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STATEMENT OF JURISDICTION

Jurisdiction over this attorney discipline matter is established by Article V, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, R.S.Mo. (1994).

STATEMENT OF FACTS

A. Background and Disciplinary History

Respondent Christi S. Fingal-Griffin is a fifty-two year old attorney who was licensed to practice law in the State of Missouri on April 28, 1984. **App. 2, 24.**¹

Respondent has received prior discipline. On May 31, 1991, Respondent received an admonition as a result of violating Rule 4-7.2(d) regarding her improper use of advertising material. On October 22, 1996, Respondent received an admonition as a result of violating Rule 4-1.15(b) relating to the failure to promptly distribute funds in which her client and a third party had an interest. **App. 284-287.**

The complaint in this case was received by the Office of Chief Disciplinary Counsel on February 6, 2004 and referred to the Region XI Disciplinary Committee for investigation on February 27, 2004. The Region XI Disciplinary Committee investigated the matter, found probable cause and voted to issue an Information against Respondent

¹ The facts contained herein are drawn from the testimony elicited and the exhibits admitted into evidence at the trial in this matter conducted over the course of three hearing dates on January 4, 2006, March 30, 2006 and May 26, 2006. Citations to the trial testimony before the Disciplinary Hearing Panel are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example “**App. ____ (Tr. ____)**”. Citations to the Information, Respondent’s Answer to the Information and the trial exhibits are denoted by the appropriate Appendix page reference.

on August 22, 2004. **App. 282-283.** Informant served the Information in this case on Respondent on March 29, 2005. **App. 281.** Respondent timely filed her Answer to the Information on or about June 6, 2005. **App. 24.** The Chair of the Missouri Supreme Court Advisory Committee appointed a Disciplinary Hearing Panel in this case on July 7, 2005. **App. 85-88.** The Panel held its hearing in this matter over the course of three hearing days on January 4, March 30 and May 26, 2006. The Panel issued its Findings of Fact, Conclusions of Law and Recommendation on December 12, 2006. **App. 513-546.**

B. Relevant Facts Surrounding the Irene Green Complaint

Background Facts. Irene Green (“Green”) is 67 years old, retired and living off of disability income. **App. 108 (Tr. at 74-75).** Green has a high school education and is unsophisticated regarding real estate transactions and bankruptcy procedures. **App. 121 (Tr. at 128).** In addition, Green suffers from various physical disabilities, including diabetes, heart surgery, cataracts, arthritis and kidney disease that required she undergo dialysis three times per week. **App. 108 (Tr. at 75).**

During the relevant time period, Green owned and resided in a duplex located at 5150-52 Waterman in the City of St. Louis, Missouri (the “Waterman Property”), which Green purchased in or about 1970. **App. 108 (Tr. at 75-76).** Green also owned a residence located at 4715 Page Avenue, St. Louis, Missouri (the “Page Property”), which she had bought with a loan secured by a deed of trust on the Page Property in order to provide her daughter, Geraldine Rhymes (“Rhymes”), and her grandchildren with a place to live. Green had made the down payment and co-signed the loan on the Page Property

with Rhymes with the understanding that Rhymes would make the monthly mortgage payments. **App. 108-109 (Tr. at 76-77).**

In spring 2003, Rhymes informed Green that she was having difficulty making the mortgage payments on the Page Property. When Rhymes was unable to make the loan payments, WM Specialty Mortgage (“WM”), the holder of the note and deed of trust on the Page Property, threatened to foreclose its deed of trust unless all loan payments were brought current. **App. 109 (Tr. at 77-78).** Rhymes contacted Respondent for legal assistance with the threatened foreclosure on the Page Property and Respondent told Rhymes to have Green contact Respondent because the Page Property was titled in Green’s name. **App. 109 (Tr. at 80).**

Green contacted Respondent, who advised Green to file a Chapter 13 bankruptcy proceeding in order to stop the foreclosure on the Page Property and offered to act as Green’s attorney in the bankruptcy proceedings. **App. 109-110 (Tr. at 80-81).** Green hired Respondent as her attorney and on or about June 16, 2003, Respondent filed a Chapter 13 bankruptcy case on Green’s behalf in the United States Bankruptcy Court for the Eastern District of Missouri (Case No. 03-48011-399). **App. 4; 29.**

Green’s largest creditors in the bankruptcy case were WM, which held the mortgage on the Page Property, and Countrywide Home Loans (“Countrywide”), which held a promissory note payable by Green and secured by a deed of trust on the Waterman Property. **App. 4, 29.** Green’s bankruptcy proceeding was involuntarily dismissed on July 7, 2003 for failure to file schedules, plans and statements. However, Respondent

immediately re-filed another Chapter 13 bankruptcy proceeding on Green's behalf (Case No. 03-48959-399). **App. 4; 29.**

On or about July 18, 2003 and August 1, 2003, creditors WM and Countrywide filed separate motions asking the Court for relief from the automatic stay to permit them to foreclose their respective deeds of trust, or in the alternative, for an order dismissing the bankruptcy. WM alleged that the balance owed on its secured claim on the Page Property was \$33,329.94 and Countrywide alleged that the balance owed on its secured claim on the Waterman Property was \$54,070.15. **App. 4-5; 31.** On or about August 11, 2003, the Bankruptcy Court granted Countrywide's Motion for Relief from the Automatic Stay and permitted it to proceed with a foreclosure sale on the Waterman Property scheduled for August 19, 2003. In so ruling, the Court found that the Chapter 13 proceedings and plan were not proposed in good faith and were designed "solely to hinder, delay and frustrate creditors in bad faith." **App. 5; 31.**

In the meantime, however, Green received an offer from Clarkson Realty to purchase the Waterman Property for \$120,000 "as is" but with the right to inspect the property and cancel the contract within 10 days of Green's acceptance of the offer. Green accepted Clarkson's offer on or about August 3, 2003. **App. 5; 31; 468-473.**

On or about August 12, 2003, Respondent moved to voluntarily dismiss the bankruptcy proceeding, which motion the Bankruptcy Court granted on August 13, 2003. **App. 5; 31.** The same day that Green's bankruptcy case was dismissed, Clarkson Realty notified Green that it was exercising its right to terminate its contract for the purchase of the Waterman Property because of Clarkson Realty's inability to satisfy an insurability

requirement. Clarkson Realty then offered to purchase the Waterman Property from Green for \$100,000. **App. 5; 31.**

On August 13, 2003, however, another buyer, Larry Wilson (“Wilson”) offered to buy the Waterman Property from Green in “as is” condition for \$130,000. **App. 5; 31.**

On August 14, 2003, Green accepted Wilson’s offer and signed a contract agreeing to sell the Waterman Property to Wilson. The contract between Wilson and Green provided, *inter alia*, that the closing date would occur as soon as the Title Company could “prepare proper paper work.” **App. 5-6; 31.** On August 19, 2003, Respondent re-filed a Chapter 13 bankruptcy proceeding on behalf of Green (Case No. 03-51006). The Chapter 13 Plan stated that Green had “accepted the sale contract with Larry Wilson [for the sale of the Waterman Property] for \$130,000” and provided, *inter alia*, that Countrywide and WM would be paid from the sale proceeds and that any excess remaining would be paid to the trustee. **App. 6; 31.**

On August 20, 2003, Countrywide filed a motion for relief from the automatic stay to permit it to foreclose its deed of trust on the Waterman Property or, in the alternative, to dismiss Green’s bankruptcy petition. Countrywide then continued its foreclosure sale from August 19, 2003 to August 26, 2003 and filed a motion for an expedited hearing on its motion to lift the stay which it scheduled to be heard on the same day as the foreclosure sale. **App. 6; 32.**

Also on August 20, 2003, Respondent, as Green’s attorney, filed a “Motion for Approval to Sell” the Waterman Property to Wilson pursuant to the Wilson contract. The motion represented that Green had sufficient equity in the Waterman Property to pay the

Chapter 13 plan in full. The motion was scheduled to be heard concurrently with the Countrywide Motion for Relief from Stay on August 26, 2003. **App. 6; 32.**

On August 22, 2003, Wilson's attorney filed formal objections to Green's Motion, stating that Wilson was unwilling to proceed to close the sale "absent the Court denying Countrywide's Motion for relief from stay and a final order of the bankruptcy court approving a sale to [Wilson] free of interests, liens, claims and encumbrances." The objections further stated that Wilson was "willing to purchase the property for \$130,000 and [was] ready and able to do so" provided the conditions described herein were satisfied and a title company was ready to insure marketable title free from record liens. **App. 7; 34.**

Respondent immediately sent a letter to Wilson's attorney dated August 22, 2003 questioning Wilson's motives. She noted in her letter that prior to the August 19, 2003 bankruptcy being filed, Wilson and his attorney had refused her oral request that Green and Wilson sign an "official contract" and that because the Wilson contract executed on August 14, 2003 left the closing date open, Green remained subject to the risk of foreclosure when numerous other buyers were ready to perform. **App. 7; 34.**

Respondent repeated her demand that Wilson prove that he was able to perform his contract by placing the \$130,000 purchase price in escrow and faxing Respondent a copy of a cashier's check or a bank statement demonstrating that funds were immediately available. Respondent also stated that if Wilson refused to escrow the funds on or before noon on Monday, August 25, 2003 and provide proof that he was able to perform, then Respondent and Green would consider the contract "null and void." **App. 7-8; 34.**

Finally, Respondent told Wilson's attorney that the legal fees related to bringing the matter to a conclusion were in excess of \$3,000 and that if Wilson persisted in pursuing the purchase of the Waterman Property, Respondent would expect full payment of these legal fees from Wilson. **App. 8; 34.**

Respondent's Plan to Purchase her Client's Property. Respondent knew from her representation of Green and her access to the purchase offers made by Clarkson Realty and Wilson that the Waterman Property was worth substantially more than the amount of the Countrywide debt. **App. 111 (Tr. 85-86); 291-292; 468-473.** In other words, her client Green had significant equity in the Waterman Property. In order to confirm this fact, Respondent retained a real estate agent (Ladonna Parker) to visit the Waterman Property and to provide Respondent with her opinion of the fair market value of the property. **App. 8, 40.** Parker estimated that the Waterman Property was worth approximately \$150,000.00 in "as is" condition. **App. 198-199 (Tr. 186-189).**

On August 22, 2003, Respondent contacted Sara Rittman, Legal Ethics Counsel for the State of Missouri, and inquired whether she could advance Green the necessary funds to pay the Countrywide loan and thereby keep the Waterman Property out of foreclosure. **App. 100-102 (Tr. 44-50); 288.** Ms. Rittman advised Respondent that she could not ethically advance her client the funds, but that Respondent could purchase her client's property provided that the transaction was a "genuine" purchase, meaning that the sale would have to be an arm's length transaction and would have to comply in all respects with the requirements of Rule 4-1.8(a) of the Rules of Professional Conduct.

