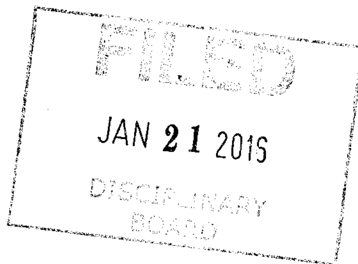

BEEFORE THE
DISCLIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

IN RE

MONA LISA CUARTE GACUTAN,

Lawyer (Bar no. 39344).

Proceeding No. 13#00104

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS FOR DISCIPLINARY ACTION

I. INTRODUCTION

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), a hearing was held before the undersigned Hearing Officer from October 29 to November 11, 2014. The Association was represented by Ms. Francesca D'Angelo and Ms. Erica Temple. The Respondent was present and represented by Mr. Kurt Bulmer. The parties agreed to waive the 20-day requirement for filing of the Findings of Fact and Conclusions of Law and Recommendations. The parties were allowed the opportunity to provide both oral closings and written summations with limited replies. Additional input on two issues, one factual and one legal, were also solicited during the deliberation process.

This case involves the personal financial circumstances of a number of witnesses

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and/or individuals whose client files were admitted as exhibits at this hearing. To protect the privacy interests of these individuals, a protective order has been entered restricting access to these documents except to the extent required to allow any hearing officer, the Disciplinary Board, or the Supreme Court to perform their duties.

Where it has been necessary to refer to the financial circumstances of individual clients, these findings have been drafted to protect those same privacy interests. Consequently, those findings dealing with individual clients refer to the client by their initials. A key identifying which initials correspond to each individual is being filed under a separate protective order.

II. FACTUAL SUMMARY

This complex case was heard over a period of seven days and involves thousands of pages of exhibits, and the testimony of fifteen witnesses. To understand the context, one needs to explore the intricacies of the debt resolution industry. Therefore, a factual summary has been included, which sets forth the background of debt resolution law and the general facts and the issues in dispute. This summary should be used only for context. The specific findings contained in the individually numbered paragraphs in Section VI constitute this Officer's official Findings of Fact.

A. History of Debt Resolution Industry

The debt resolution industry has a checkered past which has resulted in significant regulations governing its conduct. Debt resolution agencies advertise that they are able to compromise a client's debts by negotiating settlements for amounts lower than the consumer's outstanding debt. In order to convince creditors to compromise their claims, the debtor is instructed to stop making payments on their unsecured accounts. *Ex. 102, p. 14; RP*

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231. Eventually, to comply with banking regulations that require banks to remove stale debts from their books, the creditors sell the debt at a deep discount to debt collection agencies. *RP 231.*

Consumers enroll in debt reduction programs based on promises that the companies will extricate the consumers from their debts by negotiating large reductions in the outstanding debt. The companies advertise that they can substantially compromise the total amount the debtor owes to his or her creditors, frequently by guaranteeing reductions of 35 per cent or more of the debtor's total debt. *See e.g., Ex. 203.1, p. 7.* Debtors are informed that their monthly payments will be used for a savings account that will allow the companies to compromise the outstanding debts. Typical monthly payments are frequently $600 to $800 per month. *RP 47.*

During the first six months of the program, little, if any, of the funds collected from the debtor are placed in the "savings account." *RP 47.* Instead, almost the entire payment is consumed by fees payable to the multiple players: the company that solicited the business, the company handling the money and the debt resolution company actually conducting the debt negotiations. *Id.* Because of these upfront fees, debt resolution done by for profit companies generally exacerbates the debtor's financial problems. The creditors add penalties and interest for non-payment to the outstanding balance at the same time the debt resolution firms are imposing large fees that further jeopardize the financial health of the debtors. *RP 36; 778.*

Typically, the only beneficiaries of these schemes are the debt resolution firms who flourish by obtaining their fees before the debtor is forced to either quit the program and/or file bankruptcy. *RP 42-43.* To combat the abuses associated with upfront fees and predatory

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conduct, debt resolution companies are highly regulated.[1] Essential to eliminating these abuses are state laws and federal regulations that limit both upfront fees and the total amount of fees charged for debt resolution services.

Washington has also struggled to regulate the debt resolution industry. In 1967, Washington's legislature adopted regulations in the form of the Debt Adjustment Act, (DAA) *RCW 18.28 et. seq*. *RP 38.* Violation of this chapter constitutes an unfair or deceptive practice in the conduct of trade or commerce under consumer protection laws. *RCW 18.28.185*. This chapter has stringent guidelines as to the timing and amount of fees charged for debt resolution services. *RP 39.* Consistent with the policies of other state and federal regulations, Washington's DAA requires debt resolution companies to distribute to the client's creditors at least **85 per cent** of *each payment received from the debtor. RCW 18.28.110(4).* It also prohibits the debt adjustment firm from representing that it is authorized or competent to furnish legal advice and prohibits any communication with a debtor or creditor "in the name of any attorney, or upon the stationary of any attorney. . . ." *RCW 18.28.130(2) & (4).*

Washington's statute defines a debt adjuster very broadly as anyone who is engaged in settling, prorating, consolidating debts or receiving funds for the purpose of paying or partially paying creditors. *RP 40.* The statute does not apply to "attorneys at law, escrow agents, accountants, broker-dealers in securities, or investment advisors in securities while performing services solely incidental to the practice of their profession." *RCW 18.28.010(2)(a).* There is only one published Washington appellate decision, *Carlsen v.*

[1] Although a detailed analysis of the area is beyond the scope of the issues that must be resolved in this hearing, certain background information is necessary.

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GCS, 171 Wn.2d 486, 256 P.3d 321(May 2011) interpreting Washington's DAA. This decision does not address the proper interpretation of RCW 18.28.010(2)(a).

Because of the strict regulations regarding upfront fees contained in Washington's DAA, the debt reduction industry essentially vanished in Washington and in other states. *RP 41*.

The revival of the debt resolution industry began in 2004, when a company called Global Client Solutions (hereafter GCS) started a program where it would be the repository of all the funds of every[2] debt settlement company. *RP 43-44*. The appearance of GCS on the scene split the process of receiving funds from the consumer and the process of settling debt. *RP 43*. Because most states' consumer protection statutes were inapplicable if the debt resolution company did not actually receive funds, GCS's presence allowed an explosion of debt resolution companies. *RP 44.*

During late 2009 through September 2010, the Federal Trade Commission developed new provisions in its telemarketing rules to address abuses by debt resolution companies and to close this apparent gap in regulations. *RP 157*. These regulations modified the telemarketing rules making it harder for the debt resolution companies to obtain upfront fees. *RP 81*. No fees could be taken until the companies performed. *Id.*

The final regulations were released in September 2010 and took effect on October 27, 2010. There are no exceptions to the FTC rules for attorneys. However, the FTC promulgated guidelines that suggested that if clients entered into the contracts as a result of face to face meetings, the activity would be considered intrastate and outside the FTC's

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[2] Later, GCS was joined by other money handlers, such as "NoteWorld." RP 46. Further background information concerning both the debt resolution industry and GCS is contained in *Carlsen v. Global Client Solutions*, 171 Wn. 2d 486, 256 P. ed 321 (2011).

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jurisdiction. *RP 224*. This combination of state regulations, which contained exceptions for lawyers, and the FTC regulations closing the prior loopholes, generated new business models for debt resolution. These new models relied upon strategic alliances between law firms and debt resolution companies.[3]

B. General Background

Respondent was involved with debtors in two ways. After her first year as an attorney, she joined a national bankruptcy firm, Legal Helpers PC, on June 26, 2008. This firm did only bankruptcy. On November 3, 2009, she also accepted a position as a Class B member of a second, related, national law firm, Legal Helpers Debt Resolution, LLC, a Nevada limited liability company [hereafter LHDR]. LHDR was marketed as a debt resolution law firm, with partners in every state, who would help negotiate reductions in a consumer's debt. The advertisement, website, and other marketing materials refer to the law firm as the entity providing legal services to the clients. By accepting the position as a Class B member, Respondent agreed to be LHDR's Washington designated "partner" and agreed to serve as its registered agent.

III. FORMAL COMPLAINT

Respondent is charged with misconduct based primarily on her activities in LHDR.

Count One alleges that Respondent assisted, or aided and abetted, LHDR in misrepresenting that it was a law firm that provided legal services to its clients. It alleges further that Respondent assisted LHDR in charging fees in excess of those allowed by the applicable consumer protection statutes, specifically Washington's DAA, which makes it a

[3] These alliances purported to comply with the terms of RPC 5.7 by allowing lawyers to contract out certain nonlegal services. *RP 1317-19*.

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misdemeanor to aid or abet a violation of the statute. *RCW 18.28.190.*[4] The Bar urges that Respondent's conduct violated RPC 8.4(a), RPC 8.4(b) and/or RPC 8.4(c).

Count Two alleges that Respondent violated RPC 1.3, RPC 1.4(a)(2) and/or RPC 1.4(b) by failing to explain the risks of LHDR's debt settlement program compared to other courses of action, by failing to explain the terms of the agreement to her clients, and by failing to explain that the fees charged in LHDR's fee agreement violated one of more or Washington State's consumer protection statutes.

Count Three alleges that Respondent violated RPC 1.5(b) by failing to explain fully the fee agreement to LHDR's Washington clients.

Count Four alleges that by assisting LHDR in charging between $500 and $900 for legal services and not providing any legal services, Respondent violated RPC 8.4(a) and/or RPC 1.5(a) and/or RPC 1.3.

Count Five alleges that by failing to make reasonable efforts to ensure that subordinate attorneys from her firm adequately explained the risks and benefits of debt resolution versus bankruptcy and/or adequately explained the fee agreement to clients, Respondent violated RPC 5.1(b) and/or RPC 8.4(a) and/or RPC 8.4(c).

The Bar seeks disbarment.

IV. SPECIFIC ALLEGATIONS & AFFIRMATIVE DEFENSES

Because of the complexity of the legal and factual issues, a general overview of the parties' positions, in addition to the formal complaint, is in order.

A. Basis for Charges

Counts One through Four are based on Respondent's role as the sole Washington

[4] The formal complaint actually refers to RCW 12.28.190. All parties operated on the assumption that this was a

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lawyer/member of LHDR. Count One is based on the claim that Respondent assisted LHDR in misrepresenting to Washington clients that it was a law firm providing legal services to debtors. The Bar asserts that LHDR was set up to avoid statutes meant to prohibit predatory debt resolution firms from taking advantage of debtors. The Bar contends that LHDR did not provide legal services, but instead simply contracted with non-lawyer third party debt resolution companies. The Bar asserts that neither LHDR nor Respondent provided legal services to the Washington debtors who retained LHDR.

To bolster its' claim of excessive fees, the Bar contends Respondent's participation in LHDR allowed LHDR to collect upfront fees in violation of Washington's State's consumer protection statutes, specifically RCW 18.28.080. The Bar contends that neither LHDR's nor Respondent's activities fall within the exception contained in RCW 18.28.010(2)(a) because this exemption only covers those attorneys who perform debt resolution services "solely incidental to their profession." Because LHDR's activities were only debt resolution, the Bar contends the exemption does not apply.

Counts Two and Three charge the Respondent with misconduct for failing to advise LHDR clients of information needed to make decisions regarding the choice of debt resolution versus bankruptcy and to evaluate the terms of the retainer agreement.

Count Four alleges that Respondent and LHDR took fees but did not provide legal services to the clients.

Count Five implicates Respondent's role in supervising other attorneys at Legal Helpers, PC when those attorneys were charged with conducting face to face meetings to sign up clients for LHDR.

mistake and that the actual section intended was the provision of the DAA contained in RCW 18.28.190.

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B. Defenses

Respondent defends her conduct by denying that LHDR misrepresented that it provided legal services. She insists that she, other members of LHDR, and the non-lawyers provided legal services and the necessary advice. She rejects the conclusion that the DAA applies, claiming that in considering whether the exemption applies, all her activities as a lawyer, including her bankruptcy practice with Legal Helpers, PC, should be considered. She urges that the exception contained in RCW 18.28.010(2)(a) allowed LHDR's activities, making it permissible to collect the fees it charged.

Respondent argues further that even if it is determined that LHDR's activities do not fall within the exemption permitted to lawyers, only the Washington Supreme Court can restrict the practice of law, not the Legislature, and therefore the statute cannot be applied to restrict lawyers. Respondent also contends that the interpretation of the term "solely incidental to their profession" is an issue of first impression. She therefore contends she cannot be charged with misconduct based on this statute.

In making these arguments, Respondent defines the term "legal services" very broadly and contends that it includes any act done by an attorney for a client. She insists that the file review she performed constituted legal services to her debt resolution clients.

