IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
JAMES F. CREWS,	)	**Supreme Court #86212**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

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STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

Background and Disciplinary History

Mr. Crews was admitted to Missouri's bar in 1964. **App. 17 (T. 64), 29**. He conducts a general trial practice out of his office in Tipton. **App. 17 (T. 64)**.

On January 22, 2002, the Court publicly reprimanded Respondent for violation of Rule 4-1.3. **App. 24 (T. 90-91).**

Facts Underlying Disciplinary Case

On June 2, 1993, Tom Hodge was driving a vehicle in Miller County in which his wife, Betty, and her son, Richard, were passengers. **App. 4 (T. 10-11)**. A vehicle being driven by Jerry Daniels approached them from the opposite direction and made a left turn in front of the Hodge vehicle. **App. 4 (T. 11)**. As a consequence of the ensuing collision, Mrs. Hodge and Richard suffered injuries for which they were hospitalized for three days. **App. 4 (T. 11)**. Tom Hodge's knees were crushed in the accident. He was hospitalized for two or three weeks. Mr. Hodge, who had previously operated a pest control business, was never thereafter able to walk without the assistance of first a wheelchair, then crutches, then a cane. **App. 4 (T. 11-12), 12-13 (T. 44-45)**. He was never able to bend down after the accident and never returned to work full time. **App. 4-5 (T. 12-13), 13 (T. 45)**.

The Hodge family had known Mr. Crews for years. **App. 5 (T. 14-15), 25 (T. 93)**. The Hodges contacted Mr. Crews for advice after the accident. He told them their own

insurance coverage would take care of them. **App. 5 (T. 13)**. In 1994, when their own insurance proceeds had been exhausted and the Hodges still had uncompensated losses, they went back to Respondent. **App. 5 (T. 13-15), 6 (T. 19)**. Respondent agreed to represent the Hodges on a contingency fee basis. **App. 5 (T. 14), 18 (T. 65)**. The fee agreement was never put into writing. **App. 5 (T. 14), 18 (T. 65)**.

Suit was to be brought against the driver of the other car, Jerry Daniels, and his employer at the time of the collision, Miller County Motors. **App. 5 (T. 14)**. It was explained to the Hodges that the case would not go forward unless and until evidence could be found connecting Mr. Daniels to his job at the car dealership when the collision occurred. **App. 13-14 (T. 45, 48-49), 18 (T. 65)**.

Soon after the Hodges retained him, Mr. Crews hired an investigator to determine whether Mr. Daniels was on duty at the time of the collision. **App. 5 (T. 15), 18 (T. 65)**. Mr. Crews' investigator did not come up with any helpful information. **App. 5 (T. 15-16), 18 (T. 66)**. Mr. Crews undertook no further investigation himself because he does not believe it looks good for lawyers to go out looking for witnesses. **App. 18 (T. 66-67).**

The Hodges called Mr. Crews very frequently between 1994 and 1998 because they were concerned that the statute of limitations would run on their case. Mr. Crews did very little on the case in those years because his investigator had come up with no evidence connecting Mr. Daniels to his job at the time of the collision. **App. 6 (T. 18), 18 (T. 66)**.

The Hodges finally decided to do some investigating themselves. **App. 5 (T. 16), 18 (T. 66)**. The Hodges' daughter knew someone who knew Mr. Daniels. **App. 13 (T. 46)**. Through these connections, the Hodges learned that Mr. Daniels had been on lunch break when the collision occurred, but that he was in the process of returning to the dealership in a car he had been instructed to bring in for a safety inspection when the collision occurred. **App. 13 (T. 46)**. The Hodges passed that information on to Respondent, who told them they would have to get a signed statement from Mr. Daniels to that effect. **App. 6 (T. 17-18), 13 (T. 47)**. The Hodges asked Mr. Crews to have such a statement typed up. The Hodges' daughter's friend then took the statement to Mr. Daniels, who signed it on February 4, 1998. **App. 13 (T. 47), 18 (T. 67), 56**.