App. 100-102 (Tr. 44-50); 105-106 (Tr. 61-67); 288.² Those requirements included that the transaction with Green be fair and reasonable, that the Green have an opportunity to seek the advice of independent counsel and that Green consent to the transaction in an independent writing separate from the sale contract. **App. 105-106 (Tr. 61-67).**

Respondent thereafter decided that she would seek to purchase the Waterman Property herself from Green for \$90,000, a price that was less than its fair market value and less than the amount offered by Wilson or Clarkson Realty. In order to carry out her plan, Respondent contacted a friend, Frank Simmons and Respondent's own mother, Caroline Fisher, to request that they contribute to the purchase of the Waterman Property. Simmons and Fisher each agreed to contribute \$25,000 toward an earnest money deposit on the purchase of the Waterman Property from Green. **App. 244-245 (Tr. 107-110).**

² Rule 4-1.8(a) of the Rules of Professional Conduct, effective at the time of the relevant conduct herein, provided that a "lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other interest adverse to a client unless (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents in writing thereto."

Respondent's position throughout these proceedings has been that she sought to purchase the Waterman Property from Green in order to help out her client because she does "extraordinary things for all of my clients." **App. 211-212 (Tr. 239-242).**

On or about August 22, 2003, without the knowledge or consent of Green, Respondent retained attorney John King of Blumenfeld, Kaplan & Sandweiss, P.C. and directed him to draft the following documents in furtherance of Respondent's plan to purchase the Waterman Property from Green, (i) a Real Estate Contract between Green, as seller, and Respondent and Simmons, as buyers and (ii) a Post-Closing Lease between Green, as lessee and Respondent and Simmons, as lessors. **App. 118-119 (Tr. 115-118); 197-198 (Tr. 184-185); 478-479.**

On Saturday, August 23, 2003 and Sunday, August 24, 2003, Respondent met with Green and her daughters at the Waterman Property. **App. 113-118 (Tr. 94-114).** Respondent believed Wilson had no intention of buying the Waterman Property for \$130,000. She portrayed the Wilson contract as a devious effort by Wilson to prevent Green from selling the Waterman Property to other interested parties and to force the property into foreclosure where Wilson could buy it for substantially less than its fair market value. **App. 194-195 (Tr. 172-173).** Respondent also told Green and her daughters that if the Waterman Property proceeded to foreclosure, Green would lose her house and whatever equity she had in the property. **App. 114 (Tr. 97).**

During the course of these conversations, Respondent proposed to her client Green that she and Simmons purchase the Waterman Property. **App. 113-114 (Tr. 94-99).** Green believed that Respondent was purchasing the Waterman Property for \$130,000.

App. 114 (Tr. 98-100). On August 24, 2003, Respondent went to the Waterman Property with a “Real Estate Contract.” **App. 316-318.** Respondent failed to review or explain the purchase terms of the contract to either Green or Green’s daughters. **App. 116-117 (Tr. 108-111).** Green signed the Real Estate Contract without any understanding of its terms, including the fact that Respondent was purchasing the Waterman Property for the sum of \$90,000. **App. 116 (Tr. 108-109).** Green believed that Respondent and Simmons were purchasing the Waterman Property for \$130,000, the same purchase price as Wilson had agreed to pay. **App. 114 (Tr. 98-99); 116 (Tr. 108).**

On or about August 24, 2003, Respondent also presented Green with a document entitled “Post-Closing Lease” under which Green would be permitted to lease the Waterman Property from Respondent and Simmons after closing. **App. 319-324.** Respondent failed to review or explain the terms of the Post-Closing Lease to Green. **App. 117 (Tr. 110-111).** Specifically, Respondent failed to explain the terms and meaning of paragraph 20 of the Post-Closing Lease to Green, under which Green would be charged a monthly penalty for each month that Respondent was unable to re-sell the Waterman Property after the closing. **App. 119 (Tr. 118-120).**

On or about August 24, 2003, Respondent also had Green sign a one-page document which stated “I, Irene Green, do hereby waive any potential conflict with my attorney, Christi S. Fingal arising out of the sale/purchase of my property and representation of me in bankruptcy.” **App. 315.** Green signed the waiver because Respondent “wanted me to”, but Green had no understanding of its meaning or effect. **App. 115 (Tr. 101-104).**

Green signed the Real Estate Contract, Post-Closing Lease and Waiver of Conflict despite the fact that she did not understand them. **App. 114-116 (Tr. 100-108).**

Moreover, Green relied upon Respondent for legal advice and believed, based upon what Respondent had told her that signing the documents was in her best interest. In other words, in executing the documents, Green was relying on Respondent to protect and look out for Green's own welfare. **App. 118 (Tr. 114).** Respondent did not provide Green with an opportunity to seek the advice of independent counsel regarding the transaction with Respondent. Specifically, Respondent did not advise Green that she had a right to consult with independent counsel regarding the sale of the Waterman Property to Respondent. **App. 114 (Tr. 100).** In addition, Respondent did not obtain Green's consent to the transaction with Respondent in a separate writing from the sale contract. **App. 114 (Tr. 100).**

The Real Estate Contract and Post-Closing Lease. Under the terms of the Real Estate Contract signed by Green with Respondent, Respondent and Simmons agreed to buy the Waterman Property for \$90,000 "subject to adjustments" with the monies to be paid as follows: (a) up to \$75,000 to be immediately paid to Countrywide by Respondent and Simmons at the time of execution of the contract as a down payment and part of the purchase price; (b) depending upon the pay-off amount for the Countrywide loan, the balance of the \$75,000 to be placed into Respondent's "Trust Account" and applied to Green's delinquent auto loan and mortgage arrearage on the Page Property; (c) the balance of the \$75,000 to be paid to Green at time of closing; and (d) the balance of the purchase price to be paid at time of resale closing. **App. 10; 46; 316-318.**

The Real Estate Contract further provided that it was a “back-up contract” to the Wilson contract for \$130,000 and that if the Wilson contract was consummated prior to Respondent and Simmons tendering payment to Countrywide, then the Contract among Respondent, Simmons and Green would be void; but if the Wilson contract was consummated afterwards, then Respondent and Simmons would receive 75% of the difference between the \$130,000 paid by Wilson and the \$90,000 paid by Respondent/Simmons (i.e., \$30,000) and Green would get 25% of such difference (i.e., \$10,000). **App. 10; 46; 316-318.**

Contemporaneously with the execution of the Real Estate Contract, Respondent had Green execute a Post-Closing Lease under which Green would retain possession of the Waterman Property after closing. The Post-Closing Lease had a term commencing August 25, 2003 and “ending no later than May 30, 2004.” It provided, *inter alia*, that Green paid zero rent to Respondent and Simmons but was responsible for all real estate taxes and assessments levied against the Property. The Post-Closing Lease further provided that Green was responsible for her utilities and maintaining property insurance for 100% of the replacement cost of the home and maintaining comprehensive public liability and property damage insurance naming Respondent and Simmons as insureds with minimum coverage of \$1,000,000 per occurrence. According to the Post-Closing Lease, if Green failed to perform these obligations, then Respondent and Simmons had the right to terminate the Lease and recover all attorneys’ fees arising out of Green’s failure to satisfy her obligations under the Post-Closing Lease. **App. 10-11; 46; 319-324.**

The Post-Closing Lease also gave Respondent and Simmons the right to post “for sale” signs on the Waterman Property and provided that upon the sale of the premises, the Lease immediately terminated. According to the Post-Closing Lease, Respondent and Simmons would “retain any sale proceeds from the resale if the “net resale price” was \$130,000 or less. The Post-Closing Lease further provided that the “net sale proceeds” from any resale above \$130,000 would be split with 75% of the “net sale proceeds” going to Respondent and Simmons and 25% of the net sale proceeds going to Green if the property was sold by December 25, 2003; but every month after December 25, 2003, Green’s share of the “net sale proceeds” from any resale above \$130,000 would be reduced by 5%. Consequently, if the sale occurred after May 2004, then Green would receive nothing and Respondent and Simmons would receive 100% of the proceeds from the re-sale of the Waterman Property. **App. 11; 46; 319-324.**