As to the allegation that she did not properly advise the debtors, she also alleges that appropriate advice was provided by out-of-state members of LHDR ,as part of the larger firm, or its non-lawyer affiliates.

Respondent also asserts as an affirmative defense that, as a Class B member, she was a subordinate attorney in LHDR. She claims the firm was set up and managed by Class A members. Pursuant to RPC 5.2 Respondent asserts she had the right to assume that the senior

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members of the firm had correctly set up the firm to comply with applicable law and the Rules of Professional Conduct.

V. STRUCTURE AND SCOPE OF DECISION

A. Application of RCW 18.28.010 "Solely Incidental to Practice of Law" Exemption.

Both sides urge that interpretation of the exemption contained in RCW 18.28.010 of the DAA controls this case. Assuming the underlying issues can be resolved without interpreting the statute, the arguments the parties make concerning applicability of RCW 18.28.010 are more appropriately addressed to the Washington State Supreme Court. It is not necessary to interpret this statute because Respondent's ethical duties can be analyzed whether or not the statute's exemption applies. Should the reviewing Court feel it is necessary to reach the issue of the application of RCW 18.28.010, this decision includes findings that resolve the factual issues underlying the dispute. *FOF104-110*. This Officer's findings of misconduct and recommendations regarding discipline are based solely on conduct that does not require interpretation or application of the DAA.

B. Analysis of Misconduct Based on Governing Regulations.

The Bar's First Amended Complaint covers the period November 2009 through November 2011. On October 27, 2010, halfway through this period, the FTC adopted additional regulations, which essentially mandated an additional requirement of in person meetings with potential clients in order to avoid the regulations. In response to the FTC new regulations, LHDR modified its business model to include face-to-face meetings between lawyers and debt resolution clients. The new business model also provided that LHDR would defend clients if their creditors sued them. Respondent's conduct is analyzed differently based on whether the activity concerned clients who became LHDR's clients prior to the

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change in FTC regulation or after. Those clients who engaged LHDR prior to this date did not meet with an attorney and were not provided the right to be defended if sued. These two distinctions impact the analysis of whether or not LHDR and/or Respondent provided legal services to these clients.

C. Inferences Regarding What Respondent Knew or Should Have Known.

What inference should be drawn concerning Respondent's knowledge depends in part on whether the claimed lack of knowledge concerns conduct before or after February 2, 2011. This date is important because, as the registered agent of LHDR, Respondent accepted service of a class action complaint filed against LHDR. *Ex. 227*. Respondent acknowledges having reviewed this document and having sent it onto to the Chicago home office of LHDR. *RP 1198-99*. The Complaint detailed specific allegations, which, if true, established many of the factual allegations contained in the Bar's complaint against the Respondent. Because as of this date, Respondent was alerted to the issue of whether or not she and her firm was complying with state regulations, it is appropriate to be more skeptical of her justifications for her conduct after this date.

VI. FINDINGS OF FACT

The following facts were proven by a clear preponderance of the evidence. ELC 10.4 (b).

A. Findings Relating to Respondent's Background.

1. Respondent Mona Lisa Gacutan was admitted to the practice of law in the State of Washington on November 7, 2007. Respondent has no prior discipline.

2. On June 24, 2008, Respondent signed an employment contract with a national firm that did business under the trade name Legal Helpers, PC. *Ex. 202*.

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3. Legal Helpers, PC was a bankruptcy firm owned and managed primarily by partners Thomas Macey and Jeffrey Aleman. Legal Helpers, PC is the trade name for Macey & Aleman's firm. Legal Helpers, PC's main office was located in Chicago, Illinois. Legal Helpers, PC did a volume bankruptcy practice in multiple states.

4. Respondent received a salary for her work as a bankruptcy attorney for Legal Helpers, PC. *RP 455.* She eventually became an assistant regional manager for Legal Helpers, PC. *RP 351-52.* Assistant regional managers reported to the regional managers and to the senior partners of the firm. *Id.* Even before Respondent was officially promoted to this role, she traveled to other offices of the firm, including those located in New Jersey, Philadelphia, Pennsylvania and Sacramento, California. *RP 353; 1077.*

5. While Respondent was never a partner in Legal Helpers, PC, unlike others in her office, Respondent had direct access to the partners in the Chicago office. *RP 955-56.* This access included the ability to communicate with them directly, visits to the Chicago office for training, and taking instructions directly from the Chicago partners. *Id; RP 324.* In addition, Respondent's position as assistant regional manager brought her in direct contact with other offices and members of the firm. *RP 353; 957; 1085.*

6. As a bankruptcy attorney, Respondent was aware of debt resolution programs. *RP 314-15.* It was not uncommon for her to encounter bankruptcy clients who had previously failed debt resolution programs. *RP 377.* Nonetheless, Respondent consistently denied specific knowledge of Washington's DAA. *RP 432-33.*

7. The second law firm from which Respondent received compensation was LHDR. LHDR came into existence approximately 18 months prior to the October 27, 20 change in FTC regulations. *Ex. 203A, pp. 37-63.* In anticipation of the 10 FTC changes, LHDR opted to

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form strategic alliances with debt resolution companies. Both the law firm and the debt resolution companies with which they paired took the position that because attorneys were exempt from the definition of a debt adjuster, the strategic alliance model permitted them to operate outside the FTC and state regulations. *RP 85.*

B. Respondent's Testimony Concerning Structure of LHDR.

8. Respondent's description of LHDR's activities and compliance with the RPCs was supported by her own testimony and by the testimony of one of the Class A members, Jason Searns. Mr. Searns helped form LHDR. An attorney licensed in Colorado, Mr. Searns specialized in setting up "national" law firms. Mr. Searns testified that he set up LHDR after extensive study and analysis of the applicable Rules of Professional Conduct. He called LHDR's firm structure a "Class B" model. Under this model, Class A members of the firm own the company and make management decisions. Class B members of the firm are listed on advertising, websites, and letterhead as "partners" but have no management responsibilities or equity in the firm. *RP 1332.* The designation of the Class B members as "partners" allowed the national firm to advertise that they had local partners in each state. *RP 87.*

9. In return for setting up LHDR, James Searns became a Class A member of LHDR with an 8 percent ownership interest. *RP 1320.* Thomas Macey and Jeffrey Aleman were the other Class A members. *Id.* A third individual, Jeffrey Hyslip, was a Class B member. Jeffrey Hyslip's name appears on virtually all the contracts at issue in this case. None of these individuals were licensed in Washington.

10. Unlike Legal Helpers, PC, LHDR did not practice bankruptcy law. *Id.* Instead, LHDR advertised itself as the "Nation's Largest Debt Resolution Law Firm." *Ex. 103, p. 1.*

11. LHDR is a Nevada company. *RP 1319; Ex. 253, p. 27.* Two of the Class A

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partners had offices in Chicago, Illinois. *RP 324; 1340-41*. Mr. Searns had offices in Colorado. *Id.*

12. On November 4, 2009, Respondent voluntarily accepted an offer to become a Class B member in LHDR. *Ex. 203*. LHDR compensated Respondent separately and in addition to her salaried position as an associate at Legal Helpers, PC. *RP 422-23*.

13. Respondent's membership agreement provided that she would receive: a) 10 percent of LHDR's net profits in Washington on cases she reviewed; b) the right to represent and receive the full fee for bankruptcy clients who had failed to complete LHDR's debt settlement plan; and c) a fee of $200 for each debt settlement referral made by the member to LHDR after the client executed a fee agreement and paid the retainer. *Ex. 203, Schedule* A. Pursuant to this agreement, Respondent received K-1 income from LHDR in 2009 and 2010 and 1099 Miscellaneous Income in 2011. *Exhibits 207; 225, 248*[5].

14. For all periods pertinent to this case, Respondent was the only attorney licensed in the State of Washington employed[6] by or a member of LHDR. *RP 100; Ex. 102; 103*. All other members/employees of LHDR were licensed in other states. *Id.* No other Washington employee of Legal Helpers, PC was a member of LHDR. *Id; RP 956; 960.* Pursuant to her agreement, Respondent's name was used on the LHDR website and other materials as the Washington partner. *RP 100; 299; Ex. 102; 103*. She did not receive her instructions regarding her duties from her Legal Helpers, PC manager. *RP 960*. Her duties were strictly for the partners of LHDR. *Id.*

[5] In the first year, Respondent received $765 dollars. Ex. *207*. The second year, 2010, Respondent received $24,508.00. Respondent testified that this income was attributable to her review of the files and constituted legal services. Because Respondent simply rubber-stamped previously executed contracts, she provided no legal services to these clients.

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15. Respondent testified that when she was approached to become a member of LHDR, she specifically asked what her duties would be. *RP 316-17.* She testified that because she was a busy bankruptcy attorney she "wanted to make sure that if [she] was going to do LHDR, that [she] understood exactly what [she] had to do." *RP 317.* She understood that LHDR needed a Washington lawyer because these were Washington state files. *RP 319.* Respondent is the only person that permitted LHDR to advance the argument that someone was providing legal services to Washington consumers. *RP 117.* Absent her presence, there was no colorable claim for the fees charged. *RP 118.*

16. Other lawyers in the bankruptcy firm, Legal Helper, PC, turned down offers of membership in LHDR. *RP 1006-7.* No one threatened adverse action if they did not participate in LHDR. *RP 973.*

17. As the only Washington partner in LHDR, Respondent also served as the firm's registered agent for service of process. *Ex. 212, p. 4.*

18. Mr. Searns provided extensive testimony regarding the legality of LHDR and the two-tier membership structure he designed. Mr. Searns testified that the law firm was set up so that he and his staff in Colorado, the lawyers and staff in the Chicago office, and the Class B members in individual states did a three-stage review of all client files in order to determine suitability for debt resolution. He testified further that after the Colorado and Chicago offices determined that an individual client plan was feasible for a financial workout as opposed to bankruptcy, the firm sent the file to local class B members "to do the final review locally." *RP 1334:7-16.*

19. Mr. Searns testified that the purpose of the review by the Class B members was to

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[6] Legal Helpers, PC, lawyers were paid a specific fee to conduct the in person meetings for LHDR clients. *RP*

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"make some determination as to whether or not the plan was feasible from their vantage point or whether bankruptcy was more appropriate." *Id.* He testified that if bankruptcy were more appropriate, a consultation "would be set up with the local attorney and client to discuss bankruptcy." *RP 1334: lines 16-18.*

20. LHDR had two different business models during the applicable time. The original model applied to clients who retained LHDR prior to October 27, 2010. For these clients, neither Respondent nor any other Washington lawyer had personal contact with LHDR's clients prior to their retaining the firm. *RP 249; 600; 823; 887.* Respondent did not meet with or talk, to a single client whose retainer agreement predates this cut-off. *RP 319; 371; 487; 538; 559; 583; 887.*

21. LHDR's business model changed beginning with clients who signed with LHDR after the October 27, 2010 change in FTC regulations. LHDR instituted a requirement that attorneys meet with clients in a face-to-face meeting to obtain their signature on the retainer agreement. The associate attorneys employed by Legal Helpers PC handled many of these encounters. *RP 709.* They were paid $75.00 per sign up. *RP 962.* LHDR provided training materials on what the attorneys were to do in obtaining the signatures. *RP 967.*

22. In addition to providing for in person execution of the contracts, those clients who engaged LHDR's debt resolution services after October 27, 2010 were entitled to a defense if one of their creditors sued them. *Ex. 314.* In return for providing this service, LHDR increased its retainer fee from $500 to $900.00 and the monthly maintenance fee from $50.00 to $79.00. *Id.* These agreements also provided that the debt resolution plan itself

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could be done by third parties pursuant to "non-exclusive reciprocal referral agreements[7]" under "LHDR's direct supervision." *Ex. 314, page 8.*

C. Actual Structure of LHDR.

23. Mr. Searns description of LHDR's structure conflicted with the testimony of attorney, Darrell Scott, who had conducted extensive discovery to determine LHDR's structure. This discovery stemmed from his work as counsel for clients in multiple cases involving debt resolution companies in Washington. Mr. Scott described a much different structure for LHDR than the one Mr. Searns claimed existed. Mr. Scott testified that LHDR was the middleman in the debt resolution structure. *RP 166.* Multiple "front end" companies were the client generators or marketing companies. *RP 77; 166.* The "back end" companies had contracts with front end companies. *RP 167.* These companies would generate all the marketing materials and the contracts to send out to the consumers. *Id.* They were the very same companies that had performed debt settlements prior to the regulations that required them to use the attorney model. *RP 77.* The only difference under the attorney model was that the consumer signed a retainer agreement with LHDR. *Id.* It was business as usual except the name on the contract was different. *RP 78.*

24. Mr. Scott's testimony that the marketing of LHDR was done by front end companies who advertised that lawyers provided the debt resolution services was corroborated by the testimony of the individual debtors. These individuals learned about LHDR from TV, direct soliciting calls, the internet or mailers.[8] *See, e.g., RP 484; 533; 557;*

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[7] In yet another example of LHDR's disregard for the Washington RPCs, Washington did not adopt that portion of the Model rule that allowed such agreements. *See Comment 9 to RPC 7.2.* As this was neither pled nor discussed, this violation forms no part of the decision.

