

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**LARRY D. COLEMAN,** ) **Supreme Court #SC89044**  
 )  
**Respondent.** )

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**INFORMANT'S BRIEF**

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## **STATEMENT OF JURISDICTION**

Jurisdiction over attorney discipline matters exists in the Missouri Supreme Court and is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, RSMo 2000.

## STATEMENT OF FACTS

### **Background and Disciplinary History**

On or about April 30, 1977, Respondent, Larry D. Coleman (“Respondent”) was licensed to practice law in the State of Missouri. **App. 27.** Respondent’s bar number is 27575. **App. 27.** Respondent has received two prior admonitions for violations of the Rules of Professional Conduct, the first being in 1990 for failure to communicate with his client and for unreasonableness of fees. **App. 148-152.** Respondent’s second admonition was received in 1999 for failure to act with reasonable diligence, failure to expedite litigation and failure to communicate with his client. **App. 148-152.**

### **Misconduct Underlying the Disciplinary Complaint**

On or about July 13, 2006, the Complainant, Cherie Maxwell, retained Respondent to file a civil action for employment discrimination against the General Services Administration. **App. 7 (T. 13, 15); 35-36.** Ms. Maxwell provided the Respondent with a \$4500.00 retainer fee. **App. 7 (T. 15); 36.** Per the terms of the Respondent’s fee agreement with Ms. Maxwell, the Respondent was to be paid \$250.00 per hour. **App. 8 (T. 17); 36.**

Most of Respondent’s correspondence with Ms. Maxwell was carried out via e-mail. **App. 8 (T. 20); 36.** Ms. Maxwell informed Respondent that she had a history of high blood pressure, as well as stress and anxiety-related orders. **App. 9 (T. 22); 47.** Ms. Maxwell also informed Respondent that she believed she continued to be the victim of harassment at her job, that she was suffering retaliation at her job for filing a harassment complaint, and that she feared for her physical safety. **App. 47.**

A Notice of Right to Sue from the Equal Employment Opportunity Commission (“EEOC”) is required in order to file a discrimination action in federal court. **App. 10 (T. 25-26)**. Ms. Maxwell received a Notice of Right to Sue from the EEOC, dated August 17, 2006. **App. 9 (T. 23-24)**. Respondent received the letter in his office within five days of August 17, 2006. **App. 9 (T. 24)**. Respondent had 90 days from the date of the EEOC Notice of Right to Sue to file a discrimination action in federal court. **App. 9 (T. 23-24); 124-139**. In Ms. Maxwell’s case, the 90-day limitation period ran in November, 2006. **App. 10 (T. 26)**.

From approximately July 13, 2006, to the first of September, 2006, Respondent supervised the activity of his law clerks, but did not personally work on Ms. Maxwell’s case. **App. 10-11 (T. 28-29, 30)**. In e-mail correspondence dated August 25, 2006, Respondent directed Ms. Maxwell to locate a statistician to serve as an expert in her case and indicated that this was necessary in order to file the petition. **App. 61**. Respondent further directed Ms. Maxwell to look up statisticians on the internet, as well as directing her to locate a sociologist to serve as an expert witness. **App. 61**. Respondent assured Ms. Maxwell that the filing of the pleadings would occur in September or October at the latest. **App. 73**.

Ms. Maxwell sent multiple e-mails to Respondent at the beginning of September, 2006, inquiring about the status of her lawsuit. **App. 12 (T. 34); 64**. Respondent informed Ms. Maxwell that although her suit was due to be filed on November 17, 2006, he would be unlikely to get something filed before late October because he had other pressing matters for other clients. **App. 12 (T. 34); 64**. Respondent further indicated to