The Post-Closing Lease did not define “net resale price.” However, it defined “net sale proceeds” as the “gross purchase price from the resale, less any and all costs and expenses related to Lessor’s acquisition of the Premises from Lessee and carrying costs, this Lease, and the resale, including but not limited to closing costs, insurance costs, inspection fees, maintenance costs, title insurance fees, renovation and repair costs and attorney’s fees.” Thus, under the Post-Closing Lease, Respondent was entitled to recover, *inter alia*, all her attorney’s fees incurred in connection with her representation of Green, including the fees paid to the Blumenfeld law firm to draft the Real Estate Contract and Post-Closing Lease. **App. 11; 46; 319-324.**

Events Following Execution of the Contract. On Tuesday morning, August 26, 2003, Respondent purchased a cashier's check in the amount of \$61,109.83 payable to Countrywide Home Loans, Inc. (the "cashier's check") with money contributed by herself, Simmons and Fisher identifying Green as the "Remitter." This amount was the full balance that Countrywide claimed was owed by Green on the promissory note secured by the Waterman Property. **App. 12; 47.** With the cashier's check in hand, Respondent appeared in bankruptcy court on August 26, 2003 at 10:00 a.m. for the scheduled hearing on Countrywide's motion. There, she handed Countrywide's counsel the cashier's check paying off the balance owed by Green on the Waterman Property. The Court granted Respondent's motion to dismiss the petition, denied without prejudice Countrywide's motion for relief from the stay, and denied as moot the Motion to Approve Sale. **App. 12; 47.**

At no time prior to the bankruptcy court's ruling on these motions did Respondent disclose to the bankruptcy court or opposing counsel that she had entered into a contract with her client Green to purchase the Waterman Property and that she had paid a portion of the Countrywide payoff and was now a creditor of Green. **App. 12; 47.**

That same day, Respondent sent a letter by facsimile to Wilson's attorney threatening to sue Wilson for fraud and breach of contract if he failed to perform his contract with Green. Respondent admonished Wilson's attorney for her "adversarial response" to Green's Motion to Approve Sale and represented that as a result of "this entire ordeal" Green "had incurred more than \$9,000 in attorney's fees and [had] entered into a back-up contract on terms which may prove less favorable than that of Mr.

Wilson's." Respondent demanded that Wilson close on his contract with Green within 11 days of the dismissal of the bankruptcy. She further demanded that Wilson "pay the \$130,000 sale price to Ms. Green and all attorney's fees through the date of closing." **App. 12-13; 48; 325-326.** Respondent did not confer or consult with Green prior to sending the August 26, 2003 letter and did not provide Green with a copy of the letter. **App. 120 (Tr. 121).**

On September 5, 2003, Wilson offered to purchase the Waterman Property for \$125,000 and close on the purchase on September 18, 2003 subject to the terms and conditions set forth in a letter from Wilson to Green. These terms and conditions included, *inter alia*, that Green sign and return Wilson's letter proposal and thereby represent and warrant that "she was not a party to any other agreement relating to the [Waterman Property], including, without limitation, any agreement to sell, lease, occupy or encumber the Property." **App. 13; 49; 327-357.** The contract among Respondent, Simmons and Green for the purchase of the Waterman Property rendered Green incapable of satisfying the foregoing representation and warranty.

Respondent sent Wilson's attorney a responsive letter dated September 5, 2003 rejecting Wilson's offer. In the letter, Respondent reiterated that Green would sell the Waterman Property to Wilson for the purchase price of \$130,000 "with Mr. Wilson paying the cost of bringing the sale to a conclusion and depositing the funds in escrow." **App. 13-14; 52; 358.** Respondent did not confer or consult with Green prior to sending the September 5, 2003 letter and did not provide Green with a copy of the letter. **App. 120 (Tr. 120-123).**

Wilson responded with a counter-offer detailed in a letter from his attorney to Respondent dated September 11, 2003. Wilson was prepared to purchase the Waterman Property for \$130,000 but [c]ounterproposals and allegations seeking payment of attorney's fees and costs [would] not be entertained..." Wilson's September 11, 2003 offer, like his September 5, 2003 offer, required that Green sign his proposal and warrant and represent that Green was not a party to any other agreement relating to the Waterman Property. **App. 14; 53; 359-398.** Respondent failed to either discuss Wilson's counter-offer with her client Green or to provide her client Green with a copy of the Wilson counter-offer letter. **App. 120 (Tr. 123-124).**

On September 16, 2003, Respondent, without first conferring with Green, notified Wilson's attorney that Green would "much rather not have any further dealings with Mr. Wilson" and that Green and Respondent would prefer suing Wilson for fraud, duress, emotional harm and tortious interference with contract and seeking actual and punitive damages. However, Respondent said that Green would be willing to transfer clear title to Wilson upon payment of \$130,000 cash "and \$15,000 in court costs including payment of a sewer lien." **App. 120 (Tr. 124); 399-400.** The additional \$15,000 demanded by Respondent would have been payable to Respondent and not to Green.

On or about September 19, 2003, Wilson's attorney notified Respondent that Wilson was delivering a cashier's check in the amount of \$133,000 to U.S. Title Guaranty Company to pay for Wilson's purchase of the Waterman Property and other closing costs. The funds would be deposited and disbursed by the title company upon Green's compliance with the conditions set forth in a letter from Wilson's attorney to

Respondent dated September 19, 2003. These conditions included that the parties close on the sale by 10:00 a.m. on September 30, 2003 and that Green sign a seller's affidavit and other customary paperwork as the title company may require. **App. 15; 55; 401-424.**

On September 22, 2003, Respondent notified Wilson's attorney that Green had declined Wilson's September 19, 2003 offer because it failed to "address any of the attorney's fees and court costs incurred by Irene Green in order to preserve her ownership interest and proceed with the sale to Wilson." Respondent stated that unless Wilson accepted the terms set forth in her September 16, 2003 letter by September 24, 2003 (i.e., that Wilson pay \$130,000 plus \$15,000 in court costs), then she and Green would consider Wilson unwilling to perform under his letter contract. **App. 15; 56; 425-426.** Green was unaware of the Wilson offer and never rejected or declined it. In addition, Green was unaware that Respondent had sent a letter to Wilson's attorney rejecting the offer. **App. 121 (Tr. 126-127).** Wilson refused to accept the terms set forth in Respondent's September 16, 2003 letter. **App. 16; 56.**

On September 23, 2003, Wilson filed suit against Green in the Circuit Court of the City of St. Louis seeking specific performance of the Wilson Contract dated August 14, 2003, or in the alternative, a declaratory judgment that the contract was null and void (the "Wilson Lawsuit"). **App. 16; 56.**

Termination of the Attorney-Client Relationship. On October 16, 2003, Respondent told Wilson's attorney that she was open to any settlement offers that Wilson wished to make to her client Green and that if they were unable to settle the matter it was our "intention to file a counterclaim." Respondent reiterated that she expected Wilson to

pay her client's reasonable damages and costs that her client has incurred. **App. 16; 58; 427-428.**

On or about October 20, 2003, Respondent told Green that she needed to come to Respondent's office. After Green arrived with her daughters, Respondent told them to follow her to a bank where she took them to a notary's office. There, she pulled out a Warranty Deed to the Waterman Property conveying ownership from Green to Respondent and Simmons and told Green to sign it. **App. 17; 58; 122 (Tr. 129-132).** Green refused to sign the Warranty Deed conveying the Waterman Property to Respondent. **App. 123 (Tr. 133).**

The next day, Respondent gave Green a document titled "Directive Regarding 5150-52 Waterman" (the "Directive"). The ostensible purpose of the Directive was to direct Respondent to take actions on Green's behalf. It listed four actions and directed Green to read and initial one. The Directive also had a signature line for Green above an acknowledgment that Green was signing the document of her "own will and accord." **App. 17; 60; 429.**

The first action was "Settle the lawsuit filed by Larry Wilson by agreeing to sign a Mutual Release." **App. 17; 60; 429.**

The second action was "Settle the lawsuit filed by Larry Wilson by agreeing to sell the property to Larry Wilson for \$130,000." This action required Green to acknowledge her understanding that "upon closing she would receive \$15,000 of the proceeds and the remaining portion of the original \$15,000 and all other funds [would be] due under the contract" with Respondent and Simmons; further, Green would "be responsible for her

own attorney fees from those proceeds.” The Directive did not explain what, if any, “other funds” would be due under the Contract, nor did it specify the remaining portion, if any, of the original \$15,000 Green would receive. **App. 18; 60; 429.**

The third action was for Green to acknowledge that she did “not intend to honor the contract” with Respondent and Simmons and that she would “retain an attorney to represent her in the Wilson Lawsuit. **App. 18; 60; 429.**

The fourth and final action was for Green to acknowledge that if she signed a mutual release with Wilson, but did not close on her contract with Respondent and Simmons, then she would be in breach of that contract and Respondent and Simmons would sue her and “at that point” Respondent would no longer be acting as her attorney. That action read in pertinent part as follows:

I understand that if I sign a Mutual Release with Larry Wilson, that I will be free to close on my contract with Christi Fingal and Frank Simmons. I further understand that I have presently breached the Contract with Frank Simmons and Christi Fingal and that unless I Perform under that contract a Third Party Claim will be filed in the Larry Wilson v. Irene Green lawsuit before said lawsuit is dismissed. I further understand, that at that point, Christi Fingal will no longer be acting as my attorney.

App. 18; 60; 429.

