

IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN RE:)
)
LAWRENCE JOSEPH FLEMING) Supreme Court #SC91440
MISSOURI BAR NO. 019946)
)
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

Respondent is Lawrence Joseph Fleming who was licensed as an attorney in Missouri on September 2, 1967. **App. A29.**¹ His date of birth is November 9, 1942. Respondent has been the subject of prior discipline having received three admonitions between 1985 and 1998:

- a. An admonition was issued on October 19, 1998 for Respondent's violation of Missouri Supreme Court Rules (i) 4-1.1 by failing to competently represent his client, (ii) 4-1.3 by failing to diligently represent his client, (iii) 4-1.4 by failing to keep his client reasonably informed about his case, (iv) 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and (v) 4-8.4(d) by engaging in conduct prejudicial to the administration of justice, which admonition was issued pursuant to Consent by Stipulation of Respondent. **App. A30.**

¹ The facts contained herein are drawn from the Joint Stipulation of Facts and Conclusions of Law entered into among Informant. Citations to the record are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example "**App. ___**".

b. An admonition was issued on July 6, 1993 for Respondent's violation of Missouri Supreme Court Rules (i) 4-2.1 by failing to render candid advice to his client, and (ii) 4-8.4(d) by engaging in conduct prejudicial to the administration of justice, which admonition was issued pursuant to Consent by Stipulation of Respondent. **Id.**

c. An admonition was issued on April 12, 1985 for violating Missouri Supreme Court Code of Professional Responsibility (i) DR 1-102(A)(4) by engaging in conduct involving deceit or misrepresentation, (ii) DR 5-103(B) by advancing or guaranteeing financial assistance to his client, (iii) DR 6-101(A)(3) by neglecting the legal matter entrusted to him, (iv) DR 7-101(A)(3) by intentionally prejudicing or damaging his client during the professional relationship and (v) DR 9-101(C) by implying he was able to improperly influence a tribunal, which admonition was issued pursuant to Consent by Stipulation of Respondent. **Id.**

The Charles Rogers, Jr. Complaint (Count I)

Respondent was retained by Charles F. Rogers, Jr. in July 2006 to represent him in connection with a lawsuit against Bank of America, N. A. (the "Bank") resulting from the Bank making numerous erroneous debits from Mr. Rogers' bank account. **App. 32.**

Respondent represented to Mr. Rogers that the petition against the Bank was filed by Respondent in St. Clair County, Illinois Circuit Court in 2007. **Id.** Respondent informed Mr. Rogers that the trial for the case was set for July 2008 and asked Mr. Rogers to appear for the trial in St. Clair County Circuit Court. **Id.** Upon Mr. Rogers' arrival to the courthouse he was informed by the Respondent that the case had settled for \$75,000 (the "Settlement) and that he would receive payment in three weeks. **Id.** Mr. Rogers and Respondent spoke several times concerning the Settlement. **App. A33.** Respondent had Mr. Rogers come to his office on at least three separate occasions to pick up the Settlement. **Id.** Mr. Rogers never received the Settlement or any documents evidencing a settlement of his claims against the Bank. **Id.**

On April 10, 2009 Respondent sent Special Representative a letter providing that Mr. Rogers told him that the disciplinary complaint had not been drafted or signed by him, but by his girlfriend. **Id.** On April 16, 2009, Respondent requested that Mr. Rogers sign a document confirming this statement and stating that he was withdrawing his complaint against Respondent by informing him that if he signed the document, Respondent "would stay on the case" and continue to represent Mr. Rogers in the lawsuit against the Bank (the "Rogers Document") but that he would not be able to do so as long as the disciplinary complaint was pending. **Id.** The Rogers Document was prepared by Respondent and provides, in part, "I want Mr. Fleming to remain my attorney, and I do not want to pursue any complaint against him." **Id.** This document was immediately provided to the Special Representative by Respondent via courier, along with a cover letter dated April 17, 2009. **Id.** On the same day that Mr. Rogers signed the Rogers

Document, April 16, 2009, he telephoned the Special Representative stating he was coerced to sign it by the Respondent and did so only because he was promised the Settlement if he did. **Id.** As a result of the differing facts, the Special Representative had Respondent and Mr. Rogers appear before the Disciplinary Committee to provide live testimony on that and other topics. **App. A33-34.** Mr. Rogers did not withdraw his complaint against Respondent.

