IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	**)**	
	)	
	)	
JOSH P. TOLIN	**)**	**Supreme Court # SC 87352**
	)	
	)	
Respondent.	**)**	

INFORMANT'S BRIEF

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ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT TOLIN FOR VIOLATIONS OF RULES 4-1.6(a) AND 4-8.4(c) BECAUSE HE REVEALED CONFIDENTIAL CLIENT INFORMATION TO A THIRD PARTY AND BECAUSE HE ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT AND MISREPRESENTATION BY MAKING A PAYMENT ON A LOAN FRAUDULENTLY OBTAINED BY A THIRD PARTY IN THE NAME OF HIS CLIENT WITHOUT NOTIFYING HIS CLIENT THAT THE LOAN EXISTED OR THAT HE HAD MADE SAID PAYMENT.

Informant will reply to Respondent's Points I and II under Point I of its Reply Brief.

The gist of Respondent's argument appears to be that both Respondent and his client, Brenda Dietrich, were victims of the criminal behavior of Respondent's mistress, Amy Lennen, that Respondent can not be held ethically responsible for that criminal conduct and that he should be credited, not disciplined, for attempting to repair the severe damage done to his client's credit rating and personal life by the criminal activities of his mistress. To believe Respondent's "spin", one might conclude that Respondent is a beneficent attorney who was motivated only by concern for his client and who, when faced with criminal conduct on the part of his paramour that resulted in harm to his client, righted the wrong by paying-off fraudulent credit cards and making a payment on a

fraudulent car loan. On the other hand, an objective review and analysis of the facts and the Rules of Professional Conduct, as conducted by the Disciplinary Hearing Panel in this case, might lead one to conclude that Respondent revealed confidential client information to his mistress and then engaged in dishonest, fraudulent and deceitful conduct by actively attempting to hide the consequences of the improper disclosure from his client.

As might be expected, Respondent repeatedly suggests that this Court should ignore the findings, conclusions and disbarment recommendation of the Disciplinary Hearing Panel, noting they are only advisory in nature. While the advisory nature of the Panel's decision is clear, it is also well-settled that due deference should be given to the Panel's ability to assess the credibility of live witnesses appearing before it. *In re Crouppen*, 731 S.W.2d 247, 249 (Mo. banc 1987). After evaluating the credibility of the witnesses and reviewing the documentary evidence admitted into evidence, the Panel in this case concluded that Respondent (i) violated Rule 4-1.6(a) by revealing confidential client information to his mistress and (ii) violated Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation by making payments on credit cards and a car loan fraudulently obtained by his mistress in the name of his client without notifying his client that the loan existed or that he had made such payments. After applying the appropriate sections of the *ABA Standards for Imposing Lawyer Sanctions*, the Panel recommended that Respondent be disbarred. Informant concurs in these conclusions and recommendation.

While Respondent's Brief contains many factual misstatements and legal misinterpretations, Informant's Reply Brief will address and rebut only the most significant of those inaccuracies and errors.

Respondent is being disciplined for his own misconduct, not the criminal conduct of his mistress. Respondent's initial assertion is that Respondent should not "pay the price" for the unforeseeable crimes of Amy Lennen, arguing that he was under no duty to protect his client from the intervening criminal acts of another. **See Respondent's Brief at pages 26-29.** Respondent seeks to support this claim with an analysis of case law involving the employer-employee relationship [*Wright v. St. Louis Produce Market, Inc.*, 43 S.W.3d 404 (Mo.App. 2001)] and restaurateur-customer relationship [*Nappier v. Kincade*, 666 S.W.2d 858 (Mo.App. 1984)]. Such an analysis has no factual or legal relevance to this case and should be summarily rejected.