Green did not sign or initial the Directive. **App. 18; 60.**

On November 7, 2003, Respondent filed a Motion to Intervene as a Party Plaintiff in the Wilson Lawsuit seeking specific performance of the alleged contract among Green,

Respondent and Simmons or in the alternative a declaratory judgment that the Contract was void and that Respondent and Simmons have judgment against Green in the amount of \$63,524.33 and such relief, legal, and equitable, general or special to which they might be entitled. **App. 19; 65; 430-445.** That same day, Respondent and Simmons filed a Notice of Lis Pendens against the Waterman Property with the Recorder of Deeds for the City of St. Louis, Missouri. **App. 19-20; 65.** On or about November 20, 2003, the Court granted Respondent's and Simmons' Motion to Intervene. **App. 20; 65.**

On or about November 20, 2003, Green and Wilson executed a Mutual Release of claims and Wilson dismissed his claim against Green. **App. 20; 65; 474-475.**

On or about February 14, 2004, Green and her daughter Ernestine Ross appeared in St. Louis City Circuit Court and, with financing available through American Mortgage Corporation, offered to settle the Respondent and Simmons lawsuit by re-paying Respondent, Simmons and Fisher all funds Respondent had advanced on Green's behalf (totaling \$63,524.33) in exchange for Respondent and Simmons removing the Lis Pendens against the Waterman Property and agreeing that the Contract and Lease were null and void. Respondent, however, rejected this offer, claiming that she was entitled to receive the benefit of her bargain. **App. 123-124 (Tr. 136-140).**

C. The Disciplinary Hearing Panel's Decision.

On December 12, 2006, the Disciplinary Hearing Panel filed its Findings of Fact, Conclusions of Law and Disciplinary Recommendation recommending that Respondent be suspended from the practice of law in the State of Missouri for a period of three years. **App. 513-547.** The Panel found that Respondent acquired the Waterman Property from

her own client for substantially less than its fair market value and substantially less than the purchase offers received from third parties. **App. 515.** As a result, the Panel found that Respondent “was dealing primarily in her own behalf, and looking after her own best interests, rather than that of Ms. Green.” **App. 515-516.** The Panel noted that Respondent refused to accept tender of a cashier’s check from Green in an amount that would have made Respondent, Simmons and Fisher whole. The Panel found that Respondent was intent on keeping the Waterman Property in order that she could receive the “benefit of her bargain.” **App. 516.** In this latter regard, the Panel made the following finding:

“If the Respondent was truly concerned about her client, she would not be concerned about herself receiving the benefit of the bargain. Respondent was overly concerned with being compensated for her time spent, her attorney fees, and her own expenses, to the detriment of her client. It is the panel’s opinion that Respondent, a sophisticated, well educated attorney, took advantage of a substantially less educated, less sophisticated, elderly individual, and that the person that benefited primarily from the attorney-client relationship was Respondent herein.” **App. 516.**

The Panel found that Respondent violated Rule 4-1.8(a) of the Missouri Rules of Professional Conduct by entering into a prohibited business transaction with her client and knowingly acquiring a pecuniary interest adverse to her client under terms that were not fair and reasonable to Green and without giving Green a reasonable opportunity to seek the advice of independent counsel regarding the transaction. **App. 539-540.**

The Panel found that Respondent violated Rule 4-1.8(b) of the Missouri Rules of Professional Conduct in that Respondent used information relating to the representation of her client Green to her client's disadvantage and that her client did not consent to such usage after consultation. Specifically, the Panel found that Respondent ascertained information regarding (i) Green's financial condition, (ii) the value of the Waterman Property and (iii) the status of previous and pending sale contracts relating to the Waterman Property in an attempt to carry out a scheme whereby Respondent would financially benefit from her own purchase of the Waterman Property. **App. at 540.**

The Panel found that Respondent violated Rule 4-1.2(a) of the Missouri Rules of Professional Conduct in that Respondent failed to abide by her client's decisions regarding the objectives of the representation. Specifically, the Panel found that Green desired to sell the Waterman Property to Wilson and stood ready, willing and able to consummate such sale; however, Respondent purposefully interfered with and hindered the sale to Wilson in furtherance of her scheme to financially benefit from her own purchase of the Waterman Property. **App. 540-541.**

The Panel found that Respondent violated Rule 4-1.2(a) of the Missouri Rules of Professional Conduct in that Respondent failed to consult with her client Green as to the means by which the objectives of the representation were to be pursued. Specifically, the Panel found that Respondent sent Wilson and Wilson's attorney a series of letters intended to cause Wilson to refrain from purchasing the Waterman Property in furtherance of her scheme to financially benefit from her own purchase of the Property. **App. 541.**

The Panel found that Respondent violated Rule 4-1.4 of the Missouri Rules of Professional Conduct in that Respondent failed to keep her client reasonably informed about the status of the representation. Specifically, the Panel found that Respondent failed to keep Green reasonably informed regarding (a) the status of the bankruptcy proceedings in which she was representing Green and (b) the communications with Wilson regarding the sale of the Waterman Property. **App. 541.**

The Panel found that Respondent violated Rule 4-1.7(b) of the Missouri Rules of Professional Conduct in that Respondent represented her client notwithstanding the fact that the representation was materially limited by Respondent's responsibilities to third persons (i.e., Frank Simmons and Caroline Fisher) and by the Respondent's own interests. **App. 542.**

The Panel found that Respondent violated Rule 4-1.16 of the Missouri Rules of Professional Conduct in that Respondent failed to terminate the attorney-client relationship with her client after it became reasonably clear that the representation would result in violation of the Rules of Professional Conduct. **App. 542.**

The Panel found that Respondent violated Rule 4-3.3(a)(1) of the Missouri Rules of Professional Conduct in that Respondent failed and omitted to advise the bankruptcy court of her personal involvement in the financial matters of her client. **App. 542.**

The Panel found that Respondent violated Rule 4-8.4(c) of the Missouri Rules of Professional Conduct in that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in her attempts to carry out a scheme to financially benefit

from the purchase of the Waterman Property to the detriment of her client. **App. 542-543.**

The Panel found that Respondent violated Rule 4-8.4(d) of the Missouri Rules of Professional Conduct in that Respondent engaged in conduct prejudicial to the administration of justice in her attempts to carry out a scheme to financially benefit from the purchase of the Waterman Property to the detriment of her client. **App. 543.**

Having found violations of the Rules of Professional Conduct by Respondent, the Panel applied the provisions of the ABA *Standards for Imposing Lawyer Sanctions (1991 Edition)* to determine the appropriate sanction that should be imposed. The Panel found that the following sections of the ABA *Standards* were applicable to Respondent's misconduct:

- Section 4.31(a) in that Respondent, without the informed consent of her client, engaged in the representation of Green knowing that her interests were adverse to Green's interests, with the intent to benefit herself, Frank Simmons and Caroline Fisher, and such conduct caused serious injury or potentially serious injury to Green. **App. 543.**³

³ Section 4.31(a) of the *ABA Standards* states as follows: "Disbarment is generally appropriate when a lawyer, without the informed consent of client(s): engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client."

- Section 4.61 in that Respondent knowingly deceived her client with the intent to benefit herself, Frank Simmons and Caroline Fisher and thereby caused serious injury or potentially serious injury to Green. **App. 544.**⁴
- Section 6.11 in that Respondent, with the intent to deceive the Bankruptcy Court, improperly withheld material information from the Court on August 26, 2003 regarding her own contract to purchase the Waterman Property from her client and the terms of said purchase, and thereby caused significant or potentially significant injury to Green. **App. 544.**⁵
- Section 7.1 in that Respondent knowingly engaged in conduct that is a violation of a duty owed to the profession by fraudulently and deceitfully entering into a unreasonable and adhesive contract with her client for the sole benefit of carrying out a scheme to financially benefit herself, Frank Simmons and Caroline Fisher,

⁴ Section 4.61 of the ABA Standards states as follows: “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 potentially serious injury to a client.”

⁵ Section 6.11 of the ABA Standards states in relevant part as follows: “Disbarment is generally appropriate when a lawyer, with the intent to deceive the Court, ...improperly withholds material information, and causes serious or potentially serious injury to a party....”

thereby causing serious or potentially serious injury to her client Irene Green, the public and the legal system. **App. 541.**⁶

The Panel also considered aggravating and mitigating circumstances as authorized by the ABA Standards in determining what sanction to impose. **App. 544-545.** The Panel found that the following aggravating circumstances were applicable in this case:

- A history of prior disciplinary offenses [Section 9.22(a)];
- Dishonest motive [Section 9.22(b)];
- Multiple offenses [Section 9.22(d)];
- Refusal to acknowledge wrongful nature of the conduct [Section 9.22(g)]; and
- Vulnerability of the victim [Section 9.22(h)].

Based on the foregoing findings and conclusions, the Disciplinary Hearing Panel recommended that Respondent be suspended from the practice of law in the State of Missouri for a period of not less than three (3) years. The parties did not concur in the Panel recommendation, causing the record to be filed with the Court. **App. 546.**

⁶ Section 7.1 of the ABA Standards states as follows: “Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.”

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT FINGAL-GRIFFIN FOR VARIOUS VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT ARISING FROM HER SCHEME TO FINANCIALLY BENEFIT FROM THE PURCHASE OF HER CLIENT'S PROPERTY UNDER TERMS THAT WERE EXPLOITIVE, UNFAIR AND UNREASONABLE AND INTENDED TO BENEFIT RESPONDENT AT THE EXPENSE OF THE ATTORNEY-CLIENT RELATIONSHIP AND HER CLIENT'S INTERESTS.

