

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
LINDA F. JARMAN)
) Supreme Court No. SC89987
Respondent.)

INFORMANT'S BRIEF

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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

Linda F. Jarman (sometimes referred to herein as “Respondent”) was licensed as an attorney on April 22, 1994. **App. 2.** Ms. Jarman practices in St. Louis County, Missouri. **App. 3.**

Ms. Jarman has a previous disciplinary history. **App. 2-3.** Ms. Jarman accepted an Admonition issued in May 2005 for violation of Rules 4-1.4 (communication), 4-1.5 (fees) and 4-1.15 (safekeeping of property). **App. 3.** Ms. Jarman accepted two Admonitions issued in November 2003 for violations of 4-1.15 (safekeeping of property). **App. 3.**

Neley-Mosley Complaint (Count I)

Respondent previously represented Elisha M. Neley-Mosley in numerous traffic matters. **App. 24.** Ms. Neley-Mosley retained Respondent on or about May 7, 2007 to represent her in new traffic matters pending in the City of St. Louis Municipal Court for seatbelt and speeding charges. **App. 3.** Ms. Neley-Mosley paid Respondent legal fees in the amount of Seventy-Five and No/100 Dollars (\$75.00). **App. 3.** Sometime before Ms. Neley-Mosley’s May 14, 2007 court date, Respondent traveled to the St. Louis City Municipal Court Building and spoke with the City Counselor about Ms. Neley-Mosley’s traffic charges. **App. 4.** Respondent received a recommendation from the City Counselor and a new court date for Ms. Neley-Mosley’s payment and acceptance of the recommendation. **App. 4.** Respondent failed to report the new court date to a court clerk

and took no further action to ensure that the new date was entered into the court's computer database. **App. 4.**

Ms. Neley-Mosley contacted Respondent in mid May 2007 concerning the status of her traffic matters. **App. 4.** She was unable to reach Respondent and left her a message on the office voicemail machine. **App. 4.** A few days later, Respondent contacted Ms. Neley-Mosley and informed her that, upon payment of the court costs and fines, the seatbelt ticket would be dismissed and the speeding violation would be amended to a non-moving violation, for which Ms. Neley-Mosley would not be assessed points on her driver's record. **App. 4.** Respondent advised Ms. Neley-Mosley that the total fines and court costs were One Hundred Eighty-Five and No/100 Dollars (\$185.00) and were due on or before August 23, 2007. **App. 4.** Respondent faxed a memorandum to Ms. Neley-Mosley on June 5, 2007, advising her of the same and recommending that she remit payment to the court before August 15, 2007. **App. 4.**

On July 19, 2007, Ms. Neley-Mosley received correspondence from the City of St. Louis Municipal Court advising her that a warrant for her arrest had been issued on June 21, 2007, due to her failure to appear in court to respond to the traffic violations. **App. 4.** Ms. Neley-Mosley attempted to reach Respondent at her office regarding the warrant but the telephone had been disconnected with no forwarding number. **App. 4.**

On or about July 23, 2007, Ms. Neley-Mosley paid the court costs, fines, and warrant recall fees, resulting in guilty pleas to the traffic violations. **App. 5.** Ms. Neley-Mosley was assessed points on her driver's record for the speeding ticket. **App. 5.** Respondent learned of Ms. Neley-Mosley's guilty pleas (as a result of her payment of the

finer, court costs and warrant recall fees) upon receiving the complaint filed against her by Ms. Neley-Mosley. **App. 5.** Respondent made no attempt to withdraw the guilty pleas and reinstate the City Counselor's recommendations or take any other mitigating action on behalf of Ms. Neley-Mosley. **App. 5.**

When Respondent appeared before Division I of the Region X Disciplinary Committee on March 20, 2008, she stated that the telephone wiring in her office building is substandard such that her telephone and fax machine are frequently out of order. **App. 5.** Respondent stated that as a result, her clients, in addition to other attorneys, often experience difficulties contacting her. **App. 5.**

Dean Complaint (Count II)