The facts that give rise to the charges and the recommended discipline in this case relate entirely to Respondent's conduct. The Panel found that Respondent "at the very least was negligent in permitting Lennen, a person then known to be addicted to drugs, who had made threats to Tolin and his family if not given money, and a person with a history of criminal activity, after hours solitary access to Tolin's office suite where client files were kept. The negligence of Respondent directly and proximately caused serious and significant damage to Dietrich." **App. at 51.** The Panel also found that Respondent "consciously, intentionally and without excuse or justification withheld information from Dietrich concerning the identity theft. The Panel further finds that Tolin consciously abetted Lennen's scheme to financially profit from the theft of Dietrich's identity by

making a payment on the Chase loan and paying off a cancelled credit card account fraudulently obtained by Lennen using Dietrich's identity. At no time did Respondent tell Dietrich that personal information had been stolen from her client file and used by Lennen for fraudulent purpose." **App. at 51-52.**

There is no suggestion in the Informant's charges or in the Panel's findings that Respondent is being disciplined for the conduct of any third party. To the contrary, Respondent is being charged and disciplined for his own actions and omissions that abetted the theft of confidential information from his own client file and the subsequent active concealment of the theft and the resulting identity theft from his client. The deceit and dishonesty involved in such concealment is simply unassailable and reflects an absence of character that raises a serious question as to Respondent's fitness to practice law in the State of Missouri.

Respondent suggests that Informant could not have known that a person suffering from drug addiction problems would stoop to criminal behavior. Respondent charges Informant with being overzealous in making unsupported claims in this regard. While the unauthorized disclosure of confidential information from a client file in violation of Rule 4-1.6 is itself a serious violation regardless of the background of the person to whom such information is revealed, the unauthorized disclosure in this case is made all the more suspect by the circumstances surrounding Lennen's past, to wit:

- Lennen had been employed by the "Crazy Horse II" club for ten (10) years and met Respondent in 1999 at a Las Vegas "club." **App. 33, 102.**

- Respondent told his client Dietrich that Lennen had drug problems and that he was paying for her drug rehabilitation. **App. 6, 7, 33 (Tr. 14-15; 18-19; 123).**
- Once Respondent started seeing Lennen, she would demand money from him and would threaten to contact Respondent's wife if he did not continue to give her money. Respondent "kept paying her." **App. 24 (Tr. 88).**

It is disingenuous for Respondent to suggest that he could not have anticipated that a known drug abuser who was regularly demanding money from him and threatening to tell his wife of the affair could be trusted alone with his client files. To the contrary, with this knowledge in hand, the fact that he allowed a situation to occur in which Lennen was able to access and steal confidential information from his client file amounts to gross negligence on Respondent's part.

Respondent attempts to escape responsibility by suggesting that law requires that "special facts" must be present before this Court can hold Respondent ethically responsible for allowing Lennen to access his client file and steal Dietrich's identity. Respondent cites case law in the context of the employer-employee and restaurateur-customer relationships. This line of reasoning is specious and fails to take account of the special fiduciary duty owed by an attorney to his client.

An attorney occupies a position of trust with his clients. This Court has repeatedly observed that the relationship between an attorney and his client is highly fiduciary and of a very delicate, exacting and confidential nature, requiring a very high degree of fidelity and good faith on the attorney's part. *In re Howard*, 912 S.W.2d 61, 62 (Mo. banc 1995); *In re Oliver*, 285 S.W.2d 648, 655 (Mo. banc 1956). Respondent

breached this fiduciary duty of trust owed to his client Dietrich and violated Rule 4-1.6(a) when he recklessly gave his mistress solitary access to his client files.

Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 4-8.4(c). Respondent engages in illogical self-aggrandizement and semantic bootstrapping by asserting that his conduct after he learned that Lennen had stolen confidential information from his client file did not constitute a violation of Rule 4-8.4(c) because (i) he did not personally and financially benefit from Lennen's actions, (ii) he was ethically prohibited from disclosing what he learned from Lennen to his client Dietrich because an order of the California court "cloaked his conversation with Lennen under the confidentiality of the attorney-client relationship", and (iii) Respondent's passive silence toward his client did not meet the affirmative act requirement for fraud under the Rule 4-8.4(c). **See Respondent's Brief at pages 29-32.** These assertions should be rejected.

Respondent clearly stood to benefit from hiding the theft of confidential information from his client file and the subsequent identity theft from his client Dietrich because he knew the ethical implications of such disclosures. He knew that Dietrich would likely file a disciplinary complaint with the Office of Chief Disciplinary Counsel, which is what she later did when she finally learned about what had happened through an unrelated third-party source. In addition, as found by the Panel, the payments by Respondent on the fraudulent credit cards and loan abetted Lennen's scheme by permitting her to financially benefit from the theft. **App. 51-52.**

Mental state is rarely openly acknowledged. By its nature, it must necessarily be found from the facts. Here, Respondent had previously been suspended for the surreptitious and improper use of his attorney trust account to funnel more than $100,000 of his personal funds to his mistress Lennen without the knowledge of his then-wife. With such conduct as a backdrop, it is reasonable to conclude that Respondent made the payments on the credit cards and loan without telling his client Dietrich because he was trying to protect this law license from a serious violation of the Rule 1.6(a). In so doing, and as might be expected from such a reaction, Respondent violated Rule 8.4(c) by taking steps to actively hide the foreseeable results of that misconduct from his client.

