IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	**)**	
	)	
HAHN, JAMES W. II,	**)**	**Supreme Court #86940**
	)	
Respondent.	**)**	

INFORMANT'S REPLY BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

NANCY L. RIPPERGER #40627
STAFF COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
Nancy.Ripperger@courts.mo.gov

ATTORNEYS FOR INFORMANT

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STATEMENT OF FACTS

The primary purpose of the "Statement of Facts" is to afford the reviewing court an immediate, accurate, and complete understanding of the case. *Kent v. Charlie Chicken II, Inc.*, 972 S.W.2d 513, 514 (Mo. App. 1998). Rule 84.04(c) instructs that the "Statement of Facts" shall be a fair and concise statement of the facts relevant to the questions presented for determination and without argument.

Respondent's "Statement of Facts" does not provide an accurate depiction of the case in that it includes numerous references to facts not in evidence, inaccurately summarizes witnesses' testimony and includes numerous arguments. Informant requests that this Court strike Respondent's statements that are unsupported by the record, inaccurate, and/or argumentative.

Background

In his "Statement of Facts" Respondent greatly expounds upon his background beyond what was in the record.[1] Respondent appears to be trying to gain the sympathy of the Court by characterizing himself as an outstanding attorney with an impressive background. Consequently, he makes numerous statements about his accomplishments prior to 1993. Assuming that the statements Respondent has made about his prior accomplishments are in fact true, the information is too old to be relevant in this case.

[1] The transcript contains one and one-half pages of testimony concerning Respondent's life prior to 1993. In his "Statement of Facts" Respondent has included five pages of text regarding his life prior to 1993.

The information Respondent has provided does not provide an accurate representation of Respondent's current abilities as an attorney or his present standing in the community.

Facts Underlying Disciplinary Hearing

John Gaither Complaint
Count III of Information

Respondent states that Mr. Gaither was charged with and entered a guilty plea to the criminal offense of manufacturing methamphetamine and served time in prison until August 2002. Respondent then provides detailed information about where Mr. Gaither resided after he was released from prison, that Mr. Gaither did not have a personal phone and that after Mr. Gaither was released Respondent returned phone calls from Mr. Gaither by leaving messages at the front desks of the various institutions where Mr. Gaither resided. There is no evidence in the record regarding where Mr. Gaither resided after being released from prison, whether he had a personal phone or that Respondent attempted to return calls from Mr. Gaither after Mr. Gaither's release. Tr. 190-208.

Moreover, in his "Statement of Facts" Respondent sets forth various information regarding Mr. Gaither's medical condition. More specifically, he states that in 2002 he advised Mr. Gaither that he must obtain new x-rays and have a physician, rather than a chiropractor, examine him before Respondent could make a demand upon the insurance company. This evidence was not presented at trial. Tr. 190-208. Consequently, Informant did not have the opportunity to ask Mr. Gaither about Respondent's allegations or cross-examine Respondent about the matter. Accordingly, this Court should strike or disregard Respondent's statements.

Respondent also asserts that after the February 4, 2005, hearing in this matter he has attempted to locate the driver of the car and has had regular contact with Mr. Gaither. Respondent is improperly making statements about activities that have allegedly occurred after the hearing and the information should not be considered by this Court.

Making False Statement to Court and Informant
Count VI of the Information

In his "Statement of Facts", Respondent discusses his dealings with Informant prior to entering into the Joint Stipulations and the "problems" he has experienced with his employees in recent years.

Prior Diversion Agreement

Respondent states that after he entered into a Diversion Agreement with Informant he took the following actions to comply with the Diversion Agreement: (1) he attended the Solo and Small Firm Seminar in June of 2003, (2) he hired a computer consultant in July 2003 to assist him with his computer problems, (3) he consulted with a doctor about mental health issues, and (4) he reviewed office procedures with staff.

Respondent has made misstatements to the Court. Respondent admitted in his Answer that he took no action to comply with the Diversion Agreement. Ex. 1, ¶ 71; Ex. 2, ¶ 71. Moreover, Informant's staff did not even discuss the possibility of Respondent entering into a Diversion Program until July 17, 2003, when they met with him and Respondent did not enter into the Diversion Agreement until August 24, 2003. Tr. 266, Ex. 1, ¶ 69; Ex. 2, ¶ 69. Therefore, any action Respondent took before August 24, 2003, would not have been in an effort to comply with the Diversion Agreement.