Shaffer v. Terrydale Management Corporation, 648 S.W.2d 595 (Mo.App. 1983)

Rule 4-1.7(b), Rules of Professional Conduct

Rule 4-1.8(a), Rules of Professional Conduct

Rule 4-8.4(c), Rules of Professional Conduct

POINTS RELIED ON

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT FINGAL-GRIFFIN SCHEMED TO FINANCIALLY BENEFIT FROM THE PURCHASE OF HER CLIENT'S PROPERTY UNDER TERMS THAT WERE EXPLOITIVE, UNFAIR AND UNREASONABLE AND INTENDED TO BENEFIT RESPONDENT AT THE EXPENSE OF THE ATTORNEY-CLIENT RELATIONSHIP AND HER CLIENT'S INTERESTS BECAUSE:

- A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION; AND**
- B. THE COURT HAS RULED THAT ATTORNEYS WHO ENGAGE IN DECEITFUL AND DISHONEST CONDUCT AND THEREBY INJURE THE INTERESTS OF THEIR CLIENT SHOULD BE DISBARRED.**

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

In re Oliver, 285 S.W.2d 648 (Mo. banc 1956)

In re Snyder, 35 S.W.3d 380 (Mo. banc 2000)

In re Littleton, 719 S.W.2d 772 (Mo. banc 1986)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT FINGAL-GRIFFIN FOR VARIOUS VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT ARISING FROM HER SCHEME TO FINANCIALLY BENEFIT FROM THE PURCHASE OF HER CLIENT’S PROPERTY UNDER TERMS THAT WERE EXPLOITIVE, UNFAIR AND UNREASONABLE AND INTENDED TO BENEFIT RESPONDENT AT THE EXPENSE OF THE ATTORNEY-CLIENT RELATIONSHIP AND HER CLIENT’S INTERESTS.

Before discussing the serious violations of the Rules of Professional Conduct committed by Respondent and the appropriate discipline that will protect the public and preserve the integrity of the legal profession, Informant believes that it would be useful to review the important role that a lawyer in private practice plays in our society.

A lawyer owes her client the utmost good-faith and the highest loyalty and devotion to her client’s interests. “The relation between attorney and client is highly fiduciary and of a very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith” on the part of the attorney. *In re Oliver*, 285 S.W.2d 648, 655 (Mo. banc 1956). Respondent repeatedly breached that duty to her client in this case.

The Rule 4-1.8(a) Violation. The Rules of Professional Conduct prohibit an attorney from entering into a business transaction with a client or knowingly acquiring an ownership, possessory or pecuniary interest adverse to a client unless (i) the transaction

and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted to the client in a manner which can reasonably be understood by the client, (ii) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction, and (iii) the client consents in writing to the transaction. Rule 4-1.8(a).⁷

The evidence clearly established, and the Disciplinary Hearing Panel correctly found, that Respondent's scheme to acquire the Waterman Property from her client Green constituted a violation of Rule 4-1.8(a). Specifically, the terms of the Real Estate Contract and the Post-Closing Lease between Respondent and her client were not fair and reasonable and were not the produce of an arm's length transaction. Moreover, Respondent did not give Green a reasonable opportunity to seek the advice of independent counsel regarding the transaction. Finally, Green did not consent to the transaction in a separate writing from the transactional documents.

Respondent learned from her representation of Green that Clarkson Realty had offered \$120,000 for the Waterman Property, that Wilson had offered \$130,000 for the Waterman Property, and that both offers were substantially more than the Countrywide

⁷ Respondent sought the advice of Sara Rittman, Legal Ethics Counsel for the State of Missouri, regarding her dealings with Green. Ms. Rittman advised Respondent that she could purchase her client's property provided that the transaction was a "genuine" purchase, meaning that the sale would have to be an arm's length transaction and would have to comply with the requirements of Rule 4-1.8(a). **App. 100-101 (Tr. 44-46); 288.**

debt. **App. 111-112 (Tr. 85-87); 291-292; 468-473.** As a result, Respondent knew that her client had significant equity in the Waterman Property. In order to confirm this fact, Respondent arranged for a real estate agent to visit the Waterman Property and to provide Respondent with her opinion of the fair market value of the property. **App. 8; 40.** The agent estimated that the Waterman Property was worth approximately \$150,000.00.

App. 198-199 (Tr. 186-189). If true, Green had almost \$90,000 of equity in the Waterman Property (i.e., the difference between the fair market value as determined by the real estate agent and the principal amount of the outstanding loan to Countrywide).

With this information in hand, Respondent conceived and carried out a scheme to purchase the Waterman Property herself from her client for a purchase price substantially less than its fair market value and significantly less than the purchase amounts offered by Clarkson Realty and Wilson. Thus, under the terms of the Real Estate Contract signed by Green with Respondent on August 25, 2003, Respondent agreed to buy the Waterman Property for \$90,000 and to immediately pay-off the outstanding amount of the Countrywide loan in order to forestall foreclosure. In addition, the Contract provided that it was a “back-up contract” to the Wilson contract for \$130,000 and that if the Wilson purchase was consummated after the Countrywide loan was satisfied by Respondent, then Respondent would receive 75% of the difference between Respondent’s contract and Wilson’s contract, or \$30,000. In other words, Respondent would reap the benefit of any subsequent sale of her client’s property for anything approaching its fair market value.

Respondent also had her client Green sign a Post-Closing Lease under which Green was permitted to retain possession for a limited period of time after Respondent

closed on the purchase and became the owner of the Waterman Property. The Lease provided, however, that Respondent would “retain any sale proceeds from the resale of the Waterman Property if the “net resale price” was \$130,000 or less. The Post-Closing Lease further provided that the “net sale proceeds” from any resale above \$130,000 would be split with 75% of the “net sale proceeds” going to Respondent and 25% of the net sale proceeds going to Green if the property was sold by December 25, 2003; but every month after December 25, 2003, Green’s share of the “net sale proceeds” from any resale above \$130,000 would be reduced by 5%. Consequently, if the sale occurred after May 2004, then Green would receive nothing and Respondent would receive 100% of the resale proceeds. In other words, Respondent retained an increasing percentage of the proceeds of any resale of the Waterman Property.

The Post-Closing Lease defined “net sale proceeds” as the “gross purchase price from the resale, less any and all costs and expenses related to Lessor’s [Respondent] acquisition of the Premises from Lessee and carrying costs, this Lease, and the resale, including but not limited to closing costs, insurance costs, inspection fees, maintenance costs, title insurance fees, renovation and repair costs and attorney’s fees.” Thus, under the Post-Closing Lease, Respondent was entitled to recover, *inter alia*, all her attorney’s fees incurred in connection with her representation of Green, including the fees paid to the Blumenfeld law firm to draft the Real Estate Contract and Post-Closing Lease. **App. 11; 46; 319-324.** Thus, Respondent received attorney’s fees as well as most, and potentially all, of the net sale proceeds from the ultimate resale of the Waterman Property.

Irene Green did not understand the terms or the ramifications of either the Real Estate Contract or the Post-Closing Lease. Green believed that Respondent was purchasing the Waterman Property for \$130,000. **App. 114 (Tr. 98-100)**. Respondent failed to review or explain the purchase terms of the contract to either Green or Green's daughters. **App. 116-117 (Tr. 10-110)**. Green signed the Real Estate Contract without any understanding of its terms, including the fact that Respondent was purchasing the Waterman Property for the sum of \$90,000. **App. 116-117 (Tr. 108-109)**. Green believed that Respondent and Simmons were purchasing the Waterman Property for \$130,000, the same purchase price as Wilson had agreed to pay. **App. 114 (Tr. 98-99); 116 (Tr. 108)**.

With regard to the Post-Closing Lease, Respondent failed to explain the terms and meaning of Paragraph 20 of the Post-Closing Lease to Green, under which Green would be charged a monthly penalty for each month that Respondent was unable to re-sell the Waterman Property after the closing. **App. 119 (Tr. 118-120)**.

On or about August 24, 2003, Respondent also had Green sign a one-page document which stated "I, Irene Green, do hereby waive any potential conflict with my attorney, Christi S. Fingal arising out of the sale/purchase of my property and representation of me in bankruptcy." **App. 315**. Green signed the waiver because Respondent "wanted me to", but Green had no understanding of its meaning or effect. **App. 115 (Tr. 101-104)**. The document clearly did not meet the requirements of Rule 4-1.8(a)(3) that the client consent to the transaction in a separate writing.

Green signed the Real Estate Contract, Post-Closing Lease and Waiver of Conflict despite the fact that she did not understand them. Moreover, Green relied upon Respondent for legal advice and believed, based upon Respondent's statements, that signing the documents was in her best interest. In other words, in executing the documents, Green was relying on Respondent to protect and look out for Green's best interests. **App. 118 (Tr. 114).**

In point of fact, Respondent was only interested in her own best interests and the best interests of her partners, Frank Simmons and Caroline Fisher. Respondent knew that her client had significant equity in the Waterman Property, knew that her client was in financial difficulty, knew that her client was unsophisticated and physically frail and knew that her client was relying on her for advice. Rather than fulfill her fiduciary duty as an attorney, Respondent used the attorney-client relationship with Green to her own benefit and placed her own financial interests above those of her client. In so doing, Respondent violated Rule 4-1.8(a).

The Rule 4-1.8(b) Violation. The Rules of Professional Conduct prohibit an attorney from using information relating to the representation of a client to the disadvantage of the client unless the client consents after consultation. Rule 4-1.8(b).