Respondent previously represented Dianne Dean in various domestic proceedings. **App. 5.** In or about April 2007, Dianne Dean's daughter, Latasha Dean (hereinafter, "Latasha"), consulted with Respondent about modifying her parents' divorce decree to have her father's child support payments paid directly to her rather than her mother. **App. 5.** Latasha told Respondent that Dianne Dean no longer wanted her to reside in her home. **App. 5.** Latasha was twenty (20) years of age at that time and a college student. **App. 5, 27.** During this initial contact, Respondent did not advise Latasha that a potential conflict of interest existed since Respondent had previously represented Latasha's mother. **App. 5.**

In or about late April or early May 2007, Latasha paid Respondent fees in the amount of Three Hundred and No/100 Dollars (\$300.00) to prepare and file the Motion to Modify. **App. 6.** Respondent accepted the advance payment for attorney's fees and

court costs without first obtaining consent from her former client, Dianne Dean, to represent Latasha. **App. 6.**

Respondent consulted with the Presiding Judge about the procedural steps in filing the Motion to Modify and whether Respondent could file the Motion on behalf of Latasha. **App. 6.** The Judge informed Respondent that a guardian ad litem may have to be appointed and that Respondent could not represent Latasha if a conflict existed between Latasha and her mother. **App. 6.**

Thereafter, Respondent contacted Dianne Dean and advised her of Latasha's desire to have child support payments paid directly to her. **App. 6.** Respondent informed Dianne Dean that she (Dianne Dean) would have to petition the court for the modification rather than Latasha. **App. 6.** Dianne Dean told Respondent that she would consent to the Motion to Modify providing for the restructuring of the child support payments if Latasha paid the attorney's fees and court costs for the modification. **App. 6.**

Respondent admitted that she was unaware that pursuant to Section 452.340.5, RSMo (2000), Latasha, a college student, **App. 27**, and of majority, could petition the court in her name for the modification. **App. 6.** Sometime thereafter, Respondent contacted Latasha and advised her that her mother consented to the modification and, further, that Respondent was unable to represent Latasha due to a conflict of interest. **App. 6.** Respondent then drafted the Motion to Modify and, upon obtaining Dianne Dean's signature on the Motion, filed the same with the Court and paid the filing fee from the funds advanced by Latasha. **App. 7.**

Dianne Dean and Latasha's father subsequently executed paperwork to have the child support payments deposited directly into Latasha's bank account. **App. 7.** Respondent filed a Memorandum of Dismissal with the court on or about August 8, 2007. **App. 7.** Respondent refunded One Hundred and No/Dollars (\$100.00) to Latasha, stating that she paid One Hundred Fifty-Five and No/Dollars (\$155.00) from the advanced funds for court costs and retained Forty-Five and No/Dollars (\$45.00) for the drafting of the Motion. **App. 7.**

Disciplinary Case History

On May 6, 2008, a two-count Information was filed against Ms. Jarman based upon a finding by Division I of the Region X Disciplinary Committee that probable cause existed to believe that Respondent was guilty of professional misconduct in her representation of Ms. Neley-Mosley and Ms. Dianne Dean. **App. 14-22.** Respondent filed an Answer on June 5, 2008. **App. 23-29.** A disciplinary hearing panel ("Hearing Panel") was appointed and a hearing was scheduled for November 24, 2008. **App. 30.**

Prior to the hearing, Respondent and Informant engaged in discussions and negotiations in an attempt to reach an agreement as to the violations and appropriate discipline to resolve the pending complaints. Through a cooperative process of negotiation, Respondent and Informant reached an agreement to enter into a joint stipulation that resolved the factual basis for discipline for the Neley-Mosley and Dean complaints. The parties also stipulated that Respondent's conduct with respect to her representation of Ms. Neley-Mosley, violated Rules 4-1.1 (competence), 4-1.3 (diligence), and 4-1.4 (communication), and that her conduct, with respect to her

representation of Dianne Dean, violated Rules 4-1.1 (competence) and 4-1.9(a) (duties to former clients). **App. 7-9.** Respondent and Informant agreed to recommend that Respondent's license be suspended for six months, but that the suspension be stayed pending completion of a twelve month period of probation with enumerated conditions to be satisfied during that probation period. **App. 11.** The recommended conditions included, *inter alia*, quarterly reporting requirements, completion of Ethics School and requiring Respondent to meet once a month with a mentor, approved by the Probation Monitor, for law practice management and organization. **App. 31-37.**