Preparation of Bills by Chris Leonard

Respondent lays blame for his inability to resume billing upon employee Chris Leonard. He states that when he hired Ms. Leonard she represented to him that she was proficient in using his billing software. After Ms. Leonard prepared two bills Respondent states it was apparent she had no knowledge of his billing software in that she billed time increments incorrectly. Respondent states that he tried to explain to Ms. Leonard how to convert his time records into the proper one hundredth of hour's entries but that Ms. Leonard was unable to grasp the concept. More specifically, he states that she could not calculate that 15 minutes of time should be billed as .25 hours and 20 minutes of time should be billed as .33 hours.

At the hearing, Ms. Leonard admitted that she had incorrectly listed time increments on the two bills she generated. She further explained that she had made errors on the bills because at her prior employment the attorneys had billed in quarter hour increments rather than the one hundredth hour increments Respondent used. She also stated that after Respondent addressed the issue with her she understood how he wanted future bills prepared. When asked at the hearing by Respondent to convert time into one hundredth of hour increments, Ms. Leonard was able to do so without any problem. Tr. 231-32.

Shannon Blagg Testimony

In his "Statement of Facts", Respondent maintains Informant presented Ms. Blagg's sworn affidavit to both the Panel and Respondent only minutes before the hearing. Respondent has blatantly misstated the facts. Ms. Blagg had previously

provided Informant with an affidavit which Informant used as an exhibit to a motion filed with this Court on September 14, 2004. Informant had sent the motion and attached affidavit to Respondent on September 14, 2004. Accordingly, Respondent had Ms. Blagg's affidavit for over four months before the hearing. Moreover, Informant did not rely upon Ms. Blagg's affidavit at the hearing. Ms. Blagg testified on behalf of Informant. Rather, Respondent used the affidavit at the hearing to attempt to impeach Ms. Blagg.

Respondent argues that Ms. Blagg's testimony was not credible because in her affidavit she swore that Respondent did not generate any bills while she was employed by Respondent when in fact Respondent had generated two bills. At the hearing, Ms. Leonard testified that she was the one that produced the two bills, not Ms. Blagg. Tr. 216-217. As a result, Ms. Blagg was not aware of Ms. Leonard's actions when she provided Informant with her affidavit.

Respondent also argues that Ms. Blagg's testimony is not credible because in Ms. Blagg's affidavit she stated that he sometimes missed court appearances or other crucial deadlines. At the hearing, he contends Ms. Blagg could not provide any examples of court appearances he missed. Respondent did not accurately characterize Ms. Blagg's testimony. On cross-examination Ms. Blagg admitted that she did not have first-hand knowledge of any court appearances Respondent missed. However, she stated that she had received a phone call from a local judge expressing his displeasure with having to constantly continue Respondent's cases and based upon the judge's statement to her she believed Respondent was missing court appearances. Tr. 153.

Respondent argues that while Ms. Blagg testified at the hearing that once Respondent received his initial retainer from a client he ceased working on a client's matter, Ms. Blagg could not give any specific examples of such. Respondent is incorrect. Ms. Blagg testified about Respondent's failure to prepare her own divorce petition after she had paid him to do so. Tr. 66-68.

Respondent argues that while Ms. Blagg testified that Respondent routinely did not keep prescheduled phone conferences with clients and that clients often had to wait weeks or even months before Respondent would return the client's calls, Ms. Blagg could not provide specific examples of such. Again Respondent has misstated the facts. Ms. Blagg testified that Respondent was not available for at least three previously scheduled phone conferences with Randy Woodard. Tr. 63. She also testified that Respondent regularly failed to keep conferences with clients Mike Eakins, Jessica Richardt, Raymond Bugg, Richard Crisp and Jeremy Patterson. Tr. 120-21. Ms. Blagg's testimony is also corroborated by Mr. Gaither's testimony that Respondent continually failed to keep prescheduled conferences and Mr. Gaither would have to wait weeks or months before being able to speak with Respondent. Tr. 197.

