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DISCIPLINARY  
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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
**SHAWNA M. MIRGHANBARI,**  
Lawyer (Bar No. 25059).

Proceeding No. 16#00022  
STIPULATION TO REPRIMAND

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Disciplinary Counsel M Craig Bray and Respondent lawyer Shawna M. Mirghanbari, who is represented by lawyer Sam Franklin.

Respondent understands that she is entitled under the ELC to a hearing, to present exhibits and witnesses on her behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that she is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to her. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the

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1 risk, time, and expense attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on October 17,  
4 1995.

5 **II. STIPULATED FACTS**

6 2. Tamaki (Tami) Kikuchi is 92 years old, began suffering memory loss in 2006, and  
7 was diagnosed with dementia in 2008. She is Respondent's great aunt.

8 3. Tami's son and Respondent's uncle, Stobbie Kikuchi (Stobbie), began managing  
9 Tami's personal finances in 2008 and has a financial power of attorney for Tami and at all times  
10 relevant acted in that capacity as the designated power of attorney, "DPOA".

11 4. Tami dated Bill Endo, who had access to her financial accounts, until sometime in  
12 2008.

13 5. Stobbie discovered that Endo may have written checks on Tami's accounts without  
14 permission and diverted assets from a trust Tami had established for Stobbie.

15 6. In January 2009, Tami hired Respondent to investigate the suspected theft.

16 7. On February 4, 2009, Tami, Stobbie as DPOA, Respondent and her husband, Jason  
17 Pittman, executed a promissory note that Respondent drafted, which operated to loan  
18 Respondent and her husband \$135,000 from Tami.

19 8. All of the parties referenced in paragraph 7 above agreed to the following terms: the  
20 term for repayment of the loan was 30 years. The loan was unsecured. The loan document did  
21 not provide for penalty or a process for collection should Respondent and her husband fail to  
22 timely pay the loan or default.

23 9. While the loan document advised Tami that she had the opportunity to consult

1 independent counsel, it did not advise her that the loan could be discharged in bankruptcy.

2 10. After the loan document was executed, Respondent received the funds from Tami.

3 11. On December 10, 2010, Tami, Stobbie as DPOA, Respondent and her husband  
4 executed a second promissory note that Respondent drafted, which superseded the first note and  
5 loaned another \$85,000 to Respondent and her husband from Tami, representing a total debt of  
6 \$220,000.

7 12. As was the case with the first note, all of the parties referenced in Paragraph 7  
8 agreed to the following terms: the second note shortened the term for repayment of the debt to  
9 20 years. The total debt was unsecured. The note did not provide any penalty or process for  
10 untimely payment or default.

11 13. While the loan document advised Tami that she had the opportunity to consult  
12 independent counsel, it did not advise her that the loan could be discharged in bankruptcy.

13 14. After the second loan document was executed, Respondent received the funds from  
14 Tami.

15 15. On July 8, 2011, Tami, Stobbie as DPOA, Respondent and her husband executed a  
16 third promissory note that Respondent drafted, which superseded the second note and loaned  
17 another \$80,000 to Respondent and her husband, for a total debt of \$300,000.

18 16. As had been done on both prior occasions extending credit to the Respondent, all of  
19 the parties referenced in paragraph 7 above agreed to the following terms: the third note left the  
20 term of the loan at 20 years, but reduced the interest rate from 4.9 percent to 4.0 percent. At the  
21 time of all loans, the prime interest rate was 3.25 percent. The interest rates on savings accounts  
22 and certificates of deposits in which Tami had the money which was loaned to Respondent were  
23 both less than 1%. On each promissory note, Stobbie was the named successor beneficiary in

1 the event of Tami's death.

2 17. As with the two prior notes, the third note was unsecured, provided no penalty or  
3 process for untimely payment or default, and did not notify Tami that the loan could be  
4 discharged in bankruptcy.

5 18. Respondent received the \$80,000 from Tami.

6 19. The terms on which Respondent acquired the borrowed funds from Tami were not  
7 fair and reasonable to Tami, in particular, the lack of security, the lengthy term of the loans, and  
8 the lack of any process or penalty for late payment or default.

