have the resources to file motions in all of the cases to recoup fees. (Tr. 85-86).

In the two cases in which Stearns prevailed (Andreas and Cegin), the bankruptcy court specifically found that Respondent received excessive and unauthorized fees, found her in civil contempt, and ordered her to repay the fees to those clients. The court found that Respondent violated 11 U.S.C. §329(a) and Federal Rule of Bankruptcy Procedure 2016(b). Section 329(a) provides that "any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, . . ." Rule 2016(b) requires attorneys to disclose their fees to the court, and states: "every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee . . . the statement required by §329 of the Code including whether the attorney has shared or agreed to share the compensation with another entity." Rule 2016(b) also requires an attorney to file,

with the trustee, a supplemental statement after any payment or agreement not previously disclosed. As the court stated, “timely disclosure under §329 and Bankruptcy rule 2016(b) is central to the integrity of the bankruptcy process.” (Adm. Ex. 62 at 9-12).

After evaluating the law and the facts, the bankruptcy court found that the fees Respondent charged in the Andreas and Cegin refinance matters were “blatantly excessive for the work performed” and should have been disclosed to the court. The court further found Respondent in civil contempt because she “knowingly and willfully violated the fees orders entered in the Debtors’ cases.” Those orders allowed \$2,700 to Respondent for attorney’s fees. Respondent violated the orders when she “covered up the receipt of the additional unauthorized and flagrantly excessive fees.” (Adm. Ex. 62 at 12-14).

Testimony of Shirley Wells

In the late 1990’s Shirley Wells and her husband, Donald Wells, hired Respondent to represent them in a Chapter 13 bankruptcy. (Tr. 173-74). Their first three bankruptcy cases were dismissed, for various reasons, and in 2003 or 2004, Respondent filed a fourth action. Wells agreed to pay Respondent \$2,700 for attorney’s fees. (Tr. 175-77, 190-92; Adm. Ex. 35). Wells gave Respondent a portion of the fee, and understood that the remainder would be paid through the Chapter 13 proceedings. (Tr. 176-77).

After the bankruptcy plan was confirmed, Wells and Respondent discussed refinancing Wells’ mortgage to pay off the Chapter 13. (Tr. 178-79). Prior to the refinance, Respondent did not discuss charging fees for the refinance with either of them, they did not agree to pay a fee, and they did not sign a fee agreement relating to the refinance. (Tr. 179-80). The closing on the refinance occurred on March 8, 2005, and the HUD statement reveals that Respondent received \$2,500 in attorney’s fees from the proceeds of the refinance. (Tr. 179-80, 183-84; Adm. Ex. 38).

Wells learned of Respondent's fee at the closing when her husband noticed it on the HUD statement. Neither Wells objected to the fee at the closing because they thought they were supposed to pay it, and wanted to complete the refinance. (Tr. 183-87, 193; Adm. Ex. 38). As a result of the refinance, they were able to stay in their house and pay off the Chapter 13. (Tr. 193-94).

At the time of the refinance, Wells did not believe she owed Respondent any fees. (Tr. 182). Respondent also represented the Wellses in a matter with the IRS that was related to the bankruptcy, and after the refinance, they paid her \$1,100 for that matter. (Tr. 181-82). Respondent sent Wells a bill for the IRS fees, but not for any other purported fees. (Tr. 182-83). Ultimately, the Wellses received a refund of the \$5,200 for the attorney's fees they paid Respondent. (Tr. 194-95).

Testimony of Irene Cegin

In 2003 Irene Cegin and her husband, Juraj Cegin, hired Respondent to represent them in a Chapter 13 bankruptcy. The first bankruptcy action was dismissed. In 2004, Respondent filed a second bankruptcy action. Cegin agreed to pay Respondent \$2,700 for attorney's fees, and paid her in full. (Tr. 197-99, 210-11; Adm. Ex. 59). Respondent filed a Chapter 13, the plan was confirmed, and the Cegins began making payments. (Tr. 199-201). Subsequently, Cegin discussed refinancing her house to get a better interest rate, and use some of the equity to pay off the Chapter 13. (Tr. 201-202). The Cegins assumed Respondent would charge a fee for the refinancing, but they did not know the amount and Respondent did not discuss it with them prior to the closing. (Tr. 202-207). The refinance took place on March 28, 2006, and the HUD statement revealed that Respondent received \$5,262.21 for attorney's fees. (Tr. 205; Adm. Ex.

61). As a result of the refinance, the Cegins paid off their mortgages and the Chapter 13. (Tr. 212-13).

The Cegins were surprised to see the amount of Respondent's fee, but did not dispute the amount because they wanted the refinance to be completed. Respondent did not explain how the fee was calculated. (Tr. 207-209). Respondent had performed no other legal work for the Cegins besides the bankruptcy and the refinance. (Tr. 204-205). Cegin did not feel that Respondent treated her fairly because the Cegins thought they would get more money from the refinance. Cegin trusted Respondent and thought she was a good lawyer, but after the refinance, she lost trust in Respondent. Tr. 209-10).

Testimony of Shirl Healy

In 2003 Shirl Healy hired Respondent to represent her in a Chapter 13 bankruptcy. Healy agreed to pay Respondent \$2,995 in attorney's fees, with a portion of the fees paid through the bankruptcy proceedings. (Tr. 216-19; Adm. Ex. 17). Respondent filed a Chapter 13, the bankruptcy plan was confirmed, and Healy started making payments. (Tr. 219-20). Subsequently, after Healy had discussions with Respondent, she decided to refinance her house. Respondent did not tell Healy that she would be paid a fee for the refinance from the proceeds until they were at the closing. (Tr. 220-24). The refinance took place on May 15, 2004, and the HUD statement showed that Respondent received \$2,500 in attorney's fees. Healy said nothing about the fee because she did not think she could question it, and she wanted the refinance to be completed. (Tr. 223-25; Adm. Ex. 19). Respondent performed no legal services for Healy other than the bankruptcy and refinance. (Tr. 225). Part of the proceeds from the refinance were used to pay off the Chapter 13. (Tr. 226, 229; Adm. Ex. 19).

Testimony of Michael Frees

In 2002 Michael Frees and his wife, Andrea, hired Respondent to represent them in a Chapter 13 bankruptcy. Frees agreed to pay Respondent \$2,995 in attorney's fees. He paid her \$1,490, with the remaining \$1,590 paid through the bankruptcy proceeding. (Tr. 236-39; Adm. Ex. 27). Respondent filed the Chapter 13, the plan was confirmed, and Frees started making payments. (Tr. 239-40). Subsequently, Frees decided to refinance his house and the refinance was completed in January 2005. (Tr. 240; Adm. Ex. 30). Prior to the closing, Respondent did not discuss additional attorney's fees with Frees. (Tr. 242). Respondent did not perform any legal services for the Freeses other than the bankruptcy and the refinance. (Tr. 242-43).

The HUD statement from the Frees' refinance shows that Respondent received \$2,500 in attorney's fees. Frees did not notice this at the closing, and Respondent did not discuss it with him prior to the closing or bring it to his attention at the closing. (Tr. 243-45). Frees did not realize he paid that fee until long after the refinance was completed. He trusted Respondent and felt betrayed by her. His experience with Respondent has made him "a little leery" about attorneys. (Tr. 245-47).

Testimony of Robert Rowe

In 2004 Robert Rowe and his wife, Barbara, hired Respondent to represent them in a Chapter 13 bankruptcy. Rowe agreed to pay Respondent \$2,700 for attorney's fees. He paid her a portion of the fee, and understood that the remainder would be paid through the bankruptcy proceedings. Respondent filed a Chapter 13, and the plan was confirmed. (Tr. 251-54). In 2005, the Rowes decided to refinance their house to pay off the Chapter 13. (Tr. 253-54; Adm. Ex. 55). Respondent might have told Rowe that she would charge him an additional fee for the refinance, but she did not tell him the amount of the fee. (Tr. 254-56). The HUD statement from

the closing revealed that Respondent received \$300 in attorney's fees. (Tr. 256; Adm. Ex. 55). Rowe noticed the fee at the closing, but assumed it was appropriate and did not discuss it with Respondent. (Tr. 257-61). Respondent performed no other legal services for the Rowes other than the bankruptcy and refinance. (Tr. 258).

Testimony of Randy Reusch

Randy Reusch hired Respondent to represent him in a Chapter 13 bankruptcy and a separate court action involving the title to his property. Reusch agreed to pay Respondent \$2,700 for attorney's fees for the bankruptcy. He also paid her either \$1,100 or \$1,300 for the separate court action. (Tr. 296-99, 301; Adm. Ex. 39). After the Chapter 13 plan was confirmed, Reusch began to make payments. Subsequently, Reusch decided to refinance his house to pay off the Chapter 13, and to remove someone else's name from the title and mortgage. (Tr. 299-300, 313-14). They did not discuss attorney's fees for the refinance. (Tr. 301-302, 305-306). The refinance occurred on July 20, 2005, and the HUD statement shows that Respondent received \$7,500 in attorney's fees from the refinance proceeds. Reusch was not aware of Respondent's fee at the time of the closing, and had not agreed to pay her a fee. (Tr. 306-309; Adm. Ex. 42). He was "shocked" when he later learned of the fee. (Tr. 311).

Two years after the refinance, Reusch learned that the other person's name had not been removed from the property's title. Reusch resolved the matter on his own. (Tr. 303-304, 318-20). He ultimately received a refund of the \$7,500 and \$2,700 attorney's fees. (Tr. 316-17).

Testimony of Monica Sanjurjo

In 2004, Monica Sanjurjo and her husband hired Respondent to represent them in a Chapter 13 and Chapter 7 bankruptcy, respectively. (Tr. 323-25). When she hired Respondent for the bankruptcy, she paid a portion of the attorney's fees, and the remainder were paid through

the Chapter 13. (Tr. 328). Sanjurjo's Chapter 13 was confirmed, and she began making payments. Subsequently, a foreclosure action was filed against the Sanjurjos and Respondent recommended they refinance their mortgage to keep their house. (Tr. 326-27, 335). Respondent might have mentioned attorney's fees for the refinance, but Sanjurjo did not understand that she would pay them. (Tr. 326-28). The refinance occurred on July 21, 2004, and the HUD statement revealed that Respondent received \$4,200 from the proceeds. (Tr. 329; Adm. Ex. 26). Sanjurjo was not aware of Respondent's fee until she saw the refinance papers at the closing. (Tr. 329). Sanjurjo signed the HUD statement because she trusted Respondent. (Tr. 330, 333). On July 26, 2004, Respondent sent the Sanjurjos a bill for \$4,200. Sanjurjo did not believe she owed Respondent any additional fees. (Tr. 331, 336; Adm. Ex. 25).

Testimony of Lori Federman

Lori Federman and her husband, Christian Federman, hired Respondent to represent them in a Chapter 13 bankruptcy. Federman agreed to pay Respondent \$2,700 for attorney's fees, and made payments for a portion of the fees. (Tr. 339-40, 343, 346, 349-51; Adm. Ex. 44). The Chapter 13 was confirmed, and Respondent discussed refinancing to pay it off. (Tr. 340-41). Respondent did not tell Federman that there would be additional attorney's fees for the refinance, and Federman thought the initial attorney's fee would be for the bankruptcy and the refinance. (Tr. 341-43). The closing occurred on August 23, 2005, and the HUD statement shows that Respondent received \$1,750 from the proceeds for her fees. (Tr. 342-43; Adm. Ex. 46). Federman or her husband might have noticed the fee on the HUD statement, but did not say anything because they wanted the refinance to be completed. (Tr. 343-45).

Testimony of Lloyd Meinke

In 2004 Lloyd Meinke hired Respondent to represent him in a Chapter 13 bankruptcy. Meinke paid Respondent \$1,100 for attorney's fees, believing that was the entire amount of the fees. (Tr. 353-55, 365-67). The Chapter 13 was confirmed, and Meinke made payments. After he realized he owed a significant amount of money, he decided to refinance his mortgage and met with Respondent. (Tr. 355-58). Respondent did not tell him there would be an additional fee for the refinance. (Tr. 358-59). Prior to the closing, Respondent told Meinke that her fee would be \$1,350, but did not explain the basis for the fee. (Tr. 359-61). The closing occurred on March 27, 2006, and Respondent received \$1,350 from the proceeds. (Tr. 361-63; Adm. Ex. 58).

Testimony of Kimberle Andreas

Kimberle Andreas hired Respondent to represent her in a Chapter 13 bankruptcy. She paid Respondent \$100 toward attorney's fees, with the understanding that the balance of the fees would be paid from through the bankruptcy. (Tr. 369-70). At that time, Andreas had a foreclosure case and an action to collect homeowner's association fees pending against her. Respondent assisted Andreas with those cases. (Tr. 379-80). Eighteen months after the Chapter 13 was confirmed, Andreas decided to refinance her mortgage, in part, to pay off the bankruptcy plan. (Tr. 371). Respondent did not discuss attorney's fees for the refinance. (Tr. 371-72). The bankruptcy took place on August 24, 2005, and the HUD statement revealed that Respondent received \$3,500 from the proceeds. (Tr. 372-74; Adm. Ex. 51). Andreas was not aware before or during the closing, that Respondent would receive that amount in attorney's fees. (Tr. 375). She did not discover the fee payment until a few years later. (Tr. 376). Andreas trusted Respondent and felt that Respondent violated that trust. (Tr. 378).

The Chapter 13 was paid off from the proceeds from the refinance. Additionally, the foreclosure and homeowner's association actions were also resolved. (Tr. 381-82). Subsequently, Respondent refunded the fee to her. (Tr. 376).

Testimony of Thomas Eaves

Thomas Eaves and his wife hired Respondent to represent them in a Chapter 13 bankruptcy. They agreed to pay Respondent \$2,700 for her attorney's fees, and paid her \$900 with the remainder being paid from the proceeds of the bankruptcy. (Tr. 649-53; Adm. Ex. 32). After the first Chapter 13 was dismissed and second one was filed, Respondent discussed refinancing with the Eaveses. The closing on the refinance occurred on December 23, 2004, and the HUD statement showed that Respondent received \$666.53 as fees from the proceeds. Eaves was not aware that Respondent would receive a fee for the refinance until he reviewed the documents at the closing. (Tr. 653-57; Adm. Ex. 34). Eaves did not know the basis for Respondent's fees, and Respondent did not explain it. (Tr. 657-58). When Eaves filed the bankruptcy, his house was in foreclosure and he had some issues with the IRS. Through the refinance, all of these issues were resolved. (Tr. 658-63).