Ms. Maxwell that he had hoped she would have already contacted expert witnesses, familiarized the experts with her case, and retained them to work on the case. **App. 64.** Respondent informed Ms. Maxwell that after several weeks of having his law clerks work on the case, Respondent had determined that he would have to “give the case texture and direction” and set the forms for the case himself, before having the law clerks work on the matter any further. **App. 12 (T. 35-36); 64.** Ms. Maxwell expressed concern that her case would not be filed until the end of the 90-day limitation period, and further expressed concern that the stress and anxiety was taking a toll on her health. **App. 67.** Ms. Maxwell informed Respondent that she did not want to wait until the last minute to file the lawsuit and was not comfortable with Respondent’s contentions that the filing depended on the hiring of a sociologist and/or statistician. **App. 66.** Ms. Maxwell further expressed concern that Respondent had retained \$4500.00 and to date, she had no indication as to how the money was being used or whether Respondent was working towards filing her case. **App. 66.**

In late September, 2006, Respondent sent Ms. Maxwell e-mail correspondence indicating that he may wish to withdraw from her case, as he felt Ms. Maxwell’s repeated e-mails concerning the delay in filing her action evidenced a lack of confidence in his services. **App. 71.** Respondent stated to Ms. Maxwell that he would inform her of his decision the following Friday. **App. 71.** Ms. Maxwell did not hear from Respondent the following Friday and contacted him on September 23, 2006, for further discussion. **App. 124-139.** Respondent replied to Ms. Maxwell’s September 23, 2006 correspondence with an e-mail, in which Respondent stated that Ms. Maxwell’s inability to invest further

money in the case posed a definite problem and suggested that although her retainer had not yet been exhausted, a federal court case may cost her an additional \$20,000.00. **App. 124-139.** Respondent also stated that the investment of additional money for a \$40,000.00 job was worthwhile and stated that he would definitely need to be paid beyond the \$4500.00 retainer. **App. 124-139.** Finally, Respondent asked Ms. Maxwell whether he should close the case and withdraw or continue working on the matter. **App. 124-139.** Subsequently, Ms. Maxwell interpreted Respondent's e-mail as a request for additional monies in order to proceed with her case and requested a breakdown of her costs, to date. **App. 124-139.**

On or about October 2, 2006, Ms. Maxwell filed a complaint with the Office of Chief Disciplinary Counsel. **App. 124-139.** Thereafter, Ms. Maxwell received a billing statement from Respondent, dated September 26, 2006, in which Respondent indicated that during the four months that he represented Ms. Maxwell, Respondent spent 3.49 hours working on Ms. Maxwell's case, 2.5 hours of which were for the initial consultation. **App. 144-145.** The billing statement further indicated that Respondent's law clerks spent 36.25 hours reviewing the file and creating a timeline, for a total service cost of \$4566. **App. 124-139.** Respondent's law clerks were students from the University of Missouri-Kansas City, who worked approximately ten hours per week, and Respondent billed Ms. Maxwell \$100.00 per hour for their time. **App. 14-15 (T. 44-45); 144-145.** Respondent paid the law students \$11.00 per hour. **App. 15 (T. 45).** The law clerks generated two, four-page timelines pertaining to Ms. Maxwell's case. **App. 18 (T. 57-60); 153-163.** The outlines were virtually identical, with one of the four-page

timelines being an updated version of the first four-page timeline. **App. 18 (T. 59-60); 172.** Having reviewed the case file, Respondent could not locate any memorandum or other piece of work that would reflect the 36.25 hours of law student work for which Ms. Maxwell was billed. **App. 18 (T. 58-59).**

At no time during his correspondence with Ms. Maxwell did Respondent disavow Ms. Maxwell of her belief that Respondent was requesting an additional \$40,000.00 to process her case. **App. 124-139.** Prior to the time that Respondent sent Ms. Maxwell the billing statement, Respondent had not provided Ms. Maxwell a statement concerning the remainder of her retainer, reasoning that he need not provide a statement because Ms. Maxwell had not asked for a statement. **App. 18 (T. 57); 146-147.** Prior to the time Ms. Maxwell filed a formal complaint with the Office of Chief Disciplinary Counsel, Respondent failed to provide Ms. Maxwell a status update on the progress of her case. **App. 146-147.**