Informant's counsel, Shevon L. Harris, spoke with Respondent about the joint stipulation in the days immediately preceding the November 24, 2008 disciplinary hearing. Respondent advised Informant that she was ill and unable to attend the hearing before the Hearing Panel. **App. 44.** Informant's counsel asked Respondent to provide her with an executed copy of the Joint Stipulation of Facts, Joint Proposed Conclusions of Law and Joint Recommended Discipline ("Joint Stipulation") (if she agreed to the facts and discipline stated therein) before the date of the hearing. **App. 45.** Informant's counsel told Respondent that she would then present the executed Joint Stipulation to the Hearing Panel at the hearing on November 24, 2008 and explain Respondent's absence. Respondent had the executed copy of the Joint Stipulation delivered to the office of Informant's counsel office on November 22, 2008. **App. 45.** Informant executed the Joint Stipulation on November 23, 2008. **App. 46.**

Informant's counsel met with the Hearing Panel on November 24, 2008, in the Jury Deliberation Room of the St. Louis County Courthouse, where the hearing was

scheduled. **App. 38-49.** Informant's counsel advised the Hearing Panel of Respondent's illness and provided the panel members with copies of the executed Joint Stipulation. **App. 43-46.** Informant's counsel and the Hearing Panel then proceeded to make a record of the hearing. **App. 38-49.** Informant's counsel explained Respondent's absence on the record and the exhibits were introduced and admitted. **App. 43-46.** The hearing was concluded shortly thereafter. Upon leaving the Jury Deliberation Room, Informant's counsel saw Respondent in the Courthouse. **App. 50.** Informant's counsel advised Respondent that the hearing had just taken place and questioned Respondent as to why she was not present if she was no longer ill. Respondent stated that she was still ill but had just come from a court setting. Informant's counsel then advised the Hearing Panel Presiding Officer of Informant's counsel's encounter and conversation with Respondent. **App. 50.**

On January 22, 2009, the Hearing Panel issued their decision. **App. 50-62.** The Panel's decision accepted the parties' stipulated facts and conclusions, but recommended an actual one-year suspension, with no probation until reinstatement, after the one-year suspension. **App. 61.** The Hearing Panel found that Respondent's failure to participate in the hearing, despite her presence in the courthouse at the same time as the hearing, after reporting an inability to attend because of illness, constituted an additional aggravating factor justifying the longer suspension without probation. **App. 61.** The decision was received by the Advisory Committee on January 27, 2009. **App. 63.** Neither Informant nor Respondent filed an acceptance or rejection of the Hearing Panel's decision with the Advisory Committee. Under Rule 5.19(a), failure to timely file notice of rejection of the

panel's decision shall be deemed acceptance of the decision. Under Rule 5.19(a), the parties' deadline for timely rejection of the decision passed on February 26, 2009. Pursuant to Rule 5.19(c), Informant filed a Statement of Acceptance with this Court on March 9, 2009. In the Statement of Acceptance of the Hearing Panel's Decision, Informant prayed that Respondent be suspended.

The Court issued a Show Cause Order on March 31, 2009, asking Respondent to show cause why she should not be disciplined in accordance with the recommendation for discipline of the Office of Chief Disciplinary Counsel contained within the Statement of Acceptance of the Hearing Panel decision. On or about April 7, 2009, Respondent filed with the Court a "Rejection to the Disciplinary Hearing Panel Decision." Respondent filed an "Answer to the Show Cause Order" on April 15, 2009. Informant filed Informant's Reply to Respondent's Answer to the Show Cause Order on April 17, 2009 ("Reply"). In the Reply, Informant suggested that this Court could accept Informant and Respondent's original stipulated disposition of a suspension with probation. The Court activated a briefing schedule on June 4, 2009.

POINTS RELIED ON

I.