9 20. Tami likely did not receive the same advice from Respondent about loaning the  
10 funds that she would have received from a disinterested lawyer.

11 21. At the suggestion of Tami and DPOA Stobbie, all three notes provided that  
12 Respondent could reduce her debt to Tami by the amount of fees she billed for legal work done  
13 for Tami. This, in addition to Respondent's interest in receiving the funds from Tami, created a  
14 significant risk that Respondent's representation of Tami would be materially limited by her  
15 own personal interest.

16 22. Respondent performed substantial legal services for Tami as requested by Tami and  
17 DPOA Stobbie, and substantially completed the stated purposes of the engagement when she  
18 was directed to discontinue her investigation of a claim against William Endo. Respondent's  
19 representation of Tami ended on or about March 7, 2012.

20 23. Respondent repaid to Tami cash payments in a total amount of \$ 19,800.

21 24. On May 12, 2012, Tami told Respondent that she wished to forgive the loans.

22 25. On August 1, 2012, Tami and Stobbie voluntarily initialed a handwritten addendum  
23 to the third note indicating that the loans were deemed satisfied in full even though they had not

1 | been fully repaid.

2 | 26. On August 13, 2012, Stobbie expressed remorse over forgiving the debt. After  
3 | discussing the matter, Respondent gave Stobbie \$1,100, which he gave to Tami. Later that day,  
4 | Tami and Stobbie verbally again reaffirmed their willingness to forgive the loans.

5 | 27. In February 2013, Stobbie hired a lawyer in attempt to set aside the loan forgiveness  
6 | and recover the loaned funds from Respondent.

7 | 28. Respondent immediately volunteered to resume payments on the third note on the  
8 | original terms. Stobbie's lawyer sought to accelerate repayment. No formal agreement for  
9 | repayment was ever reached.

10 | 29. Respondent and her husband petitioned for bankruptcy on May 15, 2013. They  
11 | received a discharge of debts on August 20, 2013, which discharged any potential remaining  
12 | debt to Tami as well as other debts the couple owed.

13 | **III. STIPULATION TO MISCONDUCT**

14 | 30. By taking loans from Tami on terms that were not fair and reasonable to her,  
15 | Respondent violated RPC 1.8(a).

16 | 31. By taking loans from Tami with provision that legal fees she billed could be debited  
17 | from the debt, Respondent created a significant risk that her representation of Tami would be  
18 | materially limited by her own personal interest, and thereby violated RPC 1.7(a).

19 | **IV. PRIOR DISCIPLINE**

20 | 32. Respondent has no prior discipline.

21 | **V. APPLICATION OF ABA STANDARDS**

22 | 33. The following American Bar Association Standards for Imposing Lawyer Sanctions  
23 | (1991 ed. & Feb. 1992 Supp.) apply to this case:

1 4.3 Failure to Avoid Conflicts of Interest

2 4.31 Disbarment is generally appropriate when a lawyer, without the  
3 informed consent of client(s):

4 (a) engages in representation of a client knowing that the  
5 lawyer's interests are adverse to the client's with the intent  
6 to benefit the lawyer or another, and causes serious or  
7 potentially serious injury to the client; or

8 (b) simultaneously represents clients that the lawyer knows  
9 have adverse interests with the intent to benefit the lawyer  
10 or another, and causes serious or potentially serious injury  
11 to a client; or

12 (c) represents a client in a matter substantially related to a  
13 matter in which the interests of a present or former client  
14 are materially adverse, and knowingly uses information  
15 relating to the representation of a client with the intent to  
16 benefit the lawyer or another and causes serious or  
17 potentially serious injury to a client.

18 4.32 Suspension is generally appropriate when a lawyer knows of a  
19 conflict of interest and does not fully disclose to a client the  
20 possible effect of that conflict, and causes injury or potential injury  
21 to a client.

22 4.33 Reprimand is generally appropriate when a lawyer is negligent in  
23 determining whether the representation of a client may be  
24 materially affected by the lawyer's own interests, or whether the  
representation will adversely affect another client, and causes  
injury or potential injury to a client.