Testimony of Respondent

Respondent stated that she informed Healy that she would receive \$2,500 from the proceeds of her refinance, and Healy agreed to pay that fee. (Tr. 504). Healy had several title issues that Respondent resolved before the refinance. Additionally, the bankruptcy was complicated because the IRS had a lien on Healy's house. (Tr. 505-507). Respondent believed the fee was reasonable. (Tr. 507). She also served as title agent in Healy's closing. She was compensated for the title work in this case, and in every case where she was the title agent. (Tr. 629-30; Resp. Ex. 19).

Respondent opined that she did not have to seek approval of the bankruptcy court to get the fee because Healy could have hired a different attorney to perform this work, and would have been able to pay that attorney, so she could hire and pay Respondent to do the same work. (Tr. 509-10; Resp. Ex. 1). The fee agreement covered only work related to the bankruptcy. She did not send Healy a bill or invoice for work not related to the bankruptcy. (Tr. 591-93).

Respondent informed Rosa that she would receive \$2,500 as fees from the proceeds of his refinance, and he agreed to pay her. Rosa also had title problems that Respondent cleared to complete the refinance. For the same reasons stated in the Healy matter, Respondent did not believe she was required to seek approval from the bankruptcy court for the fee. (Tr. 512-14; Resp. Ex. 2).

Respondent informed the Sanjurjoes that she would receive \$4,200 as fees from the proceeds of their refinance, and they agreed to pay her. Part of that fee was for money Juan Sanjurjo owed Respondent for a separate Chapter 7 case that was concluded. (Tr. 515-17). Respondent described numerous issues relating to Juan's Chapter 7 and Monica's Chapter 13 proceedings that complicated the refinance. Respondent was not required to obtain approval from the bankruptcy court to charge Juan fees because he was not involved in the pending bankruptcy case, and did not need to do so for Monica for the same reasons as in the other cases. (Tr. 517-20; Resp. Ex. 3).

Respondent informed the Freeses that she would receive \$2,500 as fees from the proceeds of their refinance, and they agreed to pay her. The Freeses were behind on their real estate taxes, and had title and student loan issues Respondent resolved before the closing. (Tr. 521-22, 524; Resp. Ex. 4).

In all of the cases, at the closing, Respondent had her clients read the HUD statement, and explained certain items to them. She could not recall pointing out her attorney's fees to each client; however, it was listed on the statement, and she discussed it with them prior to the closing. (Tr. 522-25).

Respondent informed the Klines that she would receive \$2,500 as fees from the proceeds of their refinance, and they agreed to pay her. The Klines's house was in foreclosure and there were some title issues Respondent resolved prior to the closing. Respondent thought she did not need to get approval from the court to get additional fees. (Tr. 525-28; Resp. Ex. 5).

Respondent informed the Wellses that she would receive \$2,500 as fees from the proceeds of their refinance, and they agreed to pay her. The Wellses had federal and real estate tax, and some title issues Respondent resolved before the closing. Respondent opined that she was not required to obtain approval from the bankruptcy court to collect the fees. (Tr. 528-30; Resp. Ex. 6). Subsequently, on June 29, 2007, in compliance with the bankruptcy court's order, Respondent refunded \$5,200 to the Wellses. (Tr. 530-31; Resp. Ex. 14).

Respondent informed Reusch that she would receive \$7,500 as fees from the proceeds of his refinance, and he agreed to pay her. Respondent represented Reusch in other matters involving a partition suit, a related civil contempt matter, and three foreclosure actions. These matters impacted on the bankruptcy proceedings, and Respondent spent a substantial amount of time attempting to resolve them. (Tr. 532-37; Resp. Ex. 7). Respondent opined that she was not required to obtain approval from the bankruptcy court to collect the fees. (Tr. 535). She did not provide Reusch with a bill or invoice listing the services she preformed for him. (Tr. 627-28). Subsequently, in compliance with the bankruptcy court's order, Respondent refunded \$10,200 to Reusch. (Tr. 538; Resp. Ex. 15).

Respondent informed the Federmans that she would receive \$1,750 as fees from the proceeds of their refinance, and they agreed to pay her. The Federmans had some title issues Respondent resolved before the closing. Respondent opined that she was not required to obtain approval from the bankruptcy court to collect the fees. (Tr. 539-41; Resp. Ex. 8).

Respondent informed Andreas that she would receive \$3,500 as fees from the proceeds of her refinance, and she agreed to pay her. Andreas was involved in a lawsuit with her homeowner's association, her house was in foreclosure, and she had some tax issues. Respondent had to resolve those issues. (Tr. 541-43; Resp. Ex. 9). Respondent believed she was not required to obtain approval from the bankruptcy court to collect the fees. (Tr. 542). Subsequently, in compliance with the bankruptcy court's order, Respondent refunded \$7,317.56 to Andreas. (Tr. 544; Resp. Ex. 16).

Respondent informed the Rows that she would receive \$300 as fees from the proceeds of their refinance, and they agreed to pay her. The Rows had some issues with their mortgage company Respondent had to resolve before the closing. Respondent opined that she was not required to obtain approval from the bankruptcy court to collect the fees. (Tr. 544-46; Resp. Ex. 10).

Respondent informed Meinke that she would receive \$1,350 as fees from the proceeds of his refinance, and he agreed to pay her. Meinke had initially filed a Chapter 7 bankruptcy, and later filed a Chapter 13, and had some federal tax issues which had to be cleared from his house title. (Tr. 545-48; Resp. Ex. 11). Respondent believed she was not required to obtain approval from the bankruptcy court to collect the fees. (Tr. 548).

Respondent informed the Cegins that she would receive \$5,262 as fees from the proceeds of their refinance, and they agreed to pay her. The Cegins had title issues and other issues

related to their bankruptcy that Respondent resolved before the refinance. (Tr. 552-59; Resp. Ex. 12). Respondent believed she was not required to obtain approval from the bankruptcy court to collect the fees. (Tr. 558). Subsequently, in compliance with the bankruptcy court's order, Respondent refunded \$7,896.12 to the Cegins. (Tr. 559-60; Resp. Ex. 17).

Respondent informed the Eaveses that she would receive \$666 as attorney's fees from the proceeds of their refinance, and they agreed to pay that amount. (Tr. 667). The Eaveses had issues involving their mortgage payments, income and property taxes, and Mr. Eaves's employment history that Respondent had to resolve. (Tr. 668-70). Respondent believed she was not required to obtain approval from the bankruptcy court to collect the fees. (Tr. 670; Resp. Ex. 13).

In none of the cases was there a standing order or rule requiring Respondent to submit the HUD statement to the bankruptcy trustee. If there was an order in a specific case, Respondent complied with it. She acknowledged that the trustee would need a copy of the HUD statement to make sure that any liens on the house were paid off. (Tr. 560-61). None of the client agreements Respondent used stated that refinancing was included in the bankruptcy fees. Respondent no longer handles bankruptcy cases, and has no plans to handle those cases in the future. (Tr. 561-62). Respondent acted as the title agent in all of the refinance transactions involved in this Count, and was compensated for that work by the title company. (Tr. 639-45; Adm. Ex. 88).

Count III

Admitted Facts

In November 2003, Respondent began representing Evelyn Spencer Booth (Evelyn) in a dissolution of marriage action which was filed by Evelyn's husband, Richard Booth (Booth). On January 22, 2004, Evelyn committed suicide at her residence, located at 339 Rolland Drive,

Glendale Heights, Illinois. Evelyn's will named Richard the executor of her estate, and left him a life estate "in the real property which is our principal residence at the moment" of her death. Following her death, Respondent met with Brian and David Elwart, Evelyn's sons from a previous marriage. Respondent agreed to represent the Elwarts in matters relating to Evelyn's estate.

Between January and April 2004, Respondent participated with the Elwarts in causing the Rolland Drive property to be listed for sale. During that time, Guillermina Nunez agreed to purchase the property for \$160,000, and the real estate closing was scheduled for April 15, 2004. Respondent agreed to represent the Elwarts in closing, and to act as title agent in her capacity as agent for Professional National Title Network (PNTN). Prior to the closing, Respondent prepared a warranty deed in which the Elwarts purported to convey the Rolland Drive property to Nunez. Also, an employee of PNTN prepared a RESPA statement relating to the Elwarts' sale of the property to Nunez. The RESPA statement listed "the estate of Evelyn Spencer Booth" as the seller of the property. On April 15, 2004, the closing was held. Respondent attended the closing on behalf of the Elwarts, and caused the deed to be delivered to Nunez. Subsequently, Respondent received \$32,500 from the proceeds of the sale of the property, which was disclosed on the RESPA statement.

On June 17, 2004, attorney Douglas Trent, on Booth's behalf, filed a probate proceeding for Evelyn's estate. Prior to September 9, 2004, Trent filed a petition to recover estate assets on behalf of Booth. On September 9, 2004, Respondent appeared for a hearing in connection with the petition, and was granted leave to file a response to the petition. Attorney Paul Marzano appeared on Trent's behalf at that hearing.

Testimony of Richard Booth

Richard Booth married Evelyn in 1994, and they resided together at 339 Rolland Drive, in Glendale Heights. (Tr. 264-65). Evelyn owned the house prior to their marriage. During their marriage, they executed wills. (Tr. 265-66; Adm. Ex. 63). Evelyn's will names Booth as the executor, and gives him "a life estate for his life in the real property which is our principal residence at the moment of my death." (Tr. 267; Adm. Ex. 63).

In the fall of 2003, Booth filed an action to dissolve his marriage to Evelyn. On January 22, 2004, before the divorce action was completed, Evelyn died. Booth and Evelyn had been separated for two to three months at that time. (Tr. 269-71, 280). Evelyn had two children from a previous marriage, David and Brian Elwart. After her death, Booth had several telephone conversations with David and Brian. He also went to the house to retrieve some of his personal property, and talked to David and Brian at that time. (Tr. 271-72). Brian and David said nothing about the house being for sale, and Booth had no indication that the house was under contract to be sold. (Tr. 272-73). Booth also received a car after Evelyn's death because his name was on the title. (Tr. 281-84).

One month later, Booth informed his attorney, Douglas Trent, that Evelyn had a will that made him executor and gave him a life estate in the house. (Tr. 273, 280-81). After Trent obtained a copy of the will, Trent went to court and obtained an order allowing Booth to take possession of the house. (Tr. 274-76). When Booth went to the house, he noticed a car in the driveway and someone he did not know exiting the house. (Tr. 276). Booth contacted the police, went to the house with a police officer, and discovered that someone was living in the house. (Tr. 277-78). Prior to that time, Booth had not relinquished his life estate and was

unaware that the house had been offered for sale or had been sold. (Tr. 278). Trent initiated court proceedings to resolve ownership of the house, and that case is still pending. (Tr. 279).

Booth did not attend Evelyn's funeral because David Elwart made it clear he was not welcome. He did not pay for Evelyn's funeral because he did not have the money. (Tr. 280-82).

Testimony of Douglas Trent

Douglas Trent is an attorney, and in 2003, he agreed to represent Booth in a divorce case. Trent filed the divorce action, but in January 2004, Evelyn died, and the case was dismissed. (Tr. 386-87). Trent continued to represent Booth in matters relating to Evelyn's estate. Booth thought he was the executor of Evelyn's estate and had a life estate in her house, but he did not have a copy of her will. On February 25, 2004, Trent sent a letter to Respondent in an effort to obtain a copy of the will, and property belonging to Booth. (Tr. 389; Adm. Ex. 65). Respondent filed the will with the Clerk of the Circuit Court. Trent could not find the will because it was filed under the name Evelyn Spencer-Booth, and he was looking under the name Evelyn Booth. (Tr. 409-11). On March 3, 2004, Respondent sent Trent a letter stating that Booth did not have a life estate in the house because "he filed for divorce and moved out." She did not provide Trent with a copy of the will. (Tr. 390-92; Adm. Ex. 66). At this time, Trent believed no one was living in the house, and no one had taken any steps to sell it. (Tr. 390).

On March 19, 2004, Respondent sent a facsimile to Trent offering to give Booth \$7,500 for any interests he had in the estate. She also stated that it was Evelyn's dying declaration that Booth not be allowed to live in the house. (Tr. 393; Adm. Ex. 67). On March 25, 2004, Trent sent Respondent a letter rejecting the offer. At this time, Trent was unaware of any actions being taken to sell the house. (Tr. 392-93; Adm. Ex. 68).

On April 16, 2004, Evelyn's house was sold to Guillermina Nunez. Trent was unaware of the sale. (Tr. 393-94; Adm. Ex. 73). On April 28, 2004, Trent sent a letter to Respondent requesting that the house be made available to Booth, and that Respondent provide a copy of the will. (Tr. 395; Adm. Ex. 75).

Subsequently, Trent obtained a copy of Evelyn's will from the attorney who drafted it, and in late 2004, he filed a probate action. (Tr. 396-97; Adm. Ex. 78). On September 9, 2004, Trent, on behalf of Booth, filed a motion to obtain possession of Evelyn's house based on the life estate given to Booth in Evelyn's will. When Trent filed the motion, he thought the house was vacant. (Tr. 399-401; Adm. Ex. 79). Also on September 9, 2004, Respondent filed a response to the motion, in which she argued that Booth should be removed as executor of the estate. (Tr. 401-402; Adm. Ex. 80). On September 13, 2004, the circuit court granted Booth's motion for possession of the house. (Tr. 402; Adm. Ex. 82).

Trent gave Booth a copy of the order. Booth went to the house with a police officer, but did not obtain possession because someone else was living in the house. (Tr. 403-404). Through the discovery process in the probate case, Trent learned that the house had been sold and that a family was living in it. The matter is still pending, and Booth does not have possession of the house. (Tr. 404, 415-17). Trent was unaware of any quitclaim deed signed by Booth. (Tr. 424-25). Respondent raised the issue of a quitclaim deed after the matter was filed in probate court. (Tr. 425-26).