[8] Respondent testified that she "might have" looked at the website, "like once." She denied seeing any LHDR's commercials and denied seeing any of the LHDR post-cards. *RP 1116.*

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580. They never talked to a lawyer prior to signing up. *RP 487; 561*. No one went over the documents with them or told them about the pros and cons of filing for bankruptcy. *RP 485; 487; 552; 560-61; 584*. These individuals believed they were hiring a law firm. *RP 486-87; 535; 582; 595*. It was important to them that they were represented by lawyers because they felt it was the best option to protect themselves. *RP 535; 583*. This testimony was similar to Mr. Scott's summary of what he learned during discovery.

25. Mr. Scott also testified that it was the back end firms who provided the actual debt resolution services. He based this testimony on his review of the files and contact with the class members. *RP 79*.

26. The proposition that there was no lawyer contact during the debt resolution process was supported by the testimony of debtors[9] who entered into contracts with LHDR, and that of a bankruptcy trustee, Attorney Kathryn A. Ellis. These witnesses established that, contrary to Respondent's testimony and that of her expert/fact witness, James Searns, LHDR did not provide legal services to clients whose contracts were executed under the original pre-October 2010 business model.

27. The fact that non-lawyers debt resolution firms, not LHDR, provided debt resolution services is also supported by evidence that the services they performed were done without the usual protections that employing a lawyer would include. There were no trust accounts and/or confidentiality of information normally associated with engaging a law firm. GCS, not the law firm, handled the money that it withdrew directly from the clients' banking

[9] Two additional debtors testified about their experiences with LHDR based on contracts that were entered into after October 27, 2010. The situation of these two cases differ slightly than the pre-October 2010 contracts as these two individuals had at least one face to face contact with a lawyer from LHDR.

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accounts. *RP 166; 196.* No traditional law firm trust accounts or accountings were created by GCS. *Id.* At best, GCS simply kept individual ledgers of the client's funds. *Id.*

28. There was no evidence in any client file of a process to ensure that the clients received advice *prior* to signing up for the debt resolution services. There was no evidence of lawyer-to-client communications in any of the client files. Finally, these client's files do not contain any evidence that lawyers reviewed or supervised the debt resolution services. From the marketing of the product, through the retention of LHDR, and the negotiation of the debts, non-lawyer debt settlement companies, not LHDR lawyers or staff, handled the debt resolution process. *See Ex. 253, pp. 86-96.*

29. The evidence established that debt resolution companies even sent the letters of initial representation, many times months after the client enrolled in the program. Ex. 253, p. 87. Similarly, other form[10] letters to the creditors were generated and sent by the debt adjustment contractors, not LHDR. *Id at pp. 87; 88; 93; 95.*

30. When a client was sued by a creditor the debt resolution company, not a LHDR lawyer, handled the matter. Ex. 253, p. 90; 96. Respondent knew this because she did not represent any LHDR clients in any civil complaints. RP 390.

D. Mr. Searns' Credibility

31. Mr. Searns' testimony regarding the purported structure of LHDR and the alleged lawyer "oversight" was not credible. It conflicted with the testimony of other witnesses and the available documents. As an individual implicated in LHDR's activities, Mr. Searns had his own motivation to conceal the real nature of LHDR's activities. See, *FOF 34-36, infra.*

32. Despite his testimony of lawyer involvement in the process, Mr. Searns admitted

[10] The form letters literally had a underlined blank where the relevant information as entered.

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that: 1) the initial client contact was performed by a lawyer; 2) the next call, the compliance call, was performed by a non-lawyer; 3) the person providing the contract to the client was a non-lawyer; and 4) the people doing the actual debt negotiations were non-lawyers. *RP 1372-74.*

33. Mr. Searns testimony was also not credible because it contradicted his prior sworn testimony. In other proceedings, he claimed to have reviewed all 30,000 clients accepted by LHDR. *RP 1366.* In the current hearing, he testified that this review was "relatively quick" and was in fact done by his two paralegals. *RP 1365.* He clarified that the second level of review, supposedly done in Chicago, was also done by paralegals. *RP 1368.* He then admitted that only the third level of review, the one Ms. Gacutan was responsible for, guaranteed that a lawyer was looking at the file. *Id.*

34. Mr. Searns' credibility was also undercut by evidence the Bar produced demonstrating that other companies Mr. Searns had set up, or with which he had affiliations, were the subject of similar allegations that consumers signed up for legal services without receiving any services. These other actions included another LHDR related company, The Mortgage Law Group, which (along with Mr. Searns personally) was sued by the Consumer Financial Protection Bureau in the Western District of Wisconsin. That suit alleged a violation of 12 CFR 1015.5 based on the fact the Mortgage Law Group took advanced fees and made representations in violation of that regulation. *RP 1377-78.*

35. Mr. Searns was also part of the Credit Advocates Law Firm, a firm that had received multiple complaints that it had not provided credit repair or credit improvement services to clients who had paid thousands in monthly fees. *RP 1379.*

36. In 2012, the State of Wisconsin sued Mr. Searns, along with the other Class A

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members of LHDR. *Ex. 266.* Allegations in this complaint included the claim that LHDR made "untrue, deceptive, or misleading representations in the course of marketing its debt resolution services. . . ." *Ex. 266, p. 23.* One of the specific allegations was that LHDR "misrepresented that consumers would be represented by a law firm for debt settlement and loan modification services when in fact all debt settlement, loan modification and related services are provided by non-law firm, third parties." *Id.*

37. There were also important omissions in Mr. Searns testimony. He did not discuss the role of a related company, Legal Services Support Group, which was apparently created in tandem with LHDR. RP 88-89. Members of long-time back end debt resolution companies formed this entity. *Id.* LSSG contracted with LHDR. *Id.* LSSG prepared the documents that provided guidance to the debt resolution firms regarding what representations could be made and protocols for how the debt settlement programs worked.[11] *RP 239.*

E. Respondent's Knowledge of LHDR's Structure and Activities.

38. Mr. Searns' testimony was intended to bolster both Respondent's claim that LHDR had been properly set up and to support her affirmative defense that she relied upon the Class A members vetting the business model. Before addressing the specifics of Respondent's knowledge, it is important to note that Mr. Searns and Respondent contradicted each other on an important point, the role Class B members had in the review process. Mr. Searns testified to the existence of substantive reviews by Class B members and incidents where Class B members could override the approval. *See FOF 19, supra.*

39. Respondent, on the other hand, testified that as a class B member her "job at the end of the month [was] to look at an individual's income and budget to make sure they had

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enough disposable income to make an LHDR payment." *RP 316*. She did not do any debt review analysis regarding the debt resolution plan for the clients. *RP 328*. She did not speak personally with the clients. *RP 329*. Rather, the files came to her in finished form. *RP 328*. She understood that LHDR clients had communications from LHDR, but she could only say that it was possible those communications were with a lawyer. *RP 330*. The extent of Respondent's legal services to LHDR clients was "reviewing the client's budget and income." *RP 335:14-15*.

40. Respondent's contention that she believed legal services were being provided and/or that the clients were given appropriate advice by other lawyers in LHDR was contradicted by the documents. The retainer agreements, which were present in each file Respondent reviewed, specifically provided that the "implementation, management and maintenance of a debt resolution plan shall be performed under the direct supervision of LHDR" by the third party contractors. These agreements specifically stated that the third party contractors were *not* providing legal services. The following language was typical of the disclaimers contained in the retainer contracts:

> The implementation, management and maintenance of a debt resolution plan by LHDR shall be performed under the direct supervision of LHDR by Eclipse Financial (ECLIPSE) at a cost of 15% of the Client's total scheduled debt .(Service Fee) LHDR has a non- exclusive reciprocal referral agreement with ECLIPSE to provide these services under LHDR's direct supervision. These are services required for the debt resolution plan, but are not legal services. There is no attorney-client relationship between Client and ECLIPSE in regard to these services and any specific communications between client and ECLIPSE are not protected by attorney-client privilege. ECLIPSE cannot and will not provide any legal advice to the Client other than as communicated through ECLIPSE by LHDR and under LHDR's supervision. The Service Fee shall be paid by Client in equal consecutive monthly payments commencing immediately following the preparation of the debt resolution plan.. Client understands and agrees to set aside an amount as designated by LHDR in a Federal Deposit Insurance Corporation (referred to as "F.D.I.C.") insured bank account for LHDR to withdraw this Service
>
> Fee for ECLIPSE's work in the management of the debt resolution plan and for Client to accumulate settlement funds to be used for settlement purposes. Client agrees to have their payments of Service Fees to be automatically drafted by LHDR from an authorized bank account with Client's first payment to start on 7/15/2010 and thereafter on each 15 day of the month.

[11] Mr. Scott did testify that he was uncertain about LHDR's involvement in LSSG preparation of the protocols. RP 239-40. Mr. Searns, however, made no mention of working with this legal entity.

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1 *Exhibit 302, p. 6* (Emphasis added).

2 41. The written materials did not accurately and/or completely explain the rights the clients had if they declared bankruptcy, nor did they provide the debtor with the information they needed to make informed choices. *RP 794-95.* The scripts and forms contained inaccurate or incomplete information about the ability to obtain credit cards after filing for bankruptcy, the effect of changes to bankruptcy laws in 2005 legislation, and provided misleading statements about the bankruptcy process. *RP 803-808.* The statements contained in the disclosure were phrased in such a way as to intimidate the reader and steer them away from bankruptcy. *RP 806-08.*

11 42. Additionally, Respondent had full knowledge of her own activities. Even before she became a member of LHDR, Respondent insisted on knowing the details of her obligations. She repeatedly testified that she wanted to know exactly what was expected of her because she was "a busy bankruptcy attorney at the time." *RP 316-17.* She testified, "I wanted to make sure that if I was going to do LHDR, that I understood what exactly I had to do." *RP 317.* She looked over the Class B member addendum "carefully" because she wanted to make sure that what she had been told over the phone was consistent with her role in LHDR and "what my liability was and my responsibility was." *RP 1100-01.*

20 43. The credible testimony established that non-lawyers working from out of state call centers and other locations remote from LHDR attorneys did the activities on the debt resolution client files without lawyer supervision. This fact was accessible to anyone handling the files. There is no credible evidence that the individuals working in the call centers were supervised by attorneys. This fact is demonstrated by reviewing the materials provided by Respondent regarding services provided to the grievant in this matter, Kim

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Flake. *Ex. 253 (Internal exhibit 7).* Both Respondent's written response and the log she provides document that the subcontractor, CDS, performed all the debt resolution services. *Ex. 253, p. 2; pp. 86-97.* There is no indication on this log that the person from the call center assigned to this file consulted a LHDR attorney at any time regarding how Ms. Flake's file should be handled.

44. Exhibit 325, the client file for LB., which Respondent approved on August 30, 2010 also documents that non-lawyers were providing the services Respondent claims were legal services. The second page of this exhibit is a tracking document from Eclipse Services. *Ex. 325, p. 2.* Even a cursory review of this file would have revealed to Respondent that no attorney had reviewed the file before Respondent approved it. This contract was signed on June 4, 2010. Respondent approved in on August 30, 2010. The payment schedule at page 12 of the exhibit, documents that by the date Respondent reviewed the file, the time for the client to make an informed decision had passed. By this date, the client had made three payments of $842.12, or a total of $2,536.36.

45. LB's file demonstrates how LHDR profited from the scheme. By the time Respondent "approved" the file, LHDR had received its $500 retainer fee and an additional $150 for three monthly maintenance fees, a total of $650.00. The back end firm, Eclipse, took another $1876.36. Consequently, by the time Respondent reviewed and "approved" this file, LB had paid $2,536.36, or 100 percent of her first 3 monthly payments, for fees to LHDR and the third-party debt resolution firm.

46. Had Respondent reviewed LB's file, she would have learned the client associated with this file was a widow with two children. *Ex. 325, p. 2.* LB had gotten into debt when her husband died, without life insurance, after a lengthy illness. *Id.*

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2
F. Respondent's After the Fact Review of Files Executed Before October 27, 2010 Does Not Constitute Legal Services.