On May 28, 1998, Mr. Crews filed a two-page petition on the Hodges' behalf against Mr. Daniels and the car dealership. **App. 53-55**. The statute of limitations would have run on the cause of action on June 2, 1998. **App. 18 (T. 67)**.

Mr. Daniels' deposition was taken on May 14, 1999. **App. 57-121**. He testified that he was employed by the car dealership at the time of the accident. **App. 70**. Mr. Daniels testified that the service manager instructed him to pick up a customer's car on his way back from a "parts run," during which time he also picked up lunch, so that the car could be given a safety inspection at the dealership. **App. 88**. The customer was Mr. Daniels' cousin. **App. 80**. Mr. Daniels was driving the cousin's car and making a left turn into the dealership when he collided with the Hodges. **App. 18 (T. 68), 89-92**. After the deposition, Mr. Crews called the Hodges and told them Mr. Daniels had nailed the car dealership to the cross. **App. 6 (T. 20)**.

On November 24, 1999, the car dealership filed a motion asserting it was entitled to summary judgment on the grounds that it was an undisputed fact that Mr. Daniels was on an unpaid lunch break and not acting within the course and scope of his employment at the time of the collision. **App. 123-132**. Mr. Crews received a copy of the motion in a timely manner. **App. 19 (T. 69).** Respondent never told the Hodges that a motion for summary judgment had been filed. **App. 7 (T. 24)**.

Mr. Crews filed no response to the motion for summary judgment. **App. 19 (T. 70)**. Respondent received notice that the defendant noticed the summary judgment motion for hearing on January 13, 2000. **App. 19 (T. 72)**. Respondent did not appear for the hearing on January 13, 2000. **App. 136**. The judge heard and sustained the motion for summary judgment in favor of the car dealership, noting on the docket sheet that there was no appearance for the plaintiffs and "no responsive pleading filed." **App. 136**.

Respondent never told the Hodges that he failed to file a response to the summary judgment motion or that he failed to appear for the hearing. **App. 8 (T. 26)**. It is Respondent's contention that he did so advise them. **App. 20 (T. 74)**.

Mr. Crews does not believe it was necessary that he file a pleading in opposition to the motion for summary judgment. **App. 19 (T. 69-71), 22 (T. 83)**. According to Respondent, the mandatory language of Rule 74.04(c)(2) "doesn't mean anything." **App. 19 (T. 70-71).** In his view, the motion was deficient on its face, and the judge could have discerned that on his own. **App. 19 (T. 69, 71), 25 (T. 95)**. In Mr. Crews' opinion, anything he would have filed would have been merely "icing on the cake." **App. 19 (T. 69).** As far as Mr. Crews is concerned, the information in a deposition is on file with a

court after it is taken, although Mr. Crews concedes that Mr. Daniels' testimony was not part of the court's record at the time the motion for summary judgment was pending. **App. 24 (T. 89)**.

Mr. Hodge called the circuit clerk's office in January of 2000 to see if the Hodges' case was on a jury docket for the upcoming spring or fall. **App. 8 (T. 25), 17 (T. 61)**. The clerk's office told him that *Hodge v. Daniels and Miller County Motors* had been dismissed. **App. 8 (T. 25)**. Before that call, the Hodges did not know that the defendant had filed a motion for summary judgment or that it had been sustained. **App. 8 (T. 25)**.

The Hodges immediately called Mr. Crews. **App. 8 (T. 25), 14 (T. 49)**. He told them not to worry about it; that the court must have mistaken the personal injury case for one pending concurrently in the same circuit in which Ford Motor Credit had sued the Hodges. **App. 8 (T. 26).** Respondent did not act like it would be very difficult to fix the problem – he would file a motion to set aside the summary judgment. **App. 8 (T. 26-27), 14 (T. 49)**.

Respondent filed a motion to set aside the judgment on January 24, 2000. **App. 143-144**. He alleged in the motion that he did not appear for the January 13 hearing because it was calendared improperly by his office staff. **App. 143**. Later, in response to an inquiry from the Office of Chief Disciplinary Counsel, Respondent wrote that he failed to appear for the hearing on the motion for summary judgment because he confused the personal injury case with the Ford Motor Credit collection case. **App. 22 (T. 84), 141**.

