

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**JOHN C. HAMBRICK, JR.,** ) **Supreme Court #SC87892**  
 )  
**Respondent.** )

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**INFORMANT'S BRIEF**

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## **STATEMENT OF JURISDICTION**

Jurisdiction over attorney discipline matters exists in the Missouri Supreme Court and 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**

On or about September 1, 1979, Respondent, John C. Hambrick, Jr. (“Respondent”), was licensed to practice law in the State of Missouri. **App. 128.** Respondent’s Missouri Bar number is 28165. **App. 128.**

On July 23, 1998, Respondent received and accepted an admonition for failure to reduce a contingency fee contract to writing, failure to communicate with clients, and failure to cooperate with a disciplinary investigation. **App. 159.** On June 26, 2001, Respondent received and accepted a second admonition for failure to act with diligence. **App. 160.**

On December 21, 2004, after a full hearing before a disciplinary hearing panel, Respondent was suspended by this Court for a period of six months for violations of Rules of Professional Conduct 4-1.1 (failure to act with competence), 4-1.3 (failure to act with diligence), 4-1.4 (failure to communicate with clients), 4-1.16(d) (failure to protect client interests at the termination of representation) and 4-8.1(failure to cooperate with a disciplinary proceeding). **App. 162.**

The Office of Chief Disciplinary Counsel continued to receive complaints regarding Respondent’s practice and following Respondent’s suspension from the practice of law, Informant, the Office of Chief Disciplinary Counsel (“Informant”), filed its five count Information in the present action on December 17, 2005. **App. 128-158.** A disciplinary hearing panel was appointed and the hearing in this matter was held on May 25, 2006. **App. 2-127.** On June 7, 2006, the disciplinary hearing panel issued its

Disciplinary Hearing Panel Decision, finding that Respondent violated Rules 4-1.5, 4-8.4(c), 4-3.3(a)(1), 4-3.3(a)(2), 4-1.1, 4-1.3, 4-1.4(a), 5.27, 4-5.5(a), and 4-8.4(d). **App. 602-635.** The disciplinary hearing panel specifically found aggravating factors in Respondent's prior disciplinary offenses, pattern of misconduct, multiple offenses, and refusal to acknowledge the wrongful nature of his conduct. **App. 612.** The panel was unable to find any mitigating factors. **App. 613.** The disciplinary hearing panel recommended that Respondent be disbarred from the practice of law. **App. 614.** Following the hearing, the Respondent declined to concur in the disciplinary hearing panel's recommendation and this request for review follows.

### **Facts Underlying the Disciplinary Hearing**

#### **Robert and Sharon Gilbert, Counts I and II of the Information**

In September, 2001, Robert Gilbert and his wife, Sharon Gilbert (collectively "the Gilberts"), met with Respondent to discuss a bankruptcy filing and worker's compensation matter. **App. 17 (Tr. 42).** The Gilberts agreed that Respondent would receive 25% of any money recovered as an award or settlement for the worker's compensation claim. **App. 17 (Tr. 43).** Respondent prospectively informed the Gilberts that if a worker's compensation award should issue, the award should be placed in Respondent's bank account. **App. 17 (Tr. 43-44).** Robert Gilbert did not feel comfortable depositing money in Respondent's bank account, however, Respondent counseled the Gilberts to refrain from keeping any large sums of money in their bank account if the Gilberts were planning to file for bankruptcy. **App. 17 (Tr. 44).** Respondent informed the Gilberts that the bankruptcy court could use the proceeds of the

worker's compensation settlement to repay creditors and Respondent instructed the Gilberts to allow Respondent to deposit any award from the worker's compensation matter in Respondent's bank account. **App. 17 (Tr. 44); App. 25 (Tr. 76-77).** Respondent assured the Gilberts that he would distribute their money as they may need. **App. 18 (Tr. 47).** When the Gilberts suggested that a worker's compensation settlement be deposited in the account of a family member, Respondent told the Gilberts that the money would be better placed in Respondent's bank account. **App. 34 (Tr. 111).** The Gilbert's hired Respondent to handle the worker's compensation matter and on October 4, 2001, Respondent forwarded a claim for compensation to the Missouri Division of Worker's Compensation on behalf of Robert Gilbert. **App. 17 (Tr. 44); App. 163-173.**

The Gilberts also hired Respondent to proceed with a bankruptcy filing. **App. 25 (Tr. 75).** In October, 2001, the Gilberts submitted their financial paperwork for the bankruptcy filing to Respondent. **App. 26 (Tr. 78).** Respondent charged the Gilberts \$900.00 for his services in filing the bankruptcy petition and informed the Gilberts that the filing fees would cost approximately \$200.00. **App. 26 (Tr. 78).** The Gilberts withdrew \$1,600.00 from their account, and subsequently gave Respondent \$900.00 for attorney's fees, \$200.00 for filing fees, and \$500.00 to be held by Respondent should the Gilberts need additional funds. **App. 26 (Tr. 79).**