On November 9, 2006, Respondent sent a letter to Ms. Maxwell indicating that he had that day received a copy of her formal complaint from the Office of Chief Disciplinary Counsel, that he was terminating the attorney/client relationship, and that he had enclosed a copy of her discrimination petition, so that she might file the petition, *pro se*. **App. 74.** At the same time, Respondent sent a copy of the discrimination petition to Region IV Special Representative, Charles W. Gotschall. **App. 140-143.** On or about November 14, 2006, Ms. Maxwell filed her discrimination lawsuit in federal court, *pro se*. **App. 35-123.**

## **Disciplinary Proceeding**

An Information was served on Respondent in May, 2007, setting forth Informant's belief that probable cause existed to establish that Respondent violated Rule 4-1.3 (failure to act with reasonable diligence) and 4-1.5(charging an unreasonable fee). **App. 4 (T. 4); 27-29; 30.** A hearing panel was appointed and a hearing was held on September 18, 2007, wherein Informant was represented by Charles W. Gotschall and Respondent appeared, *pro se.* **App. 3-26; 31-34.** The Disciplinary Hearing Panel ultimately determined that Respondent violated Rule 4-1.5 in "charging a fee that was unreasonable by obtaining an advance fee of \$4,500 without clarifying services to be rendered and then failing to provide sufficient services or expenses to justify the advance fee." **App. 173.** The Disciplinary Hearing Panel further found that Respondent was guilty of violating Rule 4-1.3 in failing to act with reasonable diligence and promptness. **App. 173.**

The Disciplinary Hearing Panel determined that there were aggravating factors in Respondent's case, in that Respondent had prior disciplinary offenses for similar complaints, Respondent refused to acknowledge the wrongful nature of his conduct, the vulnerability of Ms. Maxwell, as Respondent was aware of Ms. Maxwell's emotional and psychological state and Respondent's substantial experience in the law. **App. 174.** Using the ABA's Sanctioning Rules as guidelines, the Disciplinary Hearing Panel recommended that Respondent be reprimanded. **App. 173-174.** The initial Decision of the Disciplinary Hearing Panel was signed on November 5, 2007, only by the Presiding Officer, Lajuana Counts. **App. 164-169.** A subsequent copy of the Decision was mailed to all parties containing the signatures of the other two panel members. **App. 170-177.**

On November 21, 2007, Respondent submitted a Motion to Dismiss Disciplinary Hearing Panel Decision Owing to Substantive and Procedural Infirmities to Special Representative, Charles Gotschall, Legal Ethics Counsel, Sara Rittman, Chief Disciplinary Counsel, Alan Pratzel, Missouri Supreme Court Advisory Committee Chair, John Dods, and Disciplinary Hearing Panel Members, Rebecca Leonard and William Riggs. **App. 178-186.** In his motion, Respondent suggested that the initial failure of each panel member to sign the Disciplinary Hearing Panel Decision, as well as the Disciplinary Hearing Panel's failure to render a written decision within 30 days, constituted infirmities justifying dismissal of Informant's complaint. **App. 178-186.** Respondent further alleged that there were omissions of fact from the Decision of the Disciplinary Hearing Panel and that the inability of Ms. Maxwell to appear at the hearing violated his right to confrontation under the 6<sup>th</sup> Amendment of the Constitution and a denial of Due Process and Equal Protection rights. **App. 178-186.** On November 28, 2007, Advisory Committee Chair, John Dods, advised the Respondent that he found nothing in the Rules concerning a Motion to Dismiss following the rendering of a Disciplinary Hearing Panel Decision and that final determination is the sole province of the Missouri Supreme Court. **App. 187.** Following the hearing, Respondent declined to concur in the Disciplinary Hearing Panel's Decision and this request for review follows.