On February 7, 2000, the circuit court entered a judgment for Miller County Motors pursuant to Rule 74.04(c)(3), noting that plaintiffs had filed no response to the motion for summary judgment and failed to appear for hearing on the motion. **App. 145**.

In April of 2000, Mr. & Mrs. Hodge had a final meeting with Respondent. **App. 8 (T. 26-27)**. Respondent told the Hodges that his motion to set aside had been overruled, and that he would have to take it to an appeals court. **App. 12 (T. 42-43)**. The Hodges were very concerned about their case. They offered to hire additional attorneys to assist Respondent. Mr. Crews did not appear very concerned and told the Hodges he did not need any help. **App. 8 (T. 27-28)**.

After the April meeting with Mr. Crews, Mr. Hodge became increasingly upset about what had happened to the case. He felt the case had gone down the drain. Mr. Hodge suffered from stomachaches and headaches. **App. 9 (T. 29)**. The Hodges met with a lawyer in Jefferson City about their concerns. The lawyer suggested they might have to sue Respondent. **App. 8 (T. 28)**. Mr. Hodge died of natural causes on July 7, 2000, at the age of fifty-seven. **App. 9 (T. 29-30)**.

Respondent filed his initial brief in the western district court of appeals on August 31, 2000. **App. 146-160**. In a letter dated September 8, 2000, the court of appeals advised Respondent that the brief had been stricken due to his failure to comply with Rule 84.04, but provided Respondent with the opportunity to file an amended brief that it was anticipated would correct the deficiencies. **App. 161**. Respondent never told Mrs. Hodge that the court of appeals struck his initial brief. **App. 9 (T. 32)**. Respondent refiled the brief on September 18, 2000. **App. 162-176**. The amended brief was different

than the brief filed in August in that Respondent changed some words in the Point Relied On and expanded his respondeat superior argument a bit. **App. 20 (T. 75-76)**. By order dated September 28, 2000, the court of appeals dismissed the appeal due to briefing deficiencies. **App. 177**.

Mr. Crews wrote Mrs. Hodge a letter on September 29, 2000, enclosing the court of appeals' dismissal order. Respondent told Mrs. Hodge in the letter that everything he had done had backfired, and that she should get another attorney if she wished to continue pursuing the case. **App. 9 (T. 30-31), 178**.

Mrs. Hodge thereafter consulted with the Jefferson City lawyer with whom she and Mr. Hodge had met the prior spring. That lawyer suggested she get a lawyer in St. Louis or Kansas City to sue Respondent. **App. 10 (T. 34)**. Mrs. Hodge did retain a lawyer who filed a malpractice case against Respondent. The suit was eventually dismissed because it was discovered that Mr. Crews was judgment proof. **App. 10 (T. 34-35)**.

Mrs. Hodge filed a complaint with the Office of Chief Disciplinary Counsel on April 20, 2001. **App. 179-184**. In the response Mr. Crews directed to Mrs. Hodge about the complaint, he stated that "I am sorry that you feel that you are somehow entitled to money. You had a claim and it was dismissed. I assume that it was dismissed because it was not worth pursuing." **App. 185-186**. Respondent does not believe the Office of Chief Disciplinary Counsel had legitimate grounds to pursue Mrs. Hodge's complaint against him. **App. 24 (T. 90)**.

