

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**BERNARD EDWARDS,** ) **Supreme Court #SC92013**  
 )  
**Respondent.** )

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**INFORMANT'S REPLY BRIEF**

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**POINT RELIED ON**

**I.**

**RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:**

**(A) FAILING TO COMPETENTLY REPRESENT GENATT PERRY IN VIOLATION OF RULE 1.1 OF THE RULES OF PROFESSIONAL CONDUCT;**

**(B) FAILING TO DILIGENTLY REPRESENT GENATT PERRY IN VIOLATION OF RULE 4-1.3 OF THE RULES OF PROFESSIONAL CONDUCT;**

**(C) FAILING TO INFORM HIS CLIENT GENATT PERRY THAT HER LAWSUIT HAD BEEN AMENDED, PARTIALLY DISMISSED BY THE CIRCUIT COURT AND REMOVED TO FEDERAL COURT AND THE REASONS FOR THAT DISMISSAL IN VIOLATION OF RULE 4-1.4 OF THE RULES OF PROFESSIONAL CONDUCT;**

**(D) ENGAGING IN DILATORY TACTICS BEFORE THE FEDERAL COURT IN HIS REPRESENTATION OF GENATT PERRY INCLUDING BEING NONRESPONSIVE TO DISCLOSURE AND DISCOVERY REQUIREMENTS, COURT RULES AND**

**COURT ORDERS IN VIOLATION OF RULES 4-3.2, 4-3.4(D) AND 4-8.4(D) OF THE RULES OF PROFESSIONAL CONDUCT;**

**(E) KNOWINGLY FAILING TO RESPOND TO A LAWFUL DEMAND FOR INFORMATION FROM A DISCIPLINARY AUTHORITY IN VIOLATION OF RULE 4-8.1(C) OF THE RULES OF PROFESSIONAL CONDUCT; AND**

**(F) COLLECTING “NONREFUNDABLE” RETAINER PAYMENTS AT THE COMMENCEMENT OF HIS REPRESENTATION OF CLIENTS AND FAILURE TO DEPOSIT SUCH ADVANCE FEE PAYMENTS INTO A CLIENT TRUST ACCOUNT IN VIOLATION OF RULES 4-1.5, 4-1.15(F) AND 4-1.16(D) OF THE RULES OF PROFESSIONAL CONDUCT.**

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.15(d)

Rule 4-1.15(m)

**ARGUMENT**

**I.**

**RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:**

**(A) FAILING TO COMPETENTLY REPRESENT GENATT PERRY IN VIOLATION OF RULE 1.1 OF THE RULES OF PROFESSIONAL CONDUCT;**

**(B) FAILING TO DILIGENTLY REPRESENT GENATT PERRY IN VIOLATION OF RULE 4-1.3 OF THE RULES OF PROFESSIONAL CONDUCT;**

**(C) FAILING TO INFORM HIS CLIENT GENATT PERRY THAT HER LAWSUIT HAD BEEN AMENDED, PARTIALLY DISMISSED BY THE CIRCUIT COURT AND REMOVED TO FEDERAL COURT AND THE REASONS FOR THAT DISMISSAL IN VIOLATION OF RULE 4-1.4 OF THE RULES OF PROFESSIONAL CONDUCT;**

**(D) ENGAGING IN DILATORY TACTICS BEFORE THE FEDERAL COURT IN HIS REPRESENTATION OF GENATT PERRY INCLUDING BEING NONRESPONSIVE TO DISCLOSURE AND DISCOVERY REQUIREMENTS, COURT RULES AND**

**COURT ORDERS IN VIOLATION OF RULES 4-3.2, 4-3.4(D) AND 4-8.4(D) OF THE RULES OF PROFESSIONAL CONDUCT;**

**(E) KNOWINGLY FAILING TO RESPOND TO A LAWFUL DEMAND FOR INFORMATION FROM A DISCIPLINARY AUTHORITY IN VIOLATION OF RULE 4-8.1(C) OF THE RULES OF PROFESSIONAL CONDUCT; AND**

**(F) COLLECTING “NONREFUNDABLE” RETAINER PAYMENTS AT THE COMMENCEMENT OF HIS REPRESENTATION OF CLIENTS AND FAILING TO DEPOSIT SUCH ADVANCE FEE PAYMENTS INTO A CLIENT TRUST ACCOUNT IN VIOLATION OF RULES 4-1.5, 4-1.15(F) AND 4-1.16(D) OF THE RULES OF PROFESSIONAL CONDUCT.**

Respondent’s Brief contains numerous misstatements of facts and mischaracterizations of the evidentiary record, all set forth by Respondent in an attempt to avoid any responsibility for his ethical misconduct. Most disturbing, Respondent makes assertions throughout his Brief regarding the medical condition of his client, apparently in an attempt to explain his failure to competently and diligently represent his client, arguing that her medical condition prevented him from providing appropriate legal representation to her in pending litigation. Respondent makes these assertions without any evidence in the record to provide a factual or legal basis for his assertion other than his own self-serving arguments.