On April 4, 2002, Respondent filed a bankruptcy petition on behalf of the Gilberts in the United States Bankruptcy Court, Western District of Missouri, Kansas City, Case No. 02-41651. **App. 27 (Tr. 82-83); App. 183.** On April 4, 2002, the same day that the Gilberts' bankruptcy petition was filed, the Bankruptcy Court issued an Order to Show

Cause as to why the proceedings should not be dismissed with prejudice or the discharge be denied for failure to provide a Summary of Schedules, Schedules A-J, declaration regarding schedules, summary of financial affairs, statement of intent, debtors verification of matrix, or disclosure of compensation, with the incomplete filings to be due on or before April 19, 2002. **App. 183.** On April 4, 2002, the Bankruptcy Court issued an Order to Show Cause as to why the proceedings should not be dismissed with prejudice or the discharge be denied for failure to provide an Amended Petition showing the middle name/initial of the debtor, Sharon Gilbert, with incomplete filings due on or before April 19, 2002. **App. 183.** On April 9, 2002, the Bankruptcy Court issued an Order to Show Cause in writing as to why the proceedings should not be dismissed with prejudice or the discharge be denied for failure to provide the Declaration Re: Electronic Filing which was due within five days of filing the petition, with incomplete filings to be due on or before April 24, 002. **App. 183.** Respondent failed to inform the Gilberts of both the April 4, 2002 Show Cause Orders and the April 9, 2002 Show Cause Order. **App. 27 (Tr. 82-83).** Respondent failed to correct the Gilberts' filings and on April 24, 2002, the Bankruptcy Court dismissed the Gilberts' bankruptcy petition for failure to comply with the Court's previous Orders. **App. 183.**

Concurrently, in April, 2002, Robert Gilbert reached a settlement agreement with his employer regarding his worker's compensation claim. **App. 168.** On May 3, 2002, a Stipulation for Compromise and Settlement was approved by the administrative law judge presiding over Robert Gilbert's worker's compensation claim. **App. 168.** Under the terms of the settlement agreement, Robert Gilbert was to receive a check in the

amount of \$10,936.24. **App. 168; App. 18 (Tr. 46).** A check in the amount of \$10,936.24 was issued in the names of Robert Gilbert and Respondent. **App. 18 (Tr. 46-47).** On the day that the settlement check arrived at the home of the Gilberts, Sharon Gilbert contacted Respondent and informed Respondent that the settlement check had arrived in the mail. **App. 18 (Tr. 47).** Respondent appeared at the Gilberts' home on the same day and took possession of the check. **App. 18 (Tr. 47).** Respondent then traveled to Robert Gilbert's place of work, requested that Robert Gilbert endorse the check, and then left with the check in Respondent's possession. **App. 18 (Tr. 47).**

Respondent was the holder of bank account number 7020779 at Provident Bank, FSB Belt Branch, in St. Joseph, Missouri. **App. 75 (Tr. 275-276); App. 481.** The account was established on May 10, 1999, and lists J.C. Hambrick, Jr., Escrow Account, as the sole account owner and signator. **App. 481.** Sherilyn Hambrick, who is Respondent's wife, but is not an attorney, was later added as a signator to account no. 7020779. **App. 478.** No other individual was ever listed as a signator on the account. **App. 478-601.** On May 13, 2002, Respondent deposited Robert Gilbert's settlement check in the amount of \$10,936.24 into bank account 7020779. **App. 75-76 (Tr. 277-278); App. 560-562.** The check cleared for deposit on May 14, 2002. **App. 560-569.** Respondent's bank account records indicate that the following transactions subsequently occurred:

<b>DATE</b>	<b>ACTIVITY</b>	<b>AMOUNT</b>	<b>DAY ENDING BALANCE</b>
5/13/02	Starting balance		\$3,440.13
5/13/02	Deposited check	\$10,936.24	
5/13/02	Wrote check to Judy Hunter	\$856.50	
5/13/02	Wrote check to Jacob Rostock	\$2860.00	
5/13/02	Wrote check to J.C. Hambrick	\$1500.00	
5/13/02	Wrote check to the Employee Benefit Trust	\$196.00	
5/14/02	ATM Withdrawal	\$103.00	\$14,273.37
5/14/02	Deposit Return and Charge	\$755.00	
5/15/02	Purchase at Conoco Gas Station	\$19.63	\$9,782.24
5/20/02	ATM Withdrawal	\$103.00	\$7,572.60
5/21/02	Purchase at Target	\$38.22	\$7,534.38
5/22/02	ATM Withdrawal	\$102.50	\$7,260.88

5/23/02	Purchase at Quick Trip	\$19.88	\$7,241.00
5/24/02	ATM Withdrawal	\$152.50	\$7,038.81
5/24/02	Purchase at Osco Drug	\$49.69	
5/28/02	Purchase at Spotless Car Wash	\$5.00	\$7,014.02
5/28/02	Purchase at Quick Trip	\$19.79	
5/29/02	Wrote check to Bill Norton	\$500.00	\$6,911.52
5/29/02	ATM Withdrawal	\$102.50	
5/30/02	Purchase at Dirk's Bar and Grill	\$34.67	\$6,180.85
5/31/02	Maintenance Fee	\$10.00	\$6,171.92
5/31/02	Interest on Account	(+)\$1.07	
6/1/02	Wrote check to Kipp Rozard	\$28.00	
6/3/02	Wrote check to Gold Bank	\$606.00	\$6305.94
6/3/02	Deposit	(+)\$1000.00	