VIOLATIONS

RESPONDENT IS SUBJECT TO DISCIPLINE BY THIS COURT IN THAT:

A. RESPONDENT STIPULATED, AS TO COUNT I OF THE INFORMATION, THAT IN HER REPRESENTATION OF MS. NELEY-MOSLEY, SHE VIOLATED:

- **RULES 4-1.1 AND 4-1.3 WHEN RESPONDENT FAILED TO ENSURE THAT THE NEW COURT DATE FOR PAYMENT AND ACCEPTANCE OF THE CITY COUNSELOR'S RECOMMENDATION WAS ENTERED INTO THE MUNICIPAL COURT'S COMPUTER DATABASE AND, WHEN RESPONDENT MADE NO ATTEMPT TO WITHDRAW MS. NELEY-MOSLEY'S GUILTY PLEAS AND REINSTATE THE CITY COUNSELOR'S PRIOR RECOMMENDATIONS OR TAKE ANY OTHER MITIGATING ACTION ON BEHALF OF MS. NELEY-MOSLEY;**
- **RULE 4-1.4(A) BY FAILING TO ENSURE THAT RESPONDENT HAS A RELIABLE MODE OF COMMUNICATION IN WHICH TO KEEP CLIENTS REASONABLY INFORMED ABOUT THE STATUS OF**

**MATTERS AND IN WHICH TO ENABLE RESPONDENT'S
CLIENTS TO CONTACT HER;**

**B. RESPONDENT STIPULATED, AS TO COUNT II OF THE
INFORMATION, THAT IN HER REPRESENTATION OF DIANNE
DEAN, SHE VIOLATED:**

- **RULE 4-1.1 WHEN SHE FAILED TO REVIEW THE
RELEVANT STATUTE CONCERNING THE PROCEDURAL
REQUISITES FOR FILING A MOTION TO MODIFY AND
WHEN SHE FAILED TO ADVISE DIANNE DEAN AND
LATASHA DEAN THAT THE MOTION TO MODIFY COULD
BE FILED IN LATASHA DEAN'S NAME;**
- **RULE 1.9(A) WHEN RESPONDENT FAILED TO OBTAIN
CONSENT FROM HER FORMER CLIENT, DIANNE DEAN,
PRIOR TO RENDERING LEGAL ADVICE TO LATASHA DEAN
AND ACCEPTING FUNDS ADVANCED BY LATASHA DEAN
FOR ATTORNEY'S FEES AND COURT COSTS.**

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4(a)

Rule 4-1.9(a)

POINTS RELIED ON

II.

SANCTION

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE FOR SIX (6) MONTHS, STAY THE SUSPENSION, AND ORDER RESPONDENT TO SUBMIT TO A ONE YEAR PERIOD OF PROBATION SUBJECT TO THE CONDITIONS ENUMERATED IN THE PROBATION AGREEMENT AND INCORPORATED WITHIN THE JOINT STIPULATION, BECAUSE THE SANCTION AGREED TO BETWEEN RESPONDENT AND OCDC BEST SERVES THE DUAL PURPOSES OF LAWYER DISCIPLINE IN THAT CLOSE MONITORING OF RESPONDENT'S PRACTICE AND THE LAW PRACTICE MANAGEMENT EDUCATION COMPONENT OF THE PROBATION SHOULD PROTECT THE PUBLIC AND THE PROFESSION FROM RECURRENCE OF THE MISCONDUCT THAT HAS MARKED RESPONDENT'S PAST PRACTICE.

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

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4(a)

Rule 4-1.9(a)

ARGUMENT

I.

VIOLATIONS

RESPONDENT IS SUBJECT TO DISCIPLINE BY THIS COURT IN THAT:

A. RESPONDENT STIPULATED, AS TO COUNT I OF THE INFORMATION, THAT IN HER REPRESENTATION OF MS. NELEY-MOSLEY, SHE VIOLATED:

- **RULES 4-1.1 AND 4-1.3 WHEN RESPONDENT FAILED TO ENSURE THAT THE NEW COURT DATE FOR PAYMENT AND ACCEPTANCE OF THE CITY COUNSELOR'S RECOMMENDATION WAS ENTERED INTO THE MUNICIPAL COURT'S COMPUTER DATABASE AND, WHEN RESPONDENT MADE NO ATTEMPT TO WITHDRAW MS. NELEY-MOSLEY'S GUILTY PLEAS AND REINSTATE THE CITY COUNSELOR'S PRIOR RECOMMENDATIONS OR TAKE ANY OTHER MITIGATING ACTION ON BEHALF OF MS. NELEY-MOSLEY;**
- **RULE 4-1.4(A) BY FAILING TO ENSURE THAT RESPONDENT HAS A RELIABLE MODE OF COMMUNICATION IN WHICH TO KEEP CLIENTS REASONABLY INFORMED ABOUT THE STATUS OF**

**MATTERS AND IN WHICH TO ENABLE RESPONDENT'S
CLIENTS TO CONTACT HER;**

**B. RESPONDENT STIPULATED, AS TO COUNT II OF THE
INFORMATION, THAT IN HER REPRESENTATION OF DIANNE
DEAN, SHE VIOLATED:**

- **RULE 4-1.1 WHEN SHE FAILED TO REVIEW THE
RELEVANT STATUTE CONCERNING THE PROCEDURAL
REQUISITES FOR FILING A MOTION TO MODIFY AND
WHEN SHE FAILED TO ADVISE DIANNE DEAN AND
LATASHA DEAN THAT THE MOTION TO MODIFY COULD
BE FILED IN LATASHA DEAN'S NAME;**
- **RULE 4-1.9(A) WHEN RESPONDENT FAILED TO OBTAIN
CONSENT FROM HER FORMER CLIENT, DIANNE DEAN,
PRIOR TO RENDERING LEGAL ADVICE TO LATASHA
DEAN AND ACCEPTING FUNDS ADVANCED BY LATASHA
DEAN FOR ATTORNEY'S FEES AND COURT COSTS.**

The facts and ethical violations have been agreed to by stipulation. The parties stipulated that the following conduct of Respondent violated the basic duties of competence (Rule 4-1.1), diligence (Rule 4-1.3), and communication (Rule 4-1.4) owed to Ms. Neley-Mosley: failure to ensure that Ms. Neley-Mosely's new court date for payment was entered into the court's database; failure to make any attempt to reinstate the City Counselor's prior recommendation of Ms. Neley-Mosely's traffic citations or

take any other mitigating action on behalf of Ms. Neley-Mosely; and failure to ensure that Respondent has a reliable mode of communication for clients and other members of the bar to contact her. The parties also stipulated that Respondent violated Rule 4-1.9(a) when she failed to obtain consent from her former client, Dianne Dean, prior to rendering legal advice to Latasha and accepting the funds advanced by Latasha for attorney's fees and court costs. The parties further stipulated that Respondent violated Rule 4-1.1 when she failed to review the relevant statutes concerning the procedural requisites for filing a Motion to Modify resulting incorrect legal advice being given to Dianne Dean.

- A. Respondent failed to ensure that Ms. Neley-Mosely's new court date for payment was entered into the court's database, failed to make any attempt to reinstate the City Counselor's prior recommendation upon learning of Ms. Neley-Mosely's guilty pleas, and failed to ensure that she has a reliable mode of communication for clients and fellow bar members to contact her.**

Upon retention of a lawyer's services, clients have the fundamental expectation to have their legal business handled diligently and competently and to be able to reasonably contact and communicate with their counsel. During her representation by Respondent, Ms. Neley-Mosely was deprived of each of these fundamental expectations. Ms. Neley-Mosley retained Respondent for representation in her traffic matters and paid Respondent Seventy-Five and No/100 Dollars (\$75.00) for her services. Sometime before Ms. Neley-Mosely's May 14, 2007 court date, Respondent obtained a recommendation from the City Counselor and a new court date of August 23, 2007, for Ms. Neley-Mosely's remittance

of court costs and fines. Respondent, however, failed to provide the new date to the court clerks and took no further action to ensure that the new court date was entered into the court's database.

Ms. Neley-Mosely received a warrant notice on July 19, 2007, and immediately tried to contact Respondent. Respondent's office telephone was disconnected with no forwarding number. Faced with the pending warrants and inability to reach Respondent, Ms. Neley-Mosley paid the warrant fees, fines and court costs resulting in guilty pleas and the assessment of points on her driver's record. Respondent made no attempt to reinstate the City Counselor's recommendation or take any other mitigating action when she learned of Ms. Neley's-Mosley's guilty pleas and assessment of points.