**A. Respondent makes unsupported and irrelevant allegations about his client's medical condition**

Respondent admits in his Brief that he failed to timely file Genatt Perry's lawsuit against Pro Rehab. As a result of that failure Perry's claims before the Circuit Court were dismissed. As set forth in Informant's Brief, after Perry's claims against ProRehab were removed to the U.S. District Court, Respondent did nothing to pursue the cause of action or to protect Perry's interest.

Respondent seems to argue in his Brief that his failure to pursue Perry's lawsuit before the District Court, including his failure to respond to opposing counsel's discovery requests, Court rules and Court orders, was an intentional strategy, followed by Respondent after consultation with his client, necessitated by Perry's medical condition. Respondent's assertions in this regard are unsupported by the record, contrary to the explicit testimony of Genatt Perry, and outrageous. Not only did Respondent fail to discuss this strategy with his client, it was Perry's testimony that Respondent never told her that her case had been filed in state court, that the state court had dismissed the case, that her case had been removed to federal court, or that the federal court dismissed her case with prejudice. **App. 38-39 (T.75-76).**

While Respondent spends a significant portion of his Brief making assertions about Ms. Perry's medical condition, her medical condition is irrelevant to the ethical considerations presented in this case. Contrary to Respondent's

assertions, Ms. Perry testified that whatever her condition was it did not impact her recall of events. **App. 41 (T.85)**. Significantly, Respondent offered no expert testimony at the DHP hearing to provide a nexus between the claimed medical condition of his client and her ability to participate in litigation. Indeed, it appears from the record that it was this lack of medical evidence that led the Disciplinary Hearing Panel to conclude that the line of questioning by Respondent about Ms. Perry's medical condition was irrelevant to the matters at issue in the Information. **App. 40 (T.83)**. Other than Respondent's own self-serving statements during his case in chief, the evidentiary record before this Court is devoid of support for Respondent's argument that his client was somehow impaired from being able to proceed in the litigation. Indeed, Perry's own testimony contradicts this assertion.

Respondent admittedly failed to timely file Perry's lawsuit before the Circuit Court and admittedly failed to comply with Court rules and obey Court Orders once the cause of action was removed to the District Court. Respondent's only explanation for this failure to represent his client's interest is to blame his client and make unsupported assertions concerning her medical condition. Respondent has provided nothing from his file, the Court file or by way of testimony from others in support of his assertion that he and Perry discussed any medical condition, mutually reached a conclusion to abandon the District Court lawsuit and ignore Court orders or that he discussed her condition with Perry's treating healthcare provider. Respondent's outrageous allegations in this regard

are wholly unsupported in the record, refuted by his client and irrelevant to the issue of his misconduct.

**B. Respondent offers no good reason for his failure to respond to a demand for information from a disciplinary authority**

On May 14, 2010 Informant requested information from Respondent relating to two separate ethics complaints filed by Harry Maul and Perry against Respondent. It is undisputed that Respondent failed to respond to that request for information. For the first time, Respondent in his Brief now lays the blame for his failure to respond at the feet of the “receptionist of the Shell Building” who Respondent asserts failed to deliver the letter to Respondent. Respondent provides no explanation of how he discovered shortly before the April 22, 2011 hearing that his receptionist still had possession of a letter sent almost one year previously to Respondent; he doesn’t provide any explanation as to why the letter had not been previously discovered by him; and he did not provide any evidence from the receptionist at the DHP hearing or before this Court by way of affidavit in support of this assertion.

In addition to failing to respond to the May 2010 request for information, Respondent also failed to respond to requests for information sent to him by Informant relating to issues concerning the maintenance of his client trust account at U.S. Bank and an overdraft notice relating to that account in May of 2010. Letters requesting information from Respondent were sent on June 4, 2010, June

25, 2010 and July 1, 2010. Respondent made a partial response to the June 25 request by providing a copy of his May and January 2010 U.S. Bank trust account statement but otherwise failed to provide the information requested. In his Brief, Respondent asserts that he sent “all the information he had concerning the US Bank overdraft and bank records” to Informant.

Pursuant to Rule 4-1.15(d), records of a client trust account are to be maintained for a period of five years. Respondent cannot use his failure to abide by his ethical obligation under Rule 4-1.15(d) as an excuse for his failure to provide information lawfully requested by a disciplinary authority in violation of Rule 4-8.1(c). Respondent has shown a pattern of ignoring requests for information from the Informant relating to ethical investigations and now seeks to explain that failure to respond by blaming others.