Testimony of Paul Marzano

Paul Marzano is an attorney who is employed by Trent's law firm. (Tr. 427). He performed some work on the Booth probate case. On September 9, 2004, Marzano appeared in court on Booth's motion to obtain possession of Evelyn's house. (Tr. 428-29). At that time,

Marzano was not aware that the house had been sold, or that a quitclaim deed had been executed. (Tr. 429-30).

Testimony of David Elwart

David Elwart is Evelyn's son. Booth was Evelyn's third husband, and they married in 1996. (Tr. 442-43). Prior to Evelyn's death, David and Booth had a good relationship. After Evelyn died, David and his brother Brian, met with Respondent and asked her to handle Evelyn's estate. David believed that Evelyn was the sole owner of her house on Rolland Drive, and Booth had not lived in the house since October 2003. (Tr. 444-46). In a letter Evelyn left before she died, she stated that wanted David to be the executor of her estate. (Tr. 446). Evelyn never indicated that she wanted to transfer ownership of her house to David. Prior to April 16, 2004, David was not aware of any document transferring ownership of the house to him. David was surprised when Respondent told him he was the owner of the property. (Tr. 451-52). Booth did not attend or offer to help pay for Evelyn's funeral. (Tr. 446-47).

Subsequently, Evelyn's house was sold. Booth knew the house was for sale because David told him and he saw a for sale sign in the window when he visited the house. David also told Booth to go to the house to pick up his belongings, but Booth did not do so, and his belongings were put in storage. (Tr. 447-48). Evelyn also owned a car, and Booth took possession of it. (Tr. 448).

David never gave Respondent specific instructions regarding the information she should give to Trent. (Tr. 451). David agreed to pay Respondent from the proceeds of the sale of Evelyn's house, but Respondent did not explain how much she would charge, and never explained how her fee had been calculated. Respondent received \$32,500 in attorney's fees after the house was sold. (Tr. 449-50, 453-55).

David acted as executor of his mother's estate, and used estate funds to pay certain expenditures. (Tr. 455-57; Adm.Ex. 84).

Testimony of Brian Elwart

Brian Elwart is also Evelyn's son, and David's older brother. Booth moved out of Evelyn's house in late 2003, approximately three or four months before her death. Brian and David met Respondent in February or March 2004, to discuss Evelyn's estate, and she agreed to represent them. (Tr. 458-62). In April 2004, Respondent was paid \$32,500 from proceeds of the sale of Evelyn's house. She did not inform Brian of the rate she would charge for her services or what services she would or had performed. (Tr. 464-66). Brian had some contact with Booth, and their relationship was not adversarial. (Tr. 462-64).

Testimony of Respondent

Respondent began representing Evelyn in the fall of 2003 in a divorce case. At that time, Evelyn was separated from Booth. (Tr. 563-64). When Evelyn died, she was the owner of the house on Rolland Drive, and had \$100,000 in marital debt that was in her name. Respondent was unaware of any recorded deeds that evidenced a transfer of title of the property. (Tr. 432-33, 565). Booth did not live with Evelyn, but was providing her with health insurance. (Tr. 565). Evelyn committed suicide in late January 2004, and sent a detailed suicide note to her children and Respondent. (Tr. 565-67; Resp. Ex. 24). The note referred to David Elwart as the executor. (Tr. 566; Resp. Ex. 24). David and Brian retained Respondent to represent Evelyn's estate. (Tr. 567).

Respondent did not draft Evelyn's will, and when she received the original copy, she filed it with the DuPage County Clerk of the Court on January 30, 2004. (Tr. 567-69; Resp. Exs. 22, 23). Respondent felt that she was still in an adversarial position with Trent because the

divorce action was pending, however, she told him that she filed Evelyn's will. (Tr. 569). Respondent did not file a petition to probate the will on behalf of Brian and David because, in her opinion, a petition was not necessary. According to Respondent, all of Evelyn's property had passed to her children directly, except for the house, and Respondent was able to clear title to the house without opening a probate estate. (Tr. 570). Evelyn's will gave Booth a life estate in the house, but Respondent believed that he was not entitled to the life estate because he was not living with Evelyn at the time of her death. That issue has yet to be decided by the circuit court. (Tr. 570-71).

In December 2003, Respondent prepared a quitclaim deed for Evelyn conveying the property to Brian and David Elwart. Evelyn signed the quitclaim deed in Respondent's office, and Respondent kept the deed in her office safe. (Tr. 571-74). Respondent left the deed in her safe until the April 2004, closing, when she gave it to the title company. She expected that the deed would be recorded, but it was never recorded. Respondent did not have a signed copy of the deed. (Tr. 571-75, 632; Resp. Ex. 25).

Respondent denied that her failure to record the deed was because she did not want to appear to be circumventing the jurisdiction of the divorce court. However, during a sworn statement, she stated, "I didn't want to make it look like we were attempting to circumvent the Court's jurisdiction." (Tr. 632-34). Respondent also denied that the Illinois Dissolution Act would prevent the transfer of the property without court permission. However, during a sworn statement, Respondent stated "I believe that the Illinois Dissolution Act would prevent something like that without court permission if she went through estate planning or whatever she – however she wanted to do this particular move." (Tr. 635).

Respondent believed David was the executor of the estate because Booth had done nothing for the estate, and David was the successor executor. (Tr. 575-76). Respondent represented the Elwarts in the sale of Evelyn's house, and did not inform Trent or Booth of the sale. (Tr. 576-77).

In April 2004, Respondent drafted an affidavit signed by David Elwart, stating that Evelyn was the sole owner of the house. (Tr. 434; Adm. Ex. 71). In the context of the probate matter, Respondent admitted that she did not give Booth notice of the pending sale of the property. (Tr. 436; Adm. Ex. 83). Respondent's file contained an itemized list and receipts regarding expenses relating to Evelyn's funeral and estate; however, Respondent denied having any knowledge of the document or related expenses. (Tr. 437-38; Adm. Ex. 84). Respondent and the Elwarts agreed that Respondent's fee for representing the estate would be \$32,500, and she would be paid from the proceeds of the sale of the house. The fee was based on work Respondent had already performed and would perform in the future. (Tr. 580-81).

On September 9, 2008, Respondent appeared in court in the probate action initiated by Trent. (Tr. 577-78; Adm. Ex. 81). Respondent was contesting jurisdiction, and in her opinion, had limited standing in the case. (Tr. 578). Respondent was not asked about the house, and did not address that issue. (Tr. 578-79).

The transcript of the proceedings demonstrates that Respondent appeared in court and made numerous statements about Evelyn's estate, her will and her house. Booth's attorney presented the court with a copy of the will which named Booth as the executor and gave him a life estate in the house. He informed the court that as executor, Booth needed access to the property to make mortgage payments and pay insurance. Respondent responded by stating that Booth would have to get jurisdiction "of the people he claims is preventing him from doing

that.” (Adm. Ex. 81 at 3). The court asked “well, who is in the property?” Booth’s attorney stated “I don’t think anybody is right now.” Respondent replied, but completely ignored the issue of who was in possession of the property, and argued the merits of the motion. (*Id.*).

Booth’s attorney also stated that no one was living in the house at that time. Respondent argued that Evelyn’s dying declaration removed Booth as the executor, and he had no life estate because he had filed for divorce and was not living in the house. The court found that the will had been filed, Booth was the executor, and had a right to possession of the house. Respondent stated, “Your Honor, but I don’t believe the residence is vacant, and he alleges in his motion that they’re relatives of Evelyn Spencer-Booth that are keeping him.” (Adm. Ex. 81 at 9). The court later stated the “representation is that no one is living in the house.” To which Respondent replied, “that’s not true your Honor. I don’t believe that’s true.” Booth’s attorney again stated that as far as he knew, there was no one in the house, and Respondent said nothing to the contrary. (Adm. Ex. 81 at 9-10).

Respondent also denied that she represented Evelyn’s children. Respondent stated, “You know, I do not represent at this point, your Honor, the heirs, her children of the estate.” (Adm. Ex. 81 at 5). Later in the proceedings, when the court stated it would enter an order giving Booth possession of the house, Respondent again denied representing Evelyn’s children. (Adm. Ex. 81 at 9). At the end of the argument, the court asked Respondent who she was representing, and Respondent stated, “right now just myself, because I have not been --.” The court then found that Respondent had no standing to object. (Adm. Ex. 81 at 11).

Evidence Offered in Mitigation

Testimony of Character Witnesses

Four character testified on behalf of Respondent: Janet Baie, Elizabeth Schoonenberg, Marvin Toenjes and Julane Sullivan. Baie and Respondent are close friends, and Respondent has been her attorney. (Tr. 468-69). Baie believes Respondent is a truthful and trustworthy person. (Tr. 469-74). Elizabeth Schoonenberg has known Respondent since 2000, and they are friends. Schoonenberg characterized Respondent as a good person and mother. (Tr. 477-79). She believes Respondent has a good reputation for truth and fair dealing. (Tr. 480-81).

Marvin Toenjes has known Respondent for 20 years. They are friends and Respondent has represented Toenjes and his wife in legal matters. He sees Respondent two to three times per year. He believes Respondent is a truthful and honest person. (Tr. 482-87). Julane Sullivan has known Respondent for more than 30 years. They are friends, and Respondent has represented her in some legal matters. Sullivan opined that Respondent is a truthful and honest person, and knows other people who would agree with her. (Tr. 488-94).

Testimony of Respondent

Respondent is married and has two children. She was licensed to practice law in Illinois in 1979. (Tr. 495-97). Respondent also has a real estate broker's license, an insurance producer's license, and a series 663 securities license. (Tr. 497). After working for various law firms and an insurance company, Respondent has been a sole practitioner since February 1991, and primarily performs bankruptcy, real estate, probate and divorce work. (Tr. 498-99). She performs pro bono legal work through the bar association program, including some bankruptcy and divorce cases. She has worked on three or four divorce cases, and has not done any pro bono cases for several years. (Tr. 500, 582-83). She was also involved in the Jaycees and

Rotary Club, and volunteers through her church. (Tr. 500-501). Respondent is a member of the Kane County, DuPage and Illinois Bar Associations, and the Graduate Realtor Institute. She has also been a chair of the bankruptcy law committee of the DuPage Bar Association, and last chaired a committee in 2001. (Tr. 501-502, 583).

Prior Discipline

Respondent had no prior discipline.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator must prove the alleged misconduct by clear and convincing evidence. Supreme Court Rule 753(c)(6); In re Cutright, 233 Ill. 2d 474, 910 N.E.2d 581 (2009). "Clear and convincing evidence is a standard of proof which, while less than the criminal standard of proof beyond a reasonable doubt, is greater than the civil standard of preponderance of the evidence." Cleary and Graham, Handbook of Illinois Evidence, § 301.6 (6th ed. 1994). This standard of proof is one in which the risk of error is not equally allocated; rather, this standard requires a high level of proof, both qualitatively and quantitatively, from the Administrator. Santosky v. Kramer, 455 U.S. 745, 764-66, 102 S. Ct. 1388 (1982); In re Tepper, 96 CH 543, M.R. 14596 (1998) (Review Bd. at 12). Suspicious circumstances are insufficient to warrant discipline. In re Lane, 127 Ill. 2d 90, 111, 535 N.E.2d 866 (1989).

In this case, based on the evidence and testimony presented at the hearing, we find that the Administrator proved by clear and convincing evidence that Respondent engaged in all of the misconduct alleged in the Complaint, as described below.

Count I

We find that the Administrator proved that Respondent engaged in the following misconduct alleged in Count I of the Complaint: 1) overreaching the attorney-client relationship;

2) undue influence; 3) breach of fiduciary duty; 4) charging an excessive fee; 5) making a statement of material fact to a third person that the lawyer knows or reasonably should have known was false; 6) engaging in conduct involving dishonesty, deceit, fraud or misrepresentation; 7) engaging in conduct that is prejudicial to the administration of justice; 8) engaging in conduct that tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Rules 4.1(a); 8.4(a)(4) and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 770.

We find that Respondent engaged in misconduct when she changed the bankruptcy court's pay off letter in the Olsen matter. In November 2004, Respondent filed a Chapter 13 bankruptcy case on behalf of the Olsens. In July 2005, the bankruptcy court granted the Olsens' motion to refinance their house, and ordered them to pay the trustee from the refinance proceeds. On July 19, 2005, the trustee's office issued a pay off letter stating that the pay off amount was \$50,910. The Olsens did not refinance at that time, and on March 14, 2006, the trustee issued a second pay off letter stating that the amount needed to pay off the Chapter 13 was \$34,270. These are the only two pay off letters issued by the trustee's office.

The refinance was completed later in March 2006. The title company sent the trustee's office a check in the amount of \$26,164, a copy of a letter purportedly issued by the trustee's office showing that amount as the pay off, and the first page of the HUD statement. A close inspection of the pay off letter reveals that it is an altered copy of the July 19, 2005, letter. The date on the letter had been removed and the pay off date and amount were typed in a different font. The bankruptcy trustee, Stearns, testified that his office did not issue the letter. Laushot, the trustee employee responsible for issuing pay off letters, testified that she did not prepare the letter. Further, Respondent's paralegal, Kirk-Velez, testified that she worked on the Olsen

matter and noticed that the pay off letter had been altered. Specifically, she stated that there was a pay off letter on her desk that was different from the original pay off letter in that the date was deleted and the pay off date and amount were different. Also, white out was visible on the letter. Kirk-Velez stated that she did not alter the letter.

Wilfred Olsen testified that after the refinance, Respondent told him that the Chapter 13 had not been paid off. She explained that the trustee's office oftentimes gets the amount of the pay off wrong. She also told Olsen that the pay off letter in his case was wrong, and she corrected it. We find the testimony of these witnesses credible. Cutright, 910 N.E. 2d at 589 (the Hearing Board is in the best "position to observe the witnesses' demeanor, judge their credibility, and resolve conflicting testimony."). Based on this evidence, we find that Respondent changed the trustee's pay off letter.