Respondent knew from the representation that Green was in serious financial trouble and had tried to forestall Countrywide's foreclosure on the Waterman Property by filing a series of bankruptcies. Respondent also knew that her client owed Countrywide approximately \$61,000 on the mortgage on the Waterman Property and that her client had received two offers for the Waterman Property in the amounts of \$120,000 and \$130,000.

Accordingly, Respondent knew that client had significant equity in her property.

Respondent independently confirmed this fact by having an appraisal performed on the Waterman Property which confirmed the fact that the property was worth \$150,000 in “as is” condition.

Armed with this knowledge, Respondent hatched and carried out a scheme to financially benefit from her own purchase of the Waterman Property from her client for a purchase price far below its fair market value and far below the offers her client had already received from Clarkson Realty (i.e., \$120,000) and Larry Wilson (i.e., \$130,000). Rather than enter into an arm’s length transaction with her client that was fair and reasonable to all parties, Respondent sought to promote her own interest to the extreme detriment of her client. She saw an opportunity to steal her client’s equity in the Waterman Property for her own benefit and she grabbed that opportunity by presenting her client with a contract and lease that were unfair and that her client did not understand. She did so without properly consulting with her client and obtaining her client’s informed consent. Respondent’s conduct clearly violated the express prohibitions of Rule 4-1.8(b).

The Rule 4-1.2(a) Violation. The Rules of Professional Conduct require a lawyer to abide by her client’s decisions concerning the objectives of the representation and to consult with the client as to the means by which those objectives are to be pursued. Rule 4-1.2(a).

On August 14, 2003, Green executed a contract with Wilson for the sale of the Waterman Property for the purchase price of \$130,000 and stood ready, willing and able to consummate that sale. If Wilson had been allowed to close on the purchase of the

Waterman Property, Green would have received approximately \$68,000 in cash (i.e., the difference between the purchase price and the amount of the Countrywide loan). Instead, Respondent engaged in a series of obstructive demand letters to Wilson and his attorney intended to thwart the sale of the Waterman Property so that Respondent could financially benefit from her own purchase of the Waterman Property to the severe financial detriment of her client. Thus, Respondent sent Wilson's attorney the following letters:

- On August 22, 2003, Respondent sent Wilson's attorney (Cheryl Kelly, an attorney at the Thompson Coburn law firm) a letter demanding that the full amount of the purchase price be immediately escrowed and stating that if Wilson fails to provide proof that he is able to perform, "we will consider the contract null and void." Respondent also stated that "if Mr. Wilson persists in pursuing this contract", he would be required to pay the Respondent's attorney's fees incurred in the transaction. **App. 313-314.** Green was unaware that Respondent had sent this letter to Wilson's attorney. **App. 113 (Tr. 93); 120 (Tr. 121).**
- On August 26, 2003, after Respondent had entered into her own contract with her client for the purchase of the Waterman Property for \$90,000, Respondent sent Wilson's attorney a letter demanding that Wilson close on the purchase of the Waterman Property and that Wilson pay Respondent's attorney's fees in an amount in excess of \$9,000. In the event that Wilson failed to close on the transaction, Respondent threatened to file suit against Wilson for fraud and breach

of contract. **App. 325-326.** Green was unaware that Respondent had sent Wilson's attorney the August 26, 2003 letter. **App. 120 (Tr. 121).**

- On September 5, 2003, Respondent sent Wilson's attorney a letter again demanding that Wilson pay Green's costs of bringing the sale to a conclusion, noting that "those 'costs', including the necessity to file bankruptcy to stop the foreclosure and all other attorney fees, exceed \$9,000." **App. 358.** Green was unaware that Respondent had sent Wilson's attorney the September 5, 2003 letter. **App. 120 (Tr. 123).**
- On September 16, 2003, Respondent sent Wilson's attorney a letter demanding that Wilson close on the purchase of the Waterman Property for \$130,000 and that he pay Green \$15,000 in costs, including Respondent's attorney's fees. She again threatened litigation against Wilson. Significantly, Respondent stated that Green's property had been appraised by a real estate agent at \$150,000 in "as is" condition and that it was given a resale value of \$225,000 after repairs. **App. 399-400.** Green was unaware that Respondent had sent Wilson's attorney the September 16, 2003 letter. **App. 120 (Tr. 124).**
- On September 22, 2003, after Wilson had increased his offer on the Waterman Property to \$133,000 and delivered a cashier's check in that amount to the title company, Respondent sent Wilson's attorney a letter rejecting the increased offer because it "fails to address any of the attorney's fees and court costs." **App. 425-426.** Green was unaware that Respondent had sent Wilson's attorney the September 22, 2003 letter. **App. 121 (Tr. 125-126).**

The contract between Green and Wilson provided for the sale of the Waterman Property for \$130,000 without the payment of any attorney's fees. **App. 291-292.**

Through the above series of letters, Respondent sought to impose additional substantive requirements on the sale to Wilson in order to with the intent to thwart Wilson's purchase. She did so without first consulting with Green as to the objectives of the representation or the means by which those objectives were to be pursued. The Disciplinary Hearing Panel correctly found that Respondent violated Rule 4-1.2(a).

The Rule 4-1.4 Violation. The Rules of Professional Conduct require that a lawyer keep her client reasonably informed about the status of the legal matter for which she is providing representation. Rule 4-1.4.

As set forth above, the record evidence clearly establishes that Respondent made substantive additional demands upon Wilson with regard to his purchase of the Waterman Property without consulting with her client or advising her either in advance or after the fact that such demands had been made. It is equally clear that Respondent threatened that she would sue Wilson for fraud and breach of contract on behalf of her client without consulting with Green. **App. 120-121 (Tr. 121-127).**

Respondent failed to keep her client Green reasonably informed regarding the status of the negotiations regarding the sale of the Waterman Property by Green to Wilson. This is particularly troublesome given the fact that, as of August 26, 2003, Respondent herself had a vested interest in the Waterman Property. Under these circumstances, it was all the more important that Green be informed regarding the status of the Wilson negotiations so that she could have made informed decisions regarding the

disposition of the property. Respondent clearly believed that an uninformed client would permit her to carry out her scheme to financially benefit from her own purchase of the Waterman Property. The Disciplinary Hearing Panel correctly found that Respondent violated Rule 4-1.4.

The Rule 4-1.7(b) Violation. The Rules of Professional Conduct prohibit a lawyer from representing a client if the representation may be materially limited by the lawyer's responsibilities to a third person or by the lawyer's own interests, unless the lawyer reasonably believes that the representation will not be adversely affected and the client consents after consultation. Rule 4-1.7(b).

In order to carry out her scheme, Respondent contacted a friend, Frank Simmons, and Respondent's mother, Caroline Fisher, about contributing to the purchase of the Waterman Property. Simmons and Fisher each agreed to contribute \$25,000, along with \$25,000 of Respondent's own money, toward the purchase of the Waterman Property from Green. **App. 244 (Tr. 107-108)**. Respondent and Simmons thereafter executed a Real Estate Contract with Green for the purchase of the Waterman Property upon terms that were skewed in favor of Respondent, Simmons and Fisher and unfair and unreasonable to Respondent's client.

It is abundantly clear that Respondent's representation of Green was materially limited by her responsibilities to Simmons and Fisher and by her own financial interests following Respondent's execution of the contract to purchase the Waterman Property for \$90,000. That contract provided that it was a "back-up contract" to the Wilson contract for \$130,000 and that if the Wilson contract closed after Respondent had paid-off the

Countrywide loan, then Respondent, Simmons and Fisher would get \$30,000 and Green would get \$10,000. The upshot of this scheme was that Respondent, Simmons and Fisher would financially benefit from Green's equity in the Waterman Property at the financial expense of Respondent's client. **App. 11; 46; 316-318.**

There can be no doubt that Respondent's representation of her client was influenced by her responsibilities to Simmons and Fisher and by her own interests. Respondent admitted that in order to induce Simmons to invest \$25,000 in her scheme to purchase of the Waterman Property, she told him that he stood to make a profit on his investment. **App. 245 (Tr. 109).** Respondent also admitted that she and Simmons intervened in the Wilson specific performance lawsuit in order to protect their investment. **App. 215 (Tr. 255).** Respondent admitted that once she intervened in the Wilson lawsuit, she was "hot as heck" and "my desire to help her [Green] could not have been many more reversed." **App. 245 (Tr. 112).**

Respondent flatly refused Green's offer to make Respondent, Simmons and Fisher whole by repaying them all monies that they had expended in paying off the Countrywide deed of trust on the Waterman Property on Green's behalf. Instead, Respondent felt that she had made an investment in the Waterman Property, had put her money as well as the money of Simmons and Fisher at risk, and that she and her partners deserved the "benefit of their bargain." **App. 502.** In other words, they wanted to reap the full financial benefit of the contract that the client Green had executed with them, regardless of the fact that it was consummated in an unfair and unethical manner to the extreme detriment of an unsophisticated and uneducated client who was rightfully relying on Respondent to

protect her interests. Respondent's conduct constituted brazen self-dealing on behalf of herself and her partners, materially limited her representation of her client and was clearly in violation of Rule 1.7(b).

The Rule 4-1.16(a) Violation. The Rules of Professional Conduct require a lawyer to withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct. Rule 4-1.16(a).