Disciplinary Case

An information was filed against Respondent in June of 2003. It alleged violations of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.5(c), and 4-8.4(c). Hearing was had before a Panel on March 19, 2004. The Panel recommended disbarment in a decision containing findings of fact that supported the conclusion that Respondent had violated all the Rules alleged in the information. **App. 187-191.**

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED MULTIPLE DUTIES TO HIS CLIENTS IN THAT HE REPEATEDLY MISLED THEM ABOUT THE STATUS OF THEIR CASE (4-8.4(c)), HE FAILED TO COMMUNICATE MATERIAL INFORMATION TO THEM, SUCH AS THAT A DISPOSITIVE MOTION WAS FILED AND GRANTED AGAINST THEM (4-1.4), HE FAILED TO REPRESENT THEM DILIGENTLY BY DOING VERY LITTLE TO ADVANCE THEIR CASE FOR FOUR YEARS AND BY NOT FILING A RESPONSIVE PLEADING OR APPEARING FOR THE HEARING ON THE MOTION FOR SUMMARY JUDGMENT (4-1.3), HIS INCOMPETENT REPRESENTATION RESULTED IN BOTH THE ENTRY OF SUMMARY JUDGMENT AGAINST THEM AND IN THE DISMISSAL OF THEIR APPEAL (4-1.1), AND HE FAILED TO PUT THEIR CONTINGENT FEE AGREEMENT IN WRITING (4-1.5(c)).

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4

Rule 4-1.5(c)

Rule 4-8.4(c)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Leimer v. Hulse, 178 S.W.2d 335 (Mo. 1944)

In re Lavin, 788 S.W.2d 282 (Mo. banc 1990)

In re Disney, 922 S.W.2d 12 (Mo. banc 1996)

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE THE PRESENCE OF MULTIPLE, SERIOUS AGGRAVATING FACTORS, WHEN CONSIDERED WITH THE APPLICABLE ABA STANDARD, COMPEL DISBARMENT IN THAT RESPONDENT'S REFUSAL TO ACKNOWLEDGE THE WRONGFUL NATURE OF HIS CONDUCT, THE VULNERABILITY OF HIS VICTIMS, HIS 40 YEARS PRACTICE EXPERIENCE, AND HIS RECENT DISCIPLINARY HISTORY, WHEN CONSIDERED IN AGGRAVATION OF THE APPLICABLE ABA STANDARD COMPEL DISBARMENT.

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-8.4(c)

In re Murphy, 732 S.W.2d 895 (Mo. banc 1987)

In re Frick, 694 S.W.2d 473 (Mo. banc 1985)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED MULTIPLE DUTIES TO HIS CLIENTS IN THAT HE REPEATEDLY MISLED THEM ABOUT THE STATUS OF THEIR CASE (4-8.4(c)), HE FAILED TO COMMUNICATE MATERIAL INFORMATION TO THEM, SUCH AS THAT A DISPOSITIVE MOTION WAS FILED AND GRANTED AGAINST THEM (4-1.4), HE FAILED TO REPRESENT THEM DILIGENTLY BY DOING VERY LITTLE TO ADVANCE THEIR CASE FOR FOUR YEARS AND BY NOT FILING A RESPONSIVE PLEADING OR APPEARING FOR THE HEARING ON THE MOTION FOR SUMMARY JUDGMENT (4-1.3), HIS INCOMPETENT REPRESENTATION RESULTED IN BOTH THE ENTRY OF SUMMARY JUDGMENT AGAINST THEM AND IN THE DISMISSAL OF THEIR APPEAL (4-1.1), AND HE FAILED TO PUT THEIR CONTINGENT FEE AGREEMENT IN WRITING (4-1.5(c)).

In a statement foretelling the sort of sanction analysis anticipated by the ABA Standards for Imposing Lawyer Sanctions (1991 ed.), this Court, in *Leimer v. Hulse*, 178 S.W.2d 335, 339 (Mo. 1944), observed that while particular misconduct on separate

occasions might not be grounds for disbarment, a course of conduct may demonstrate unfitness to remain a member of the bar. Just such a course of conduct is presented by Mr. Crews' six year botched representation of the Hodges. Respondent took a relatively straightforward personal injury matter and, through successive instances of misconduct, made it into a template for bad lawyering.

At the very outset of the relationship, Respondent violated Rule 4-1.5(c) by agreeing to represent the Hodges on a contingency fee basis, but then failing to put the agreement in writing. The misconduct only worsened in severity thereafter.