Respondent further argues that Respondent's Exhibit A, Ms. Blagg's desk calendar, proves that he regularly returned phone calls to clients in that it lists his scheduled phone conferences with clients. At trial, Ms. Blagg testified that Respondent often scheduled phone conferences but then failed to keep the conferences. She further testified that her desk book did not reflect whether Respondent actually kept a previously

scheduled phone conference but rather only reflected whether support staff had scheduled the conference. Tr. 179.

In his Statement of Facts, Respondent also spends a great deal of time attempting to dispute Ms. Blagg's testimony that Respondent had no filing system or method of organizing files. Respondent's statements are not credible. In Respondent's deposition, which was entered into evidence at the hearing, Respondent admits that his files were in complete disarray when Ms. Blagg came to work for him, while she worked for him and after she left his employment. Ex. 13, pp. 45-49.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE IN ADDITION TO VIOLATING RULES 4-1.3, 4-1.4(a), 4-1.16(d), 4-8.1(b), 4-5.5(c), AND 4-8.4(d), WHICH RESPONDENT ADMITTED, HE ALSO VIOLATED:

a. **RULE 4-1.3 IN CONNECTION WITH THE REPRESENTATION OF JOHN GAITHER IN THAT RESPONDENT DID NOT ACT WITH DILIGENCE WHEN HE FAILED TO TAKE ANY ACTION ON THE MATTER FOR ALMOST FIVE YEARS;**

b. **RULE 4-8.1 IN CONNECTION WITH RESPONDENT ENTERING INTO THE JOINT STIPULATION IN THAT RESPONDENT, WITH THE INTENT TO DECEIVE, FALSELY STATED TO INFORMANT'S STAFF ON FEBRUARY 18, 2004, THAT HE WAS BILLING CLIENTS AND RECEIVING FUNDS FROM THE BILLINGS; AND**

c. **RULE 4-3.3(a) WHEN RESPONDENT ENTERED INTO THE JOINT STIPULATION WHEN HE KNEW THE JOINT STIPULATION CONTAINED FALSE INFORMATION REGARDING HIS BILLING OF CLIENTS.**

Cases:

In re Donaho, 98 S.W.3d 871, 874 (Mo. banc 2003)

Rules:

Rule 4-1.3

Rule 4-1.4(a)

Rule 4-1.16(d)

Rule 3.3(a)

Rule 5.5(c)

Rule 8.1(b)

Rule 8.4(d)

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE DISBARMENT IS AN APPROPRIATE DISCIPLINE:

a. **WHEN A LAWYER ENGAGES IN UNETHICAL CONDUCT INVOLVING DISHONESTY IN THAT RESPONDENT INTENTIONALLY MADE A MATERIAL FALSE STATEMENT TO THIS COURT IN THE JOINT STIPULATION, THIS COURT AND INFORMANT SPENT VALUABLE TIME AND EFFORT ADDRESSING THE MATTER AND APPROPRIATE DISCIPLINARY PROCEEDINGS WERE DELAYED AS A RESULT OF THE DECEPTION; AND**

b. **WHEN A LAWYER ENGAGES IN A PATTERN OF NEGLECT WITH RESPECT TO CLIENT MATTERS IN THAT RESPONDENT HAS CONTINUED TO TAKE ON NEW CLIENTS WHEN HE KNOWS THAT HE CANNOT DILIGENTLY REPRESENT THEM.**

III.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE THE MITIGATING FACTORS IN THIS CASE DO NOT DEMONSTRATE RESPONDENT'S FITNESS TO PRACTICE LAW IN THAT RESPONDENT HAS WIDESPREAD PROBLEMS WITH HIS PRACTICE, RESPONDENT HAS SHOWN AN UNWILLINGNESS TO WORK WITH INFORMANT TO CORRECT THE PROBLEMS AND RESPONDENT HAS DEMONSTRATED AN INABILITY TO CORRECT THE PROBLEMS ON HIS OWN.