4.34 Admonition is generally appropriate when a lawyer engages in an  
isolated instance of negligence in determining whether the  
representation of a client may be materially affected by the  
lawyer's own interests, or whether the representation will  
adversely affect another client, and causes little or no actual or  
potential injury to a client.

34. Respondent acted negligently in determining whether there was a substantial risk  
that her representation of Tami would be materially limited by her own interests, and in drafting  
notes that included terms that were not fair and reasonable to Tami.

1 35. The misconduct potentially injured Tami because she lost access to the funds and  
2 because of the unsecured nature of the loans, which carried real risk at the time the notes were  
3 entered that Tami would lose the funds. Any potential injury was mitigated by Tami's  
4 subsequent forgiveness of the loans.

5 36. The presumptive sanction for Respondent's violation of RPC 1.7(a) and 1.8(a) is  
6 reprimand under ABA Standard 4.33.

7 37. The following aggravating factors apply under ABA Standard 9.22:

8 (d) multiple offenses; and

9 -(i) substantial experience in the practice of law (admitted in 1995).

10 38. The following mitigating factor applies under ABA Standard 9.32:

11 (a) absence of a prior disciplinary record.

12 39. It is an additional mitigating factor that Respondent has agreed to resolve this matter  
13 at an early stage of the proceedings.

14 40. On balance the aggravating and mitigating factors do not require a departure from  
15 the presumptive sanction of reprimand.

#### 16 VI. STIPULATED DISCIPLINE

17 41. The parties stipulate that Respondent shall receive a reprimand for her conduct.

#### 18 VII. RESTITUTION

19 42. The parties stipulate that there shall be no restitution due to the legal effect of the  
20 bankruptcy discharge.

#### 21 VIII. COSTS AND EXPENSES

22 43. Respondent shall pay attorney fees and administrative costs of \$750 in accordance  
23 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs

1 are not paid within 30 days of approval of this stipulation.

2 **IX. VOLUNTARY AGREEMENT**

3 44. Respondent states that prior to entering into this Stipulation she has consulted  
4 independent legal counsel regarding this Stipulation, that Respondent is entering into this  
5 Stipulation voluntarily, and that no promises or threats have been made by ODC, the  
6 Association, nor by any representative thereof, to induce the Respondent to enter into this  
7 Stipulation except as provided herein.

8 45. Once fully executed, this stipulation is a contract governed by the legal principles  
9 applicable to contracts, and may not be unilaterally revoked or modified by either party.

10 **X. LIMITATIONS**

11 46. This Stipulation is a compromise agreement intended to resolve this matter in  
12 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
13 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer  
14 and ODC acknowledge that the result after further proceedings in this matter might differ from  
15 the result agreed to herein.

16 47. This Stipulation is not binding upon ODC or the respondent as a statement of all  
17 existing facts relating to the professional conduct of the respondent lawyer, and any additional  
18 existing facts may be proven in any subsequent disciplinary proceedings.

19 48. This Stipulation results from the consideration of various factors by both parties,  
20 including the benefits to both by promptly resolving this matter without the time and expense of  
21 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As  
22 such, approval of this Stipulation will not constitute precedent in determining the appropriate  
23 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in




1 subsequent proceedings against Respondent to the same extent as any other approved  
2 Stipulation.

3 49. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for  
4 his or her review become public information on approval of the Stipulation by the Hearing  
5 Officer, unless disclosure is restricted by order or rule of law.

6 50. If this Stipulation is approved by the Hearing Officer, it will be followed by the  
7 disciplinary action agreed to in this Stipulation. All notices required in the Rules for  
8 Enforcement of Lawyer Conduct will be made.

9 51. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have  
10 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in  
11 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil  
12 or criminal action.


13 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
14 to Discipline as set forth above.

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16   
Shawna M. Mirghanbari, Bar No. 25059  
Respondent

Dated: 7/19/16

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Sam Franklin, Bar No. 1903  
Respondent's Counsel

Dated: 7/19/16

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M Craig Bray, Bar No. 20821  
Disciplinary Counsel

Dated: 7/25/2016