Respondent provided Mr. Rogers with a file-stamped copy of the complaint against the Bank in May 2009, which had been filed in the Circuit Court of St. Clair County Illinois, where Mr. Rogers resided and he did his banking. **App. A34.** That complaint was file-stamped May 22, 2009, nearly 3 years after Mr. Rogers first retained Respondent, nearly one year after Respondent informed Mr. Rogers that case had been settled and more than five months after Mr. Rogers filed a complaint with the Office of Chief Disciplinary Counsel against Respondent. **Id.**

Respondent loaned Mr. Rogers a total of \$1,000 of his personal funds in connection with the pending or contemplated litigation so that Mr. Rogers could travel to Germany for an employment opportunity and to pay various bills. **Id.**

The Robert Goerger Complaint (Count II)

Robert Goerger retained Respondent in November 2005 to represent him in connection with his request for post conviction relief in connection with assault and armed criminal action convictions; specifically, a motion to recall mandate (the “Motion”). **App. A35.** Mr. Goerger served part of his sentence and was on parole when

he retained Respondent. Mr. Goerger paid Respondent a total of \$5,500 for his services. **Id.** Respondent provided Mr. Goerger with a copy of the Motion, the Respondent's explanation of which led Mr. Goerger to reasonably conclude that the Motion had been filed with the appropriate court. **Id.** In November of 2006 Respondent informed Mr. Goerger that the Motion was successful and that the matter had been remanded to circuit court for final disposition. **Id.** Respondent never filed the Motion on behalf of Mr. Goerger. **Id.**

The Charles Rogers Complaint and the Robert Goerger Complaint are collectively referred to herein as the "Complaints".

Disciplinary Proceeding

The Office of Chief Disciplinary Counsel received the Complaints in January, 2009. The Complaints were referred to the Region XI Disciplinary Committee for investigation. On September 25, 2009, the Region XI Disciplinary Committee completed its investigation of the matters, found probable cause and voted to issue an Information against Respondent. Informant served the Information on Respondent on or about December 23, 2009. **App. A10.** Respondent's Answer to the Information was received on or about February 27, 2010. **App. A18.** The Chair of the Missouri Supreme Court Advisory Committee appointed a Disciplinary Hearing Panel (the "Panel") in this case on March 15, 2010. **App. A24.** Respondent has been represented by Mary Kathleen Justin since April 26, 2010.

Informant and Respondent entered into a Joint Stipulation of Facts and Conclusions of Law dated as of August 30, 2010 (the “Joint Stipulation”). **App. A27.** The Panel adopted the Joint Stipulation as its decision on October 21, 2010 (the “DHP Decision”). **Id.**

As a result of adopting the Joint Stipulation as its decision, the Panel concluded that as to Count I, Respondent is guilty of professional misconduct under Rule 4-8.4(a) as a result of violating:

- a. Rule 4-1.1 by failing to provide competent representation to Mr. Rogers;
- b. Rule 4-1.3 by failing to act with reasonable diligence and promptness with respect to Mr. Rogers’ matters;
- c. Rule 4-1.8(e) by providing financial assistance to Mr. Rogers in connection with pending or contemplated litigation;
- d. Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and
- e. Rule 4-8.4(d) by engaging in conduct that is prejudicial to the administration of justice.

The Panel further concluded that as to Count II, Respondent is guilty of professional misconduct under Rule 4-8.4(a) as a result of violating:

- a. Rule 4-1.1 by failing to provide competent legal representation to Mr. Goerger;

- b. Rule 4-1.3 by failing to act with reasonable diligence and promptness with respect to Mr. Goerger's matters; or alternatively Rule 4-1.4 by failing to adequately communicate with Mr. Goerger that the Motion had little or no chance of success under the present state of the law.
- c. Rule 4-8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- d. Rule 4-8.4(d) by engaging in conduct that is prejudicial to the administration of justice.