### **C. Respondent’s late submission of the written retainer agreement**

As noted in footnote 2 at page 13 of Informant’s Brief, subsequent to the DHP hearing Respondent sent to the Chair of the DHP a copy of a document he represented to be a copy of his written fee agreement with Perry relating to his representation of her in the Iron Mountain case. In his Brief, Respondent incredibly argues that had the Panel had this document at the time of the DHP hearing “their conclusions would have been different.” Respondent does not provide any basis for this statement nor does he indicate what DHP conclusions he believes would have been different.

Respondent provides no explanation for the unavailability of the written fee agreement at the time of the DHP hearing. It should be noted that while no testimony was given related to this document, and it was not a part of the evidentiary record before the DHP, in its Brief Informant, in an effort to grant the benefit of the doubt to Respondent, did not assert the DHP finding of a violation of Rule 4-1.5(c) (contingent fee agreement to be in writing) or the DHP recommendation that Respondent refund to Perry the \$2500 contingent fee in the Iron Mountain case, both of which were based upon the absence of a written fee agreement in the Iron Mountain case. It is unclear what other “conclusions” of the DHP Respondent believes would have been different had the written fee agreement been presented at the time of the hearing. Respondent did send the DHP a copy of the agreement subsequent to the hearing and at no time has the DHP indicated a desire to reopen the record or to otherwise amend its findings based upon Respondent’s late submission of this document.

**D. Respondent’s refund of \$1,500 to Perry is not a mitigating factor**

In his Brief, Respondent points out that he refunded Perry \$1,500. It is not clear from Respondent’s Brief whether he proffers this as a mitigating factor to this Court’s consideration of his conduct. It is clear, however, that if that is Respondent’s intent, such suggestion is ill-founded.

Respondent only refunded monies to Perry after the Information was filed and served. The ABA Standards for Imposing Lawyer Sanctions, 1991 Edition,

makes it clear that, “Lawyers who make restitution only after a disciplinary proceeding has been instituted against them, however, cannot be regarded as acting out of a sense of responsibility for their misconduct, but, instead, as attempting to circumvent the operation of the disciplinary system. Such conduct should not be considered in mitigation.” Commentary to Section 9.4 of the ABA Standards. Respondent cannot use his refund of client fees after he has been served with an Information as a mitigating factor.

**E. Respondent’s argument that the destruction of his legal files encumbered his defense before the Disciplinary Hearing Panel is unsupported by the record**

Respondent seeks to have this Court consider an affidavit of Michael C. Williams in support of his assertion that his legal files were destroyed prior to the DHP hearing and such impaired his ability to provide information before the DHP for its consideration. It is important to note that Respondent made no mention of Michael C. Williams at the time of the DHP hearing and did not seek to provide an affidavit from Mr. Williams or anyone else regarding the alleged destruction of his legal files before the DHP. More importantly, Respondent does not indicate what documents or information he believes were destroyed that would have been of import to the DHP’s consideration of this matter. Respondent did produce some documents relating to his representation of Perry at the time of the DHP hearing and subsequently produced the Iron Mountain fee agreement. Therefore,

presumably Respondent is not arguing that all of his files relating to his representation of Perry were destroyed. Furthermore, to the extent that Respondent is arguing that portions of Perry's legal file were destroyed, such runs afoul of Respondent's ethical obligation to securely store a client's file for ten years following representation. *See* Rule 4-1.15(m).

Respondent's reliance on Mr. Williams' untested affidavit as either a mitigating factor or an explanation or excuse is unfounded, unsupported and inappropriate.

## CONCLUSION

As previously set forth in Informant's Brief, Respondent committed professional misconduct in his representation of Perry, his failure to respond to Informant's request for information during the course of its investigation of a disciplinary matter and his charging of non-refundable fees and not properly utilizing his trust account. In his Brief Respondent continues to fail to accept responsibility for his own acts of ethical misconduct, blaming his client, his receptionist, Mr. Williams and his landlord or U.S. Bank. Respondent's numerous ethical violations as reflected in the evidentiary record supports the Disciplinary Hearing Panel recommendation of discipline in this matter. Respondent's refusal to acknowledge the wrongful nature of his conduct, as well as his repeated, unsupported, irrelevant and dilatory actions in these pending Supreme Court proceedings, are all aggravating circumstances to be considered in determining an appropriate sanction.

Respectfully submitted,

OFFICE OF  
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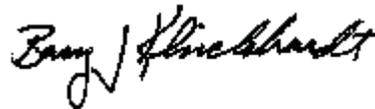
ATTORNEYS FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of January, 2012, a true and correct copy of the foregoing was served on Respondent via the electronic filing system pursuant to Rule 103.08:

Bernard F. Edwards, Jr.  
8431 Midland Blvd.  
St. Louis, MO 63114

*Self-represented*



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Barry J. Klinckhardt

**CERTIFICATION: RULE 84.06(c)**

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 2,614 words, according to Microsoft Word, which is the word processing system used to prepare this reply 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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Barry J. Klinckhardt