We believe the reason Respondent altered the pay off letter was so she could collect \$8,500 in attorney's fees. It is undisputed that Respondent charged the Olsens \$8,500 in attorney's fees for the refinance. The HUD statement clearly shows that amount was paid to Respondent at the closing for attorney's fees. The correct amount of the pay off was \$34,270. The amount of the altered pay off was \$26,164. When this amount is added to Respondent's attorney's fees of \$8,500 the amount totaled \$32,664. If Respondent had not altered the pay off amount, there would have been insufficient funds for her to receive the attorney's fees.

We further find, that by altering the pay off letter and failing to send the trustee the full HUD statement, Respondent made a statement of material fact that she knew was wrong, and committed a fraud on the bankruptcy court. Respondent had no basis or authority for changing the pay off letter. She unilaterally changed the amount, altered the letter to look like the original letter, and submitted to the trustee's office as if it were the original letter. Additionally, although

the pay off letters from the trustee clearly states in bold and capital letters "A FULL AND LEGIBLE COPY OF THE HUD 1 STATEMENT MUST BE SUBMITTED TO THE TRUSTEE WITH THE FINAL PAYMENT" Respondent submitted only the first page of the HUD statement. The reason for her omission is obvious. The second page of the HUD statement showed the \$8,500 deduction made for her attorney's fees. These facts clearly establish Respondent's misconduct.

We also find that Respondent's attorney's fees were excessive. Our conclusion is supported by the plain language of the agreement and the findings of the bankruptcy court. Respondent agreed to represent the Olsens for a flat fee of \$2,700. She signed a Model Retention Agreement in which she agreed to a flat fee through the closing of the case. The agreement specifically provides that "any attorney retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor on **all matters arising in the case** unless otherwise ordered by the court." (Adm. Ex. 1 at 4) (emphasis added). At the time Respondent received the \$2,700 fee, the Chapter 13 had been confirmed, but not paid off and not closed. Subsequently, Respondent represented the Olsens in the refinance of their house with the proceeds used to pay off the Chapter 13. It is clear that refinancing their house to pay off the Chapter 13 was part of the Chapter 13 case. However, Respondent was paid an additional \$8,500 for the refinance, more than three times the amount she agreed to accept for the bankruptcy. Accordingly, based on the terms of the fee agreement, Respondent was not entitled to additional fees for the refinance, and they were excessive.

The bankruptcy court specifically found that Respondent "knew, based on the fee order entered May 13, 2005, which she had prepared and her experience in chapter 13 cases, that she was not entitled to any additional fees in this case." The court further found that Respondent

“fraudulently altered the Trustee’s pay off letter as part of a scheme to collect an additional legal fee to which she was not entitled.” (Adm. Ex. 13 at 5). Although we are not bound by the bankruptcy court’s findings, based on the facts before us, we agree with them, and they support our findings of misconduct.

We further find that Respondent overreached the attorney-client relationship, breached her fiduciary duty to the Olsens, and engaged in undue influence. Overreaching occurs when the attorney takes undue advantage of the position of influence she holds over her client, particularly where the attorney obtains a benefit for herself. In re Rinella, 175 Ill. 2d 504, 516, 677 N.E.2d 909 (1997). “Where an attorney engages in a transaction with a client and is benefited thereby, the burden rests on the attorney to show that it is fair, equitable and just, and that it did not proceed from undue influence.” In re Imming, 131 Ill. 2d 239, 256, 545 N.E.2d 715 (1989). In such a case, the Hearing Board must look at several factors in determining whether this presumption has been overcome, including whether: 1) the attorney made a full and frank disclosure of all the relevant information that he had; 2) the consideration was adequate; and 3) the client had independent advice before completing the transaction. Id. Further, “the existence of an attorney-client relationship creates a fiduciary relationship between those parties as a matter of law.” Id. The fiduciary relationship imposes the duties and obligations upon the attorney to deal with her client with fidelity, honesty and good faith. See In re Winthrop, 219 Ill. 2d 526, 543-44, 848 N.E.2d 961 (2006); In re Mlade, 99 CH 18, M.R.17977 (March 23, 2002) (Hearing. Bd. at 27).

These principles apply to situations where an attorney negotiates a revised fee agreement after the attorney-client relationship has already been established. See In re Lutz, 06 SH 81, M.R. 22544 (Sept. 17, 2008) (Review Bd. at 9) citing In re Marriage of Pagano, 154 Ill. 2d 174,

185, 607 N.E.2d 1242 (1992). "Given the pre-existing attorney-client relationship, the law presumes undue influence in the subsequent agreement that changed the terms of the representation." Lutz, 06 SH 81 (Review Bd. at 9). In such a case, the attorney has the burden of proving that the transaction did not proceed from undue influence. "A change in the terms of the representation, during the existence of an attorney-client relationship, that inures to the attorney's benefit also constitutes overreaching and breach of fiduciary duty, absent proof otherwise." Id.

Respondent, as the Olsens' attorney, was clearly in a position of influence over the Olsens. This is particularly true here, where the Olsens were involved in bankruptcy proceedings and had to refinance their house to pay off the bankruptcy. Respondent stood to benefit from the refinance by charging a fee for that transaction which was in addition to her fee for the bankruptcy. However, Respondent failed to inform the Olsens of the additional fee until at the closing for the refinance. By that time, the Olsens wanted to save their house from foreclosure, and felt they had no choice but to agree to Respondent's fee. Respondent overreached and engaged in undue influence by putting the Olsens in a position where they either agreed to her excessive fee, or feared losing their house. Moreover, Respondent failed to deal with the Olsens with honesty and good faith, and put her own interests before those of her clients.

Based on these facts, Respondent must show that the transaction was fair. She could have done this by presenting any number of possible facts, but she failed to do so. Instead, she invoked her 5th amendment rights and declined to answer any questions relating to the Olsens. We need not draw any inferences from Respondent's failure to testify. We simply have no facts to rebut the evidence demonstrating overreaching, undue influence, and breach of fiduciary duty.

Moreover, overreaching and breaching a fiduciary duty is conduct which tends to bring the legal profession into disrepute and defeats the administration of justice. Rinella, 175 Ill. 2d at 516-17. Respondent's actions caused the Olsens to feel taken advantage of by Respondent and negatively affected their opinion of attorneys. Further, Respondent's conduct required additional efforts by the bankruptcy trustee and additional court proceedings to remedy the situation.

Count II

We find that the Administrator proved that Respondent engaged in the following misconduct alleged in Count II of the Complaint: 1) overreaching the attorney-client relationship (relating to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin); 2) undue influence (relating to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin); 3) breach of fiduciary duty (relating to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin); 4) charging an excessive fee (relating to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin); 5) making a statement of material fact to a third person that the lawyer knows or reasonably should have known was false (relating to all clients named in this Count); 6) engaging in conduct involving dishonesty, deceit, fraud or misrepresentation (relating to all clients named in this Count); 7) engaging in conduct that is prejudicial to the administration of justice (relating to all clients named in this Count); 8) engaging in conduct that tends to defeat the administration of justice or brings the courts or legal profession into disrepute (relating to all clients named in this Count) in violation of Rules 4.1(a); 8.4(a)(4) and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 770.

As stated in Count I, overreaching occurs when the attorney takes undue advantage of the position of influence she holds over her client, and where an attorney engages in a transaction

with a client, the burden rests on the attorney to show it was fair and equitable. Rinella, 175 Ill. 2d at 516; Imming, 131 Ill. 2d at 256. Also, an attorney-client relationship creates a fiduciary relationship between those parties and imposes the duties and obligations upon the attorney to deal with her client with fidelity, honesty and good faith. Imming, 131 Ill. 2d at 256; Mlade, 99 CH 18 (Hearing Bd. at 27). These principles apply when an attorney changes a fee agreement with a client. Lutz, 06 SH 81 (Review Bd. at 9).

We find that Respondent engaged in overreaching, undue influence and breach of her fiduciary duties relating to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin when she charged them attorney's fees for their refinances. There can be no question that Respondent had an attorney-client relationship with each of these individuals which required her to deal with them fairly and honestly. In each of these cases, Respondent's clients were involved in Chapter 13 proceedings and decided to refinance their houses. Ten of the eleven clients testified that Respondent did not inform them that there would be additional attorney's fees for the refinance. The eleventh client, Rowe, testified that Respondent might have mentioned a fee, but did not inform him of the amount of the fee. Almost all of the clients discovered the additional fee at the closing when they reviewed the documents. At least three clients, Frees, Reusch and Andreas, did not discover the fee until after the closing. The other eight clients essentially testified that even after they noticed the fee, they did not contest it because they wanted the refinance to be completed.

It must be kept in mind that all of these clients were in the midst of Chapter 13 proceedings and many of their houses were either in foreclosure or would be in foreclosure. They had desperate financial circumstances and, in some cases, were on the cusp of losing their homes. They did not believe they were in a position to argue about the fee and risk completing

the refinance. Respondent had put these clients in a position where she could take advantage of them, and she did so. Based on these facts, we find that Respondent overreached the attorney-client relationship and engaged in undue influence. She took advantage of her clients for her personal gain. She also breached her fiduciary duty by failing to disclose the additional fees to her clients and putting them in a position where they could not object to her fees.

Respondent testified that she informed each of these clients of the fee before the closing, and that they all agreed to pay the fee. After observing Respondent testify and considering other evidence presented at the hearing, we find this testimony not credible. Cutright, 910 N.E. 2d at 589 (the Hearing Board is in the best "position to observe the witnesses' demeanor, judge their credibility, and resolve conflicting testimony."). In the face of the multiple witnesses who consistently testified that Respondent failed to inform them of the additional attorney's fees, we find Respondent's testimony unbelievable. Ten witnesses from ten separate cases consistently testified that Respondent failed to inform them that there would be a fee for the refinance. Only one client stated that Respondent might have mentioned a fee, but that client also stated that Respondent did not articulate the amount of the fee. Each of these clients was having financial problems, and any fee paid to Respondent was with money he or she could have used for other purposes. It seems obvious to us that if Respondent had told them she was charging a fee, which was substantial in many cases, the clients would have remembered it. Respondent's general statements to the contrary are completely unsupported by any evidence. She has no fee agreement, no follow-up letter or any documentary evidence to substantiate her claim. Further, she simply made a blanket statement about informing her clients and provided no specific details to put her version of the facts in context. Accordingly, we find her testimony not credible.

We further find that Respondent charged thirteen clients excessive fees. As in Count I, our conclusion is supported by the plain language of the bankruptcy fee agreement and the findings of the bankruptcy court. For five clients (Healy, Rosa, Sanjurjo, the Frees and the Klines) Respondent entered into fee agreements she drafted. The agreement stated the amount of the fee Respondent would charge each client. The agreement also stated “[i]f additional services are needed, there will be an extra charge as outlined in the retainer agreement. These fees will be billed to you on a monthly basis and are due and payable only if a Federal Court Judge of competent jurisdiction approves the additional fees or if your case fails and is dismissed.” The agreement also stated that Respondent agreed to provide various services including “[p]repare, file and serve necessary motions to buy or sell property and to incur debt.”

Regarding the remaining eight clients (the Eaves, the Welles, Reusch, the Federmans, Andreas, the Rowes, Meinke, and Cegin) Respondent entered into the model retention agreement. That agreement provides that the client agreed to pay Respondent a flat fee for her services either through the time that a Chapter 13 plan was confirmed, or the time the case was concluded. It also provided that in either case, Respondent would be permitted to apply to the court for additional compensation “in extraordinary circumstances, such as extended evidentiary hearings or appeals.” Additionally, the agreement specifically provides that “any attorney retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor on **all matters arising in the case** unless otherwise ordered by the court.”

In each of the 13 cases involved in Count II, Respondent was paid the entire agreed upon fee for the Chapter 13 case, and charged each client an additional fee for the refinance. The proceeds from each refinance were used to pay off the Chapter 13. Based on the terms of the fee agreements, Respondent was not entitled to additional fees for the refinances, and those fees

were excessive. Our finding is supported by the finding of the bankruptcy court. In two of the relevant cases, involving Andreas and Cegin, the bankruptcy court specifically found that Respondent charged excessive fees. According to the court, when Respondent entered into the model retention agreement, she agreed to represent her clients for a flat fee of \$2,700. Respondent received that fee and should not have received any additional fee. The refinancing was directly related to the bankruptcy, and in every case the proceeds from the refinances were used to pay off the Chapter 13 plans. We agree with the findings of the bankruptcy court and find that by charging her clients additional fees for the refinancing, Respondent charged excessive fees.

Not only do we believe that the fees were excessive, we also believe that Respondent knew she was not entitled to the fees and purposely attempted to hide them from the bankruptcy court. In each case, Respondent intentionally failed to send the bankruptcy trustee the second page of the HUD form which showed her attorney's fees. Also, as we have already found, she failed to inform her clients of the additional fees until the closing. We believe she did this in an effort to hide the fee from the bankruptcy court and to collect fees she knew she was not entitled to receive. Again, on this point, we agree with the bankruptcy court's findings.

Respondent argues that she could charge the additional fees because if another attorney had handled the refinance matters, that attorney could have charged a fee. Even if, for the sake of argument, another attorney could have charged a fee, Respondent nevertheless engaged in misconduct because she was not another attorney, and even a different attorney would have had to disclose the fee. First, Respondent was not another attorney. She was the attorney of record in the bankruptcy proceedings. She had already petitioned the bankruptcy court, and received her fees. As discussed above, she was not entitled to an additional fee.

Second, the relevant bankruptcy laws require any attorney who charges a fee to a client involved in a bankruptcy proceeding to report that fee to the bankruptcy court. Section 329(a) provides that “any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, . . .” Rule 2016(b) requires attorneys to disclose their fees to the court, and states: “every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee . . . the statement required by §329 of the Code including whether the attorney has shared or agreed to share the compensation with another entity.” Rule 2016(b) also requires an attorney to file, with the trustee, a supplemental statement after any payment or agreement not previously disclosed. Accordingly, even if another attorney had handled the refinances, he would have been required to disclose that fee to the court. Likewise, Respondent was required to report her fee to the court. Respondent gives no valid explanation for failing to comply with these provisions of the bankruptcy laws, and we interpret her actions as an intentional effort to conceal the fees from the bankruptcy court.