The chronology of events in this case leads to the inescapable conclusion that Respondent was required by the Rules of Professional Conduct to withdraw from representing her client Green as her personal financial interests and her responsibilities to third parties became increasingly divergent from the interests of her client. The extent to which those interests diverged is obvious from the most cursory examination of the terms of the Real Estate Contract and Post-Closing Lease that Respondent presented to her client. They were one-sided and clearly in violation of the Rules of Professional Conduct. In addition, the fact that Respondent retained John King and the law firm of Blumenfeld, Kaplan and Sandweiss to draft real estate documents for the purchase of the Waterman Property without the knowledge or consent of her client evidences the divergent interests between Respondent and her client. Finally, the fact that Respondent presented her client with a "Directive Regarding 5150-52 Waterman" in October 2003 which included an admission that "I [Irene Green] have presently breached the contract with Frank Simmons and Christi Fingal" illustrates the fact that Respondent continued to represent her client far beyond the date when it had become obvious that she had

repeatedly violated the Rules of Professional Conduct. **App. 429.** The Disciplinary Hearing Panel correctly found that Respondent had violated Rule 1.16(a).

The Rule 4-8.4(c) and Rule 4-8.4(d) Violations. The Rules of Professional Conduct state that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 4-8.4(c). Likewise, the Rules state that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Rule 4-8.4(d)

The Disciplinary Hearing Panel correctly found that Respondent's scheme to financially benefit from her own purchase of the Waterman Property to the detriment of her client constituted violations of both Rules 4-8.4(c) and 4-8.4(d). The record evidence in this case clearly establishes that Respondent violated these rules and lacks the moral character and fitness to practice law.

Respondent knew from the representation that her client had received offers on the Waterman Property from Clarkson Realty for \$120,000 and from Larry Wilson for \$130,000. She knew from her own real estate appraiser whom Respondent hired that the property was valued at \$150,000 in "as is" condition and worth approximately \$225,000 if improvements were made to the property. She also knew that her client had significant equity in the Waterman Property, was in dire financial straits and had filed bankruptcy.

With the totality of this information in hand, Respondent saw an opportunity to take advantage of her client's misfortune and to benefit herself in the process at her client's expense. She hatched and implemented a scheme to buy the Waterman Property at a reduced price and to take her client's equity in the property for her own benefit. She

carried out the scheme by (1) raising the necessary earnest deposit monies from her friend (Frank Simmons) and mother (Caroline Fisher) in order to fund the scheme; (2) hiring an outside attorney without the knowledge of her client to draft the necessary real estate documents; (3) inducing her client to execute the real estate contract and post-closing lease without proper counsel by an independent attorney; (4) paying off the Countrywide loan on the Waterman Property to forestall the threat of foreclosure; and (5) chilling Larry Wilson's plans to purchase the Waterman Property with unreasonable demands and threats of litigation. Indeed, Respondent's scheme would have worked but for Irene Green's steadfast refusal to sign a deed in the 11th hour that would have transferred title to the Waterman Property to Respondent and Simmons.

The fact that Respondent engaged in a multi-faceted scheme to misappropriate her client's equity in the Waterman Property is significant and reflects a lack of character necessary to the practice of law. Sara Rittman, Legal Ethics Counsel for the State of Missouri, cautioned her regarding the requirements of the Rules of Professional Conduct. Respondent could have had pangs of doubt and conscience at any time along the way and decided to stop her scheme. She could have accepted her client's tender of funds, been made whole and walked away from the transaction. Instead, Respondent persisted in her scheme based on the misguided belief that she was entitled to the "benefit of her bargain" with her client. Finally, Respondent's lack of honesty in her self-dealing with her own client reflects a lack of moral character necessary to the practice of law in this state. The clear weight of the evidence supports a finding that Respondent violated Rules 4-8.4(c) and 4-8.4(d) in her dealings with her client Irene Green.

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT FINGAL-GRIFFIN SCHEMED TO FINANCIALLY BENEFIT FROM THE PURCHASE OF HER CLIENT'S PROPERTY UNDER TERMS THAT WERE EXPLOITIVE, UNFAIR AND UNREASONABLE AND INTENDED TO BENEFIT RESPONDENT AT THE EXPENSE OF THE ATTORNEY-CLIENT RELATIONSHIP AND HER CLIENT'S INTERESTS BECAUSE:

- A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION; AND**
- B. THE COURT HAS RULED THAT ATTORNEYS WHO ENGAGE IN DECEITFUL AND DISHONEST CONDUCT AND THEREBY INJURE THE INTERESTS OF THEIR CLIENT SHOULD BE DISBARRED.**

The Disciplinary Hearing Panel recommended that Respondent be suspended from the practice of law for a period of three years. Informant respectfully disagrees and suggests that the conduct in this case supports disbarment because the Respondent dealt in a purposefully dishonest manner with her client and sought to enrich herself and others at the expense of her client. In such cases, this Court has determined that disbarment is the appropriate sanction. *In re Littleton*, 719 S.W.2d 772, 778 (Mo. banc 1986).

This Court has relied on the *ABA's Standards for Imposing Lawyer Sanctions (1991 Edition)* to determine the appropriate discipline to be imposed in attorney

discipline cases. *In re Warren*, 888 S.W.2d 334 (Mo. banc 1994); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994).

The Disciplinary Hearing Panel properly found that the following ABA standards and aggravating circumstances are applicable to Respondent's conduct in this case:

3.0 Generally

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty involved;
- (b) the lawyer's mental state;
- (c) the actual or potential injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating circumstances.

4.3 Failure to Avoid Conflicts of Interest

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 conflicts of interest:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client:

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

4.6 *Lack of Candor*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

4.61 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.

7.0 *Violations of Duties Owed to the Profession*

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

9.2 *Aggravation*

9.21 *Definition.* Aggravation or aggravating circumstances are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.

9.22 *Factors which may be considered in aggravation.* Aggravating factors include:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;

-
- (g) refusal to acknowledge wrongful nature of conduct; and
 - (h) vulnerability of the victim.

The ABA standards support disbarment in this case because Respondent engaged in a scheme to financially benefit from the purchase of her client's property under terms that were exploitive, unfair and unreasonable and intended to benefit Respondent at the expense of the attorney-client relationship and her client's interests. Specifically, Respondent engaged in the following misconduct:

- Knowing that her client had received offers on the Waterman Property for \$120,000 and \$130,000, and knowing that Respondent's own real estate expert had valued the Waterman Property at \$150,000, Respondent carried out a scheme to purchase her client's property for the sum of \$90,000. On its face, the transaction was unfair to her client and unethical because Respondent used information gleaned during the attorney-client relationship to further her own financial interests to the significant financial detriment of her client.
- Without the knowledge or consent of her client, Respondent engaged the services of another law firm to draft the Real Estate Contract and Post-Closing Lease in order to carry out her plan to purchase the Waterman Property.
- Through the use of fear tactics and duress, Respondent was able to coerce her client to execute the Real Estate Contract and Post-Closing Lease despite the fact that the client Green did not understand the terms of the documents and believed that Respondent was purchasing the Waterman Property for \$130,000.

- Respondent failed to review or explain the terms of the Real Estate Contract or the terms and meaning of the Post-Closing Lease under which her client would be charged a monthly penalty for each month that Respondent was unable to resell the Waterman Property after the closing. Green relied upon Respondent to protect and look out for her best interests and believed, based upon what Respondent had told her, that signing the documents was in her best interests.
- Respondent failed to provide Green with a reasonable opportunity to seek the advice of independent counsel regarding the transaction with Respondent. Specifically, Respondent failed to advise Green that she had a right to consult with independent counsel regarding the sale of the Waterman Property to Respondent. In addition, Respondent failed to obtain Green's consent to the transaction with Respondent in a writing separate from the Sale Contract.
- The terms of the transaction were unfair and unreasonable. Specifically, the Real Estate Contract provided that it was a "back-up contract" to the Wilson contract for \$130,000 and that if the Wilson contract was consummated prior to Respondent and Simmons tendering payment to Countrywide, then the Contract among Respondent, Simmons and Green would be void; but if the Wilson contract was consummated afterwards, then Green would get \$10,000 and Respondent and Simmons would get \$30,000 of the difference. The Post-Closing Lease provided that Respondent and Simmons would "retain any sale proceeds from the resale if the "net resale price" was \$130,000 or less. The Post-Closing Lease further provided that the "net sale proceeds" from any resale

above \$130,000 would be split with 75% of the “net sale proceeds” going to Respondent and Simmons and 25% of the net sale proceeds going to Green if the property was sold by December 25, 2003; but every month after December 25, 2003, Green’s share of the “net sale proceeds” from any resale above \$130,000 would be reduced by 5%. Consequently, if the sale occurred after May 2004, then Green would receive nothing and Respondent and Simmons would receive 100% of the sale proceeds regardless of the sale price.

- The day after Green signed the documents (i.e., August 26, 2003), Respondent paid off the Countrywide loan on the Waterman Property, thus triggering the provisions of the Real Estate Contract and Post-Closing Lease. Respondent thereafter engaged in a course of conduct intended to induce Wilson to breach his contract for the purchase of the Waterman Property so that Respondent could receive the full benefit of her bargain. Specifically, Respondent made a series of additional demands upon Wilson with regard to the payment of Respondent’s attorney’s fees incurred in representing Green in the transaction and bankruptcy. Respondent never consulted with Green regarding any of the demands and Green did not authorize Respondent to make any such demands.
- Respondent thereafter intervened in the lawsuit filed by Wilson with regard to the Waterman Property and sought specific performance of the contract between Green, Respondent and Simmons. In addition, Respondent filed a Notice of Lis Pendens against the Waterman Property.