Cases:

Cincinnati Bar Assoc. v. Weaver, 809 N.E.2d 1113, 1116 (Ohio 2004)

Other Authorities:

ABA Standards for Imposing Lawyer Sanctions (1991)

ARGUMENT[2]

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE IN ADDITION TO VIOLATING RULES 4-1.3, 4-1.4(a), 4-1.16(d), 4-8.1(b), 4-5.5(c), AND 4-8.4(d), WHICH RESPONDENT ADMITTED, HE ALSO VIOLATED:

a. **RULE 4-1.3 IN CONNECTION WITH THE REPRESENTATION OF JOHN GAITHER IN THAT RESPONDENT DID NOT ACT WITH DILIGENCE WHEN HE FAILED TO TAKE ANY ACTION ON THE MATTER FOR ALMOST FIVE YEARS;**

b. **RULE 4-8.1 IN CONNECTION WITH RESPONDENT ENTERING INTO THE JOINT STIPULATION IN THAT RESPONDENT, WITH THE INTENT TO DECEIVE, FALSELY STATED TO INFORMANT'S STAFF ON FEBRUARY 18, 2004, THAT HE WAS BILLING CLIENTS AND RECEIVING FUNDS FROM THE BILLINGS; AND**

[2] Respondent did not identify which of Informant's Points Relied On that he was addressing with his arguments as required by Rule 84.04(f). Informant has responded to Respondent's arguments under the Point Relied On that she believes he was addressing with his specific argument.

c. RULE 4-3.3(a) WHEN RESPONDENT ENTERED INTO THE JOINT STIPULATION WHEN HE KNEW THE JOINT STIPULATION CONTAINED FALSE INFORMATION REGARDING HIS BILLING OF CLIENTS.

Respondent contends that he did not violate Rules 4-8.1 and 4-3.3(a) because he acted in good faith and was truthful in all representations he made to the Informant on February 18, 2004. Respondent also asserts that he mistakenly believed on February 18, 2004, that he had resolved the problems with his computer system. He then goes on to blame the fact that he was unable to begin billing after February 18, 2004, on the incompetence of Ms. Leonard who started to work for him on March 1, 2004.

Respondent's argument fails for two reasons. First, Respondent states that he merely told Informant at the February 18, 2004, meeting that he was taking steps to resolve his billing problems and that he hoped to be able to send out bills in the near future. This is not true.[3] Respondent very clearly stated to Informant's staff that he had resumed billing at the February 18, 2004, meeting and that he had funds coming into his practice as a result. Ms. DeCook testified extensively about Respondent's statements and Ms. DeCook's notes reflect Respondent's statements. Tr. 273-78.

[3] In his Brief, Respondent also incorrectly states that he asked to meet with the undersigned on February 18, 2004. Informant's staff subpoenaed Respondent to their office on February 18, 2004, to discuss his outstanding complaints and the reasons Respondent failed to comply with the Diversion Agreement. Ex. 4, pp. 58-59.

Respondent asserts that the only evidence Informant had of Respondent's alleged statements was the phrase "currently billing clients" Ms. DeCook wrote on her notepad during the February 18, 2004, meeting and that Ms. DeCook's note is inaccurate. At the hearing, Ms. DeCook testified that she independently remembered Respondent making the statement that he had resumed billing. Tr. 273. Her handwritten notes from the meeting also contain much more information than the three words "currently billing clients." Her notes state that "things are doing [sic] well", and Respondent was "finally getting payments from clients". Ex. 5.

In his Brief, Respondent explains that when he told Informant's staff that he was "finally getting payments from clients" he merely meant that his staff had increased their efforts to collect the initial nonrefundable retainers from clients.[4] He also states that for the majority of his cases he expends less time on them than his nonrefundable retainer so that his ability to bill clients is not crucial to his financial welfare. Respondent, however, did not advise Informant of this. Ms. DeCook's testimony reflects that he told Informant's staff that the increase in his revenues was due to the fact that he was now billing clients. Tr. 273-78.

Furthermore, Respondent's statement that for the majority of his cases he would need to bill above the initial nonrefundable retainer does not coincide with what he had told Informant in the past. At the July 22, 2003, meeting with Informant, Respondent

[4] Respondent allowed clients to make periodic payments for their nonrefundable initial retainer.

attributed many of his problems with his practice to the fact that he had experienced computer problems and was unable to bill clients. Tr. 266-268; Ex. 18.