Based on these findings, there can be little question that Respondent conduct involved dishonesty, deceit or misrepresentation; was prejudicial to the administration of justice; and tended to defeat the administration of justice and brought the legal profession into disrepute. Respondent’s clients were deceived and taken advantage of, and required to pay excessive fees without their prior consent. The fact that all of these clients received the results they sought, namely successfully completing Chapter 13 proceedings, does not diminish Respondent’s misconduct or lessen the impact of that misconduct. Several of her clients testified that Respondent’s conduct has negatively impacted their opinion of attorneys. Additionally, the

bankruptcy trustee was required to expend resources of his office and initiate further bankruptcy proceedings to investigate Respondent's conduct and recoup some of the fees for her clients.

Count III

We find the Administrator proved that Respondent engaged in the following misconduct alleged in Count III of the Complaint: 1) engaging in conduct involving dishonesty, deceit, fraud or misrepresentation; 2) engaging in conduct that is prejudicial to the administration of justice and; 3) engaging in conduct that tends to defeat the administration of justice or brings the courts or legal profession into disrepute in violation of Rules 8.4(a)(4) and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 770.

Specifically, we find that Respondent engaged in misconduct when she represented the Elwarts and of Evelyn's estate. The most glaring misconduct occurred in connection with the sale of Evelyn's house. Evelyn died in January 2004. At that time, she was married, but separated, from Richard Booth. Evelyn's will made Booth the executor, and gave him a life estate in her house. Respondent represented Evelyn in a divorce proceeding against Booth, and agreed to represent Brian and David Elwart in matters relating to Evelyn's estate. Respondent was familiar with Booth and Trent, Booth's attorney, from the divorce proceedings. She was also familiar with the terms of Evelyn's will.

Despite knowing these facts, Respondent represented the Elwarts in the sale of Evelyn's house without notifying Booth or Trent and without any regard for Booth's property rights. On April 15, 2004, Respondent represented the Elwarts at the closing. Additionally, Respondent acted as the title agent, prepared the warranty deed, and delivered the deed to the buyer, Nunez. At the time of Evelyn's death, she was still married to Booth. Evelyn's valid and executed will gave Booth a life estate in the house. Respondent ignored these facts and was heavily involved

in selling the house to Nunez. All of the proceeds from the sale went to the Elwarts. Booth learned about the sale only after he went to the house and saw that the Nunez's were living there.

Respondent makes several arguments to justify her actions. First, she asserts that in December 2003, before she died, Evelyn signed a quit claim deed giving her sons title to the house. Respondent stated that she put the signed deed in her office safe until the April 2004, closing, when she gave it to the title company. She expected the deed would be recorded by the title company, but it never was recorded. Respondent did not have a copy of the signed deed, but presented an unsigned undated copy. We find Respondent's testimony regarding the quitclaim deed not credible. In fact, we believe it is a blatant fabrication. We base our credibility determination on our observations of Respondent while she testified as well as a lack of any supporting evidence and obvious contrary evidence. It is simply not believable that Respondent would keep a signed quitclaim deed in her safe for more than a year without recording it. Further, it is suspicious that she would have a copy of the unsigned deed, but not the signed deed. Moreover, it strains common sense to believe that she brought the deed to the closing, and the title company misplaced it. This is especially true because there is absolutely no evidence from the closing documents indicating that there was a quitclaim deed.

Further, the warranty deed, prepared by Respondent and given to Nunez, stated that the owner of the property was the estate of Evelyn. The purported quit claim deed conveyed the property to Brian and David Elwart. Accordingly, if there were a valid quit claim deed, the owners would have been the Elwarts. Additionally, on April 17, 2004, David Elwart signed an affidavit, which was drafted by Respondent, stating that Evelyn was the sole owner of the house. This affidavit contradicts the quit claim deed. Therefore, based on all these facts, we find that Respondent's testimony not credible, and find that there was no signed quit claim deed.

Moreover, Respondent's testimony regarding the quit claim deed is contradicted by earlier statements. At the hearing Respondent denied that she failed to file the quit claim deed because she did not want to appear to be circumventing the jurisdiction of the divorce court. In a sworn statement prior to the hearing, she stated that she "didn't want to make it look like we were attempting to circumvent the Court's jurisdiction." Also at the hearing, she denied that the Dissolution Act would prevent the transfer of the property without court permission. During her sworn statement, she said "I believe that the Illinois Dissolution Act would prevent something like that without court permission if she went through estate planning or whatever she – however she wanted to do this particular move." Respondent's inconsistent statements further undermines her credibility.

Respondent also believed that Booth was not entitled to the life estate because he was not living with Evelyn at the time of her death. She further argues that the issue of whether Booth had a life estate is currently being litigated in the circuit court, and we should let the court decide that issue. We agree that the circuit court should decide that issue. However, we have the duty to evaluate Respondent's conduct to determine whether it violates her ethical obligations. Regardless of how the circuit court decides the life estate issue, we find that Respondent acted dishonestly when she was involved in selling Evelyn's house. At the time Evelyn's house was sold, her will gave Booth a life estate, Respondent knew the contents of Evelyn's will, and at least knew that there was a legal issue involving the life estate. Additionally, she knew Booth and Trent from Evelyn's divorce matter. Despite these facts, she did nothing to resolve the life estate issue, failed to give Booth or Trent a copy of Evelyn's will, and failed to notify Booth or his attorney of the sale.

Importantly, Respondent acted deceptively and fraudulently when she failed to inform the circuit court in the probate matter that the house had been sold. Respondent appeared in court on the probate matter, and failed to inform the court that Evelyn's house had been sold. She claims she did nothing wrong because she had limited standing in the case, and was not asked about the house. We reject Respondent's argument. Fraud encompasses "any conduct, statement or omission that is calculated to deceive," including "the suppression of truth and the suggestion of what is false." In re Gerard, 132 Ill. 2d 5017, 528, 548 N.E.2d 1051 (1989); In re Yamaguchi, 118 Ill. 2d 417, 426, 515 N.E.2d 1235 (1987). Also, an attorney has the duty to inform the court of the law and facts of the case and violates the oath of an attorney when she resorts to deception. See In re Braner, 115 Ill. 2d 384, 392, 504 N.E.2d 102 (1987). Moreover, an attorney who engages in conduct calculated to deceive a court engages in conduct prejudicial to the administration of justice. Yamaguchi, 118 Ill. 2d at 426.

After receiving a copy of Evelyn's will, Trent initiated a probate case. Trent filed a motion to obtain possession of Evelyn's house. Respondent filed a response to the motion, arguing that Booth should be removed as executor of the estate. On September 9, 2004, Respondent and Trent argued the motion in court. At that point in time, Respondent had represented the Elwarts in the sale of the house, and knew that the house had been sold to Nunez. At no time did Respondent inform the court of the sale. In fact, a review of the transcript establishes that she had several opportunities to reveal that fact, but failed to do so. At one point, the court asked "well, who is in the property?" Booth's attorney stated "I don't think anybody is right now." Respondent's reply completely ignored the issue of who was in possession of the property, and she argued the merits of the motion. On two additional occasions, Booth's attorney stated that no one was living in the house, and Respondent ignored that issue and said

nothing. Further, Respondent twice generally stated that she did not think the house was vacant, but said nothing about who was living in the house.

Respondent was also deceptive and dishonest when she stated that she did not represent the Elwarts. During her court appearance in probate court, Respondent stated, "You know, I do not represent at this point, your Honor, the heirs, her children of the estate." Later in the proceedings, when the court stated it would enter an order giving Booth possession of the house, Respondent denied representing Evelyn's children. At the end of the argument, the court asked Respondent who she was representing, and Respondent stated, "right now just myself." Although Respondent had not entered an appearance on behalf of the Elwarts in the probate case, it is clear she represented them in the matters relating to Evelyn's estate. She met with the Elwarts after Evelyn's death to discuss the estate, and she represented the Elwarts in the sale of Evelyn's house. Most importantly, Respondent received \$32,500 from the proceeds of the house sale for attorney's fees for representing the estate. As Respondent testified, the fee was for work she already performed and work she would perform in the future. These facts clearly establish that Respondent represented the Elwarts, and her statements to the court to the contrary were deceptive and dishonest.

RECOMMENDATION

The purpose of the disciplinary system is to protect the public, maintain the integrity of the legal system and safeguard the administration of justice. See In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003); In re Howard, 188 Ill. 2d 423, 721 N.E.2d 1126 (1999). "The Rules of Professional Conduct recognize that the practice of law is a public trust and lawyers are the trustees of the judicial system." In re Smith, 168 Ill. 2d 269, 287, 659 N.E.2d 896 (1995). The objective of a disciplinary inquiry is not punishment, but to protect the public from incompetent

or unscrupulous attorneys, maintain the integrity of the profession, and protect the administration of justice from reproach. See In re Twohey, 191 Ill. 2d 75, 727 N.E.2d 1028 (2000). In determining the appropriate sanction for an attorney's misconduct, the purpose of the disciplinary system and the facts surrounding the misconduct must be considered. See In re Chernois, 114 Ill. 2d 527, 502 N.E.2d 722 (1986). Also, "it is important to recognize the deterrent value of a sanction and the need to impress upon others the seriousness of the misconduct at issue." Twohey, 191 Ill. 2d at 85.

The discipline imposed on an attorney who has engaged in misconduct also depends on the aggravating and mitigating factors presented during that attorney's disciplinary proceedings. See Gorecki, 208 Ill. 2d at 360-61. In the present case there are several mitigating and aggravating factors.

Respondent aggravated her misconduct by the facts that she failed to recognize the seriousness of and showed a lack of remorse for her misconduct. Even faced with overwhelming facts establishing her misconduct, including the bankruptcy court holding her in contempt, numerous client testimony showing that she took fees without their consent, and her involvement handling an estate that is contrary to the plain language of a will, Respondent did not acknowledge that she did a single thing wrong or would do anything differently in the future. Failing to recognize the seriousness of misconduct and the lack of remorse are aggravating factors that must be considered. In re Lewis, 138 Ill. 2d 310, 562 N.E.2d 198 (1990). Without some recognition of wrongdoing, we believe that Respondent will repeat her misconduct.

Respondent further aggravated her misconduct by causing harm to her clients. Although Respondent's legal representation of her clients appears competent, she caused financial damage to individuals who were already in financial trouble. She took substantial fees from her clients

for the refinances without obtaining their consent and without substantiating the amount of work she performed. It is obvious that these individuals could have used that money for any number of other expenses and debt, and Respondent's conduct prevented them from doing so. See Cutright, 910 N.E.2d at 588.

Respondent also aggravated her misconduct by the fact that this was not an isolated incident, but a pattern of misconduct occurring over a period of several years. Respondent's misconduct relating to her bankruptcy clients occurred between 2002 and 2005 and involved 14 different clients. Additionally, Respondent attempted to hide her misconduct from her clients and the bankruptcy trustee. Her actions amount to a deliberate course of conduct and constitute a significant aggravating factor. Id.

We do not find Respondent's misconduct to be mitigated by her attempt to introduce evidence of her good character. Respondent presented four character witnesses who testified that Respondent has a good reputation for truth and honesty. However, we have specifically found that Respondent was untruthful with her clients, with the bankruptcy and circuit courts and was not credible in her testimony in this matter. She might have a good reputation for truth and honesty in her social community, but because she was not truthful in connection with this case, we will give little weight to the testimony of her character witnesses.

We also give little weight to her pro bono and volunteer activities. Based on her testimony, although she has performed pro bono work in a handful of cases, she has not done so in several years. Additionally, she testified about volunteer work in her community and with bar associations, but that testimony was too general and vague to provide us with any substantial facts that would mitigate her misconduct.

Respondent has received no prior discipline. Generally, the lack of a prior discipline is a mitigating factor. See In re Lewis, 138 Ill. 2d 310, 562 N.E.2d 198 (1990). However, in the present case, because Respondent has engaged in extensive misconduct over an extended period of time, we give this mitigating factor little weight.

Having considered the mitigating and aggravating factors, we must now recommend the appropriate sanction. The Administrator recommends Respondent be disbarred, and bases this recommendation on several cases. See In re Braner, 115 Ill. 2d 384, 504 N.E.2d 102 (1987); In re Crane, 96 Ill. 2d 40, 449 N.E.2d 94 (1983); In re Bartley, 96 SH 879, M.R. 15176 (Sept. 28, 1998). Respondent argued that the Administrator failed to prove any of the misconduct and no discipline should be imposed. Alternatively, she argues, if some misconduct was proven, a censure or reprimand should be imposed. See In re Wolf, 07 CH 49, M.R. 23192 (Sept. 22, 2009); In re Landis, 05 CH 69, M.R. 22970 (March 16, 2009); In re Rukavina, 07 CH 96 (pending before the Review Bd.). Because we have found that the Administrator proved all of the alleged misconduct, we cannot agree with Respondent's suggestion that she receive a reprimand or censure and find the cases she cites irrelevant.

After considering the proven misconduct, the aggravating and mitigating facts, the cases cited by the Administrator, and other relevant cases, we believe Respondent should be disbarred. We find the present case similar to Crane and Braner. Crane involved representation of the children of a woman who died as a result of a car accident. At the time of her death, three of the four children were minors. Crane represented the children in two lawsuits, one against a life insurance company and one against the owner of the truck that caused the accident. Both lawsuits were settled. Crane's fees were paid from the proceeds of the settlements, with approval of the probate court, and the shares of the minors were deposited into bank accounts, to

be distributed as they came of age. Subsequently, Crane believed that the children might have a medical malpractice claim, and with the consent of children, he filed a lawsuit. One of the children testified that Crane did not discuss attorney's fees for that lawsuit, and she believed he would receive a contingent fee. Crane testified that his clients agreed to pay him on an hourly basis, but he did not tell them the rate, obtain a retainer, or have a written fee agreement.