Nearly four uncommunicative and inactive years passed after Respondent agreed to represent the Hodges before he filed, only five days before the statute of limitations ran, a five paragraph petition setting forth their cause of action. Lack of diligence, even though no permanent harm resulted because Respondent barely avoided the running of the statute, is a violation of a lawyer's ethical responsibilities. See Rule 4-1.3; *In re Lavin*, 788 S.W.2d 282 (Mo. banc 1990) (involved the predecessor to Rule 4-1.3, DR6-101).

The undisputed fact that Respondent filed nothing in response to his opponent's motion for summary judgment constitutes violation of both the diligence and competence

rules.[1] The express language of Rule 74.04(c)(2) ("the adverse party shall serve a response"), and opinions confirming that the non-moving party must file a responsive pleading to a motion for summary judgment, demonstrate the incompetence of Respondent's failure to do so. See *Weiss v. Rojanasathit*, 975 S.W.2d 113, 120 (Mo. banc 1998) (failure by the opposing party to file verified denial is admission of facts stated in an affidavit filed with a motion for summary judgment). Rule 4-1.1 sets the low bar over which every licensed lawyer must be able to jump – familiarity with well-settled principles of law. Any litigator knows he must file a response to a motion for summary judgment. Mr. Crews, a trial practitioner of 39 years experience, violated the competency rule by failing to do so.

Respondent's explanation for not filing a responsive pleading is as baffling as his failure to comply with the rudimentary ethical requirements of diligence and competency. Respondent maintained that the presiding judge should have known from deposition testimony, which Respondent conceded was not even on file with the court, that the facts alleged by the defendant in the motion were controverted. Respondent also believed the trial judge should have dismissed the motion out of hand, without the aid of a pleading or argument from Respondent to point out the deficiencies in the opponent's motion. Mr.

[1] Respondent's failure to file a responsive pleading or even appear at the hearing on the motion for summary judgment is baffling because Respondent had at his disposal the deposition testimony of the driver, which clearly put into factual dispute whether he was acting in the course and scope of employment at the time of the collision.

Crews' rationale is not worthy of a first year law student and stands as a direct challenge to his fitness to practice law.

The harm done by Mr. Crews' failure to file a verified denial to his opponent's motion for summary judgment was only exacerbated by his failure to appear for the hearing on the motion. Mr. Crews conjured up several explanations for failing to appear at the hearing: he either had the case mixed up with another one in which he was representing the Hodges, or his office staff miscalendared it. Questions of honesty go to the heart of a lawyer's fitness to practice law. *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996). Mr. Crews' willingness to prevaricate in order to come up with some kind of explanation for his otherwise inexplicable conduct is, to put it mildly, troubling.

After suffering the dismissal of his clients' cause of action by sustention of the unopposed motion for summary judgment, Respondent perpetuated the loss by his incompetent handling of his clients' appeal. Respondent's initial brief offering was charitably returned by the court of appeals to him, accompanied by a copy of Rule 84.04 and an order striking the brief, but providing Respondent the opportunity to correct the brief's defects in an amended brief. Respondent did thereafter file an amended brief, which was different than the initial brief in two very minor ways, neither of which corrected the brief's many substantive defects. The court of appeals promptly dismissed Mr. Crews' clients' appeal, not on its lack of merit, but due to briefing deficiencies.

Lack of competence and diligence is one thing; failure to communicate to clients the consequences of the lawyer's incompetence and inattention is another. Respondent violated his ethical duty to keep his clients reasonably informed (Rule 4-1.4) by not