Second, assuming *arguendo* Respondent did not intend to mislead Informant on February 18, 2004, Respondent offered no reasonable explanation why he entered into a Joint Stipulation on or about May 28, 2004, which clearly stated he was sending out monthly bills to clients on a regular basis and was beginning to receive revenue from the billings. At the hearing, Panel Member Taylor specifically questioned Respondent about the matter and Respondent merely stated that on May 28, 2004, he thought he would be billing in the near future. Tr. 319-22. Respondent's explanation does not comport with his testimony at trial or his assertions in his Brief. Respondent states that by March 2004, he had determined that Ms. Leonard was unable to generate bills on his behalf and that he had begun experiencing a growing number of conflicts with Ms. Leonard and Ms. Blagg. If Ms. Leonard could not prepare the bills and he was experiencing personnel problems with both of his employees on May 28, 2004, how could he possibly believe that he would be billing in the near future? Furthermore, even if he had believed he would be billing in the near future why he would have entered into a Joint Stipulation that contained inaccurate information?

The evidence is undeniable - Respondent lied because it was beneficial to his negotiations with Informant to do so. When Respondent learned that Informant was going to seek suspension or disbarment of his license, Respondent was willing to do whatever it took to save his license including lying. Respondent's behavior is unacceptable. As this Court stated in *In re Donaho*, 989 S.W.3d. 871, 874 (Mo. banc

2003), "questions of honesty go to the heart of fitness to practice law" and when an attorney embarks upon a consciously chosen course of lying to disciplinary authorities it raises serious doubts about his fitness to practice law. *Id.*

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE DISBARMENT IS AN APPROPRIATE DISCIPLINE:

a. WHEN A LAWYER ENGAGES IN UNETHICAL CONDUCT INVOLVING DISHONESTY IN THAT RESPONDENT INTENTIONALLY MADE A MATERIAL FALSE STATEMENT TO THIS COURT IN THE JOINT STIPULATION, THIS COURT AND INFORMANT SPENT VALUABLE TIME AND EFFORT ADDRESSING THE MATTER AND APPROPRIATE DISCIPLINARY PROCEEDINGS WERE DELAYED AS A RESULT OF THE DECEPTION; AND

b. WHEN A LAWYER ENGAGES IN A PATTERN OF NEGLECT WITH RESPECT TO CLIENT MATTERS IN THAT RESPONDENT HAS CONTINUED TO TAKE ON NEW CLIENTS WHEN HE KNOWS THAT HE CANNOT DILIGENTLY REPRESENT THEM.

Respondent alleges that this Court should not give any credence to Ms. Blagg or Ms. Leonard's testimony regarding his neglect of clients. He asserts they are not credible witnesses because: (a) they took photographs of a room in his office that they should not have been able to access, (b) Ms. Leonard used the office internet to make personal

online banking transactions (c) Ms. Leonard's husband stopped by the office on Friday afternoons, and (d) he could not verify Ms. Leonard's statement to him that she had made a complaint to Taco Bell about experiencing food poisoning. He contends Ms. Blagg and Ms. Leonard testified against him out of spite because he fired them.[5]

This Court should ignore Respondent's assertions. The Panel Members observed the witnesses' demeanor while testifying and they were in the best position to judge the witnesses' credibility. The Panel believed Ms. Blagg and Ms. Leonard rather than Respondent. More specifically, the Panel found:

> "Respondent's office practices and procedures were not improving. Respondent's office was in disarray during all relevant time periods.
>
> a. Respondent did not have any organization of his files. Files were scattered throughout the office and many of the relevant documents were not filed into the client's files. Staff members would have to search for hours to find files.
>
> b. Respondent did not open mail on a timely basis. Often Respondent would wait weeks before opening mail including mail from the court, clients, opposing counsel and the OCDC.

[5] Ms. Blagg and Ms. Leonard contend that they resigned because of Respondent's actions and the working conditions at the office. Tr. 88, 225.

c. Respondent focused his efforts almost exclusively upon bringing in new clients and receiving retainers from the new clients.

d. Once clients paid Respondent the initial retainer, Respondent stopped working on the clients' matters.

e. After a client paid Respondent his initial retainer Respondent avoided communicating with his clients.

f. On a daily basis Respondent's staff received numerous phone calls from clients dissatisfied with Respondent because Respondent would not communicate with them about their cases and/or Respondent was not take any action on their cases.

g. Respondent had taken on many more clients than he could handle.

h. Because of the working conditions in his office, Respondent was unable to keep staff.

i. Respondent would not allow staff to make changes designed to improve his practices and procedures.

j. Respondent placed all blame for the disorganization of his office upon staff rather than himself."