The Panel found the following as aggravating factors:

- a. the neglect of client matters;
- b. dishonesty, fraud, deceit, or misrepresentation;
- c. conduct prejudicial to the administration of justice; and
- d. Respondent's substantial experience in the practice of law.

The Panel found the following as mitigating factors:

- a. Respondent's public service
- b. Respondent's reputation in the legal community
- c. lack of any recent disciplinary history, and
- d. cooperation with the Office of Chief Disciplinary Counsel.

Based on the foregoing findings and conclusions as a result of adopting the Joint Stipulation as the DHP Decision, the Panel recommended that Respondent (a) be suspended from the practice of law in the State of Missouri indefinitely with leave to apply for reinstatement after six months, (b) that the suspension be stayed for six (6) months, and (c) in lieu of enforcement thereof, Respondent be placed on probation for a period of one year. **Id.**

Informant accepted the DHP Decision by letter dated December 29, 2010. **App. A50.** Likewise, Respondent accepted the DHP Decision by letter dated December 30, 2010. **App. A51.** By letter dated January 25, 2011, this Court ordered Informant and Respondent to file briefs in this matter. **App. A53.** Informant filed the record in this matter with the Court on February 24, 2011.

POINTS RELIED ON

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:

(A) FAILING TO COMPETENTLY REPRESENT CHARLES ROGERS AND ROBERT GOERGER IN VIOLATION OF RULE 4-1.1 OF THE RULES OF PROFESSIONAL CONDUCT;

(B) FAILING TO DILIGENTLY REPRESENT CHARLES ROGERS AND ROBERT GOERGER IN VIOLATION OF RULE 4-1.3 OF THE RULES OF PROFESSIONAL CONDUCT;

(C) FAILING TO ADEQUATELY COMMUNICATE WITH MR. GOERGER THAT THE MOTION TO RECALL MANDATE HAD LITTLE OR NO CHANCE OF SUCCESS UNDER THE PRESENT STATE OF THE LAW IN VIOLATION OF RULE 4-1.4 OF THE RULES OF PROFESSIONAL CONDUCT;

(D) PROVIDING FINANCIAL ASSISTANCE TO MR. ROGERS IN CONNECTION WITH PENDING OR CONTEMPLATED LITIGATION IN VIOLATION OF RULE 4-1.8(e) OF THE RULES OF PROFESSIONAL CONDUCT;

(E) ENGAGING IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT AND MISREPRESENTATION IN VIOLATION

**OF RULE 4-8.4(c) OF THE RULES OF PROFESSIONAL
CONDUCT; AND**

**(F) ENGAGING IN CONDUCT THAT IS PREJUDICIAL IN THE
ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-
8.4(d).**

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4

Rule 4-1.8(e)

Rule 4-8.4(c)

Rule 4-8.4(d)

II.

THIS COURT SHOULD SUSPEND RESPONDENT'S LICENSE INDEFINITELY, WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR AT LEAST SIX MONTHS, WITH THE SUSPENSION STAYED AND IN LIEU OF ENFORCEMENT THEREOF, PLACE RESPONDENT ON PROBATION FOR ONE YEAR FROM THE EFFECTIVE DATE OF ANY DISCIPLINARY ORDER ISSUED BY THIS COURT IMPOSING DISCIPLINE.

A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:

(A) FAILING TO COMPETENTLY REPRESENT CHARLES ROGERS AND ROBERT GOERGER IN VIOLATION OF RULE 4-1.1 OF THE RULES OF PROFESSIONAL CONDUCT;

(B) FAILING TO DILIGENTLY REPRESENT CHARLES ROGERS AND ROBERT GOERGER IN VIOLATION OF RULE 4-1.3 OF THE RULES OF PROFESSIONAL CONDUCT;

(C) FAILING TO ADEQUATELY COMMUNICATE WITH MR. GOERGER THAT THE MOTION TO RECALL MANDATE HAD LITTLE OR NO CHANCE OF SUCCESS UNDER THE PRESENT STATE OF THE LAW IN VIOLATION OF RULE 4-1.4 OF THE RULES OF PROFESSIONAL CONDUCT;