Respondent could have prevented the issuance of Ms. Neley-Mosely's warrant (and likely the points assessed on Ms. Neley-Mosely's driver's record) by providing the court clerks with the new August 23, 2007 payment date. The duty of diligence under Rule 4-1.3 encompasses the duty to protect a client's interests by taking specific action. In this case, Respondent's lack of diligence, i.e., her failure to ensure that Ms. Neley-Mosely's new court date was entered into the municipal court's database and her failure to take any mitigating action upon learning of the guilty pleas adversely affected Ms. Neley-Mosely's driver's record. Further, Respondent acknowledged that she had previously represented Ms. Neley-Mosely in numerous traffic matters. Respondent's experience in traffic matters demonstrates the lack of competency exercised in Ms. Neley-Mosely's case, in violation of Rule 4-1.1.

Moreover, a fundamental component in any attorney-client relationship is communication. Respondent stated that the telephone wiring in her building is substandard and unreliable, such that her clients, as well as other members of the bar, experience difficulty reaching her. An attorney has a duty to keep clients reasonably informed about the status of their legal matters and respond to clients' reasonable requests for information. See, Rule 4-1.4(a). Respondent is clearly unable to keep clients reasonably informed or respond to requests for information when her telephones do not work and no forwarding number is provided. Had Ms. Neley-Mosley been able to reach Respondent after she received the warrant notice, Respondent may have been able to resolve Ms. Neley-Mosley's traffic matter and avoid the point assessment on Ms. Neley-Mosley's driver's record.

B. Respondent rendered inaccurate legal advice to Dianne Dean due to her failure to review the relevant statute concerning the procedural requisites for filing a Motion to Modify and failed to obtain consent from Dianne Dean prior to rendering legal advice to Latasha Dean and accepting the funds advanced by Latasha Dean for attorney's fees and court costs for the Motion to Modify.

Competent representation requires legal knowledge, thoroughness and preparation reasonably necessary for the representation of one's client. Rule 4-1.1. The practice of family law was not a novel area for Respondent. Respondent stated that she had previously represented Dianne Dean in other family law matters. Notwithstanding her experience in the area of family law, Respondent failed to exercise the minimal amount

of competency when she neglected to review the relevant statutes governing Motions to Modify.

In April 2007, Latasha, Dianne Dean's daughter, consulted with Respondent and asked Respondent to represent her in modifying her parents' divorce decree. Latasha wanted to have her father's child support payments paid directly to her rather than to her mother, Dianne Dean. Respondent accepted payment from Latasha but subsequently advised her that she was unable to represent her due to a conflict. Respondent then told Dianne Dean that she (Dianne Dean), and not Latasha, would have to petition the court for the modification. This legal advice given to Dianne Dean was inaccurate. Pursuant to Section 452.340.5, RSMo. 2000, Latasha, being a college student and of majority, could petition the court to amend the order to have her father make the child support payments directly to her. See, §452.340.5, RSMo. Respondent admitted that she was not familiar with Section 452.340.5, nor did she review the relevant sections of the Missouri Statutes prior to rendering legal advice to Dianne Dean. Such dilatory conduct on the part of Respondent violated the most basic notions of competency.

Respondent also violated the duty of loyalty owed to Dianne Dean under Rule 4-1.9(a)(duties to former clients). Respondent rendered legal advice to Latasha and accepted advanced funds from Latasha without obtaining consent from Dianne Dean. When Latasha consulted with Respondent, she told Respondent that her mother wanted her to move out of the home. Latasha asked Respondent to assist her in modifying the divorce decree to have child support payments paid directly to her and paid Respondent an advanced fee. Respondent did not verify Latasha's story with Dianne Dean or obtain

Dianne Dean's consent to represent Latasha before rendering legal advice to Latasha and accepting Latasha's advanced payment. Respondent negligently failed to recognize the apparent conflict of interest in her prior representation of Dianne Dean and potential subsequent representation of Latasha on the issue of modification of the child support payee.