3 47. From November 2009 to May 2011, Respondent allowed her name to be used as
4 the Washington attorney who provided legal services to at least 721[12] LHDR clients. *Ex.*
5 *610*. Respondent reaffirmed multiple times the limited extent of her legal services on these
6 files. It was "me reviewing the client's budget and income. . . ." *RP 335*. She stated that she
7 was asked by LHDR to pay special attention to the income and budget of each individual.
8 *RP 304*. She explained further that she did that by referring to a sheet that included income
9 and expenses. Her "position was to review and be a second pair of eyes to an LHDR file to
10 make sure the client had enough disposable income to, in fact, make the LHDR payment."
11 *RP 304:9-12*.
12
13 48. All of her personal reviews of the files were done *after* the clients signed up for
14 LHDR, and *after* the clients had begun paying the upfront fees and *after* the time when the
15 client should have been advised as to advantages of a choice between bankruptcy and debt
16 resolution. The dates of the documents in the following individual client files substantiate
17 this finding:
18 (a) Respondent approved client VC on *January 8, 2010*. . *Ex. 203.1, p. 1*. VC signed
19 the retainer agreement, however, on *November 17, 2009. Ex. 203.1, p.10*. Before
20 Respondent approved this contract, VC had paid LHDR $1,223.40. Of this sum, just <u>$2.86</u>
21 was placed in a savings account to pay VC's debts. LHDR and its contracted debt
22 adjustment company retained the remainder. LHDR collected $333.34 of the first two
23
24
25

[12] It appears this number is smaller than the actual number of clients as Respondent admits some data was lost due to a computer issue. *RP 341*.

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payments for its retainer and $787.20[13] for monthly administrative costs. *Ex. 203.1, p. 24.* No funds were ever paid to her creditors. *Ex. 11, p. 24.*

(b) On *January 13, 2010*, Respondent approved TD's file. *Exhibit 203.2, p. 1.* TD signed the retainer agreement, however, on *November 18, 2009. Ex. 203.2, p. 9.* By the date Respondent approved the file, TD had paid LHDR two payments totaling $845.52. Zero funds had been deposited in the savings account for paying TD's creditors. TD ultimately paid $10,573 into this program. Of that sum, fees consumed $5,050.11. No funds were ever paid to TD's creditors. *Ex. 111, p. 24.*

(c) On *August 2, 2010*, Respondent approved client DG's file. *Ex. 307, p. 1.* DG signed the retainer agreement, however, on *May 6, 2010. Ex. 307, p. 7.* By the date Respondent approved the file, DG had made two payments totaling $888.84. Upfront fees consumed the entire sum. *Ex. 307, p. 21.* DG ultimately made payments of $3,389.52. Of this sum, $2,708.12 was paid as fees to LHDR and its contractor. Zero payments were made to DG's creditors. DG filed bankruptcy on November 4, 2011. *Ex. 309.*

(d) MG signed the retainer agreement for debt resolution services on *September 21, 2010. Ex. 310, p. 10.* Respondent approved the contract a month later, on *October 25, 2010. Ex. 310, p. 1.* By the time the contract was approved, MG had paid $632.69 to LHDR and its subcontractor. Fees consumed all of this payment.

(e) DJ signed the retainer agreement on *August 31, 2010. Ex. 312, p. 7.* Respondent approved the contract a month later on *September 30, 2010. Ex. 312, p. 1.* By the time Respondent approved the contract, DJ had paid $883.41 into the program. *Ex. 312, p. 12.* Fees consumed all but $109.87 of this amount. Ultimately, DJ paid LHDR $5,300.46. *Ex.*

[13] These fees include the amounts the third-party debt resolution firms received.

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111, p. 25. Of this amount, fees consumed $3,723.56. No payments were made to DJ's creditors. *Id.*

(f) Client RP signed the retainer agreement on *June 18, 2010*. *Ex. 316, p. 9*. Respondent approved the file three months later, on *September 17, 2010*. *Ex. 316, p. 1*. By the time Respondent approved the file, RP had made three payments for a total of $1,828.08. *Ex. 316, p. 13*. All of her payments were consumed by the retainer fee, service costs and maintenance cost. *Id.* Ultimately, RP paid $8770.38 to LHDR. *Ex. 111, p. 13*. Of this amount, fees consumed $6,112.25. *Id.* Zero payments were made to RP's creditors. On October 12, 2012, RP filed bankruptcy. *Ex. 317*.

(g) On *September 29, 2010*, Client TN signed his retainer agreement with LHDR. Ex. 329, p. 9. Respondent approved this file four and one half months later, on *February 16, 2011*[14]. *Ex. 329, p. 1*. By the time Respondent approved this file, the client had paid $3,795.28[15] to LHDR. *Ex. 329, p. 15*. Of this sum, fees consumed all but $187.79. *Id.* On August 11, 2011, TN filed for bankruptcy. *Ex. 331, p. 36*.

(h) Client LB signed the retainer agreement on *June 4, 2010*. *Ex. 325, p. 8*. Respondent approved this file on *August 30, 2010*. *Ex. 325, p. 1*. By the time Respondent approved this file, the client had made three payments of $842.12 for a total of $2,526.36, all of which were consumed by fees. On December 9, 2010, LB filed for bankruptcy. *Ex. 239, p. 4*. On June 24, 2011, Trustee Kathryn Ellis filed an adversary action on behalf of LB seeking to recover a total of $3,941.42 that LB had paid to LHDR. *Ex. 239, p. 5*.

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[14] This date is two weeks after Respondent was served with the class action lawsuit referred to in *FOF's 57-58, infra* which put her on notice of the irregularities in LHDR practice model to which she was providing assistance.

[15] There is a discrepancy between the amount of funds listed as paid in Exhibit 111 and those contained on the schedule in Exhibit 329. That discrepancy does not impact the basic analysis, however. The Client had been

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1 49. Even without looking at the dates the individual files were executed, Respondent
2 was fully aware of the fact that files she approved after the October 27, 2010 change in the
3 FTC regulations had been executed months before. This fact is substantiated by the multiple
4 emails asking her to approve contracts that had been executed prior to the October 27, 2010
5 deadline. For instance, on November 19, 2010, Respondent received an email with a client
6 file attached. *Ex. 224*. The email specifically noted, in bold "**We are still reviewing files**
7 **executed before 10/27/2010.**" *Ex. 224, p. 6* (Emphasis in original). The same notation, in
8 bold, appears on emails contained in this same exhibit on the following dates: November 22,
9 2010 (p. 10); November 23, 2010 (p. 14); November 24, 2010 (p. 20); December 3, 2010 (p.
10 26); December 6, 2010 (p. 32); December 7, 2010 (p. 30); December 15, 2010 (p. 35);
11 December 16, 2010 (p. 39); December 17, 2010 (p. 44); December 21, 2010 (p. 46); and
12 December 27, 2010 (p. 48).
13
14 50. Because Respondent knew that the reviews of the 721 files were all done after the
15 fact, at a time when the review had no value, Respondent knew that whatever activity she
16 personally conducted could not be construed as advising clients or providing a legal service.
17 Her agreement to this arrangement permitted LHDR take legal fees without providing legal
18 services to the client. Because she received payments for each approval, Respondent shared
19 in these fees.
20
21 51. In the addition to the after the fact approvals, there is other evidence establishing
22 that Respondent knew her "review" of the file was simply designed to further LHDR's
23 misrepresentations by allowing it to claim a Washington lawyer was involved in the process.
24 While each of the client files contains multiple pages of forms and data, some of
25

paying pursuant to the contract for months before the Respondent "approved" the file as appropriate for the

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1 Respondent's "approvals" took as little as *one* to *two* minutes a piece. *Ex. 215, p. 17.* (*Three* files approved within *six* minutes of receipt.); *Ex. 217, p. 31* (*five* files approved in *six* minutes.); *Ex. 220, p. 24* (four files in *five* minutes.) No reasonable lawyer would conclude that a 60-second review of a "file" constitutes legal services on behalf of a client.

52. The fact that Respondent never contacted any client to provide advice, to counsel or determine whether they wanted to file for bankruptcy also supports her knowledge that legal services were not provided. *RP 307.* Respondent never spoke to a single LHDR client who signed the retainers under the original business model unless that individual had dropped out of the program and came to her in her capacity as a bankruptcy attorney for Legal Helpers, PC. *RP 1285.*

53. Respondent did not review the retainer agreement or any other part of the contracts with any of the clients nor did she direct staff to do so. *RP 313.* She did not do the debt review analysis or the structuring of the debt resolution plan. *RP 308.* She did not prepare the settlement statement. *RP 309.* The settlement amount had been determined prior to her receipt of the files. *Id.* The individuals performing these activities were employees of debt resolution companies that LHDR contracted with to provide these services. *Ex. 253, p. 73.* Respondent did not send any letters to her clients' creditors. *RP 390.*

54. Finally, Respondent's contention that she believed there were lawyers handling the other aspects of the debt resolution process, including the negotiations, is contradicted by her statements to one of her associate attorneys, Nicholas Barta. Mr. Barta testified that he called Respondent from the Tacoma office with his concern that the clients he was meeting with appeared to think that LHDR was a law firm, and that he or someone at the firm was

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program.

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representing them. *RP 641*. Respondent replied that the clients knew that they were not being represented and knew what they were signing. *RP 641, lines 3-12*. She told Mr. Barta not to worry about that. *RP 642, lines 13-15*.

G. Respondent Assisted LHDR in Misrepresenting the Scope of Its Services and In Obtaining Fees to Which It was Not Entitled.

55. Both Respondent and LHDR received significant financial benefits from the profits associated with a law firm acting as the front for third-party debt resolution companies. These included the $500 retainer agreements, the $50 per month maintenance fees LHDR accepted directly, and the benefits from the reciprocal referral agreements with the debt resolution companies. *See, e.g., Ex. 253, pp. 4-17; Ex. 302, p. 6*. By lending her name as the Washington partner for LHDR, Respondent assisted LHDR in collecting at least $360,500[16] in legal fees. Neither Respondent, nor LHDR, were entitled to these fees as no services were provided.

56. Without Respondent's assistance, or someone in a similar position, LHDR would not have been able to: 1) assert that it practiced law in Washington State; 2) offer debt reduction services to people residing in Washington State; or 3) collect the upfront and excessive fees associated with the debt resolution retainer agreements. Respondent's assistance in this scheme substantially damaged public confidence in the integrity of the legal profession.

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[16] The contracts also provided for maintenance and contingent fees. The $360,500 simply reflects the total number of files that Respondent admits she approved (721) multiplied by the $500 fee charged on each. LHDR also took tens of thousands of dollars in maintenance fees. The debt resolution firms providing the actual

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H. Respondent's Credibility Regarding Her Denial of Knowledge.

57. Respondent's claim that she did not know that LHDR misrepresented that it was providing legal services is not credible. Respondent had access to information, which would lead any reasonable attorney concerned about her clients and her ethical responsibilities to inquire further. In her capacity as LHDR's registered agent, Respondent accepted service on a number of claims against LHDR, including: 1) a class action lawsuit filed in January 2011; 2) multiple adverse actions by bankruptcy trustee Kathryn Ellis; and 3) other lawsuits, including one which named her personally. Ex. 227; Ex. 239, Ex. 246; Ex. 254; Ex. 258; RP 781. These claims will be discussed in more detail in later findings.

58. Respondent received the copy of the class action lawsuit as the registered agent of LHDR on February 2, 2011. She scanned it to determine if she was a named defendant. *RP 1198-99.* 71. This complaint alleged: "LHDR is in the business of lending its name to multiple front-end and back-end for profit debt resolution companies to create a fiction that the subject debt relief services are being performed by attorneys, thereby ostensibly evading consumer protections applicable to such debt relief activities, including fee limitations. Among others, LHDR lends its name as a law firm to Defendants Marshall Banks, LLC (d/b/a Kazlow and Tucker Debt Relief) and JEM Group." *Ex. 106, pp. 3-4. Ex. 227; Ex. 601, p. 129.*

59. Respondent took no steps to determine if any of the allegations were true and/or whether she and her firm were operating within the parameters of the Washington statutes. She did not contact any of the clients to discuss the class action lawsuit. *RP 430*. She did

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services took an additional 15 percent as their fees. *Ex. 253, p. 73*. Again, these were structured so the fees were paid first, before money accumulated for the payment of the debts. *Ex. 253, p. 83.*

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not feel that she should because it was just a complaint. *Id.* She testified that she did not remember if she looked up the DAA to determine if she might be violating it. *RP 432.*

60. It is not reasonable for an attorney practicing in a specific area of the law, such as bankruptcy and debtor relations, to deny knowledge of the statutes which specifically govern her conduct.