(D) PROVIDING FINANCIAL ASSISTANCE TO MR. ROGERS IN CONNECTION WITH PENDING OR CONTEMPLATED LITIGATION IN VIOLATION OF RULE 4-1.8(e) OF THE RULES OF PROFESSIONAL CONDUCT;

(E) ENGAGING IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT AND MISREPRESENTATION IN VIOLATION

OF RULE 4-8.4(c) OF THE RULES OF PROFESSIONAL CONDUCT; AND

(F) ENGAGING IN CONDUCT THAT IS PREJUDICIAL IN THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d).

STANDARD OF REVIEW OF DISCIPLINARY HEARING PANEL DECISION

It is well settled that a Disciplinary Hearing Panel's recommendations are advisory in nature. *In re Crews*, 159 S.W.3d 355, 358 (Mo. Banc 2005). In a disciplinary proceeding, this Court reviews the evidence *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. *Id.* Discipline will not be imposed unless professional misconduct is proven by a preponderance of the evidence. *Id.* Where misconduct is proven by a preponderance of the evidence, violation of the Rules of Professional Conduct by an attorney is grounds for discipline. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. Banc 2004).

A. Failure to Competently Represent Charles Rogers and Robert Goerger as Described in the Complaints

The Charles Rogers Complaint

Mr. Rogers retained Respondent in July 2006 to represent him in his case against the Bank. **App. A32.** Respondent informed Mr. Rogers that the lawsuit was filed in 2007. **Id.** However, Respondent did not file the lawsuit until May, 2009. **App. A34.**

Respondent's failure to file the lawsuit against the Bank for almost 3 years also shows a complete lack of "thoroughness and preparation" as described in Rule 4-1.1.

The Robert Goerger Complaint

Similarly, Mr. Goerger retained Respondent in November, 2005 to represent him in connection with his request for post conviction relief in connection with a criminal matter. **App. A35.** At the time when Mr. Goerger filed his disciplinary complaint against the Respondent in January, 2009, the Respondent had not yet filed the Motion, despite representations to Mr. Goerger that it had been filed. Respondent's failure to file the Motion for over 3 years after being engaged by Mr. Goerger is further evidence of lack of "thoroughness and preparation" as described in Rule 4-1.1.

Based upon the foregoing, Respondent violated Rule 4-1.1 by failing to possess the preparation, thoroughness and knowledge necessary to adequately represent Mr. Rogers and Mr. Goerger.

B. Failure to Diligently Represent Charles Rogers and Robert Goerger as Described in the Complaints

The Charles Rogers Complaint

Mr. Rogers retained Respondent in July 2006 to represent him and file a lawsuit against the Bank with respect to numerous overdraft debits. **App. A32.** Again, Respondent informed Mr. Rogers that the lawsuit was filed in 2007 even though it was not filed until May, 2009. **App. A32, 34.** The nearly three year delay in filing the lawsuit is evidence that Respondent was not diligent in connection with his representation of Mr. Rogers in violation of Rule 4-1.3.

The Robert Goerger Complaint

Mr. Goerger retained Respondent in November, 2005 to represent him in connection with his request for post conviction relief in connection with a criminal matter. **App. A35.** At the time when Mr. Goerger filed his complaint against the Respondent, January, 2009, the Respondent had not yet filed the Motion, despite representations to Mr. Goerger that it had been filed. The fact that the Motion was never filed illustrates that Respondent did not diligently represent Mr. Goerger.

Furthermore, Respondent states that the Motion was never filed because current precedent was unavailable to support the basis upon which the Motion was drafted. **Id.** At a minimum, Respondent should have communicated the status of Missouri law and its impact on the Motion to Mr. Goerger at the time he provided him with the Motion. Respondent's failure to communicate to Mr. Goerger that the Motion had little or no chance of success under the current state of Missouri law was a violation of Rule 4-1.4.