Crane collected his fee for the malpractice action from each of the children when they obtained their shares of the proceeds from the earlier settlements. In fact, he went to the bank with each of the children and collected a portion of their proceeds, in cash, when they either deposited or withdrew their funds. When the youngest child, David, turned 18, Crane and David went to court to obtain approval for the child to receive the money. On the way there, Crane instructed him not to mention anything about fees, and to "keep his mouth shut and go along with anything." After obtaining the court order, Crane accompanied David to the bank, and told him fill out a withdrawal slip for \$12,000 for his fees. After the bank official told them that any amount over \$10,000 would require special approval, David requested \$9,500, and Crane received the funds in cash. Crane declined to give David a receipt for the money because he wanted to avoid paying taxes on the money.

Crane had received court approved fees for the work he performed in the probate court, but he also took more than \$24,000 in additional fees from the children for the malpractice action. He testified that he spent 175 hours on the malpractice case, and performed other work for the children over the years.

The Court found that the additional fees Crane collected constituted overreaching and a violation of his fiduciary duties to his clients. Because three of his clients were minors, they had an additional degree of trust and confidence in Crane. The Court found that Crane "knew these

clients were young and lacked sophistication in the handling of financial and legal matters. Therefore, he should have taken every step to keep them informed of the matters he was handling for them and handled them in an above-board manner.” Id. at 58. The Court suspended Crane for three years. Id. at 65.

In Braner, the attorney failed to disclose pertinent information to the court in two separate proceedings, and deceived a state agency, his client’s mentally incompetent wife, and the court. While working as a trust officer for a bank, Braner was responsible for handling the conservatorship of Betty Booker’s estate. Betty had sustained brain damage in a car accident and was confined to a nursing home. Her estate consisted of a half interest in a house. Betty’s medical expenses were paid by her husband, James, and the Department of Public Aid (Department). In 1979, the Department filed a \$10,000 claim against the estate. In 1982, Braner left the bank and started a private practice. Braner, 115 Ill. 2d at 387.

Braner agreed to represent James in a divorce action and a claim against Betty’s estate for the amount he spent on her medical bills. Braner filed a petition in the probate court alleging that the estate owed James \$25,200, and requesting that Betty’s interest in the marital residence be conveyed to James as payment. Braner did not serve the Department with notice of the petition or inform the court of that claim. Id. at 388.

Braner also filed a divorce action on behalf of James. Subsequently, he filed an appearance and consent in the divorce action that was purportedly signed by Betty. Braner failed to inform the court that Betty was mentally incompetent. The court dissolved the marriage, transferred Betty’s interest in the house to James, and left Betty with nothing. Additionally, the Department could no longer recover on its claim against Betty’s estate. Id. at 389.

The Court found that Braner violated his duty to disclose pertinent facts to the court when he failed to disclose the Department's claim to the probate court, and failed to disclose Betty's mental condition to the divorce court. The Court cited a long-held principle that "[a] lawyer's 'high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusions.'" Id. at 392, quoting People ex rel. Healy v. Case, 241 Ill. 279, 283-84, 89 N.E. 638 (1909); see also In re Winthrop, 219 Ill. 2d 523, 848 N.E.2d 961 (2006). In the case before it, the Court found that the dissolution proceeding clearly demonstrated a violation of the requirement to disclose all material facts to the court. Braner, 115 Ill. 2d at 392. The court further found that Braner engaged in a scheme to further his own interests and the interests of James "in obtaining a divorce and defrauding an incompetent woman of her share of marital assets." Id. at 393. Braner was disbarred. Id. at 395.

In the present case, as in Crane, Respondent charged vulnerable clients additional attorney's fees without their consent, and in a manner in which they had little choice but to pay the fees. The sanction imposed in this case should be harsher than in Crane because it involves more clients and because there is additional misconduct relating to the Booth matter. As in Braner, Respondent was misleading and dishonest with the circuit court and deceptively orchestrated the sale of Evelyn's house. Her actions amounted to a scheme to defraud Booth for the benefit of her own clients.

Respondent has demonstrated she is unfit to practice law. She has shown that she has little regard for her clients and her ethical obligations. She put her clients in a position where they could not object to her fees and took advantage of them for her personal gain. She was dishonest with the bankruptcy court and the circuit court. She refused to acknowledge her misconduct and, in fact, gave less than truthful testimony at this disciplinary hearing. She has

learned nothing from her past actions, and we have reason to believe that she will repeat her misconduct if allowed to continue practicing law. We agree with the Court's statement in Feldman that we "cannot permit this Respondent to continue the practice of law, and thus invite the public to retain the purported services of one to whom the common obligations of his profession mean so little." In re Feldman, 89 Ill. 2d 7, 13-14, 431 N.E.2d 388 (1982) quoting In re Clark, 8 Ill. 2d 314, 321, 134 N.E.2d 281 91956).

Therefore, in light of Respondent's misconduct, and considering the aggravating and mitigating factors, and the relevant case law, we recommend that Respondent be disbarred.

Date Entered: November 6, 2009

Keith E. Roberts, Jr. ^{K+}
Keith E. Roberts, Jr., Chair, Harvey N.
Levin, and Robert Wilson, Hearing Panel
Members.

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* Ellen L. Johnson was initially assigned to this matter and participated on the January 14 and 15, 2009 hearing dates. Ms. Johnson was unable to attend the remainder of the hearing and Mr. Wilson was assigned to the matter.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

SUSAN GRACE CASTAGNOLI,

Attorney-Respondent,

No. 3123234.

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)
)
) Commission No. 07 CH 57
)
)
)

NOTICE OF FILING

TO: Ronald J. Broida
Counsel for Respondent
Broida & Associates, Ltd.
1250 East Diehl Road, Suite 108
Naperville, IL 60563-9338

PLEASE TAKE NOTICE that on December 5, 2008, I will file the Administrator's **MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**, to which is attached the proposed **SECOND AMENDED COMPLAINT**, copies of which are attached, by causing the original and four copies to be delivered to the Clerk of the Attorney Registration and Disciplinary Commission in Chicago, Illinois.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: J A Doppke Jr
James A. Doppke, Jr.

James A. Doppke, Jr.
Counsel for Administrator
One Prudential Plaza
130 East Randolph Drive, #1500
Chicago, Illinois 60601
Telephone: (312) 565-2600

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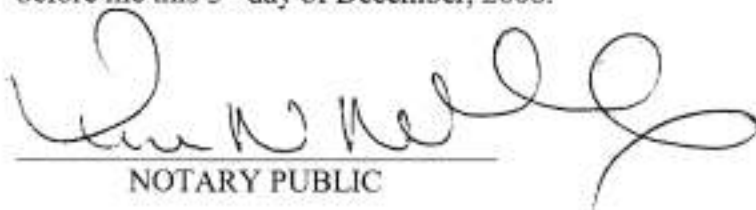
**ATTY REG & DISC COMM
CHICAGO**

PROOF OF SERVICE

I, Lorita Jordan, on oath state that I served a copy of a Notice of Filing and the Administrator's **MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** and **SECOND AMENDED COMPLAINT**, on the individual at the address shown on the foregoing Notice of Filing, by regular mail, proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox located at one Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois on December 5, 2008, at or before 5:00 p.m.


Lorita Jordan

Subscribed and sworn to
before me this 5th day of December, 2008.


NOTARY PUBLIC



BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:)
)
 SUSAN GRACE CASTAGNOLI,)
) Commission No. 07 CH 57
 Attorney-Respondent,)
)
 No. 3123234.)

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, James A. Doppke, Jr., pursuant to Supreme Court Rule 753(c)(5) and section 2-616(c) of the Illinois Code of Civil Procedure, moves for leave to file the attached Second Amended Complaint in this matter. In support, the Administrator states:

1. The Administrator's First Amended Complaint in this matter was filed on January 8, 2008. Respondent answered the complaint on January 29, 2008. Since that time, the parties have been engaging in extensive discovery, including by taking the depositions of the clients referred to in Count II of the First Amended Complaint. The Chair has previously ordered that discovery will close on December 19, 2008. A hearing is currently set for January 14 and 15, 2009.

2. Having nearly completed discovery in this matter, the Administrator requests leave to file a Second Amended Complaint. The Administrator seeks to do so in order to correct typographical errors and clarify factual matters contained in the First Amended Complaint; to amend the allegations of Counts I and II so that they more closely conform the pleadings to the expected proofs in this matter; and, with respect to the matters referred to in Counts I and II, to allege that

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DEC - 5 2008

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Respondent overreached the attorney-client relationship, exerted undue influence, breached her fiduciary duties to her clients, and violated Rule 1.5(a) of the Rules of Professional Conduct, based on the same factual matters alleged in the First Amended Complaint.

A. Factual Amendments – Count I

3. The Administrator seeks leave to amend Count I of the First Amended Complaint, in order to conform the allegations of the Complaint more closely to the expected proofs in this matter.

For example, the proposed Second Amended Complaint:

- a. clarifies that the Olsens paid Respondent a fee of \$2,700 for her representation through the closing of their case (paragraph one);
- b. correctly alleges that on June 23, 2005, Respondent filed a Motion to Refinance the Olsens' residence (paragraph two);
- c. states the exact text of the court's July 8, 2005 order (paragraph two);
- d. states the exact terms of the payoff letters issued by the office of Glenn B. Stearns (paragraphs three and four);
- e. deletes references to Option One Mortgage Corporation and substitutes the proper party, namely Professional National Title Network (paragraph six);
- f. correctly alleges the manner in which Respondent requested and received the \$8,500 fee from the Olsens (paragraphs eight and nine);
- g. clarifies the relevant statutory authority applicable to compensation of attorneys in Chapter 13 cases (paragraphs 10 through 12);
- h. clarifies the allegations relating to Respondent's failure to seek court approval for additional compensation in the Olsen case (paragraphs 13 and 14);
- i. clarifies the manner in which Stearns became aware of Respondent's conduct (paragraph 18); and

- j. correctly alleges that Respondent was required to pay the Olsens \$2,700 as a refund of her fee, not Stearns (paragraph 20).

B. Factual Amendments – Count II

4. In paragraphs 25 and 27 of Count II of the proposed Second Amended Complaint, the Administrator correctly alleges that Respondent entered into a Model Retention Agreement with all but five of the debtors referenced in that Count (as opposed to all of the debtors so referenced).

5. Also, while the proposed Second Amended Complaint does not allege a new factual cause of action from that set forth in the First Amended Complaint, it clarifies the allegations of the First Amended Complaint, and provides additional information regarding the terms of the retainer agreements between Respondent and her clients; the record of the respective bankruptcy cases with respect to Respondent's fees; and the state of her clients' knowledge of the additional fees Respondent received from the proceeds of their refinancing transactions. The additional information set forth in Count II of the proposed Second Amended Complaint is drawn from Respondent's own records (the retainer agreements), records of the United States Bankruptcy Court for the Northern District of Illinois, and the deposition testimony of the clients referred to in Count II.

6. The proposed Second Amended Complaint also omits references to, and allegations concerning, *In re Graening*, 04 B 5534.

C. Factual Amendments – Count III

7. Finally, paragraphs 38, 39, and 44 of Count III of the First Amended Complaint contained incorrect references to previous paragraphs, and those references have been corrected in the proposed Second Amended Complaint. The proposed Second Amended Complaint contains no substantive revisions to Count III.

D. Amendments to Charges – Counts I and II

8. The Administrator also seeks leave to amend Counts I and II of the First Amended Complaint to allege that Respondent overreached the attorney-client relationship, exerted undue influence, breached her fiduciary duties to her clients, and violated Rule 1.5(a) of the Rules of Professional Conduct. Based on his review of the information adduced in discovery in this matter, the Administrator believes that those allegations, as set forth in Counts I and II of the proposed Second Amended Complaint, will be established by the evidence presented at hearing.

9. Further, the amendments to the charges in Count II describe which charges apply to each of the several client matters referred to in Count II. That is, Count II of the proposed Second Amended Complaint clarifies that Respondent is charged with overreaching, undue influence, breach of fiduciary duty, and charging an excessive fee as to eleven of the cases referred to in Count II, and that the remaining charges apply to all of the cases referred to in Count II.

E. Argument

10. Illinois Supreme Court Rule 753(c)(5) provides, in relevant part, that proceedings before the Hearing Board shall be in accordance with the Code of Civil Procedure. 134 Ill.2d R. 753(c)(5).

11. The Illinois Code of Civil Procedure, 735 ILCS 5/2-616(a), provides that “at any time before final judgment amendments may be allowed on just and reasonable terms, [...] changing the cause of action or defense or adding new causes of action or defenses...”. Generally, Illinois courts liberally construe the terms of that statute “so that cases are decided on their merits and not on procedural technicalities.” *Trinity Bible Baptist Church v. Federal Kemper Ins. Co.*, 219 Ill. App. 3d 156, 578 N.E.2d 1375 (Ill.App. 5 Dist. 1991).

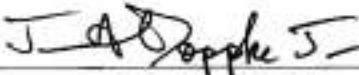
12. To grant the instant Motion would ensure that the Administrator's complaint in this matter more accurately alleges what the Administrator believes the evidence will show when presented at hearing, and that the complaint more fully sets forth each of the applicable violations of the Rules of Professional Conduct that the Administrator believes the evidence will establish. Further, the Administrator does not believe that the proposed amendments will require the parties to engage in significant additional discovery, or that they will require a continuance of the hearing in this matter or otherwise interpose any delay.

13. A proposed order is attached.

WHEREFORE, the Administrator requests that the Hearing Board grant her leave to file the attached Second Amended Complaint, and allow Respondent an appropriate period of time to answer the complaint as amended.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: 

James A. Doppke, Jr.

James A. Doppke, Jr.
Counsel for Administrator
130 East Randolph Drive, #1500
Chicago, Illinois 60601
Telephone: (312) 565-2600

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

SUSAN GRACE CASTAGNOLI,

Attorney-Respondent,

No. 3123234.

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Commission No. 07 CH 57

ORDER

Upon the Administrator's Motion for leave to file her Second Amended Complaint, Respondent having received due notice, IT IS HEREBY ORDERED THAT:

1. The motion is allowed, and the Administrator's Second Amended Complaint is filed instant.
2. Respondent shall answer or otherwise plead to the Administrator's Second Amended Complaint on or before _____, 2008.