61. Rather than determining her ethical duties, she instead approved an additional 54 files *after* receiving information that detailed the allegations of deceptive practices against LHDR. Respondent approved *49 files* of these files in the space of three hours and twenty-two minutes. *RP 429, Ex. 228.*

62. Respondent ignored other legal actions brought against the firm as well. On June 28, 2011, Respondent accepted service of an adversary action filed by Trustee Kathryn Ellis on behalf of the Estate of LB. The complaint in that action alleged that LHDR: had engaged in a fraudulent transfer in violation of 11 U.S.C. §548; that LHDR violated consumer protection laws; and that LHDR violated the DAA, RCW 18.28.*et seq*. in that it retained fees in excess of that allowed by RCW 18.28.080. *Ex. 239.*

63. Other members of her firm communicated with her about the legal issues surrounding LHDR. Rather than acknowledging that she received these communications, Respondent alleges she ignored an email that informed her that LHDR's home state had taken the extreme step of banning LHDR from doing business. Respondent received an email on August 2, 2011 from a co-worker Anna Shannon.[17] Ms. Shannon had transferred to the Seattle office from the Chicago office in late 2010. Ms. Shannon's email contained the single word "Yikes!" and the link: "http//chicago.cbslocal.com/2011/08/02/state bans-

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debt-resolution-firm-from-doing-business." The link goes to an article, which described the Cease and Desist Order filed in the State of Illinois against LHDR and the fact that the company had been fined $314,000. *Exs. 244,244.5, 601, at p. 184; RP 448*. The article further stated: "The state has also discovered that Legal Helpers, despite its name, does not provide legal representation or attorneys to customers and the person signing contracts with customers is not licensed to practice law in Illinois." *Ex. 244.5, p. 4, RP 459-50*. The State's Attorney General was quoted as saying: "They are essentially a referral source for a scavenger industry that is unfortunately seeking to profit from others financial misfortune." *Id.*

64. By the time Respondent received this email, she had already been served with the class action complaint and at least one adversary action by a bankruptcy trustee. *RP 451*. Again, straining credibility, Respondent testified that she did not remember clicking on the link. She testified that she did not do anything in response to this email, that it did not raise a concern and that when there is a link attached to an email, "I generally think its office gossip at the time, spam, now, so I don't remember doing anything with this email." *RP 450-51*. "I did not have any concerns . . . because this e-mail was emailed to me on August 2, 2011. I didn't have any LHDR clients at the time. They dropped off pretty much completely." *RP 451*. When asked whether she was concerned about all the files she had seen up until that date Respondent first claimed not to understand the question and then concluded: "No, it did not raise any concerns." *RP 452*. Respondent testified that she did not know of the Illinois Cease and Desist Order until she was preparing for this disciplinary hearing. *RP 1213-14*.

[17] This is the person Respondent points to as the person who had the most significant relationship with the

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65. Respondent continued to deny knowledge despite receiving even more claims. On September 8, 2011, Respondent received a demand from another attorney on behalf of yet another debtor. This correspondence also alleged that LHDR preyed on debtors and violated federal and state consumer protection statutes. *Ex. 245.*

66. On October 18, 2011, Respondent received a summons and complaint in the case of MF v. LHDR. *Ex. 246.* This federal lawsuit alleged that LHDR violated the DAA, RCW 18.28.010, *et. seq.*, by taking excessive fees.

67. On November 1, 2011, the State of Washington revoked LHDR's business license. *Ex. 247.* As the registered agent, Respondent was served with the notice of revocation. *Id.*

68. Respondent claims to have no knowledge of the course of these actions even though the defense of the class action involved specific allegations concerning her role in the company. On January 17, 2012[18], attorneys representing LHDR filed an Answer in the class action lawsuit. *Ex. 108.* Paragraph 154 of that document stated: "Mona Lisa Gacutan is one of LHDR's Washington State attorney. (sic) Ms. Gacutan directly oversaw Plaintiff's debt resolution program." *Ex. 108, p. 16.* Paragraph 155 of the Answer stated: "LHDR, through Ms. Gacutan, performed and oversaw all necessary legal and law related services in connection with Plaintiff's debt resolution program." *Id.*

69. On March 2, 2012, Respondent was served with the second adversary action filed by trustee Kathryn Ellis on behalf of the Estate of a debtor. *Ex. 249.* Like the previous action, this complaint also alleged violations of consumer protection laws.

partners in Chicago. *RP 1185.*

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70. On February 8, 2012, Ms. Flake filed the grievance, which began these proceedings. *Ex. 250.* Respondent's initial response to the grievance was inconsistent with the position she took at this hearing.

71. The March 19, 2012 response to the grievance referred to Respondent as "a partner in the national law firm Legal Helpers Debt Resolution, LLC" and attempted to justify both LHDR and her own activities in collecting fees for legal services. *Ex. 251, p. 1*

72. Respondent represented to the Bar that she provided services to Ms. Flake and described them as follows: "I first reviewed Ms. Flake's file in or about June 8, 2010 when she engaged LHDR, in order to ensure that she was an appropriate client and that my firm could assist her in resolving her financial issues. The fees for my legal services of ensuring that she could benefit more from debt settlement than bankruptcy, and making sure that the payments were feasible, were $500.00. On a monthly basis, we would check to see if there were any matters requiring my assistance such as if Ms. Flake lost her job or was sued, and that was taken into account in the $50 maintenance portion of the Attorney Retainer Agreement. *Ex. 251, p. 3.*

73. These statements are false. Respondent's only activity on this file was to review Ms. Flake's monthly income and budget months after she had entered into the contract. *RP 462*. Ms. Flake signed her retainer agreement on *April 5, 2010. Ex. 253, p. 76.* Respondent's review came two months later, on June 8, 2010. By this date, Ms. Flake had made two payments totaling $1,658.58, which was consumed by LHDR's and the debt resolution company's nonrefundable fees. *RP 1247.* A third payment was made two days

[18] Several of these findings discuss events outside the period of time charged in the Complaint. No findings of misconduct arise from these events. Instead, Respondent's testimony concerning these events has been evaluated to determine credibility issues.

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1 after this approval. Fees also consumed this entire payment. Respondent provided no
2 services to this client. Respondent's after the fact, review of the monthly budget cannot be
3 reasonably construed as a service, legal or otherwise. *RP 468.*
4
5 74. Respondent's participation in this fraudulent scheme caused significant harm to
6 this client. Over the course of the first 15 months of this contract, Ms. Flake made payments
7 of $12,214.37. *Ex. 253, pp. 102-108.* Of this sum, fees consumed $8,608.64 (70.48 percent).
8 *Id.* Ms. Flake ultimately made payments of $17,085.71. Of this, only $2,044.78 was ever
9 paid to her creditors. *Ex. 111, p. 25.*

10 75. Respondent performed no services for either the $500 retainer fee or the $50
11 monthly "maintenance" fee. She never followed up with this client even though the client
12 clearly needed the services of a lawyer. Exhibit 253, pages 86-97 document that non-lawyers
13 at the call centers handled Ms. Flake's garnishment paperwork and all follow-up activities.
14
15 76. Respondent's contention that she believed there were lawyers handling the other
16 aspects of the debt resolution process, including the negotiations, is contradicted by her
17 statements to one of her associate attorneys, Nicholas Barta. Mr. Barta testified that he called
18 Respondent from the Tacoma office with his concern that the clients he was meeting with
19 appeared to think that LHDR was a law firm and that he or someone at the firm was
20 representing them. *RP 641.* Respondent replied that the clients knew that they were not
21 being represented and knew what they were signing. *RP 641:3-12.* She told Mr. Barta not
22 to worry about that. *RP 642:13-15.* About that time, Mr. Barta started to feel uncomfortable
23 about signing up LHDR clients. *RP 641.* When Mr. Barta was asked directly if he was their
24 attorney, he informed them that LHDR was a completely separate company, that he was not
25

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their attorney, and to the best of his knowledge, they were not purchasing legal representation. *RP 640.*

77. As the person who had the longest, continuous presence at Legal Helper, PC and in her role as the manager of that firm, and the person who worked with the LHDR partners and handled the LHDR files, the Respondent was in the best position to have knowledge that LHDR was not providing legal services. Other employees testified that LHDR clients came in "screaming" and "crying" about nothing being done on their files. *RP 718.* At least one of them passed that complaint on to Respondent. *RP 719.* These young lawyers recognized that something was not right and took steps to remove themselves from a firm that they believed engaged in conduct that jeopardized their right to practice law. *RP 651.* It strains all credulity that the Respondent, with greater access to information, greater length of time at the firm, longer exposure to the LHDR files and direct knowledge of the multiple adverse actions against LHDR did not at know there were ethical issues associated with LHDR clients.

78. Respondent's testimony conflicted with many of the exhibits and with the response she submitted to the WSBA when this grievance was filed. In her response to the grievance, Respondent informed the Bar "the fees for my legal services of ensuring that [the grievant] would benefit more from debt settlement than bankruptcy and making sure the payments were feasible, were $500." *Ex. 253, p. 2.* However, at the hearing, Respondent admitted that she did not personally make any determination that the grievant would benefit more from debt settlement or bankruptcy and testified repeatedly that her involvement in the files was limited to the review to determine if the client had the funds to pay LHDR. *RP 1241.*

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79. Respondent was not entitled to rely upon the representations of the Class A members of LHDR when confronted with the substantial evidence contradicting their alleged representations. Respondent's own employment contract with LHDR required her to maintain a knowledge of, and advise LHDR, "with respect to the laws and Rules of Professional Conduct." *RP 1258-59; Ex. 203.*

I. Findings Regarding Clients Engaged after October 27, 2010.

80. As noted above, around October 27, 2010, LHDR's business model changed to require face-to-face meetings between Washington lawyers and the clients prior to execution of the contracts. The charges in Count Five implicate Respondent's role in implementing the new protocols for these in-person client meetings. The Bar charges Respondent with failure to properly supervise those subordinate attorneys employed by Legal Helpers, PC who did the in person client meetings.

81. The evidence is mixed on the issue of who was the Legal Helpers, PC supervisor at various times. In January 2011, Respondent was promoted to assistant regional manager in Legal Helpers, PC. *RP 351.* There were two regional managers and four or five assistant managers for the whole company. *RP 355.* At this time, Erik Divinagracia, was the Seattle office managing attorney Legal Helpers, PC. *RP 387.* He did not have any involvement in LHDR. *Id.*

82. Respondent answered directly to the partners and could talk to them directly. *RP 956.* She did interviews, made recommendations to the partners, and did the LHDR debt resolution cases. *RP 956.* She acted as a supervisor and trained at least some of the associates. *RP 711.*

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83. In April 2011, Respondent was promoted to co-manager of the Legal Helpers PC Seattle office. RP 958. Shortly after that time, the other manager left. *Id.* Respondent then became the sole manager of the Seattle office. *Ex. 613.*

84. After LHDR changed its business model in response to the change in FTC regulations, the distinction between the roles of the bankruptcy attorneys employed solely by Legal Helpers, PC and Respondent's role as a Class B member blurred.[19] Legal Helpers, PC, attorneys were required to meet with potential clients of LHDR. *Ex. 222.* The attorneys were provided with expectations regarding their roles that included the admonition that "Local partners shall sign up every client that they meet with." *Ex. 222, p. 10.* They were informed that the "law firm has already conducted the feasibility analysis." *Id.* They were further informed that "alternatives are to be discussed, not sold, at the client's request." *Id.* Finally, if the client had any additional questions, the attorneys were told to inform them that they were to contact their "customer service representative." *Id.*

85. For those clients that failed the LHDR debt resolution program, the bankruptcy attorneys were prohibited from telling the client to seek a refund from LHDR. These lawyers were specifically instructed: "When you receive a Bankruptcy referral from Legal Helpers Debt Resolution (LHDR) **DO NOT** instruct the client to request a refund from LHDR." *Ex. 214* [Emphasis in original.] Respondent received this email, but it did not cause her any concern because at the time she got it, she did not remember many former LHDR clients that they saw for bankruptcy. She testified that she simply disregarded it. *RP 1152.*

86. As part of the face-to-face meetings, the lawyers were required to sign an affidavit of compliance. *Ex. 601, p. 26.* The affidavit required the attorneys to certify that they had

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met with the client personally, that they had reviewed certain subjects with the clients and to state that no fees had been received from the client before execution of the agreement. *Id.* The affidavit provided further that the attorney was to certify that certain matters had been discussed with the client. *Id.*

87. Respondent believes she had three face-to-face meetings. *RP 1180.* Despite the fact the documentation was mandatory, Respondent denied ever having completed an Affidavit of Compliance. *RP 1167.*

88. The Bar presented the testimony of two of the associate attorneys employed by Legal Helpers PC who participated in the face-to-face client meetings to obtain signatures on the LHDR contracts. Both individuals, as well as the other manager, Erik Divinagracia, testified that Respondent did not tell them about the class action lawsuit. *RP 639; 725; 968.* She did not discuss the lawsuit at any of the office meetings where LHDR matters were on the agenda. RP 1008.