Furthermore, Ms. Blagg and Ms. Leonard's testimony is supported by Ms. Britzman and Mr. Gaither's testimony. Ms. Britzman worked for Respondent after Ms. Blagg and Ms. Leonard. Ms. Britzman testified that during the month that she worked

for Respondent: (a) the files and papers in the office were a "catastrophe", (b) Respondent would not take calls from existing clients, (c) she was instructed to get Respondent "right away" if there was a call from a potential new client, (d) Respondent instructed support staff to focus their efforts on collecting the initial retainer from clients, and (e) at least ninety percent of the phone calls she handled were from clients complaining because Respondent was not taking any action on their matter. Tr. 252-255.

Mr. Gaither testified that since May 2004 he had tried to contact Respondent numerous times and that Respondent would not speak with Mr. Gaither even when Mr. Gaither had previously scheduled a phone conference with Respondent for the given date and time. Tr. 196-97.

Ms. Blagg and Ms. Leonard's assertions are also consistent with Respondent's representation of Ms. Tidwell and Ms. Carey. Respondent admitted that Ms. Limbaugh paid him a $1,250 retainer to handle Ms. Tidwell's divorce and that he did not file an Answer on Ms. Tidwell's behalf even after Ms. Tidwell's husband moved for a default judgment and Ms. Tidwell repeatedly called him. He further admits that he did not return Ms. Limbaugh's $1,250 until over a year after she requested such and long after he told Informant he would refund the retainer. Ex. 1, ¶¶ 18-42; Ex. 2, ¶¶ 18-42.

Respondent admits that he took no action on Ms. Carey's matter for a number of years and he never advised her that her claim was barred by his lack of diligence. He further admits that Ms. Carey repeatedly called his office asking to speak to him and after each call his staff would arrange a phone conference for Ms. Carey which Respondent seldom kept. Ex. 1, ¶¶ 6-17; Ex. 2, ¶¶ 6-17.

Ms. Blagg and Ms. Leonard's testimony, along with the other credible evidence presented at the hearing, shows that Respondent has a long-standing, wide-spread pattern of neglecting clients.

III.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE THE MITIGATING FACTORS IN THIS CASE DO NOT DEMONSTRATE RESPONDENT'S FITNESS TO PRACTICE LAW IN THAT RESPONDENT HAS WIDESPREAD PROBLEMS WITH HIS PRACTICE, RESPONDENT HAS SHOWN AN UNWILLINGNESS TO WORK WITH INFORMANT TO CORRECT THE PROBLEMS AND RESPONDENT HAS DEMONSTRATED AN INABILITY TO CORRECT THE PROBLEMS ON HIS OWN.

Respondent asserts that when deciding what discipline to impose against him, the Court should consider as mitigation the fact that he admitted to some of the allegations in Count VI and admitted to all the allegations in Counts I, II, IV, and V. This Court should not heed Respondent's request. First, in Count VI Respondent did not self-report to Informant. Ms. Blagg reported Respondent's lies to Informant and Informant subpoenaed Respondent's billing records. When Respondent could not produce his billing records he was forced to admit that he was not billing clients as he had previously reported to Informant. Ex. 13, p.14. This Court should not be lenient upon Respondent because he had no choice but to admit to certain allegations. Furthermore, he continues to deny that he misled Informant and this Court. His lack of remorse should be an aggravating rather than mitigating factor.

As to admitting the allegations in the other counts, Respondent did not cooperate with Informant when she began investigating the complaints. He failed to provide Informant with a response to the Limbaugh/Tidwell complaint and Informant had to subpoena him to her office. In addition, while he admitted to the allegations in the other counts in his Answer it is clear from his testimony and his Brief that he does not accept ultimate responsibility for the violations. Instead he blames his failure to provide adequate representation to his clients upon incompetent staff. From 2003 until February 2005, Respondent has had at least fifteen different staff people working for him. This supports Ms. Blagg and Ms. Leonard's testimony that there are significant problems with the way that Respondent manages his law practice. Respondent should not consider a Respondent's admission of certain violations a mitigating factor when Respondent fails to take full responsibility for his actions. Under Standard 9.2(g) of the ABA Standards for Imposing Lawyer Discipline (1991) ("ABA Standards"), refusal to acknowledge wrongful conduct is an aggravating factor negating any mitigating factor that might exist and further suggesting that this Court should disbar Respondent.