**POINTS RELIED ON**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT 4-1.3, 4-1.5 AND 4-8.4(d) IN THAT RESPONDENT FAILED TO DILIGENTLY WORK TOWARDS FILING MS. MAXWELL'S PETITION AND RETAINED AN UNREASONABLE RETAINER AND FEE FOR THE AMOUNT OF WORK PERFORMED.**

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

*In re Crews*, 159 S.W.3d 355 (Mo. banc 2005)

*In re Caranchini*, 956 S.W.2d 910 (Mo. banc 2005)

*In re Gastineau*, 857 P.2d 136, 140 (Or. 1993)

ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer-Client Relationship*  
§ 31:403 (2005)

Rule 4-1.3

Rule 4-1.5

Rule 4-8.4(d)

**POINTS RELIED ON**

**II.**

**THE SUPREME COURT SHOULD ISSUE RESPONDENT A REPRIMAND BECAUSE A REPRIMAND IS APPROPRIATE WHEN A LAWYER IS NEGLIGENT IN ACTING WITH REASONABLE DILIGENCE AND NEGLIGENTLY FAILS TO PROVIDE A CLIENT COMPLETE INFORMATION.**

*In re Shelhorse*, 147 S.W.3d 79 (Mo. banc 2004)

*In re Crews*, 159 S.W.3d 355 (Mo. banc 2005)

*In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003)

*In re Cupples*, 979 S.W.2d 932 (Mo. banc 1998)

Standards for Imposing Lawyer Sanctions, American Bar Association, 1991

## ARGUMENT

### I.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT 4-1.3, 4-1.5 AND 4-8.4(d) IN THAT RESPONDENT FAILED TO DILIGENTLY WORK TOWARDS FILING MS. MAXWELL'S PETITION AND RETAINED AN UNREASONABLE RETAINER AND FEE FOR THE AMOUNT OF WORK PERFORMED.**

A disciplinary hearing panel's recommendation is advisory in nature. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005). This Court conducts a de novo review of the evidence and reaches its own conclusions of law. *Id.* Discipline will not be imposed unless professional misconduct is proven by a preponderance of the evidence. *Id.* Violation of the Rules of Professional Conduct by an attorney is grounds for discipline. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004).

#### **Violation of Rule 4-1.3 Regarding Diligence**

Missouri Supreme Court Rule 4-1.3 states that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.<sup>1</sup>” At the core of the duty of

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<sup>1</sup> Rule 4-1.3 was amended in July, 2007, however the Rule, itself, remained the same as the 2006 version of the Rule cited in this brief and the changes pertained only to the Comment.

diligence is a lawyer's obligation to perform in a timely manner the work for which he or she was hired. ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer-Client Relationship* § 31:403 (2005). In the present action, Respondent was hired to file a federal discrimination lawsuit against Ms. Maxwell's employer. Respondent received the EEOC's Notice of Right to Sue within days of its August, 2006 issuance and was thereafter free to file Ms. Maxwell's discrimination suit in federal court. Ms. Maxwell repeatedly expressed anxiety over her current working conditions and the retaliation she believed she was experiencing after having filed a complaint with the EEOC. Though Respondent assured Ms. Maxwell that he would file her lawsuit in September, or at the latest, early October, Respondent failed to file Ms. Maxwell's lawsuit and failed to provide her any status update as to when the case might be filed.

No professional shortcoming is more widely resented than that of procrastination. *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003) (citing Comment to Rule 4-1.3). Respondent determined that Ms. Maxwell's lawsuit must be filed on or before November 17, 2006. Ms. Maxwell repeatedly reiterated that she did not wish to wait until the last minute to file the lawsuit. Nevertheless, Respondent continued to delay in filing the suit. Respondent contends that he did not learn of Ms. Maxwell's complaint to the Office of Chief Disciplinary Counsel until November 9, 2007, and it was on that date that he terminated the attorney-client relationship. By Respondent's own calculations and admission, at the time that he terminated the attorney-client relationship, only six business days remained in which Ms. Maxwell might be able to file her federal suit, lest she be time-barred. Still, Respondent had not filed Ms. Maxwell's lawsuit. Instead, he