The Panel properly rejected Respondent's claim that he was ethically prohibited from disclosing Lennen's illegal conduct from his client because he learned this information under the guise of an attorney-client relationship between Lennen and her California attorney, David Demergian. Informant submits that Respondent's explanation of the circumstances under which he traveled to California to visit Lennen in jail is simply not believable or credible. In explaining how he came to make this trip, Respondent testified to the Panel as follows:

> "Her [Lennen's] attorney, Mr. Demergian, called me up and said 'You need to go to California.' And I said, 'Why?' He said, 'You need to gather some information for me and you need to go there.' And he was no more – he was very vague, and I hadn't – I did not want to have anything to do with her, did not want to go. He said, 'You need to go there.' And I said – I asked him why, and he said, 'You just

need to go there. You need to get some information, and I will get you a court order to go in.'" **App. 27 (Tr. 98).**

Respondent denied any prior knowledge that his visit to the California jail might involve any problem that affected him, stating:

"But I was wondering why he [Demergian] was so insistent that I go there. I mean, there was something that didn't add up and something that just -- you know, because I hadn't seen her for a long, long time, so I didn't know what was up." **App. 27 (Tr. 98-99).**

It is noteworthy that the Demergian call and Respondent's trip to California occurred in the midst of the prior disciplinary proceedings that also involved Lennen and that resulted in Respondent's suspension. Under these circumstances, Respondent's explanation that he traveled to California at the request of Lennen's attorney to "gather some information" from his former mistress whom he hadn't seen for a "long, long time" and who had been the cause of his suspension from the practice of law defies logic or belief.

A review of the actual court order obtained by Demergian in order to allow Respondent to visit Lennen in jail is particularly informative. The Court Order dated April 12, 2002 is included in Respondent's Separate Appendix at page A10. The Order provides as follows:

"It is hereby ordered, that Josh P. Tolin, Esq., an out-of-state attorney, be granted face-to-face, professional, visits with Amy Gilbert Lennen, <u>also known as Brenda Harrison</u> (Booking No. 7228974) in the same manner, and with the same

privileges and obligations, as if he were licensed as an attorney within the State of California."

This court order is noteworthy in that it makes explicit reference to Respondent's client, Brenda Dietrich, whose maiden name was Harrison. Obviously, as soon as Respondent saw the order, he knew or should have known that his visit to Lennen in jail would involve him and one of his existing clients, Brenda Dietrich. In addition, there is absolutely no suggestion in the California court order that Respondent is meeting with Lennen as the agent of attorney Demergian. Under these circumstances, Respondent's fiduciary duty to his client Dietrich overrode any manufactured agency relationship with Demergian and Respondent's ethical responsibility to disclose the theft of confidential information from his client file and the subsequent identity theft by Lennen became paramount. The Panel properly found that Respondent violated Rule 4-8.4(c) by failing to disclose this information to his client Dietrich.

Respondent next engages in semantic gamesmanship by claiming that he can not be found to have violated Rule 4-8.4(c) because he did not take any affirmative action that could constitute fraudulent behavior. The assertion is legally and factually misplaced.

Rule 4-8.4(c) includes any conduct that involves dishonesty, fraud, deceit or misrepresentation. Even if one assumes, *arguendo*, that Respondent did not take affirmative action to deceive, misrepresent or commit a fraud upon his client Dietrich, there can be no doubt that his conduct was "dishonest", a word that Respondent

conveniently fails to define in his Brief.[1] There can be no doubt that Respondent's conduct in failing to disclose the theft of Dietrich's confidential information from her client file and subsequent identity theft to his client was dishonest conduct in violation of Rule 4-8.4(c).