Keith E. Roberts, Jr., Chair
Hearing Panel

Date Entered: _____

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

SUSAN GRACE CASTAGNOLI,

Attorney-Respondent,

No. 3123234.

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Commission No. 07 CH 57

SECOND AMENDED COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, James A. Doppke, Jr., pursuant to Supreme Court Rule 753(b), complains of Respondent Susan Grace Castagnoli, who was licensed to practice law in Illinois on April 26, 1979, and alleges that Respondent has engaged in the following conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute:

COUNT I

(Overreaching, undue influence, charging an excessive fee, and dishonest conduct in relation to Wilfred and Maureen Olsen)

1. On November 15, 2004, Respondent filed a Chapter 13 bankruptcy case on behalf of Wilfred and Maureen Olsen ("the Olsens") in the Northern District of Illinois. The matter was docketed as *In re Olsen*, 04 B 42333. The Olsens paid Respondent a fee of \$2,700 for her representation through the closing of their case.

2. On June 23, 2005, Respondent filed a Motion to Refinance the Olsens' residence in case number 04 B 42333. On July 8, 2005, the court in case number 04 B 42333 entered an order allowing the Olsens to refinance their residence and further providing that the Chapter 13

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trustee would be paid in full from the proceeds of the refinancing transaction after payment of any mortgages, liens, and usual and customary costs of sale.

3. On or about July 19, 2005, Glenn B. Stearns ("Stearns"), the Trustee appointed in case number 04 B 42333, or his agent or designee, caused a payoff letter to be sent to Respondent in relation to the Olsens' case. The payoff letter indicated that the amount needed to pay off the Olsens' Chapter 13 plan by August 30, 2005 was \$50,910. Respondent received the letter shortly after it was sent.

4. On or about March 14, 2006, Stearns, or his agent or designee, caused a second payoff letter to be sent to Respondent in connection with the Olsens' case. The second payoff letter indicated that the amount needed to pay off the Olsens' Chapter 13 plan by April 15, 2006 was \$34,270. Respondent received the letter shortly after it was sent.

5. Prior to the closing of the Olsens' refinancing transaction on March 27, 2006, Respondent, or someone acting at her direction, created a letter that was similar to Stearns' July 19, 2005 letter (referred to in paragraph three, above), purporting to be a payoff letter from Stearns, but purporting to show that the amount needed to pay off the Olsens' Chapter 13 plan by April 30, 2006 was \$26,164.

6. Prior to March 27, 2006, Respondent, or someone acting at her direction, caused the letter referred to in paragraph five, above, to be sent to Professional National Title Network, the title company through which the Olsens' refinancing transaction was closed, or its agent or designee.

7. As Respondent knew, the statement in the letter referred to in paragraph five, above, indicating that the amount required to pay the Olsens' Chapter 13 plan in full was \$26,164 was false, and Respondent knew it was false when made. In fact, the amount required to

pay off the Olsens' Chapter 13 plan in full by April 15, 2006 was \$34,270, as indicated in Stearns' March 14, 2006 letter, referred to in paragraph four, above.

8. Prior to the March 27, 2006 closing of the Olsens' refinancing transaction, Respondent requested an additional fee of \$8,500 from the Olsens. The Olsens did not specifically agree to pay the additional fee at that time.

9. At the March 27, 2006 closing, Respondent caused a copy of the RESPA statement that had been prepared in connection with the transaction to be provided to the Olsens. The RESPA statement disclosed that a fee of \$8,500 fee would be paid to Respondent from the proceeds of the transaction. Although Respondent did not disclose the basis of the \$8,500 fee to them, the Olsens signed the RESPA statement indicating that Respondent would be paid the additional \$8,500 fee, and Respondent received payment of that amount from the proceeds of the Olsens' refinancing transaction.

10. Between 2004 and 2006, 11 U.S.C. §329 provided, *inter alia*, that:

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—

- (1) the estate, if the property transferred—
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
- (2) the entity that made such payment.

11. Between 2004 and 2006, 11 U.S.C. §330(a)(4)(B) provided, *inter alia*, that:

in a Chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

12. Between 2004 and 2006, Rule 2016 of the Federal Rules of Bankruptcy Procedure provided, *inter alia*, as follows:

(a) Application for Compensation or Reimbursement

An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. [...]

(b) Disclosure of Compensation Paid or Promised to Attorney for Debtor

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

13. At no time on or before March 27, 2006 did Respondent file an application or other document with the court presiding in case number 04 B 42333 seeking compensation derived from the Olsens' refinancing proceeds, or seeking compensation in an amount in excess of the \$2,700 previously paid to her in connection with the Olsens' case.

14. At no time prior to Respondent's receiving the funds derived from the Olsens' refinancing proceeds did the court presiding case number 04 B 42333 enter an order allowing Respondent to receive any compensation derived from the Olsens' refinancing proceeds, or to

receive compensation in an amount in excess of the \$2,700 previously paid to her in connection with the Olsens' case.

15. Respondent received the \$8,500 payment from the proceeds of the Olsens' refinancing transaction without the approval of the court in case number 04 B 42333.

16. After the March 27, 2006 closing of the Olsens' refinancing transaction, Respondent caused various materials relating to the transaction to be sent to Stearns, or his agent or designee, including a check in the amount of \$26,164, a copy of the altered payoff letter referred to in paragraph five, above, and the first page of the RESPA statement prepared in connection with the transaction.

17. As Respondent knew, the second page of the RESPA statement prepared in connection with the transaction indicated that she had received a fee of \$8,500 from the proceeds of the transaction. By failing to send the second page of the RESPA statement to Stearns, Respondent intended to, and did, conceal from Stearns the fact that she had received an additional fee in relation to the Olsens.

18. On or about April 12, 2006, Stearns became aware of Respondent's conduct as described in paragraphs 5 through 17, above, when his office received a check for \$26,164 from the proceeds of the Olsens' refinancing transaction.

19. On or about May 11, 2006, Stearns caused a petition for rule to show cause to be filed in case number 04 B 42333. In the petition, Stearns alleged, *inter alia*, that by reason of the conduct described above, Respondent had caused the Olsens' bankruptcy estate to be deprived of \$8,106 (the difference between the actual payoff amount of \$34,270 and the altered payoff amount of \$26,164), and requested that the court order Respondent to pay that amount to Stearns

in satisfaction of the Olsens' Chapter 13 plan. Stearns also requested that the court hold Respondent in contempt, and that it order her to pay a sanction in the amount of Stearns' reasonable attorneys' fees.

20. On August 8, 2006, following an evidentiary hearing, the Bankruptcy Court for the Northern District of Illinois held Respondent in contempt of court, pursuant to Stearns' petition for rule to show cause. Further, on August 28, 2006, the court entered an order requiring Respondent to pay \$8,500 to the Olsens as a refund of the fee described in paragraph eight, above; requiring her to pay \$3,125 to Stearns as a sanction; requiring her to pay \$2,700 to the Olsens as a refund of the fee she originally charged the Olsens in connection with their bankruptcy petition; barring her from appearing in the bankruptcy court located in Joliet, Illinois, for six months, beginning August 11, 2006; and referring the matter to the Executive Committee of the District Court for the Northern District of Illinois for its consideration of Respondent's conduct.

21. As of March 28, 2007, the date that Panel D of the Commission Inquiry Board voted to authorize the filing of a complaint in this matter, Respondent had paid the appropriate parties the amounts described in paragraph 20, above.

22. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. overreaching the attorney-client relationship;
- b. undue influence;
- c. breach of fiduciary duty;
- d. charging an excessive fee, in violation of Rule 1.5(a) of the Rules of Professional Conduct;

- e. in the course of representing a client, making a statement of material fact to a third person which statement the lawyer knows or reasonably should know is false, in violation of Rule 4.1(b) of the Illinois Rules of Professional Conduct;
- f. conduct involving dishonesty, deceit, fraud, or misrepresentation, in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct;
- g. conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and
- h. conduct which tends to defeat the administration of justice or bring the courts or legal profession into disrepute in violation of Supreme Court Rule 770.

COUNT II

*(Overreaching, undue influence, charging excessive fees, and dishonest conduct
in bankruptcy matters)*

23. Between 2001 and 2006, Respondent represented individual and joint debtors in at least the following Chapter 13 bankruptcy cases filed in the Northern District of Illinois:

TABLE 1

	Name of Debtor(s)	Bankruptcy Case Name	Bankruptcy Case Number
1.	Shirl L. Healy	In re Healy	03 B 16706
2.	John J. Rosa	In re Rosa	02 B 21162
3.	Monica Sanjurjo	In re Sanjurjo	03 B 5736
4.	Michael Frees Andrea Frees	In re Frees	02 B 15683
5.	Michelle Kline Mark Kline	In re Kline	01 B 34316
6.	Thomas Eaves Karen Eaves	In re Eaves	04 B 28560
7.	Donald Wells Shirley Wells	In re Wells	04 B 4528
8.	Randy Reusch	In re Reusch	03 B 43812
9.	Lori Federman Christian Federman	In re Federman	03 B 38210
10.	Kimberle Andreas	In re Andreas	03 B 39826
11.	Robert Rowe Barbara Rowe	In re Rowe	04 B 25714
12.	Lloyd Meinke	In re Meinke	04 B 7348
13.	Irene Cegin	In re Cegin	04 B 37642

24. By virtue of Respondent's agreements to represent the debtors in the cases referred to in Table 1, above, Respondent owed fiduciary duties to the debtors that required her to act with the highest degree of honesty and loyalty toward them, to avoid placing her own interests above those of the debtors, and to exercise the utmost good faith and fair dealing with respect to the debtors.

25. In each of the cases referred to in lines 1 through 5 of Table 1, above, Respondent entered into fee agreements with her clients that were drafted by Respondent, or at her direction. In the agreements, Respondent provided estimates of the fees she expected to charge each client,

and further agreed that “[i]f additional services are needed, there will be an extra charge as outlined in this retainer agreement. These fees will be billed to you on a monthly basis and are due and payable only if a Federal Court Judge of competent jurisdiction approves the additional fees or if your case fails and is dismissed.”

26. The retainer agreements between Respondent and the clients whose cases are referred to in lines 1 and 3 of Table 1, above, further provided that Respondent agreed to provide various services for those clients, including, *inter alia*, to “[p]repare, file, and serve necessary motions to buy or sell property and to incur debt.”

27. In each of the cases referred to in lines 6 through 13 of Table 1, above, Respondent entered into fee agreements with her clients that were entitled “Model Retention Agreement.” The Model Retention Agreement provided, *inter alia*, that the client agreed to pay Respondent an amount of fees as compensation for her services either through the time that a Chapter 13 plan was confirmed, or through the time that the case was concluded.

28. The Model Retention Agreement further provided that whether the client paid Respondent through confirmation of the Chapter 13 plan or through the conclusion of the case, Respondent would be permitted to apply to the court in writing for additional compensation “in extraordinary circumstances, such as extended evidentiary hearings or appeals.”

29. The Model Retention Agreement further provided that Respondent agreed to perform various services for her clients, including, *inter alia*, to “[p]repare, file, and serve necessary motions to buy or sell property and to incur debt.”

30. Between 2001 and 2006, 11 U.S.C. §329 provided, *inter alia*, that:

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made

after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—

- (1) the estate, if the property transferred—
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
- (2) the entity that made such payment.

31. Between 2001 and 2006, 11 U.S.C. §330(a)(4)(B) provided, *inter alia*, that:

in a Chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

32. Between 2004 and 2006, Rule 2016 of the Federal Rules of Bankruptcy Procedure provided, *inter alia*, as follows:

(a) Application for Compensation or Reimbursement

An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. [...]

(b) Disclosure of Compensation Paid or Promised to Attorney for Debtor

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

33. In each of the cases referred to in Table 1, above, the United States Bankruptcy Court for the Northern District of Illinois entered orders allowing Respondent to receive fees pursuant to fee applications filed by Respondent, as follows:

TABLE 2

	Case Name	Case Number	Date Fee Application Filed	Fees Requested in Application (total)	Date of Order Allowing Application	Fees Allowed (less amounts already paid)	Nature of Fees Allowed
1.	In re Healy	03 B 16706	2/3/2004	\$3,455.50	4/27/2004	\$2,090	Through conclusion of case
2.	In re Rosa	02 B 21162	11/7/2002	\$3,116	12/6/2002	\$2,600	Through confirmation of Chapter 13 plan
3.	In re Sanjurjo	03 B 5736	11/19/2003	\$2,995	2/6/2004	\$1,490	Through confirmation of Chapter 13 plan
4.	In re Frees	02 B 15683	12/9/2002	\$3,417.50	1/22/2003	\$695	Through confirmation of Chapter 13 plan
5.	In re Kline	01 B 34316	2/27/2002	\$1,822.50	3/27/2002	\$1,212.50	Through confirmation of Chapter 13 plan
6.	In re Eaves	04 B 28560	8/4/2004	\$2,700	11/5/2004	\$1,700	Through conclusion of case
7.	In re Wells	04 B 4528	3/11/2004	\$2,700	5/19/2004	\$2,894	Through conclusion of case
8.	In re Reusch	03 B 43812	12/8/2003	\$2,700	1/28/2004	\$1,685	Through conclusion of case
9.	In re Federman	03 B 38210	5/6/2004	\$2,700	8/19/2004	\$1,700	Through conclusion of case

TABLE 2 Continued

	Case Name	Case Number	Date Fee Application Filed	Fees Requested in Application (total)	Date of Order Allowing Application	Fees Allowed (less amounts already paid)	Nature of Fees Allowed
10.	In re Andreas	03 B 39826	12/15/2003	\$2,700	12/16/2003	\$1,905	Through confirmation of Chapter 13 plan
11.	In re Rowe	04 B 25714	11/6/2004	\$2,700	12/10/2004	\$1,699	Through conclusion of case
12.	In re Meinke	04 B 7348	4/9/2004	\$2,700	6/4/2004	\$1,794	Through conclusion of case
13.	In re Cegin	04 B 37642	11/29/2004	\$2,700	2/4/2005	\$1,700	Through conclusion of case

34. In each of the cases referred to in Tables 1 and 2, above, Respondent's clients refinanced their residences during the pendency of their Chapter 13 cases. Respondent filed motions on behalf of her clients in the cases referred to in Tables 1 and 2, above (excluding *In re Rosa*, case number 02 B 21162, *see* Table 2, line 2), requesting that the court grant her clients leave to refinance their residences, and those motions were granted by the court.