Respondent asserts that this Court should not disbar him because he did not steal money from clients or engage in any other wanton conduct deserving disbarment. He asserts that instead this Court should impose a six-month stayed suspension with Respondent having to comply with the terms of the prior Diversion Agreement.

Informant adamantly disagrees with Respondent's recommendation. Any type of stayed suspension with probation is inappropriate for Respondent. In order for probation to work effectively an attorney must be willing to work with Informant and Informant

must possess confidence that she can trust Respondent to provide accurate information about his compliance with the term of probation. Respondent has a long history of failing to work with Informant. He has received prior admonitions for failing to respond to requests from Informant for information in a timely manner. After Respondent entered into the Diversion Agreement he would not even take the time to pick up the phone and discuss with Informant's staff why he allegedly could not comply with the Diversion Agreement. He did not respond to Informant's request for information on the Limbaugh/Tidwell complaint and Informant has to subpoena him to her office. In addition at the hearing, he admitted that he has failed to provide Informant with responses to outstanding complaints filed against him after Informant filed her Information in this case. Tr. 324-325; Ex. 1, ¶¶ 5, 31; Ex. 2, ¶¶ 5, 31; Ex. 4, pp. 7-10.

Moreover, even in his Brief Respondent continues to provide inaccurate information to this Court in order to serve his cause. For instance, in the Brief he states "he spent six months in an exhausting and constant attempt to . . . meet the requirements of the diversion program." Respondent admitted in his Answer that he did not take any action to comply with the Diversion Agreement. Ex. 1, ¶ 71; Ex. 2. ¶ 71. Respondent's present and past behavior shows that he is not a suitable candidate for stayed suspension with probation. Furthermore, under ABA Standard 9.2(f) Respondent's continued submission of false statements to this Court is an aggravating factor further supporting Informant's assertion that this Court should disbar Respondent.

Case law indicates that Respondent should receive a much more severe discipline than the six month stayed suspension he requests. In *In re Donaho,* 98 S.W.3d 871 (Mo.

Banc 2003), Mr. Donaho had no prior disciplinary history, had neglected only one client and then lied to the Disciplinary Committee. This Court imposed a one-year suspension on Mr. Donaho. In the instant case, Respondent has: (a) an extensive disciplinary history, (b) has already been given the chance to participate in a Diversion Program and did not take advantage of the assistance offered to him, (c) has lied to both Informant and this Court, (d) has a long-standing, wide-spread pattern of neglecting clients, and (e) refuses to take ultimate responsibility for his failings. Respondent's conduct was much more egregious than Mr. Donaho's and warrants more severe discipline than even suspension.

While he denies doing so, Respondent has, in fact, taken money from clients. He has continued to take on new clients upon the payment of retainers when he cannot provide them with adequate representation. He has also denied clients the right to recover for their injuries because he failed to file suit on their behalf before the statute of limitations ran. As the Supreme Court of Ohio declared in *Cincinnati Bar Assoc. v. Weaver*, 809 N.E.2d 1113, 1116 (Ohio 2004), "taking retainers and failing to carry out the contracts of employment is tantamount to theft of the fee from the client" and disbarment is the only appropriate discipline.

CONCLUSION

For the reasons set forth in Informant's Brief and Reply Brief, this Court should find that Respondent violated Rules 4-1.3, 4-1.4(a), 4-1.16(d), 4-3.3(a), 4-8.1, 4-5.5(c), and 4-8.4(d), disbar Respondent, and tax costs in this matter against Respondent.

Respectfully submitted,

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

By: _____

Nancy L. Ripperger #40627
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

Nancy.Rippreger@courts.mo.gov

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2005, two copies of Informant's Reply Brief and a copy of the diskette containing the brief have been sent via First Class mail to:

James W. Hahn, II
2858 Professional Court
P. O. Box 862
Cape Girardeau, MO 63702-0862

_____
Nancy L. Ripperger

CERTIFICATION: SPECIAL RULE NO. 1(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Special Rule No. 1(b);

3. Contains 5,275 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Nancy L. Ripperger