ARGUMENT

II.

SANCTION

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE FOR SIX (6) MONTHS, STAY THE SUSPENSION, AND ORDER RESPONDENT TO SUBMIT TO A ONE YEAR PERIOD OF PROBATION SUBJECT TO THE CONDITIONS ENUMERATED IN THE PROBATION AGREEMENT INCORPORATED WITHIN THE JOINT STIPULATION, BECAUSE THE SANCTION AGREED TO BETWEEN RESPONDENT AND OCDC BEST SERVES THE DUAL PURPOSES OF LAWYER DISCIPLINE IN THAT CLOSE MONITORING OF RESPONDENT'S PRACTICE AND THE LAW PRACTICE MANAGEMENT EDUCATION COMPONENT OF THE PROBATION SHOULD PROTECT THE PUBLIC AND THE PROFESSION FROM RECURRENCE OF THE MISCONDUCT THAT HAS MARKED RESPONDENT'S PAST PRACTICE.

In determining an appropriate penalty for misconduct, the Court considers “the duty violated, the lawyer’s mental state, the actual or potential injury caused by the lawyer’s conduct, and the existence of aggravating or mitigating factors.” See, ABA Standards for Imposing Lawyer Sanctions, (1991 ed.), Rule 3.0, see also, *In re Stanley L. Wiles*, 107 S.W. 3d 228, 229 (Mo. banc 2003) (the Court considers the gravity of the

attorney's misconduct, as well as any mitigating or aggravating factors that tend to shed light on the attorney's moral and intellectual fitness as an attorney).

Informant and Respondent stipulated to the duties violated. Ms. Jarman's neglect in reporting the new payment date to the court clerk, failure to take any mitigating action on behalf of her client upon learning of the guilty pleas, failure to have a reliable mode of communication and her failure to consult the relevant Missouri statutes prior to rendering legal advice violated the basic duties of diligence, communication and competence owed to a client. In addition, Ms. Jarman's consult with Latasha and acceptance of Latasha's advanced funds, without Dianne Dean's prior consent, violated the duty of loyalty to a former client imposed by the conflict of interest rule, Rule 4-1.9(a). Ms. Jarman's negligence resulted in injury to Ms. Neley-Mosley (the assessment of points on her driver's record) and potential injury to Diane Dean had Respondent proceeded with the representation of Latasha in the absence of Dianne Dean's consent.

The disciplinary investigation produced no evidence from which to infer any mental state for Ms. Jarman's misconduct other than negligence. As a general proposition, the ABA Standards for Imposing Lawyer Sanctions (the "ABA Standards") anticipate a lower level of sanction for cases presenting a less culpable mental state. Therefore, absent other circumstances, i.e., the presence of specified mitigating and aggravating factors, the ABA Standards typically recommend admonition or reprimand in cases of negligent violation of a rule. Accordingly, absent aggravating or mitigating circumstances, the sanction generally imposed under the ABA Standards for Respondent's negligent violations of Rules 4-1.1 (competence), 4-1.3 (diligence), 4-1.4

(communication), and 4-1.9(a), is generally a reprimand or admonition. See, ABA Standards, Rules 4.4 and 4.5.

In this disciplinary matter, however, as shown below, an analysis of the aggravating factors supports Respondent and OCDC's jointly recommended discipline of six months stayed suspension pending completion of a twelve-month probation period as the most appropriate sanction for Respondent's conduct. ABA Standards, Rule 9.1 provides that after misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose. ABA Standards, Rule 9.1. ABA Standards, Rule 9.21 provides that aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. ABA Standards, Rule 9.21. Under the ABA Standards, applicable aggravating factors which may be considered include: prior disciplinary offenses; a pattern of misconduct; multiple offenses; and, substantial experience in the practice of law. See, ABA Standards, Rule 9.22(a), (c), (d), and (i). Ms. Jarman was licensed to practice law in 1994. Since 2003, Ms. Jarman has received three Admonitions. Ms. Jarman accepted an Admonition issued in May 2005 for violation of Rules 4-1.4 (communication), 4-1.5 (fees) and 4-1.15 (safekeeping of property). Ms. Jarman accepted two Admonitions issued in November 2003 for violations of 4-1.15 (safekeeping of property).