89. The allegations of misconduct against LHDR made by the attorney in the class action and by Trustee Kathryn Ellis in the adversary actions were serious accusations. *RP 1009.* Respondent testified, however, that she only reviewed the complaint to determine if she had been named. *RP 1198.* She testified that she was not concerned because she "had no liability at all in regards to LHDR." *RP 1200.*

90. After June 2011, Respondent as the only manager of the Seattle office, had supervisory responsibilities for associates Nicholas Barta and Wilberforce Agyekum. *RP 653; 712.* Respondent did not instruct these associates on the conflict of interest issue, nor did she provide them with the information (the existence of the class action lawsuit) which

[19] Respondent remained the only attorney to have any contact with the 721 files of debtors who signed up under

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would have allowed them to evaluate independently the need to inform potential clients of the conflicts and to obtain appropriate waivers.[20] *RP 639*. There is no evidence that she told them to disregard either the script or the instructions to not tell the clients to seek refunds from LHDR.

91. Following Respondent's directions, these associates continued to meet with and sign up clients after the conflicts of interests arose.[21] *RP 638*. Mr. Barta signed up 10-20 clients. *Id*. At least one of those clients, TS, was signed up after Respondent became co-manager of the Seattle office. *Ex. 323, p. 019*. Mr. Agyekum spent 75 percent of his time signing up clients for LHDR. *RP 709*. He met with an average of 14 clients a day. *RP 710*. The meeting was to take no more than 15 minutes. *RP 710*. The attorneys were told that the clients would come in and that they were to show the clients physically where to sign. *RP 714*.

92. Both Mr. Barta and Mr. Agyekum testified that shortly after beginning their employment they began to feel uncomfortable about what they were doing in signing up the LHDR clients. *RP 647; RP 728*. Mr. Barta left the firm six months after he was hired. *RP 651*. Mr. Agyekum left in October 2011, approximately 7 months after he was hired. *RP 731*. Neither attorney had obtained a replacement job at the time they quit. *RP 730; 652*. Both attorneys testified about the difficulty of making the decision to leave when they both had families to support, could not collect unemployment, and did not have a replacement job to provide the needed support. *RP 651, 730*.

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the original business model.

[20] Because the Complaint does not allege misconduct based on conflicts of interest, or that Respondent had a duty to advise the other associates of the conflicts, this information is provided as background only. None of the findings of misconduct or recommendations for sanctions are based on these facts.

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93. The scripts and the instructions regarding what was to occur during the face-to-face meetings came from the Chicago office. In addition, emails suggest that Ms. Shannon, who transferred from the Chicago office, also participated in scheduling and instructing the subordinate attorneys.

94. Both the original business model (no client contacts) and the modified model (face-to-face contract signings) involved misrepresentations that LHDR lawyers were providing legal services, including debt resolution. *See, e.g.*, marketing materials at *Exhibit 313.3, p. 27.* While Respondent makes a thin argument that she did not have knowledge of these misrepresentations, the defense of lack of knowledge cannot be stretched to include her conduct after she received notice of the class action lawsuit on February 2, 2011. By this date, the combination of fifteen months personal experience with LHDR, her own review of hundreds of individual files and the allegations in the complaint that directly accused her firm of charging for legal services without providing them, provided sufficient information that Respondent knew or should have known, of the misrepresentation about legal services made by LHDR.

95. Both on the original business model and as to the modified model, Respondent did not adequately explain the risks of LHDR's debt settlement program, the terms of LHDR's fee agreement or the fact that the fees charged violated the DAA. Respondent had no contact with the 721 clients whose files she reviewed. The files themselves did not establish that these issues were explained to the clients.

96. Respondent's claim that she believed other members of LHDR had explained their rights to the LHDR clients is not credible. The files, as well as the manner in which they

[21] It appears that both associates were hired after February 2011 when the class action was originally filed. *RP*

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were processed, revealed to anyone doing even the basic inquiry, that all client contacts were handled by non-lawyers and that the forms were inadequate to properly advise the clients of their rights.

97. The retainer fees of $500 for the 721 client files Respondent approved under the original business model are unreasonable because no services were provided for that fee. This conclusion is further bolstered by evidence that by the time Respondent reviewed some of these files, the clients had paid all or part of their nonrefundable attorneys' fees. *RP 1247; 1249; 1251.* The monthly maintenance fees are also unreasonable because no legal services were provided for those fees. Call center personnel did the follow-up calls and other activities. By the terms of the retainer agreement, the services provided by the debt resolution firms were not legal services. *Ex. 253, p. 73.* Moreover, the debt resolution contractors collected their own fees based on 15 percent of the total debt. *Ex. 253, p. 83.*

98. Because contracts entered into after October 27, 2010 included the right to be defended if a creditor brought suit against the debtor, and because the process included face-to-face meetings, this Officer does not find that the Bar has proved by clear, cogent and convincing evidence that the fee(s) associated with files executed as part of the modified business model implemented after October 27, 2010 were excessive.

99. Moreover, Respondent failed to adequately explain the risks of LHDR's debt settlement program and the terms of LHDR's retainer agreement to the three clients with which she admits she had personal contact with as part of the face-to-face meetings. Respondent testified at her deposition that she did not explain bankruptcy and the relief the clients could get. *RP 416.* She was not asked to do that. *Id.* "We were just asked to make

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709; RP 629.

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sure the client signed the documents." *Id.* These admissions support the finding that Respondent failed to properly advise these three clients.

J. Harm to Clients

100. Respondent's conduct in permitting her name to be used as a lawyer providing services to clients who did not receive legal services resulted in substantial harm to numerous debtors. Anywhere from 721 to 1300 debtors were lured into signing up for debt resolution services which were provided not by a law firm, who could provide individual attention to their particular circumstances, but by predatory debt adjustment companies who contracted with LHDR. Without Respondent's assistance, these debt adjustment companies could not have operated in Washington.

101. LHDR exacerbated the debtors' financial problems. They paid upfront fees that provided no benefit. LHDR and its debt resolution contractors could have collected these fees without Respondent providing the colorable claim of exemption from the DAA. As an example, the grievant in this case paid over $16,000 in fees over the course of 20 months, and got just $6,000 back. *RP 891.*

102. The debtors could have used these fees to pay for a bankruptcy attorney and/or to pay down their outstanding debts. Instead, the fees went to LHDR, to the Respondent, and to the for profit debt resolution companies who preyed on financially troubled consumers.

103. LHDR's program resulted in several of the debtors being sued by the creditors. *RP 538; RP 889.* When this occurred, those clients who signed retainer agreements before the FTC changes were denied a legal defense. *RP 489; RP 537; RP 890.* In fact, typically the debtors discovered that the people they were dealing with at LHDR were not lawyers when they were sued. *RP 890.*

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K. Application of "Solely Incidental to Practice of Law" Exemption.

2 104. The Debt Adjustment Act does not apply to attorneys and other named
3 professionals "while performing services solely incidental to the practice of their
4 professions." *RCW 18.28.010(1) (a).* The term "solely incidental to the practice of their
5 profession" has not been defined by judicial decisions in Washington. While the parties offer
6 differing views as to whether this exemption applies to the facts of this case, this Officer
7 determines that it is not necessary[22] to resolve the issue. The above findings establish that
8 LHDR did not provide any services to its clients and that Respondent knew or should have
9 known that her after-the-fact, brief review of the budget and income page cannot reasonably
10 be construed as a legal service to the client.
11

12 105. Should a reviewing authority determine that the Respondent had the legal
13 obligation to review the DAA and decided to apply it to LHDR and to Respondent's conduct,
14 this Officer specifically finds that the fees for the remaining clients exceeded that which that
15 statute permits. The total fees in every case exceeded the 15 percent maximum of the
16 consumer's debt contained in RCW 18.28.080(1). In addition, LHDR retainer consumed
17 more than 15 percent of the first three installment payments as every contract required that
18 these fees be paid upfront. This arrangement violated RCW 18.28.080's limitation on the
19 amount of fees that can be charged per payment. LHDR's excessive fees was aggravated by
20 the fact that its retainer contracts allowed the debt resolution companies also to take their fees
21 upfront. As established in Findings 38 and 73, this payment schedule resulted in many
22 consumers paying 100 percent of their first three months payments as fees.
23
24
25

[22] Should the reviewing authority determine it is appropriate to resolve this issue, the additional findings entered herein should allow independent resolution of this legal issue.

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1 106. LHDR's debt resolution was not done "solely incidental" to LHDR's legal
2 practice. Debt resolution was the only practice of LHDR.
3 107. LHDR's debt resolution practice was not incidental to the combined practice of
4 the bankruptcy firm, Legal Helpers and the debt resolution firm, LHDR. LHDR's debt
5 resolution activities did not relate to the bankruptcy practice. Debt resolution and bankruptcy
6 were mutually exclusive alternatives. Consequently, LHDR's debt resolution activities did
7 not assist or further the bankruptcy practice and cannot be "solely incidental" to Legal
8 Helpers, PC, bankruptcy practice. Similarly, Respondent's debt resolution practice as a Class
9 B member of LHDR cannot be "solely incidental" to her Legal Helpers, PC bankruptcy
10 practice.
11 108. The claim that the two firms operated as one is unsubstantiated. While, Legal
12 Helpers, PC and LHDR shared office space and certain other resources, the two firms are
13 separate law firms. *RP 192.* LHDR is a different legal entity than Legal Helpers PC, which
14 was kept as a discreet bankruptcy practice. *Id.* Finally, Legal Helpers, PC, continued to exist
15 after LHDR's business license was revoked.
16 109. Contrary to argument of counsel, there is no evidence that they shared
17 employees in the State of Washington prior to the time the changes in the business model that
18 began with face-to-face meetings with clients. The two firms had different email addresses
19 for the employees who worked for LHDR. Respondent, for instance, received email for
20 LHDR at mgacutan@legalhelpersdr.com. *Ex. 601, p. 11.* She received her mail for Legal
21 Helpers, PC at mog@legalhelpers.com. *Ex. 601, p. 13.* When LHDR changed its business
22 model to include face-to-face meetings, the LHDR attorneys were formally welcomed into
23 Legal Helpers, PC. Ex. 601, p. 13. [Partners, I want to thank you again *for joining our*

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firm.'](Emphasis added).

110. From November 2009 through the time Respondent approved the 721 files that predated the October 27, 2010 FTC regulations, LHDR and Legal Helpers, PC distinguished between Respondent's work for LHDR, and that the bankruptcy work which she and the Legal Helpers employees performed for Legal Helpers, PC. Work done for LHDR was billed as a separate entity. *RP 635.* The retainer and maintenance fees were withdrawn directly from the client's bank accounts and distributed through GCS.

L. Application of RPC 5.2 Affirmative Defense.

111. Respondent's employment contract contained specific directions that she agreed to "conduct business in compliance with all applicable rules of professional responsibility and to insure that the firm's practices and procedures comply with the rules in the attorney's jurisdiction." *Ex. 202, p. 2.* Respondent did not comply with this mandate.

112. Respondent had an independent duty not to take fees without providing legal services and give appropriate advice to her clients. This included informing them of their rights under the bankruptcy laws and counseling them as to whether debt resolution was an appropriate option.

113. These duties are non-delegable and are not the subject of "reasonable resolution about arguable questions of professional duty." Respondent was not entitled to rely upon the Class A members of LHDR in evaluating her duty not to take fees without providing services and her obligation to personally advise her clients of their rights.

M. Benefits to Respondent.

114. Respondent substantially benefited from her involvement in LHDR by obtaining additional compensation for her participation. *Ex. 225; 248.* Her decision to participate was

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based on her desire to be a "team player, somebody that when asked to do a project was going to do it, was excited to do it." *RP 1098*. Her cooperation and complicity in the LHDR scheme corresponds with her rise through the ranks of Legal Helpers, PC, to the position of assistant regional manager, assistant office manager and finally manager of the Seattle office.

V. CONCLUSIONS OF LAW REGARDING CHARGED VIOLATIONS

Based on the foregoing Findings of Fact, the Hearing Officer makes the following conclusions of law:

A. Conclusions Regarding Misconduct.

Count 1: Both the Bar and Respondent focus their arguments regarding this charge on applicability of the DAA, RCW 18.28, to the facts of this case. This Officer declines the invitation to resolve this issue of first impression because its resolution is not necessary to the underlying issue of whether or not this count has been proven.

There are some documents from which the Respondent can claim that early in her experience with LHDR, she reasonably relied upon representations that other members of the firm were providing legal services to the clients. While this evidence is thin, at best it can only excuse Respondent's claim of lack of knowledge for the period November 4, 2009 to February 2, 2011. Once Respondent was served with the class action complaint, her plea of ignorance is not sufficient to overcome her duty to ensure that her own personal ethical conduct conforms to that required by the RPCs. The allegations contained in the class action complaint, combined with Respondent's own opportunities to observe how LHDR actually conducted its business, makes Respondent's position untenable. *FOF 57-67*.