In addition, Respondent did take affirmative steps to deceive, defraud and misrepresent the facts to his client Dietrich. Respondent's payments on the fraudulent credit cards and car loan obtained by Lennen using Dietrich's identity, combined with Respondent's failure to disclose the truth to his client, constitute affirmative acts that meet the definitions of fraud, deceit and misrepresentation under Rule 4-8.4(c) and Rule 4-9.1. The Panel correctly found that this conduct on the part of Respondent abetted Lennen's scheme and constituted a violation of the Rules of Professional Conduct.

Respondent had an ethical obligation to reveal the theft of confidential documents from his client file to Dietrich and to advise her that her identity had been stolen. Incredibly, Respondent relies on the very rule that the Panel found he violated in his representation of client Dietrich to assert that he was under no ethical obligation to notify Dietrich that his mistress had stolen confidential information from his client file and stolen her identity. **<u>See</u> Respondent's Brief at pages 33-39.** Thus, Respondent asserts that the jail-house information disclosed to him by Lennen was protected information under Rule 1.6(a) that could only be disclosed to his client if

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[1] Dishonest: "characterized by lack of truth, honesty, or trustworthiness." *Webster's Collegiate Dictionary (Tenth Edition)*, page 333.

necessary to prevent a criminal act that is likely to result in imminent death or serious bodily harm. This entire analysis, including a discussion of case law in other jurisdictions, is inapposite.

It is indisputable that Respondent's primary fiduciary duty was owed to his client Brenda Dietrich. As stated in the Preamble to Rule 4 and the Comment to Rule 4-1.7, an attorney has a fiduciary relationship with his client, an essential element of which is the duty of loyalty. Respondent can not now be heard to plead that his pre-existing attorney-client relationship with Brenda Dietrich was somehow subsequently trumped and superseded by a California court order allowing him to visit Lennen in jail. This is particularly true in this case, where the court order makes explicit reference to his client Brenda Harrison (i.e., Dietrich's maiden name) and where the court order is silent as to any agency relationship with attorney Demergian, Lennen's California counsel. Under these circumstances, Respondent should not be allowed to hide behind the prohibitions of Rule 4-1.6(a), the very rule that he violated in his dealings with his client Dietrich, to support his deceitful and dishonest conduct toward his client.

Aggravating factors under the ABA Standards are present. Respondent asserts that the only aggravating factor under the ABA Standards that is applicable to this case is that Respondent has previously been disciplined. Respondent argues that none of the other aggravating factors found by the Panel are present. Informant submits that the Panel correctly analyzed the *ABA Standards for Imposing Lawyer Sanctions* as applied to the facts of this case when it found that the following aggravating circumstances were present:

- A history of prior disciplinary offenses [Section 9.22(a)];
- Dishonest motive [Section 9.22(b)];
- Refusal to acknowledge wrongful nature of conduct [Section 9.22(g)].

Respondent's history of prior disciplinary offenses is admitted. **See Respondent's Brief at page 40.**

Respondent's dishonest motive, as discussed above, is reflected in the fact that he failed to disclose the theft of Dietrich's confidential information from his client file or the subsequent identify theft by Lennen. In addition, Respondent took affirmative steps to deceive, defraud and misrepresent the facts to his client by making payments on credit cards and a loan fraudulently obtained by Lennen in the name of Respondent's client Dietrich, without notifying Dietrich that the credit cards and loan existed or that he had made said payments.

The record evidence supports Panel's conclusion that Respondent refused to acknowledge the wrongful nature of his conduct and that such refusal constitutes an additional aggravating factor under the *ABA Standards*. As discussed at length at pages 31-33 of Informant's Brief, Respondent refused to acknowledge that allowing Lennen solitary access to his confidential client files constituted a violation of the Rules of Professional Conduct. In addition, Respondent refused to acknowledge that the withholding of information from his client Dietrich after he learned that Lennen had stolen Dietrich's confidential information and her identity was ethically improper. Respondent's testimony before the Panel on this issue should not be read out of context. Informant invites the Court to review the Panel hearing transcript, **App. 33-36 (Tr. 124-**

136, so that it can make its own determination as to the level of contrition displayed by Respondent.[2] Informant submits that the record evidence demonstrates Respondent's refusal to take responsibility for, or even acknowledge, the nature and extent of his wrongdoing in this case.