Employing the analysis recommended by the ABA Standards, and implemented by this Court, upon consideration of the aggravating factors, six months stayed suspension pending successful completion of twelve months of probation is the most

applicable and appropriate sanction for Ms. Jarman's violations. See, In re Wiles, 107 S.W.3d 228, 229 (Mo. banc 2003) (per curiam), (in express recognition of the aggravating effect of a string of prior admonitions, the Wiles Court ordered a stayed suspension and placed Mr. Wiles on a closely monitored probation).

The Hearing Panel concluded that Respondent's failure to appear at the hearing was an additional aggravating circumstance warranting a more severe sanction of discipline. The Panel would require Respondent to serve an actual one-year suspension, followed by one year of probation. Informant acknowledges that Respondent's failure to appear at the disciplinary hearing warrants consideration. Such conduct, while certainly an aggravating circumstance, does not warrant amending the appropriate discipline in this case from a stayed suspension to an actual suspension. The parties' stipulated sanction is the most appropriate and fits within the boundaries of the ABA Standards. In addition, the stipulation accomplishes the dual purposes of protecting the public and preserving the integrity of the legal profession because the conditions of probation stipulated to in the sanction are directed to correct the deficiencies in Respondent's solo practice (failures in diligence, communication, and competence) which Respondent is guilty of committing. See ABA Standards, Rule 2.7.¹ Additionally, requiring Respondent to comply with

¹ ABA Standards, Rule 2.7 reads in relevant part, "[p]robation is a sanction that should be imposed when a lawyer's right to practice law needs to be monitored or limited rather than suspended or revoked...." "Probation is appropriate for conduct which may be corrected, e.g., ...lack of timely communication with clients!...."

quarterly reporting requirements during the period of probation further assures protection of the public.

This Court, in In re Wiles, ordered a stayed suspension and placed Mr. Wiles on a closely monitored probation for Mr. Wiles' ethical transgressions relating to competence, communication, diligence, fees and safekeeping of property. See, In re Wiles, 107 S.W.3d at 229. There is no allegation of trust account issues in the case at bar, as were implicated in the Wiles case. As a stayed suspension was ordered by the Court in Wiles, where there was a safekeeping property issue, it is difficult to justify an actual suspension in the case at bar. Further, imposing upon Respondent the sanction of an actual one-year suspension would interrupt Respondent's practice and would harm not only the Respondent but her clients and the courts. The sanction of a stayed suspension allows Respondent to continue to represent her clients while being educated on law practice management during the one-year probation period.

Moreover, the Office of Chief Disciplinary Counsel and Respondent, through a cooperative process of negotiation, agreed to recommend a six month stayed suspension with probation. Stipulated disciplines accomplish several goals: they encourage lawyers to accept responsibility for their wrongdoing, they encourage cooperation with disciplinary authorities, and they encourage modification of unethical behavior in those cases where probation with conditions requiring affirmative action by the lawyer to acquire knowledge and tools with which to reform conduct make up part of the stipulated sanction. And, stipulated sanctions potentially conserve the disciplinary system's resources and expedite the system's response to the public's complaints against lawyers.

The stipulated discipline of a six month stayed suspension pending completion of a twelve month probation period is an appropriate sanction to discipline Ms. Jarman for her misconduct while addressing the concerns of protecting the public and preserving the integrity of the legal profession. See, In re Wiles, 107 S.W.3d at 228-229 (“The purpose of attorney discipline is to protect the public and maintain the integrity of the legal profession.”).

CONCLUSION

After careful investigation of the facts and due consideration of all the information that factors into lawyer sanction analysis, the Office of Chief Disciplinary Counsel has, with Respondent's concurrence, reached a stipulated resolution of the pending complaints. For the reasons set forth herein, the Court is urged to implement the sanction recommended by the Office of Chief Disciplinary and the Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2009, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First

Class mail to:

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CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 5,474 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That AVG 8.0 software was used to scan the disk for viruses and that it is virus free.

Shevon L. Harris

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