Based upon the foregoing, the Panel properly found that Respondent violated (a) Rule 4-1.3 of the Rules of Professional Conduct by failing to diligently represent Mr. Rogers and Mr. Goerger; and (b) Rule 4-1.4 by failing to communicate with Mr. Goerger regarding the current state of the law as the same related to the Motion.

C. Providing Financial Assistance to Charles Rogers in Connection with Pending or Contemplated Litigation

After Mr. Rogers engaged Respondent to represent him in his case against the Bank, Respondent loaned Mr. Rogers \$1,000 of his personal funds to enable Mr. Rogers to travel to Germany for an employment opportunity and to pay various bills. **App. A34.**

By providing Mr. Rogers financial assistance in connection with pending or contemplated litigation, Respondent violated Rule 4-1.8(e).

D. Engaging in Conduct Involving Dishonesty, Fraud, Deceit and Misrepresentation

Respondent's actions in informing Mr. Rogers that his lawsuit against the Bank had been filed and settled when it was not was conduct that involved dishonesty, fraud, deceit and misrepresentation. Similarly, by informing Mr. Goerger that the Motion was filed and successful when it was never filed was conduct involving dishonesty, fraud, deceit and misrepresentation. **App. A35.** Respondent's actions in that regard were in violation of Rule 4-8.4(c).

E. Engaging in Conduct That is Prejudicial In The Administration of Justice

Furthermore, Respondent's conduct, to the extent it involved misrepresenting to Mr. Rogers and Mr. Goerger the results and success of their underlying actions, was prejudicial to the administration of justice. Consequently, Respondent violated Rule 4-8.4(d).

II.

THIS COURT SHOULD SUSPEND RESPONDENT’S LICENSE INDEFINITELY, WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR AT LEAST SIX MONTHS, WITH THE SUSPENSION STAYED AND IN LIEU OF ENFORCEMENT THEREOF, PLACE RESPONDENT ON PROBATION FOR ONE YEAR FROM THE EFFECTIVE DATE OF ANY DISCIPLINARY ORDER ISSUED BY THIS COURT IMPOSING DISCIPLINE.

This Court has relied on the American Bar Association’s Standards for Imposing Lawyer Sanctions (“ABA Standards”) to determine the appropriate discipline to be imposed in attorney discipline cases. *See, e.g., In re Crews*, 159 S.W.3d 355, 360-61 (Mo. banc 2005); *In re Warren*, 888 S.W.2d 334 (Mo. banc 1994); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994). Therefore, the suspension guidelines included within the ABA Standards are instructive. Based upon an analysis of the ABA Standards and Missouri case law, an indefinite suspension with leave to apply for reinstatement after six months, with the suspension stayed, is the appropriate sanction in this case. The analysis of the ABA Standards and Missouri case law further supports that in lieu of enforcement of the suspension, Respondent should be placed on probation for one year from the effective date of any disciplinary order issued by this Court imposing discipline.

According to the ABA Standards, suspension is appropriate when a lawyer knowingly (a) fails to perform or engages in a pattern of neglect and causes injury or potential injury to a client (Section 4.42 of the ABA Standards), (b) deceives a client and causes a client injury or potential injury (Section 4.62 of the ABA Standards), or (c) engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public or the legal system (Section 7.2 of the ABA Standards). Respondent's lack of diligence and candor, together with his conduct that was prejudicial to the administration of justice, caused or had the potential to cause, injury to his clients and the legal system and unreasonable delay in Mr. Goerger's case. Therefore, suspension is the appropriate sanction.

Imposition of this sanction is also consistent with Missouri case law. For example, this Court has found that attorneys who engage in dishonest and fraudulent conduct are subject to suspension. *In re Disney*, 922 S.W.2d 12 (Mo. banc 1997); *In re Stricker*, 808 S.W.2d 356 (Mo. banc 1991); *In re Littleton*, 719 S.W.2d 772 (Mo. banc 1986). Mr. Rogers and Mr. Goerger were deceived by Respondent's lack of candor when he asserted that he filed a lawsuit on behalf of Mr. Rogers and the Motion on Mr. Goerger's behalf.