[2] Respondent seems overly indignant in asserting that he was contrite with regard to his conduct in this case as well as his misconduct that led to his prior suspension by this Court. In support, Respondent includes limited and extremely selective excerpts from the Panel hearing transcript. **See Respondent's Brief at page 35.** Informant again submits that a fair and complete reading of Respondent's testimony regarding both the prior discipline and the current charges demonstrate a consistent lack of remorse. **See App. 33-36.** For example, Respondent denies knowledge or intent regarding the funneling of personal money through his attorney trust account. **App. 33 (Tr. 124).**

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT TOLIN NEGLIGENTLY DISCLOSED CONFIDENTIAL CLIENT INFORMATION AND KNOWINGLY DECEIVED HIS CLIENT WITH THE INTENT TO BENEFIT HIMSELF AND A THIRD PARTY.

Informant will reply to Respondent's Points III and IV under Point II of its Reply Brief.

Respondent attempts in his Point III to sidestep personal and professional responsibility for his misconduct by claiming that his clients will be irreparably harmed if he is suspended or disbarred because his clients will be deprived of his apparently singular and unique expertise in the handling of complex medical malpractice cases. Respondent lists a series of cases in which he asserts that "it would be difficult, if not impossible, for any other attorney to step in and adequately represent the plaintiffs". Respondent then asserts that his clients "have placed their trust in Respondent and should not be damaged because of the poor choices that Respondent made in his personal life by involving himself with Lennen." **See Respondent's Brief at pages 42-46.** This entire argument has no relevance to this Court's analysis of the appropriate discipline to be imposed in this case and should be summarily rejected by this Court.

It is well established that the purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the

public, the legal system, and the legal profession. *ABA Standards for Imposing Lawyer Sanctions (1991 Edition), Standard 1.1.* This Court has held that the purpose of such proceedings is to preserve the courts and the profession from the ministrations of those who, by their actions, degrade the administration of justice and demonstrate their unfitness to serve the courts as officers thereof. *In re Maier*, 664 S.W.2d 1, 2 (Mo. banc 1984); *In re MacLeod*, 479 S.W.2d 443, 445 (Mo. banc 1972).

Through his prior suspension and his conduct in this case, Respondent has amply demonstrated, not once, but twice, his degradation of the administration of justice and his unfitness to serve as an officer of the courts. His violation of Rule 4-8.4(c) in this case evidences dishonest and deceitful behavior directed at his client, the very person to whom he owes a fiduciary duty and a very high degree of fidelity and good faith. <u>See</u> *In re Howard*, 912 S.W.2d at 62. By favoring the interests of his paramour over those of his client, Respondent has evidenced that he lacks character and is unfit to practice law. Under these circumstances, the Panel's recommendation of disbarment was warranted.

Respondent's suggestion that this Court should temper its discipline based on the harm that will result to Respondent's clients is inappropriate. Any practicing attorney whose misconduct subjects him to disbarment presumably has clients whose cases will need to be handled by alternative counsel. Supreme Court Rule 5.27 explicitly addresses the actions that must be taken by an attorney who is disbarred or suspended by this Court in order to protect the interests of the attorney's clients. Among other requirements, such an attorney must "notify all clients to make arrangements for other representation, calling attention to any urgency in seeking the substitution of another lawyer." Rule 5.27(c).

Notwithstanding Respondent's protestations to the contrary, Informant is confident that there are qualified members of the Bar who have the requisite skill, knowledge and willingness to accept representation on behalf of Respondent's current clients.

Respondent's request that this Court temper its discipline based on the needs of his clients is particularly ironic and repugnant given Respondent's complete indifference to the needs of his client, Brenda Dietrich, which resulted in the pilfering of her confidential information from Respondent's file and the theft of her identity. Had Respondent shown the same concern for Dietrich that he now professes for his other clients, perhaps the devastating injuries to Dietrich's personal life could have been avoided or mitigated. Instead, upon Respondent's prior suspension, Dietrich was required to obtain alternative counsel. It is entirely appropriate and reasonable to expect that Respondent's current clients will have to do the same in the event that this Court disbars Respondent.

Respondent's Point III should be ignored by this Court.

In Point IV of his Brief, Respondent asserts that he has not committed offenses that warrant his disbarment. Respondent likens his conduct to a metaphorical gun shot taken at his law practice and at his client and suggests that he is being disciplined for, in effect, not "calling the police." **See Respondent's Brief at pages 47-48.** Here again, Respondent fails to acknowledge the nature and extent of his misconduct and his active participation in the criminal behavior.