telling the Hodges the following. Mr. Crews never told the Hodges that a motion for summary judgment was filed against them. He never told them he filed no response to the motion and did not show up for the hearing on the motion. He did not tell them the court had dismissed their lawsuit; they serendipitously found that out by calling the courthouse. Mr. Crews never told Mrs. Hodge (Mr. Hodge had died) that his initial brief was struck due to briefing deficiencies. While he did include a copy of the final court order with the letter advising Mrs. Hodge the appeal had been dismissed, Respondent has never acknowledged to Mrs. Hodge, not even in the course of this disciplinary proceeding, that responsibility for the dismissal lay entirely with him. Quite to the contrary, Mr. Crews wrote Mrs. Hodge in June of 2002 that "I am sorry that you feel that you are somehow entitled to money. You had a claim and it was dismissed. I assume that it was dismissed because it was not worth pursuing." Mr. Crews need not have relied on assumptions for the cause of the Hodges' legal problems; he had in his file several court orders placing the blame squarely where it belonged – on Mr. Crews. Mr. Crews' consistent and stubborn refusal to acknowledge the wrongfulness of his conduct is an aggravating factor that should weigh heavily against him in this Court's analysis of the appropriate sanction. Rule 9.2, ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

Respondent's silence regarding these material and critical developments in the Hodges' case was deceitful, in violation of Rule 4-8.4(c). And when he could no longer avoid addressing negative developments in the case, let it be remembered that Respondent misrepresented facts in violation of Rule 4-8.4(c): he told the circuit court he

missed the hearing on the summary judgment motion because of office staff calendaring error; he told OCDC he missed the hearing because he had the case confused with a collection matter. Mr. Crews assured the Hodges, after they found out on their own initiative that the case had been dismissed, that the judge must have mistaken the case for the collection matter. Mr. Crews knew full well that a defendant had filed a motion for summary judgment, that he had filed no response, and that he had not shown up for the hearing on the motion, although he mentioned none of these salient facts as a possible rationale for the dismissal. And, finally, Mr. Crews had the chutzpah to suggest to Mrs. Hodge that her lawsuit went nowhere because it lacked merit, when that is an unknowable fact because his conduct has forever foreclosed resolution of the case on its merits. Respondent misled the Hodges by misrepresenting information to them in an attempt to deflect blame from himself, a violation of Rule 4-8.4(c).

ARGUMENT

II.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE THE PRESENCE OF MULTIPLE, SERIOUS AGGRAVATING FACTORS, WHEN CONSIDERED WITH THE APPLICABLE ABA STANDARD, COMPEL DISBARMENT IN THAT RESPONDENT'S REFUSAL TO ACKNOWLEDGE THE WRONGFUL NATURE OF HIS CONDUCT, THE VULNERABILITY OF HIS VICTIMS, HIS 40 YEARS PRACTICE EXPERIENCE, AND HIS RECENT DISCIPLINARY HISTORY, WHEN CONSIDERED IN AGGRAVATION OF THE APPLICABLE ABA STANDARD COMPEL DISBARMENT.

Rarely is disbarment talked about in the context of a case in which competence and diligence play a large role, although deceit and misrepresentation are also central to the case against Mr. Crews. Yet, both the Disciplinary Hearing Panel and the Office of Chief Disciplinary Counsel have recommended that the Supreme Court disbar Respondent. The record, when analyzed according to the theoretical framework of the ABA's Standards for Imposing Lawyer Sanctions, amply supports imposition of that extreme sanction. The model set forth in the Standards initially requires identification of four factors: to which of four groups was a duty violated (the most important being duties to clients), the lawyer's mental state, the extent of injury or potential injury

resulting from the misconduct, and recognition of the aggravating and/or mitigating factors presented in the record. See ABA Standards for Imposing Lawyer Sanctions, II. Theoretical Framework, p. 5 (1991 ed.). Where, as in this case, the record discloses multiple instances of misconduct and multiple Rule violations, the Standards anticipate that the most serious incident of misconduct be run through the model. ABA Standards for Imposing Lawyer Sanctions, II. Theoretical Framework, p. 6 (1991 ed.). Applying the Crews record to the ABA model produces the following analysis.