By the time, Respondent received and reviewed that complaint; she had examined hundreds of files. None of these files showed any evidence that a lawyer had actually

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performed legal services. Respondent knew that she had corresponded directly with the third-party debt resolution agencies, even accessing the files directly from their websites. She knew her "review" of the files, which she admits was necessary in order for LHDR to operate in Washington, were done long after the clients had entered the retainer agreements and after they had provided LHDR with non-refundable fees. Both the timing of the reviews and the minimal amount of time she devoted to this task establish that Respondent knew or should have known that she was not providing a service to her clients. *FOF 50-54.*

Respondent's claim that she did not know that the clients were not being provided legal services is belied by her statement to an associate attorney that they [the clients] know "they're not being represented; they know what they're signing up for." *RP 641. FOF 76.* She told this lawyer that there were no lawyers there." *RP 651.* That statement is also contradicted by the fact that even when in-person interviews were being done, the clients were directed back to the non-lawyer representative with the debt resolution firms, rather than having their questions answered by the attorneys. *RP 663.*

Clear, cogent and convincing evidence supports Count One. Respondent's continued support of LHDR's activities after February 2, 2011 is sufficient basis to conclude that Respondent assisted LHDR in charging fees without providing any legal services and assisted in LHDR in misrepresenting that it was providing legal services to its clients. Because no legal services were provided, this conduct violated RPC 8.4(a), and RPC 8.4(c).

I do not find a violation of RPC 8.4(b). In evaluating the allegation of criminal violation of RCW 18.28.190, it is appropriate to apply the criminal definition of "aiding and abetting" because this section of the act defines a criminal act. The Bar has failed to meet its burden of proof that Respondent had the requisite elements of accomplice liability required

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under the RCW 9A and has thus not met its burden of proving a violation of RPC 8.4(b).

Count Two: Respondent violated RPC 1.3, RPC 1.4(a) (2) and/or RPC 1.4(b) by failing to explain the risks of LHDR's debt settlement program compared to other courses of action, and by failing to explain the terms of the agreement to the clients. Again, the analysis applicable to this count may differ based on when the client signed up for the debt resolution services. Respondent makes a minimally plausible argument that she believed other lawyers were providing this advice early on in her involvement with LHDR. There are emails associated with the approval of the pre-October 2010 files that support this claim. Again, this claim is much more dubious after February 2, 2011 when she received and reviewed the class action complaint.

Regardless, this defense does not apply to those clients Respondent personally enrolled in the program. For at least the three clients she admits to having seen, Respondent had a direct obligation to counsel the clients properly regarding their alternatives. There is no evidence that she did anything other than follow the script and obtain the required signature. *FOF 99.* Her failure to sign the required Affidavit of Compliance creates a negative inference that she was aware she was not providing even the minimal advice required by that certification. This conduct was inadequate to comply with her ethical obligation.

The allegation that Respondent violated the RPCs by failing to explain that the fees charged in LHDR's fee agreement violated one of more of Washington State's consumer protection statutes is not sustained. Given the decision to defer the issue of the applicability of those statutes, it would be inappropriate to conclude that the failure to provide this information to clients violated the RPCs. Should the reviewing authority determine that the DAA does apply an additional violation for failing to provide the clients with this information

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should be sustained.

Count Three: Respondent violated RPC 1.5(b) by failing to explain the fee agreement to LHDR's Washington clients. The same analysis applies to this count as applies to Count Two. As to in person interviews, Respondent had an obligation to explain the upfront fees and the arbitration clause but did not.

Count Four: Respondent assisted LHDR in charging $500 plus maintenance fees for legal services and not providing any legal services. This conduct violated RPC 8.4(a), RPC 1.5(a) and RPC 1.3. This conclusion applies only to the Respondent's conduct regarding the 721[23] files she approved prior to the changes in the FTC regulations.

The basis for concluding that this Count has been proven is two-fold. First, there is no credible evidence that the approvals Respondent provided were services, legal or otherwise, benefiting her clients. The after the fact review Respondent provided had no benefit to the debtors. *FOF 50-54.* These files came to Respondent after the clients had signed the retainer agreements, months after they had committed to the program, and after they had made substantial investment in the program in the form of multiple monthly payments. Respondent was fully aware that she was providing nothing of value because each file had the enrollment date, and the monthly payments. *FOF 48.* She knew her "approval" was pro forma; she approved all of the files, hesitating briefly on just one.

The second basis for this conclusion is that Respondent continued to assist LHDR even after being provided with information that would have raised suspicion of the most

[23] There is evidence to sustain a violation for the remaining files, as well. However, Respondent argues persuasively that a Hearing Office cannot substitute their valuation of a service. RP 1468; *In re Kagele,* 149 Wn. 2d 793 (2003). Because those clients who went through the in person signature process at least had the opportunity to meet with an attorney and ask questions, I am reluctant to insert my determination of the value of those services into the analysis in a case where the count has been already proven with other client files.

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gullible professional. By February 2, 2011, Respondent had sufficient information to know that the debt resolution subcontractors, not LHDR, sent the letters of representation, communicated with the clients and their creditors, and managed the debt resolution services. Respondent reviewed hundreds of files with retainer agreements that specifically provided the acts of the debt resolution subcontractors are not legal services. The files established that Respondent or LHDR provided no legal services.

Respondent received a portion of every client's fees via her compensation package as a Class B member of LHDR. After receiving the class action lawsuit, rather than investigating the allegations contained therein, she rapidly approved many more files. *FOF 61.*

Count Five: The evidence is mixed on the issue of the authority of the various individuals in the Washington Legal Helpers bankruptcy office and the timing associated with that authority. Although Respondent held the position of co-manager beginning in April 2011 and manager as of June 2011, there is also evidence that Anna Shannon had some management responsibilities. Respondent clearly did not inform her subordinate attorneys of the class action lawsuit and/or the other information to which she was privy, which bore on the rights of the clients. Nonetheless, I do not find that clear, cogent and convincing evidence supports the conclusion that Respondent had sufficient supervisory authority to find a violation of RPC 5.1(b), RPC 8.4(a) and RPC 8.4(c).

B. Conclusions Regarding Affirmative Defense.

Respondent urges that as a Class B member of LHDR, under RPC 5.2 (b) she was entitled to believe that the Class A members had properly set up LHDR to comply with applicable ethical and statutory provisions. Resp. Post Hearing Brief at 6. Citing *City of*

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Bremerton v. Widell, 146 Wn.2d 561, 570, 51 P.3d 733 (2002), she argues further that the "Bar had to prove the absence of her defense that she was entitled to rely on the determinations of senior counsel." *Id.*

Respondent is incorrect on both points. *City of Bremerton v. Widell* stands only for the proposition that where the affirmative defense goes to an element of an offense, the State has the burden of disproving the affirmative defense. This ruling is consistent with well-established criminal law doctrine. (See discussion of criminal defenses at 11 Wash. Prac. §IV.)

A subordinate lawyer's attempt to invoke RPC 5.2(b) will fail where the violation of the rules is indisputable or where the supervisory lawyer's resolution is not reasonable and the question is not genuinely "arguable." Geoffrey Hazard, Jr., William Hodes, Peter Jarvis *Law of Lawyering*, §46.02, p... 46-3. (2015 Ed.). In the present case, even if Respondent was entitled to rely upon the Class A partners' interpretations of the RPCs and statutes early on in the venture, that reliance cannot excuse her decision to continue. At the point where Respondent knew, or should have known, that LHDR was misrepresenting itself as providing legal services and knew that LHDR did not provide legal services but nonetheless took fees, it was no longer reasonable to rely upon the Class A members' interpretations. Pursuant to RPC 5.2 (a), Respondent had an independent duty to conform her conduct to the Rules of Professional Conduct.

VI. PRESUMPTIVE SANCTIONS

Determination of the appropriate sanction involves a two-step process applying ABA Standards for Imposing Lawyer Sanctions. *In re Anschell*, 149 Wn.2d 484, 69 P.3d 844 (2003). The first step is to determine the presumptive sanction, considering the ethical duty

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violated, the lawyer's mental state, and the extent of the harm caused by the misconduct. ABA Std. 3; *In re Whitt*, 149 Wn 2d 707, 717, 72 P.3d 173 (2003). The second step in the process is to consider whether aggravating or mitigating factors should alter the presumptive sanction. *In re Johnson*, 118 Wn.2d 693, 701, 826 P.2d 186 (1992).

Count One: This count involves misrepresentations directed towards her clients. ABA Standard 4.6 is applicable to cases where a lawyer engages in "fraud, deceit, misrepresentation directed toward a client." This standard states:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:
>
> a. Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
>
> b. Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.
>
> c. Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to the client.
>
> d. Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information and causes little or no actual or potential injury to the client.

In arriving at the presumptive sanction, the court looks to the conduct as a whole, in context, and evaluates the misconduct, the lawyer's state of mind and the harm caused. *In re Discipline of Eugster*, 166 Wn.2d 293, 322, 209 P.3d 435 (2009). The difficulty in this case is determining Respondent's mental state as it pertains to the breach of her ethical duties to the clients. The ABA standards define "intent" as "the conscious objective or purpose to accomplish a particular result." Each definition of mental state relates the mental state to a

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particular result. *Id; In re Discipline of Stansfield*, 164 Wn.2d 108, 123, 187 P.3d 254 (2008). Generally, where the court has found that an attorney acted with an intentional state of mind, the attorney's intent was to benefit herself or himself. *In re Discipline of Poole*, 156 Wn.2d 196, 239, 125 P.3d 954 (2006) (Madsen, CJ. dissenting); See also, *In re Miller*, 149 Wn.2d 262, 281, 66 P. 3d 1069 (2003).

Both the definition and the cases bifurcate the mental element into two component parts. First, the lawyer must "knowingly" deceive the client. ABA Std. 4.6(a). Second, the attorney's "intent" is directed to achieving the result, i.e., benefiting the lawyer or another person. *Id.*

Here the second prong is clear. There is little question that Respondent engaged in this activity for her own benefit. The exhibits contain multiple examples of Respondent inquiring regarding her bonus payments for this work. *See, e.g., Exs. 209; 216; RP 341-42; 360-61.* In 2010, she earned an additional $24,508 just for her review of the files. *Ex. 225*; *RP 362.* Moreover, Respondent's rise from associate to manager of the Seattle office of Legal Helpers, PC coincided with her cooperation and assistance that she provided to the partners in the LHDR venture.

The closer question is whether Respondent "knowingly" deceived the clients by assisting the Class A members of LHDR in order to perpetrate the deception that the clients were actually receiving legal services. Citing *In re Jones,* 182 Wn.2d 17, 29, 338 P. 3d 842(1982), the Bar asserts that knowledge can be proven based on circumstantial evidence. The Bar also cites Geoffrey Hazard, Jr. & William Hodes, [24] "*The Law of Lawyering.*" These authors discuss the fundamental problem associated with determining "what a lawyer knows."

[24] The more recent edition relied upon by this Officer includes a third author, Peter R. Jarvis.

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> Defining a cognitive standard, either explicitly or through interpretation, is one thing, but proving it is another. In the final analysis, all conclusions about someone else's state of mind must be derived from circumstantial evidence.

Geoffrey Hazard, Jr., William Hodes, Peter Jarvis *Law of Lawyering*, §1.24, p. 1-72. (2015 Ed.). The authors go on to note that even where a person makes a statement describing their state of mind, that information is "merely an item of circumstantial evidence" that must be evaluated in part of the process of determining the person's actual state of mind. *Id.* Noting that it is impossible to look into a lawyer's head and equally unacceptable to take the lawyer's word for "his own state of mind when the probity of his own conduct is at issue" the authors note that the model rules allow knowledge to be inferred from circumstances. *Id.* at p. 1-73. They then conclude that the more accurate statement is that "a person's knowledge or belief can *only* be inferred from circumstances." *Id.* Summing up the issue, the authors comment:

> Even where a violation requires proof of "knowledge" the circumstances may be such that a disciplinary authority will infer that a lawyer *must* have known. In such a case, the lawyer will be legally chargeable as if actual knowledge had been proved. In terms of what can be proved, the "knows" standard thus begins to merge with the "should have known" standard, because it will sometimes be impossible to believe that a lawyer lacked the requisite knowledge, unless he deliberately tried to evade it. But one who knows enough to try to evade legally significant knowledge already knows too much.