forwarded a copy of the petition to Ms. Maxwell, leaving Ms. Maxwell only a few days in which to obtain another attorney, or file her lawsuit, *pro se*. Though Ms. Maxwell was able to have her lawsuit filed a few days prior to the running of the statute of limitations, the Comment to Rule 4-1.3 makes clear that even when the client's interests are not substantively affected, delay by the lawyer can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. In the present action, Ms. Maxwell repeatedly made clear to Respondent that his delay was causing her stress and anxiety and further indicated that she did not trust Respondent's course of action.

Not taking into account the initial consultation, Respondent's billing statement indicates that he spent less than one hour personally working on Ms. Maxwell's case. Respondent has indicated that he delayed in filing the lawsuit because he had other pressing matters for other clients. However, a lawyer should pursue a matter on behalf of a client despite personal inconvenience and should control his workload so that each matter can be adequately handled. Comment to Rule 4-1.3.

In addition to Respondent's failure to diligently pursue the filing of Ms. Maxwell's petition, Respondent required Ms. Maxwell to perform work for which Respondent, himself, had been paid. Respondent indicated in his correspondence with Ms. Maxwell that he expected her to find expert witnesses to testify on her behalf, retain the expert witnesses, and orient them to her case. When Ms. Maxwell failed to locate an appropriate sociologist and/or statistician, Respondent intimated that it was Ms. Maxwell who was responsible for the delay in filing. The retaining of expert witnesses is certainly a task traditionally handled by the attorney, and not one passed to the client. More

reprehensible, however, was Respondent's attempt to make Ms. Maxwell believe that her failure to locate appropriate expert witnesses was the reason for Respondent's delay in filing her suit. Clearly, Respondent's own dilatory pursuit of filing Ms. Maxwell's case was the sole source of delay in this matter.

Respondent also took affirmative steps to create doubt in Ms. Maxwell's mind as to whether he would file her petition on time. Having retained \$4500.00 of Ms. Maxwell's money and with less than two months remaining for her suit to be filed, Respondent informed Ms. Maxwell that he would definitely need additional money to proceed with her case and that her inability to invest more money in the case posed a serious problem. Further, in correspondence with Ms. Maxwell, Respondent posed the following:

However, as you've indicated that you are without further resources to invest in the case, a problem is immediately posed. First, our contract contemplates an hourly rate and expenses. Now, you intimate that you cannot pay either, nor anything, beyond what you have already paid. That poses a definite problem.

...

Your file is on my desk, right now. It is the only file on my desk right now. What shall I do? Open it and get to work? Or leave it closed and send everything back to you, before I can get down to work in earnest?

Respondent also interjected a \$20,000.00 and \$40,000.00 figure into his correspondence with Ms. Maxwell. The question posed by Respondent, set forth above, in addition to his reference to an additional \$20,000.00 or \$40,000.00 figure naturally led Ms. Maxwell to

believe that Respondent was requesting additional monies before he would proceed with her lawsuit. When Respondent received Ms. Maxwell's e-mail, wherein she asserted her belief that he was requesting an additional \$40,000.00 to proceed with her case, Respondent did nothing to disavow Ms. Maxwell of her belief.

Finally, the fact that Respondent provided Ms. Maxwell a draft of her petition on November 9, 2007, is of little consequence. Respondent only produced the petition after having learned of Ms. Maxwell's complaint to the Office of Chief Disciplinary Counsel and the fact that he forwarded the petition to Special Representative, Charles Gotschall, would indicate that Respondent was more concerned with proving that he performed work on the case than ensuring that Ms. Maxwell's claim was not time-barred. Further, a client may be injured even when it cannot be demonstrated, with certainty, that Respondent's misconduct would have cost the client his or her claim. *In re Crews*, 159 S.W.3d 355, 361 (Mo. banc 2005). Respondent terminated the attorney-client relationship before filing the lawsuit and with a few business days remaining before the statute of limitations ran, leaving Ms. Maxwell very little recourse had she been unable to file the suit, *pro se*. The timing of Respondent's actions also call into question whether Respondent would have produced any petition, at all, had Ms. Maxwell not filed her complaint with the Office of Chief Disciplinary Counsel. Respondent's lack of diligence put Ms. Maxwell's discrimination claim in jeopardy and caused her psychological and emotional distress. As such, Informant respectfully suggests that Respondent's license should be disciplined for violation of Missouri Supreme Court Rule 4-1.3.