It is appropriate that the suspension be stayed when viewing the facts in light of *In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003). In *Wiles*, the Respondent received an indefinite suspension with leave to apply for reinstatement after six months; the suspension was stayed and the Respondent was placed on one year of probation. *Wiles* was a reciprocal discipline case from Kansas. The respondent's Kansas discipline had

been for violations relating to diligence, communication, fees, safekeeping property and competence. *In re Wiles*, 58 P.3d 711 (Kan. 2002). Mr. Wiles had several prior Missouri admonitions, as noted by the Missouri Supreme Court when listing four diligence violations (4-1.3), five communication violations (4-1.4), one safekeeping of client property (4-1.15(b)) violation, and one violation for conduct prejudicial to the administration of justice (4-8.4(d)). *In re Wiles*, 107 S.W.2d at 229.

In this case, Respondent likewise has violated Rules 4-1.3 and 4-8.4(d) with regard to several clients. Unlike *Wiles*, however, Respondent has no disciplinary history since 1998, a period of over eleven years, and all conduct for which he was previously disciplined occurred prior to 1993. Furthermore, Respondent here is not accused of any violation regarding the safekeeping of client property as was Mr. Wiles. This case is within the same range as *Wiles*. Therefore, a similar disposition is appropriate.

The ABA Standards provide that after misconduct has been established, aggravating and mitigating circumstances may be considered in determining an appropriate sanction. The neglect of client matters, dishonesty, fraud, deceit, or misrepresentation, conduct prejudicial to the administration of justice and Respondent's substantial experience in the practice of law could be considered aggravating factors. Respondent's public service, reputation in the legal community, lack of any recent disciplinary history, and cooperation with the Office of Chief Disciplinary Counsel in the prosecution of this case could be considered mitigating factors. Given the totality of the violations, as well as the aggravating and mitigating circumstances, an indefinite

suspension, with leave to reapply in six months, with the suspension being stayed, is the appropriate sanction.

Furthermore, in lieu of enforcement of the suspension, Respondent should be placed on probation for a period of one year. Engaging in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 4-8.4(c) is serious and should not be viewed lightly. However, the mitigating circumstances that exist in Respondent's case support placing Respondent on probation for one year. Specifically, Respondent has enjoyed a legal career that spans more than 43 years, during which time he developed a solid reputation as a practitioner and public servant. Respondent's conduct in connection with his representation of Mr. Goerger and Mr. Rogers is not generally indicative of Respondent's conduct throughout his legal career. The terms of probation set forth in the DHP Decision include by way of example, but not of limitation, appointment of a probation monitor, quarterly reporting to the OCDC, compliance with the Rules of Professional Conduct, attendance at the Ethics School developed by the OCDC and The Missouri Bar, mental health and substance abuse evaluations, random drug testing and maintenance of legal malpractice insurance.

Informant concurs in the discipline recommended by the Panel and submits that the evidence, Missouri case law and the ABA Standards support such a disposition.

CONCLUSION

Respondent committed professional misconduct by violating Rules 4-1.1, 4-1.3, 4-1.4, 4-1.8, 4-8.4(c) and 4-8.4(d) by: (a) failing to provide competent representation to Mr. Rogers and Mr. Goerger; (b) failing to act with reasonable diligence and promptness with respect to Mr. Rogers' and Mr. Goerger's matters; (c) failing to adequately communicate with Mr. Goerger that the Motion had little or no chance of success under the present state of the law; (d) providing financial assistance to Mr. Rogers in connection with pending or contemplated litigation; (e) engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and (f) engaging in conduct that is prejudicial to the administration of justice. The presence of aggravating circumstances and mitigating circumstances support the imposition of discipline as described herein. Informant respectfully requests that this Court indefinitely suspend Respondent from the practice of law with leave to apply for reinstatement after six months, with said suspension be stayed and in lieu of enforcement thereof, Respondent be placed on probation for a period of one year consistent with the probationary terms set forth in the DHP Decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2011, 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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Alan D. Pratzel

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 4, 621 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.

Alan D. Pratzel

APPENDIX

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