Respondent's Rule 4-8.4(c) violations are the most serious, so they are the ones used in the model. The Rule 4-8.4(c) violations implicate a conscious objective by Mr. Crews to avoid blame, by covering up his ineptitude and lack of diligence, at his clients' expense. In other words, Respondent committed much of the misconduct with a conscious, or at least knowing, mental state. Second, Mr. Crews violated duties to his clients, the most important of a lawyer's ethical obligations. And third, the Hodges suffered real harm – they lost the opportunity that the legal system is supposed to afford all litigants for an assessment of their legal claims on the merits. Identification of those three factors leads to Standard Rule 4.61, which reads 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 potential serious injury to a client.

The length of time over which Mr. Crews pursued the misconduct, and the fact that the misconduct was not an isolated incident and involved deceit, are also factors that compel

disbarment. See *In re Murphy*, 732 S.W.2d 895, 903 (Mo. banc 1987); *In re Frick*, 694 S.W.2d 473, 481 (Mo. banc 1985).

Even the less obviously serious of Mr. Crews' Rule violations point to disbarment under the ABA Standards. The Rule applying to lack of competence, Standard 4.51, states: "Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client." The lack of diligence Rule which most nearly "fits" this record is Rule 4.41(b), which reads: "Disbarment is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client." The egregiousness of the facts in this record would warrant Respondent's disbarment on the competence or diligence charges alone, but unfortunately, they are not alone – deceit and misrepresentation also permeate the record.

The aggravating factors present in this record only substantiate disbarment as the appropriate sanction. First, Respondent has refused to acknowledge the wrongful nature of his misconduct – to the point that he testified that he saw no legitimate basis for OCDC's prosecution of Mrs. Hodge's complaint, and even wrote Mrs. Hodge that her claims were judicially dismissed because they lacked merit. The danger inherent in Mr. Crews' failure to acknowledge wrongdoing is that he could be repeating the conduct with clients today, without benefit of the restraint that conscience, or "knowing better," would impose.

Second, the Court should consider the fact that the Hodges were old family friends of Mr. Crews. They trusted and relied on him for advice and for help. As Mr. Hodge grew increasingly anxious about the fate of the lawsuit in Mr. Crews' hands, the Hodges offered to get other lawyers to assist him, but Respondent declined the help. Mr. Hodge had been a small business owner, running and working his own pest control business. After the accident, he never regained the unaided use of his legs or was able to return to full time work. As news of the lawsuit, the little of it that Mr. Crews supplied them, grew only worse, Mr. Hodge increasingly suffered from headaches and stomach problems, ultimately dying at the young age of fifty-seven. The Hodges understandably trusted and relied on Mr. Crews, their friend and lawyer, and he unapologetically let them down.

The Hodges' trust and reliance on Mr. Crews is understandable, given his 40 years of practice experience. Substantial legal experience is yet another factor the Court should consider in aggravation of sanction. What Mr. Crews has to say in his testimony about the necessity of responding to summary judgment motions and the necessity of complying with appellate court briefing rules is simply not credible coming from a practicing lawyer of 40 years experience.

Respondent's 2002 public reprimand for violation of the diligence rule is disconcerting evidence that the Hodges' experience with Mr. Crews is not unique. That case, *In re Crews*, SC83944, involved Respondent's failure to pursue diligently a family's claim against their insurance company, his failure to file the necessary remedial pleadings following a trial court's dismissal of his petition, and his failure to communicate negative developments in the case to his clients.

The applicable ABA Standard Rule, standing alone, directs the Court to the sanction of disbarment. The plentiful and egregious aggravating factors present in this record serve only to confirm the appropriateness of that sanction as the only one sufficient to protect the public and preserve the integrity of the legal profession.

CONCLUSION

Mr. Crews professes a lack of understanding as to why this disciplinary case was pursued. Yet, the record clearly establishes that he handled the Hodges' lawsuit incompetently, with a lack of diligence, without the necessary written contract, and, most disturbingly, knowingly and repeatedly misled them and failed to communicate material information to them about their case. That he did so after many years of practice experience, to old family friends who trusted him, and without remorse, compels his disbarment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2004, two copies of Informant's Brief have been sent via First Class mail to:

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Sharon K. Weedin

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;

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

3. Contains 5,264 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.

_____
Sharon K. Weedin

APPENDIX