### **Violation of Rule 4-1.5 Regarding Reasonableness of Fees**

Missouri Supreme Court Rule 4-1.5 provides that a lawyer's fees shall be reasonable<sup>2</sup>. An attorney violates Rule 4-1.5 when he does not perform or complete the professional representation for which a fee was paid, but fails to remit the unearned portion of the fee. *In re Gastineau*, 857 P.2d 136, 140 (Or. 1993). "[A] fee charged for which little or no work performed is an unreasonable fee," *Attorney Grievance Comm. v. McLaughlin*, 813 A.2d 1145, 1166 (Md. 2002).

In the present action, Ms. Maxwell paid Respondent a \$4500.00 retainer. Respondent billed Ms. Maxwell \$4566.00 in fees. Respondent's billing statement indicates that he personally worked 3.49 hours on Ms. Maxwell's case, which included the initial client consultation. The remaining work was performed by law students, who worked for Respondent approximately ten hours per week and were paid \$11.00 per hour. Respondent billed Ms. Maxwell over \$3500.00 for the work performed by his law students, yet when asked to provide research memoranda or any other document reflecting the work performed by the law students, Respondent was unable to do so. Instead, Respondent produced two virtually identical timelines, one of which appears to be an updated version of the first outline, as justification for the \$4500.00 billed to Ms. Maxwell. Given the minute amount of time that Respondent personally worked on Ms.

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<sup>2</sup> Rule 4-1.5 was amended the first of January, 2008. However, both the 2006 version of the Rule, cited in this brief, and the 2008 version of the Rule require that a lawyer's fees be reasonable.

Maxwell's case, as well as the inability to show any work product related to the consumption of Ms. Maxwell's \$4500.00 retainer, Respondent's fees in this matter are unreasonable on their face.

Further, Respondent was hired for the sole purpose of filing and pursuing a discrimination action against Ms. Maxwell's employer. In the four months that Respondent represented Ms. Maxwell, he did not produce or file a petition. The factors to be considered in determining the reasonableness of a fee include, among other things, the time and labor required for the matter and the results obtained. Rule 4-1.5. Respondent invested no time in Ms. Maxwell's discrimination case and accomplished nothing with respect to her claim. Still, Respondent has retained the full \$4500.00 retainer paid by Ms. Maxwell. Because the amount of work performed by Respondent renders his \$4500.00 retainer excessive, on its face, Informant respectfully suggests that Respondent has violated Rule 4-1.5 and that his license should be disciplined accordingly.

**Violation of Rule 4-8.4(d) Regarding Conduct Prejudicial to  
the Administration of Justice**

Rule 4-8.4(d) states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice<sup>3</sup>. By virtue of the fact that Respondent has frustrated the judicial process in violating Rules 4-1.3 and 4-1.5,

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<sup>3</sup> Rule 4-8.4 was amended in July, 2007, however, the 2006 version of subsection (d), cited in this brief, is identical in language.

Respondent has also violated Rule 4-8.4(d). See *In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997) (wherein this Court determined that Caranchini had violated Rule 4-8.4(d) by failing to expedite litigation and asserting a frivolous claim). Much like Caranchini, Respondent failed to expedite Ms. Maxwell's litigation and hindered the pursuit of her legal action. As such, Respondent has violated Rule 4-8.4(d) and Informant respectfully suggests that Respondent's license be appropriately disciplined.