Using the same metaphor employed by Respondent, Informant suggests that Respondent not only failed to "call the police", but also abetted the criminal activity by trying to cover up the effects of the gun shot so that no one would know that the crime

occurred. In the context of the facts of this case, Respondent not only failed in his duty to advise his client of the theft of confidential documents from his client's file and the theft of Dietrich's identity by Lennen, but he abetted that illegal conduct (and sought to actively hide the misconduct from his client) by paying off the credit cards and loan illegally obtained by Lennen without notifying his client. Dishonest and deceitful conduct such as this warrants the most severe discipline.

In an attempt to support a lesser discipline, Respondent cites several cases where this Court imposed suspension or reprimand on attorneys for a variety of rule violations. The cases cited by Respondent are inapposite. For example, in *In re Crews*, 159 S.W.3d 355 (Mo. banc 2005), this Court suspended an attorney who failed to respond to a motion for summary judgment, neglected his client's case and acted dishonestly by providing his client, this Court and the DHP with multiple and differing explanations for his behavior. In mitigation, the Court considered the fact that Crews had practiced law for thirty-nine years with only one minor disciplinary action. No such mitigating factor exists in this case. To the contrary, the Panel correctly found that multiple aggravating factors are present in the case at bar. Under these circumstances, the *Crews* case is supportive of a supports the Panel's recommendation that Respondent be disbarred.

Respondent's reliance on *In re Staab*, 719 S.W.2d 780 (Mo. banc 1986) is also misplaced. The *Staab* case involved an attorney's neglect of two matters entrusted to him and his subsequent misstatements to his clients regarding the status of the legal matters. While the Court found that Staab had engaged in conduct which was prejudicial to the administration of justice and which adversely reflected on his fitness to practice law, the

Court also explicitly noted that there were no allegations of dishonesty contained in the Information and "a charge of dishonesty in dealing with clients was not briefed and argued." *In re Staab*, 719 S.W.2d at 781 fn. 2. In only assessing a public reprimand, the Court noted that there was no irreparable harm to Staab's clients.

Unlike the Staab case, the gravamen of the charges in this case revolves around Respondent's dishonest and deceitful conduct directed at his client. In addition, this case involves serious and irreparable harm to Brenda Dietrich's reputation and financial standing. Finally, there are only aggravating factors to consider in assessing the appropriate discipline in these proceedings. The violations in this case are significantly more serious than those in the *Staab* case, directly reflect on Respondent's character and fitness as a lawyer and support disbarment.

Respondent has filed a Separate Appendix that includes, *inter alia*, letters of support from several attorneys who purport to know or have professional contact with Respondent. **See Respondent's Separate Appendix at A1-A6**. One of those letters suggests that disbarment or suspension of Respondent's law license "seems unduly punitive." **See Respondent's Separate Appendix at A1-A2.**

Informant respectfully suggests that these letters are not properly part of the record in this case and should be stricken. None of these attorneys testified at the Panel hearing and consequently, none were subject to cross examination. Even though Respondent could have called one or more character witnesses at the Panel hearing, he chose not to. Finally, this Court has previously made it clear that such letter writing campaigns should

play no part in disciplinary proceedings and are not welcomed by the Court. *In re Frick*, 694 S.W.2d 473, 481 (Mo. banc 1985).

CONCLUSION

Respondent committed professional misconduct (i) by negligently allowing Amy Lennen to have access to Dietrich's client file, with the result that confidential personal information of his client was revealed to a third party for purposes unrelated to the representation, (ii) by failing to notify his client of the theft of her identity after learning of Lennen's scheme, and (iii) by actively furthering the scheme by making payments on loans fraudulently obtained by Lennen without notifying Dietrich that he had made such payments. Respondent's conduct violated Rules 4-1.6(a) and 4-8.4(c) of the Rules of Professional Conduct. The presence of prior serious discipline, the significant presence of cognitive awareness in his misconduct and his refusal to take responsibility for, or even acknowledge, the nature and extent of his wrongdoing require disbarment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2006, two copies of Informant's Reply Brief and a disk containing the Reply Brief in Word format have been sent via First Class United States Mail, postage prepaid, to:

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Maridee F. Edwards

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06(b);

3. Contains 5,256 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.

_____
Maridee F. Edwards