- Respondent rejected her client offer to pay back all funds that Respondent had advanced on Green's behalf in exchange for removing the Lis Pendens against the Waterman Property and agreeing that the Contract and Lease were null and void. Respondent, however, rejected this offer and claimed that she wanted to receive the benefit of her bargain.

The record evidence clearly establishes that Respondent engaged in a course of conduct with her client intended to carry out a scheme to purchase the Waterman Property so that she could extract her client's equity in the property for her own financial benefit, all to the extreme financial detriment of her client. The scheme was all the more improper due to the fact that Irene Green was an elderly, retired woman living off of disability income. Green had a high school education and was unsophisticated regarding real estate transactions. She suffered from various physical disabilities, including diabetes, heart surgery, cataracts, arthritis and kidney disease that required that she undergo dialysis three times per week. Under these circumstances, a proper application of the *ABA Standards* requires that Respondent be disbarred.

Aggravating circumstances are present in this case. Respondent has a history of prior disciplinary offenses, having received two prior admonitions. *ABA Standard 9.22(a)*. Respondent had dishonest motives as reflected in the fact that she sought to unfairly benefit financially from her scheme to the detriment of her client. *ABA Standard 9.22(b)*. Respondent engaged in multiple ethical violations in carrying out her scheme. *ABA Standard 9.22(d)*. Respondent has steadfastly refused to acknowledge the wrongful nature of her conduct and has openly stated that she deserved to receive the benefit of her

bargain in her improper dealings with her client. *ABA Standard 9.22(g)*. Finally, Respondent took advantage of a particularly vulnerable victim. *ABA Standard 9.22(h)*. Application of the ABA Standards, combined with all of the referenced aggravating circumstances, warrant Respondent's disbarment.

This Court's disciplinary decisions likewise support disbarment in this case. It is well settled that the nature of a lawyer's profession necessitates the utmost good faith and the highest loyalty and devotion to her client's interests. "The relation between attorney and client is fiduciary and binds the attorney to a scrupulous fidelity to the cause of the client which precludes the attorney from any personal advantage from the abuse of that reposed confidence." *Shaffer v. Terrydale Management Corporation*, 648 S.W.2d 595, 605 (Mo.App. 1983). The Court has imposed severe discipline where the attorney has breached that fiduciary relationship and engaged in conduct involving dishonesty and misrepresentation. *In re Carey & Danis*, 89 S.W.3d 477, 502 (Mo. banc 2002); *In re Cupples*, 979 S.W.2d 932, 936 (Mo. banc 1998).

This Court has held that disbarment is the appropriate sanction where an attorney has committed an act of fraud, dealt in a purposefully dishonest manner with a client, or sought to dishonestly enrich herself at the expense of others. *In re Littleton*, 719 S.W.2d 772, 778 (Mo. banc 1986). Thus, the Court has disbarred an attorney who willfully mishandled and misappropriated his client's settlement funds and failed to keep the client informed regarding the status of her case, including the fact that the case had been settled. *In re Fenlon*, 775 S.W.2d 134 (Mo. banc 1989). *See also: In re Panek*, 585 S.W.2d 477 (Mo. banc 1979) (disbarment ordered where attorney fraudulently misappropriated

property and personal funds belonging to client); *In re Kazanas*, 96 S.W.3d 803 (Mo. banc 2003)(disbarment ordered where attorney, *inter alia*, engaged in dishonesty and deceit in the theft of fees from his law firm).

Respondent's ethical violations in the case at bar include, but are not limited to, conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 4-8.4(c). As discussed in detail above, the scheme hatched by Respondent to enrich herself and others at the expense of her client's interests necessarily impacted and violated various ethical obligations, including the following:

- Rule 4-1.8(a) by entering into a prohibited business transaction with Green and knowingly acquiring a pecuniary and possessory interest adverse to her client under terms that were not fair and reasonable to Green without giving her client a reasonable opportunity to seek the advise of independent counsel regarding the transaction and without fully disclosing the nature of the transaction in a manner that can be reasonably understood by the client;
- Rule 4-1.8(b) by using information regarding her client's financial condition that was obtained within the scope of the attorney-client relationship in order to financially benefit from her own purchase of the Waterman Property;
- Rule 4-1.2(a) by failing to abide by her client's desire to sell the Waterman Property to Wilson pursuant to the August 14, 2003 contract and by purposefully interfering with and hindering the sale to Wilson;
- Rule 4-1.2(a) by failing to consult with her client as to the means by which the objectives of the representation were to be pursued and by engaging in obstructive

conduct through the transmission of a series of letters intended to cause Wilson to refrain from purchasing the Waterman Property, all without the knowledge or consent of her client.;

- Rule 4-1.7(b) in that Respondent continued to represent Green notwithstanding the fact that the representation was materially limited by Respondent's own financial interests and by her responsibilities to third persons (i.e., Frank Simmons and Caroline Fisher);
- Rule 4-1.16 in that Respondent failed to terminate the attorney-client relationship after it became reasonably clear that the continued representation would result in violation of the Rules of Professional Conduct;
- Rule 4-8.4(c) in that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in her attempts to carry out a scheme to financially benefit from the purchase of the Waterman Property to the detriment of her client Green; and
- Rule 4-8.4(d) in that Respondent engaged in conduct prejudicial to the administration of justice in her attempts to carry out a scheme to financially benefit from the purchase of the Waterman Property to the detriment of her client Green.

The Respondent's serious misconduct, combined with aggravating circumstances supported by the record evidence and found by the Disciplinary Hearing Panel, lead to the inescapable conclusion that "Respondent's retention as an officer of the court would be inimical to the public confidence and esteem essential to the courts and the bar in the

efficient administration of justice.” *In re Panek*, 585 S.W.2d 477, 479 (Mo. banc 1979).

This Court has found that fraudulent conduct can be of such a nature that an attorney “can no longer be allowed to represent clients and to have reposed in him the trust and confidence necessary to the proper representation of a client by a lawyer.” *In re Kirtz*, 494 S.W.2d 324, 329 (Mo banc 1973). Respondent’s misconduct in this case exceeds merely fraudulent, deceitful and dishonest conduct toward her client; it included an array of misconduct designed to appropriate her client’s equity in the Waterman Property. Disbarment is warranted.

In *In re Snyder*, 35 S.W.3d 380 (Mo. banc 2000), the Court indefinitely suspended an attorney who accepted an interest in his clients’ property in payment of his attorney’s fees, noting that such an arrangement is subject to “heightened scrutiny and notice requirements.” *Id.* at 383. The Court noted that Snyder violated Rules 4-1.7 and 4-1.8 for constructing fee arrangements that created pecuniary interests in derogation of the attorney-client fiduciary relationship. *Id.* at 385.

The Respondent’s misconduct in this case is significantly more serious than that involved in the *Snyder* case. In *Snyder*, the attorney engaged in misconduct in an attempt to recover his attorney’s fees. In this case, Respondent took a pecuniary interest in the Waterman Property in order to financially benefit from her client’s significant equity in the property, all to the detriment of her client. Unlike the *Snyder* case, Respondent stood to gain far more than merely the attorney’s fees that she was owed by Green; she stood to gain at least \$30,000 and perhaps more if the Waterman Property ultimately sold for its fair market value as determined by Respondent’s appraiser (i.e., \$150,000). The

misconduct is exacerbated by the fact that Respondent's scheme involved dishonest and deceitful conduct and violated other provisions of the Rules of Professional Conduct. Finally, aggravating circumstances are present in this case.

The most fundamental duty which a lawyer owes to the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when a lawyer engages in illegal conduct, such as misrepresentation or other conduct that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer. See Introduction, Rule 5.0, *ABA Standards for Imposing Lawyer Sanctions* (1991 ed.).

To preserve the integrity of the legal profession means, in part, to make decisions that allow the public a sense of confidence in the administration of justice, including a sense of confidence in those who are officers of the court. *In re McBride*, 938 S.W.2d 905, 910 (Mo. banc 1997) (Covington concurrence). The specific deceitful conduct of Respondent is such that she can no longer be allowed to represent clients and to have reposed in her the trust and confidence necessary to the proper representation of a client by a lawyer. *In re Panek*, 585 S.W.2d 477, 479 (Mo. banc 1979). Disbarment is warranted in this case.

CONCLUSION

Respondent committed professional misconduct (i) by taking a pecuniary interest in her client's property under terms that were not fair and reasonable to her client in order to carry out a scheme to financially benefit at the expense of her client, (ii) by using

information relating to the representation to the disadvantage of her client without obtaining her client's consent after consultation, (iii) by failing to abide by her client's decisions concerning the objectives of the representation, (iv) by failing to consult with her client as to the means by which the objectives of the representation were to be pursued, (v) by failing to keep her client reasonably informed about the status of the matter for which Respondent was providing representation, (vi) by continuing to represent her client despite the fact that the representation was materially limited by Respondent's own interests and by Respondent's responsibilities to third persons, (vii) by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation in her representation of her client, and (viii) by engaging in conduct that is prejudicial to the administration of justice in her representation of her client. The presence of prior misconduct, the vulnerability of the victim of Respondent's dishonest behavior and Respondent's refusal to take responsibility for, or even acknowledge, the nature and extent of her wrongdoing require disbarment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2007, two copies of Informant's Brief and a disk containing the Brief in Word format have been sent via First Class United States Mail, postage prepaid, to:

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Carl E. Schaeperkoetter

CERTIFICATION: RULE 84.06(c)

I hereby 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 14,977 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.

Carl E. Schaeperkoetter

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