## ARGUMENT

### II.

**THE SUPREME COURT SHOULD ISSUE RESPONDENT A REPRIMAND BECAUSE A REPRIMAND IS APPROPRIATE WHEN A LAWYER IS NEGLIGENT IN ACTING WITH REASONABLE DILIGENCE AND NEGLIGENTLY FAILS TO PROVIDE A CLIENT COMPLETE INFORMATION.**

When considering the level of discipline to impose for violation of the Rules of Professional Conduct, this Court has considered the propriety of the sanctions under the American Bar Association model rules for attorney discipline (“ABA Standards”). *In re Crews*, 159 S.W.3d 355, 360 (Mo. banc 2005). The ABA Standards divide rule violations into four categories: 1) violations of duties owed to the clients, 2) violations of duties owed to the public, 3) violations of duties owed to the legal system and 4) violations of duties owed to the profession. See Standards for Imposing Lawyer Sanctions, American Bar Association, 1991. This Court has also considered the gravity of the conduct, as well as aggravating and mitigating circumstances, when determining appropriate attorney sanctions. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). Factors considered in aggravation include prior disciplinary offenses, dishonest or selfish motive, pattern of misconduct, multiple offenses, refusal to acknowledge the wrongfulness of the conduct and experience in the law. *In re Cupples*, 979 S.W.2d 932, 937 (Mo. banc 1998).

In the present action, Respondent's misconduct resulted in harm to his client, as well as to the public, and the appropriate sanction is governed by ABA Standard 4.4, which provides that a suspension is appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury, whereas a reprimand is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, causing injury or potential injury to the client. Standards for Imposing Lawyer Sanctions, American Bar Association, 1991. The ABA Standards also provide that Respondent's charge of unreasonable fees warrants a reprimand where a lawyer negligently fails to provide a client with accurate or complete information and negligently engages in conduct that is a violation of a duty owed to the profession. *Id.* §§ 4.6; 7.3.

Respondent's lack of diligence caused Ms. Maxwell a tremendous amount of anxiety, which she repeatedly expressed to Respondent. Nevertheless, Respondent failed to act according to Ms. Maxwell's directives and his dilatory conduct resulted in harm to Ms. Maxwell. Ms. Maxwell suffered further potential harm when Respondent terminated the attorney-client relationship prior to filing Ms. Maxwell's petition and with only days remaining to do so. In this matter, Respondent's conduct posed actual harm to the client. Even had Respondent's conduct had not harmed Ms. Maxwell, however, a public reprimand is still an appropriate sanction. See *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004) (reprimand was appropriate where failure to comply with CLE requirements and failure to respond to disciplinary authorities posed no harm to the public or the client). Respondent's unreasonable fees also warrant the imposition of a public

reprimand, as Respondent billed Ms. Maxwell over \$4500, but demonstrated that little to no work was performed on her case.

The Disciplinary Hearing Panel specifically determined that there were aggravating circumstances in that Respondent had prior disciplinary offenses for similar complaints, Respondent refused to acknowledge the wrongful nature of his conduct, the vulnerability of Ms. Maxwell, as well as Respondent's substantial experience in the law. The totality of the circumstances warrant a minimum sanction of a reprimand in Respondent's case.

**CONCLUSION**

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests this Court:

- (a) find that Respondent violated Rules 4-1.3, 4-1.5 and 4-8.4(d);
- (b) reprimand Respondent's license to practice law; and
- (c) tax all costs in this matter to Respondent, including the \$750.00 fee for reprimand, pursuant to Rule 5.19(h).

Respectfully submitted,

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ATTORNEYS FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of February, 2008, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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8801 E. 63<sup>rd</sup> St., Ste. 208  
Raytown, MO 64133

\_\_\_\_\_  
Shannon L. Briesacher

**CERTIFICATION: RULE 84.06(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 Rule 84.06(b);
3. Contains 4,980 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.

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Shannon L. Briesacher

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