The treatise then recognizes that Judge Henry Friendly acknowledge this proposition in *United States v. Benjamin*, 328 F.2d 854, 862 (2d Cir. 1964) when he opined that the government could meet its burden of proving willfulness "by showing that a defendant deliberately closed his eyes to facts he had a duty to see." *Law of Lawyering,* §124, p. 1-73, n. 73.

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Much of the discussion in this section of the treatise recognizes that a lawyer, dealing with a client, has competing duties between the duty to advocate for the client and the duty not to submit false evidence. Here, that consideration does not apply. Clients did not ask her to do something that had dubious overtones. Instead, Respondent asserts the lack of knowledge as a defense, and as support for her claim that she had the right to rely upon the representations of the Class A members of her firm.[25]

In evaluating Ms. Gacutan's mental state, it is well to heed the admonition that:

> A lawyer is an adult, a man or woman of the world, not a child. He is also better educated than most people, more sophisticated and more sharply sensitized to the legal implications of a situation. The law will make inferences as to the lawyer's knowledge with those considerations.
>
> Looking forward into his professional conduct as it proceeds, a lawyer must imagine how his conduct will appear to others looking back at it later. And he must imagine the inferences that will be drawn as to what he must have known at the time. In pragmatic terms, that is what a lawyer knows.

Law of Lawyering, §1.24, p. 1-76.

Using these principles as guidelines, while the question of what Respondent knew about the misrepresentations is closer than the issue of her intent, nonetheless clear, cogent and convincing evidence supports the conclusion that after February 2, 2011, Respondent knew that the clients were being deceived, but nonetheless continued to assist LHDR in maintaining the fraudulent scheme.

This conclusion is based on the premise that Respondent had the information in front of her to know that LHDR misrepresented what it was doing to its clients. Respondent could not have performed even a cursory review of the client files without discovering that the work was being outsourced to non-lawyer debt resolution companies. She cannot evade or

[25] Indeed, Respondent has asserted this as an affirmative defense to her conduct. Resp. Post-Hearing Brief at 6.

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1 minimize her knowledge that the review she was charged with doing was done weeks or
2 months after the clients had entered into binding retainer agreements and paid non-refundable
3 fees. She cannot evade knowledge by claiming that she never looked at the advertisements,
4 never looked at the website for the firm for which she was a Class B member, and never
5 investigated the role of the debt resolution firms from which she was getting at least some of
6 the files directly.

7 The exhibits belie her claim of ignorance. Exhibit 210, page three, is an email
8 exchange between Respondent and the paralegal at the Chicago office. Dated May 13, 2010,
9 the email exchange begins with the paralegal informing Respondent that there are two files
10 for her to review. It then continues: "It has been awhile since we've seen files from this
11 *affiliate.* I have attached a word document with this email that contains instructions on how to
12 review files with this CRM. The link to the website is in the instructions." Ex. 210, p. 3.
13 (Emphasis added). Respondent answers the email a little more than two hours later,
14 informing the paralegal that she "went to the website and it was pretty easy (and I also read
15 your instructions) I have approved both." *Id.*

16 Respondent's claim of lack of knowledge is further undercut by her lack of credibility
17 and circumstantial evidence that when she learned of the class action lawsuit, she approved a
18 significant number of files rapidly.

19 Respondent asserts she was a victim and asks us to believe that she received
20 correspondence from a long-time colleague with the word "Yikes!" and the link:
21 http//chicago.cbslocal.com/2011/08/02/state bans-debt-resolution-firm-from-doing-business.
22 She asks that this officer blindly accept her contention that she did not click on the link and
23
24
25

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therefore that she did not know that her firm had been banned from doing business in its home state.

Respondent also argues that she was providing legal services, of value, but ignores evidence that she did the reviews, personally earning thousands of dollars in fees, after the fact. She does not explain how a lawyer can provide legal services based on a review of a complex file in as little as one to two minutes. These and the other findings set forth above all establish Respondent's "knowledge" that she was assisting LHDR in misrepresenting that it was providing legal services to its clients.

There is little question that the Respondent's conduct caused serious injury and/or the potential for serious injury. As established by the clients' testimony, the bankruptcy trustee and the expert testimony, Respondent's conduct resulted in vulnerable individuals paying substantial fees to Respondent's firm, third party debt resolution companies and GCS without receiving any corresponding benefit. Disbarment is the presumptive sanction.

Counts Two & Three: Both of these counts implicate the lawyer's duty to perform services for her client, including the duty to keep the client fully informed of alternative methods of legally achieving the desired result. As such, this count implicates the lawyer's duty of diligence to a client as contained in ABA Standard 4, Lack of Diligence. The following standards apply:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:
>
> 4.41 Disbarment is generally appropriate when:
>
> (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

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(b) a lawyer knowing fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowing fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4. 44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

ABA Std. 4.41(b) & (c) apply to this count because Respondent knew that she had not provided the information required for the clients to make informed decisions regarding debt resolution and she knew, or should have known, that no one else was providing that information. Respondent was aware of the contents of the individual files, was aware that the retainer agreement did not adequately inform the clients of the rights and nonetheless continued to approve files for LHDR. She knew what her approval of these files was necessary in order for LHDR to do business in Washington. She was aware that the script provided for in person meetings, that her employers instructed her and her colleagues to sign up every client that they met with, and that the alternatives to the plan were to be discussed, not sold, at the client's request. *Ex. 222, p. 10.*

This pattern of activity caused serious or potentially serious injury to Respondent's clients. Deprived of the information they needed to evaluate fully their alternatives, the

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clients signed up for expensive debt resolution services that were doomed to fail because they brought greater economic pressure on the debtors without protecting their interests. The testimony of the individual debtors described just some of the hardships faced by these individuals because they had not been fully advised of the alternatives available to them, including bankruptcy. One witness, for example, signed up for debt resolution services even though as a retired State Patrol Officer, his only sources of income, social security and his state retirement, were exempt from garnishments. *RP 532; 541.* The lack of appropriate advice resulted in a lien being placed on his house and a garnishment action. *RP 541.*

The presumptive sanction for Counts Two and Three is disbarment.

Count Four: Count Four implicates a lawyer's duty to refrain from conduct, which is either criminal and/or involves dishonesty, fraud, deceit or misrepresentation. ABA Std. 5.1 applies to such conduct. That standard provides:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit or misrepresentation:
>
> 5.11 Disbarment is generally appropriate when:
>
> a. a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances, or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
>
> b. a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
>
> 5.12 Suspension is generally appropriate when a lawyer knowingly engages

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in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that adversely reflects on the lawyer's fitness to practice law.

ABA Std. 5.11 (b) applies to this count. Respondent's conduct was clearly intentional and done for personal financial gain. She also wanted to improve her position in her related firm. While it is tempting to accept the Respondent's argument that she was as much a victim as the clients, the only fact that would justify that claim is her relative youth and inexperience. Weighing against those two facts is the evidence that other young lawyers, who were supporting families, nonetheless recognized that their duty to the profession outweighed their personal situations and needs. Also weighing against acceptance of this explanation, is the specific attention to detail the Respondent brought to every other aspect of her financial relationship to LHDR and the partners. Finally, the timing of Respondent's activities following her receipt of the class action lawsuit indicates that she recognized that the allegations contained in that complaint had merit and reflect her desire to obtain the greatest financial benefit she could from the arrangement before something happened to cut off this additional income. Under these facts, given the pervasiveness of the deception and fraudulent scheme, Respondent's voluntary participation in it justifies disbarment.

Count 5: Count 5 is being dismissed with a finding of failure to prove misconduct.

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VII. AGGRAVATING CIRCUMSTANCES

Aggravating factors or circumstances are any considerations that may justify an increase in the degree of discipline to be imposed. These factors apply to Respondent's conduct.

ABA Std. 9.22 (b) Dishonest or Selfish Motive

Respondent engaged in this activity in order to increase her position in the companion firm, Legal Helpers, PC, and for the additional compensation Class B membership provided. The Bar presented multiple e-mails wherein Respondent was aggressively seeking her compensation checks for this activity. Clearly, it was Respondent's primary concern. Most tellingly, when she learned of the claims against LHDR, she rapidly approved the remaining files.

ABA Std 9.22 (d) Multiple offenses

Respondent's misconduct involves multiple offenses. While the final number of Washington debtors who fell victim to LHDR's predatory conduct is not known, the best estimate is from 721 to 1300. Even if one accepts Respondent's assertion that initially she relied upon the Class A members, once she was served with the class action complaint, her push to rapidly approve the remaining files and collect her fees resulted in more clients being drawn into LHDR scheme.

ABA Std 9.22 (f) Submission of false evidence during the disciplinary process

"In addition to their duties to their clients, lawyers owe an ethical duty to the legal system, to the legal profession, and to the general public." *In re Disciplinary Proceedings of Huddleston*, 137 Wn.2d 560, 573, 974 P.2d 325 (1999); ABA Standards at 5. The presentation of false testimony by the Respondent during the disciplinary process undercuts

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public confidence in the legal system in a way that no other misconduct can. As our courts have repeatedly recognized:

> Misrepresentations and fabrications during the disciplinary process reflect adversely on the lawyer's ability to practice law, the public perception of the legal system, and the judicial process as a whole. The foundation of the judicial system is truth and honesty. An attorney is expected to cooperate fully with the discipline process and should not be rewarded for "coming clean" after lying in the disciplinary proceedings.

In re Disciplinary Proceedings of Whitt, 149 Wn.2d 707, 721, 72 P.3d 173 (2003).

This factor applies in two respects. First, Respondent's written submissions to the Bar in response to the grievance contained false information concerning the scope of her legal services to the client. Respondent attempted to distance herself from these submissions. She explained that she relied upon LHDR to provide her the materials for her defense. She also claimed that where she referred to *her* services, she really meant that LHDR provided the services. Neither explanation relieves Respondent of her responsibility to ensure that whatever she provided was factually accurate. She signed the response and provided the attachments. With all of the information she had been provided by other sources concerning LHDR's misconduct, it is not reasonable for Respondent to delegate the defense of her ethical conduct to LHDR or to claim that she is entitled to rely upon their representations.

Secondly, as indicated, Respondent's testimony at the hearing simply was not credible and conflicted with the various exhibits. This Officer's notes during her testimony indicate multiple examples wherein it was obvious that Respondent was uncomfortable with her own testimony. While this one fact is not controlling, it, combined with the inconsistencies between testimony and exhibits and the false information provided in response to the grievance, weighs in favor of this aggravating factor.

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VIII. MITIGATING CIRCUMSTANCES

ABA Std. 9.32 (a) Absence of a prior discipline record.

Respondent has no prior disciplinary record. This mitigating factor is clearly applicable.

ABA Std. 9.32 (f) Inexperience in the practice of law.

Respondent's inexperience partially mitigates her conduct. However, the strength of this factor must be viewed in light of the evidence that two other lawyers, with less experience, and much more to lose because of the need to support their families, realized that there were problems. These individuals voluntarily stepped away from their positions even though they did not have replacement positions. This fact substantially reduces the applicability of this factor given Respondent's greater experience, deliberate choice to participate in LHDR, acceptance of financial rewards, and greater knowledge of what was occurring.

IX. RECOMMENDATION

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge properly their professional duties to clients, the public, the legal system and the legal profession. ABA Standards, §1.1.

It is truly unfortunate that this young lawyer chose her own self-interest over her duty to her clients and to her profession. As tempting as it is to accept at face value the argument that Respondent was a victim, not a willing participant in the deceit LHDR perpetuated on hundreds of Washington consumers, overwhelming evidence rebuts that claim. The presumptive sanctions for three of the four counts is disbarment. In addition, there are

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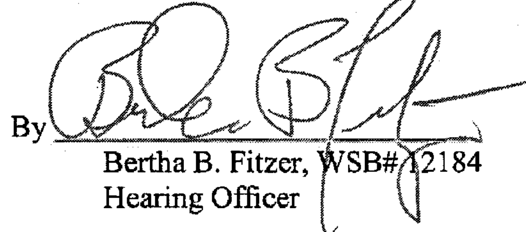
aggravating factors that outweigh any offered mitigation. This Officer recommends disbarment.

DATED this 21st day of January, 2016.

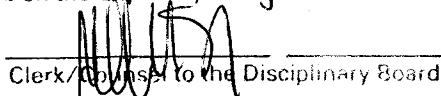
FITZER, LEIGHTON & FITZER, P.S.



By ______________________
Bertha B. Fitzer, WSB# 12184
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the FOF, COL & HO's Recommendation to be delivered to the Office of Disciplinary Counsel and to be mailed to Kurt Bulmer Respondent/~~Respondent's Counsel~~ at 1400 Belmont Pl E #3 Seattle, WA 98102, by Certified/~~first class mail~~, postage prepaid on the 21st day of Jan., 2016



Clerk/Counsel to the Disciplinary Board

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