35. In each of the cases referred to in Tables 1 and 2, above, Respondent's clients used at least a portion of the funds they obtained from the refinancing of their residences in order to pay off their Chapter 13 plans.

36. In each of the cases referred to in Tables 1 and 2, above, Respondent received fees derived or paid from the proceeds of her clients' refinancing transactions, as follows:

TABLE 3

	Client Name	Case Number	Fees to Respondent from Bankruptcy	Nature of Fees to Respondent from Bankruptcy	Refinancing Closing Date	Fees to Respondent from Refinancing Proceeds
1.	Shirl L. Healy	03 B 16706	\$2,700	Through conclusion of the case	5/19/2004	\$2,500
2.	John J. Rosa	02 B 21162	\$2,600	Through confirmation of Chapter 13 plan	12/23/2004	\$2,500
3.	Monica Sanjurjo	03 B 5736	\$2,200	Through confirmation of Chapter 13 plan	7/21/2004	\$4,200
4.	Michael Frees Andrea Frees	02 B 15683	\$2,100	Through confirmation of Chapter 13 plan	1/14/2005	\$2,500
5.	Michelle Kline Mark Kline	01 B 34316	\$1,823	Through confirmation of Chapter 13 plan	3/8/2005	\$2,500
6.	Thomas Eaves Karen Eaves	04 B 28560	\$2,700	Through conclusion of the case	12/23/2004	\$666.53
7.	Donald Wells Shirley Wells	04 B 4528	\$2,700	Through conclusion of the case	3/8/2005	\$2,500
8.	Randy Reusch	03 B 43812	\$2,700	Through conclusion of the case	7/20/2005	\$7,500
9.	Lori Federman Christian Federman	03 B 38210	\$2,700	Through conclusion of the case	8/23/2005	\$1,750
10.	Kimberle Andreas	03 B 39826	\$2,700	Through conclusion of the case	8/24/2005	\$3,500
11.	Robert Rowe Barbara Rowe	04 B 25714	\$2,700	Through conclusion of the case	8/25/2005	\$300
12.	Lloyd Meinke	04 B 7348	\$2,700	Through conclusion of the case	3/27/2006	\$1,350
13.	Irene Cegin	04 B 37642	\$2,700	Through conclusion of the case	3/28/2006	\$5,262

37. At no time prior to the closings of the refinancing transactions referred to in Table 3, above, did Respondent advise the clients referred to in lines 1, 6, 7, 11, and 13 that she would be charging or collecting any additional fees from the proceeds of their refinancing transactions, or inform them of the amounts of any such fees.

38. At no time prior to, during, or after the closings of the refinancing transactions for the clients referred to in lines 3, 4, 8, 9, and 10, of Table 3, above, did Respondent inform those clients that she would be charging or collecting any additional fees from the proceeds of their refinancing transactions, or inform them of the amounts of any such fees, other than by causing copies of the RESPA statements to be provided to her clients. At no time did Respondent direct those clients' attention to the portions of the RESPA statements prepared in connection with their refinancing transactions that indicated that Respondent would receive the fees referred to in Table 3, above.

39. At no time prior to the closings of refinancing transactions referred to in Table 3, above, did Respondent explain to her clients (except for those referred to in lines 2 and 5) the basis for any fees she would be charging or collecting from the proceeds of their refinancing transactions.

40. At no time prior to receiving the funds derived from her clients' refinancing proceeds as described in Table 3, above, did Respondent file any application or other document with the court presiding in any of the cases referred to in Table 3, above, or with the trustee appointed in any of the cases, seeking leave of the court to receive any compensation derived from her clients' refinancing proceeds; seeking leave of the court to receive compensation in an amount in excess of the amounts allowed pursuant to the orders referred to in Table 2, above; or otherwise disclosing that she had received any additional compensation from her clients.

41. At no time prior to Respondent's receipt of the funds derived from her clients' refinancing proceeds as described in Table 3, above, did the court presiding in any of the cases referred to in Table 3, above, enter an order allowing Respondent to receive any compensation derived from her clients' refinancing proceeds; allowing Respondent to receive compensation in an amount in excess of the amounts allowed pursuant to the orders referred to in Table 2, above; or otherwise reflecting that Respondent had disclosed that she had received any additional compensation from her clients.

42. At no time prior to receiving the funds derived from her clients' refinancing proceeds described in Column 7 of Table 3, above, were any of the cases referred to in lines 1 through 5 of Table 3, above, dismissed.

43. Following the closings of each of the refinancing transactions described in Table 3, above, Respondent communicated with the office of Glenn B. Stearns, the Chapter 13 Trustee appointed in each of those cases, including by sending Stearns' office a copy of the first page of the RESPA statement prepared in connection with each transaction.

44. As Respondent knew, the second page of the RESPA statement prepared in connection with each of the transactions described in Table 3, above, indicated that she had received fees derived or paid from the proceeds of the transaction. By failing to send the second page of the RESPA statements to Stearns, Respondent intended to, and did, conceal from Stearns the fact that she had received additional fees from her clients in the cases described in Tables 1, 2, and 3, above.

45. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. overreaching the attorney-client relationship (as to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin);
- b. undue influence (as to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin);
- c. breach of fiduciary duty (as to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin);
- d. charging an excessive fee, in violation of Rule 1.5(a) of the Rules of Professional Conduct (as to clients Healy, Sanjurjo, Frees, Eaves, Wells, Reusch, Federman, Andreas, Rowe, Meinke, and Cegin);
- e. in the course of representing a client, making a statement of material fact to a third person which statement the lawyer knows or reasonably should know is false, in violation of Rule 4.1(b) of the Illinois Rules of Professional Conduct (as to all clients and cases referred to in this Count);
- f. conduct involving dishonesty, deceit, fraud, or misrepresentation, in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct (as to all clients and cases referred to in this Count);
- g. conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct (as to all clients and cases referred to in this Count); and
- h. conduct which tends to defeat the administration of justice or bring the courts or legal profession into disrepute in violation of Supreme Court Rule 770 (as to all clients and cases referred to in this Count).

COUNT III

(Dishonest conduct in relation to the estate of Evelyn Spencer Booth)

46. In November 2003, Respondent began representing Evelyn Spencer Booth ("Evelyn") in connection with a petition for dissolution of marriage filed by Evelyn's husband,

Richard H. Booth ("Richard") in a matter entitled *In re Marriage of Booth*, 03 D 2544 (Circuit Court of DuPage County).

47. On January 22, 2004, Evelyn committed suicide at her residence, which was located at 339 Rolland Drive, Glendale Heights ("the Rolland Drive property"). At the time of her death, Evelyn was the record owner of the Rolland Drive property.

48. At the time of her death, Evelyn's will named Richard the executor of her estate, and left him a life estate "in the real property which is our principal residence at the moment of [her] death."

49. Following Evelyn's death, Respondent met with Brian and David Elwart ("the Elwarts"), Evelyn's sons from a previous marriage. Respondent agreed to represent the Elwarts in matters concerning Evelyn's estate.

50. Between January and April 2004, Respondent participated with the Elwarts in causing the Rolland Drive property to be listed for sale. During that time, Guillermina Nuñez ("Nuñez") agreed to purchase the Rolland Drive property for \$160,000, and the closing of that transaction was scheduled for April 15, 2004. Respondent agreed to represent the Elwarts in connection with the transaction involving Nuñez, and to act as a title agent relating to the transaction in her capacity as agent for Professional National Title Network ("PNTN").

51. Between March and April 2004, Respondent communicated with attorney Douglas P. Trent, who had represented Richard in case number 03 D 2544. In those communications, Trent requested that Respondent provide him with information regarding Evelyn's estate. At no time during those communications did Respondent advise Trent of Nuñez' agreement to purchase the Rolland Drive property, or of the fact that the closing of that transaction had been scheduled for April 15, 2004.

52. On or shortly before April 15, 2004, Respondent prepared a warranty deed in which the Elwarts purported to convey the Rolland Drive property to Nuñez. The Elwarts executed the deed individually at Respondent's direction.

53. On or about April 15, 2004, an employee of PNTN prepared a RESPA statement relating to the Elwarts' sale of the Rolland Drive property to Nuñez. The RESPA statement listed "The Estate of Evelyn Spencer Booth" as the seller of the property.

54. As Respondent knew, as of April 15, 2004, the Elwarts had no ownership interest in the Rolland Drive property which would have allowed them to convey the property to Nuñez.

55. Further, as Respondent knew, at no time prior to April 15, 2004 had Richard disclaimed or otherwise relinquished the life interest in the Rolland Drive property granted to him by Evelyn's will, as described in paragraph 48, above.

56. On April 15, 2004, the closing of the sale of the Rolland Drive property to Nuñez was held. Respondent attended the closing on behalf of the Elwarts, and caused the deed referred to in paragraph 52, above, to be delivered to Nuñez.

57. On or shortly after April 15, 2004, Respondent received \$32,500 from the proceeds of the sale of the Rolland Drive property. That amount was disclosed on the RESPA statement as Respondent's fee for representing the Elwarts in connection with the transaction.

58. At no time between March and April 2004 did Respondent inform Trent or Richard that she had participated in listing the Rolland Drive property for sale; that Nuñez had executed a contract to purchase the property; or that the sale of the property had closed on April 15, 2004. By failing to disclose that information, Respondent intended to mislead Trent, and Richard, concerning the status of the Rolland Drive property.

59. On June 17, 2004, Trent, on Richard's behalf, caused a probate proceeding regarding Evelyn's estate to be filed. The matter was docketed in the Circuit Court of DuPage County as *In re the Estate of Evelyn S. Booth*, 2004 P 626.

60. Prior to September 9, 2004, Trent filed a petition to recover estate assets on Richard's behalf in case number 2004 P 626. In the petition, Trent alleged, *inter alia*, that Richard was the executor of Evelyn's estate, and that he was entitled to possession of the Rolland Drive property by virtue of the life estate granted by Evelyn's will. Trent caused notice of the petition to be sent to Respondent.

61. On September 9, 2004, Respondent appeared for a hearing in connection with the petition described in paragraph 60, above, and she requested and was granted leave to file a response to the petition. Attorney Paul J. Marzano appeared on Trent's behalf at the September 9, 2004 hearing.

62. Nowhere in her response to the petition, and at no time during the September 9, 2004 hearing, did Respondent state that the Rolland Drive property had been sold to Nuñez, or that she had represented the Elwarts in connection with that transaction. By failing to disclose that information, Respondent intended to mislead Richard, and the court in case number 2004 P 626, concerning the status of the Rolland Drive property.

63. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, deceit, fraud, or misrepresentation, in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct;
- b. conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

- c. conduct which tends to defeat the administration of justice or bring the courts or legal profession into disrepute in violation of Supreme Court Rule 770.

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: 
James A. Doppke, Jr.

James A. Doppke, Jr.
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Chicago, Illinois 60601
(312) 565-2600

Susan Grace Castagnoli

as of 2/21/2023 9:27:39 AM

Full Licensed Name	Susan Grace Castagnoli
Full Former Name(s)	None
Registered Address	Law Office of Susan G. Castagnoli P.C. 1119 North Washington Street Naperville, Illinois 60563-2766
Registered Phone	(630) 717-1594

Date Admitted	April 26, 1979
Illinois Registration Status	Not authorized to practice law due to discipline and has not demonstrated required MCLE compliance – Last Registered Year: 2010
Malpractice Insurance	No malpractice report as attorney is disciplined

Public Record of Discipline and Pending Proceedings

Case(s) below are identified by caption and Commission case number. If there is more than one case, the cases are listed from most recent to

oldest. A case may have more than one disposition or more than one component to a disposition, in which case each disposition and component is also listed separately within that case record, again in an order from most recent to oldest.

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In re Susan Grace Castagnoli, 07CH0057

(One of multiple dispositions on this case)

Disposition	Disbarment
Effective Date of Disposition	05/18/2011
End Date of Disposition	No disposition end date scheduled at this time. Discipline continues until further order of the Court.
Definition of Disposition	Disbarment is a determination that the lawyer has engaged in misconduct warranting the most serious sanction. The disbarred lawyer is not authorized to practice law during the period of the disbarment and may not return to the practice of law unless and until he or she has demonstrated his or her rehabilitation, good character, and current knowledge of the law in a subsequent reinstatement case, which may not be filed until five years after the effective date of the disbarment.

Case Summary	Ms. Castagnoli, who was licensed in 1979, was disbarred. She exerted undue influence over clients, charged excessive fees without authorization from the bankruptcy court and, in some cases, without her clients' knowledge or consent, and engaged in dishonest conduct. She was suspended on an interim basis and until further order of the Court on April 27, 2010.
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In re Susan Grace Castagnoli, 07CH0057

(One of multiple dispositions on this case)

Disposition	Interim suspension until further order of the Court during pendency of disciplinary proceedings
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Effective Date of Disposition	04/27/2010
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End Date of Disposition	05/18/2011
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Definition of Disposition	An interim suspension reflects the determination of the Supreme Court that a lawyer should be suspended during the pendency of a disciplinary proceeding. In imposing interim suspension, the Court orders that the lawyer be suspended until further order of the Court and may impose such conditions as the Court deems necessary. The lawyer is not authorized to practice law during the period of the interim suspension. The Court may terminate the interim suspension upon imposition of final discipline or under other circumstances as the Supreme Court deems just.
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Case Summary	Order entered on April 27, 2010. Ms. Castagnoli, who was licensed in 1979, was suspended on an interim basis and until further order of the Court. The Hearing Board earlier found that she overreached an attorney-client relationship, exerted undue influence on clients, charged in excessive fees without authorization from the bankruptcy court and, in some cases, without her clients' knowledge or consent, and engaged in dishonest conduct.
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