6/3/02	ATM Withdrawal	\$103.00	
6/3/02	Purchase at Stroud's Restaurant	\$44.98	
6/3/02	Purchase at Ticketmaster	\$112.00	
6/4/02	ATM Withdrawal	\$103.00	\$6,181.88
6/4/02	Purchase at Shamrock	\$21.06	
6/5/02	Wrote check to FLOG	\$900.00	
6/6/02	Purchase at Shamrock	\$21.78	\$6,157.60
6/6/02	Withdrawal of Benefits Package	\$2.50	
6/7/02	Wrote check to Judy Hunter	\$806.50	\$6,026.60
6/7/02	ATM Withdrawal	\$103.00	
6/10/02	Purchase at Hollywood Video	\$18.79	\$6,007.81
6/14/02	Purchase at Jiffy Lube	\$43.12	\$4,237.52

6/17/02	ATM Withdrawal	\$53.00	\$4,165.33
6/17/02	Purchase at Quick Trip	\$19.19	
6/18/02	Purchase at Cracker Barrel	\$25.00	\$4,140.33
6/19/02	Purchase at Wal- Mart	\$28.71	\$4,091.97
6/19/02	Purchase at Texaco	\$19.65	
6/20/02	Purchase at Dirk's Bar and Grill	\$10.12	\$3,979.35
6/20/02	ATM Withdrawal	\$102.50	
6/21/02	Purchase at Break Time	\$18.27	\$3,961.08
6/24/02	Purchase at Piropos	\$83.38	\$3,725.20
6/24/02	ATM Withdrawal	\$152.50	
6/27/02	ATM Withdrawal	\$152.50	\$3,457.95
6/27/02	ATM Withdrawal	\$102.50	
6/27/02	Purchase at Fast Stop	\$12.25	
6/31/02	Interest	(+)\$ .94	\$3,458.89
7/1/02	Purchase at Delta	\$569.00	\$2,788.89

	Air-Florida		
7/1/02	ATM Withdrawal	\$101.00	
7/2/02	Purchase at Channel Mark Restaurant, Ft. Myers Beach	\$27.23	\$2,761.66
7/3/02	Purchase at Quick Trip	\$20.56	\$2715.16
7/3/02	Purchase at Stroud's Restaurant	\$25.94	
7/5/02	ATM Withdrawal	\$100.00	\$2,593.43
7/5/02	Purchase at Tank and Tummy	\$19.23	
7/5/02	Withdrawal of Benefits Package	\$2.50	
7/8/02	Purchase at Ranalli Parasailing, Cape Coral, FL	\$90.80	\$2,400.13
7/8/02	ATM Withdrawal	\$102.50	
7/9/02	Purchase at USBC	\$200.00	\$2,200.13
7/11/02	Debit Memo	\$1155.50	\$1,044.63
7/15/02	Purchase at	\$18.15	\$758.94

	Margaritas		
7/15/02	ATM Withdrawal	\$102.50	
7/15/02	ATM Withdrawal	\$100.00	
7/15/02	Purchase at Osco Drug	\$49.69	
7/15/02	Purchase at Texaco	\$15.35	

**App. 560-584.**

On May 16, 2002, the Bankruptcy Court reinstated the Gilberts' bankruptcy petition after granting Respondent's Amended Request for Reconsideration of Order and Reinstatement of Petition for Bankruptcy. **App. 182.** Respondent drafted the Gilberts' bankruptcy petition. **App. 28 (Tr. 87).** Respondent affixed his signature to the Declaration Re: Electronic Filing, attesting to the completeness and accuracy of the Gilberts' filings. **App. 226.** The Gilberts' worker's compensation settlement was not disclosed in the Gilberts' bankruptcy petition. **App. 180-237.** Respondent did not, at any time, amend the Gilberts' bankruptcy petition to include the worker's compensation settlement as an award or asset. **App. 80 (Tr. 296).** On August 29, 2002, the Gilberts attended a Meeting of Creditors<sup>1</sup>. Prior to entering the building, Respondent counseled

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<sup>1</sup> A Meeting of Creditors, or § 341 Meeting, is attended by a bankruptcy trustee, who has been appointed by the bankruptcy court to preside over the proceeding, the debtors, and

the Gilberts not to disclose the award of the worker's compensation settlement to the bankruptcy trustee. **App. 28 (Tr. 87)**. When asked by the bankruptcy trustee whether the Gilberts had any assets that had not been declared in the bankruptcy petition, neither the Gilberts or Respondent disclosed the award of the worker's compensation settlement. **App. 28 (Tr. 87-88)**. The Gilberts' bankruptcy petition was granted and their debt discharged on December 27, 2002. **App. 181**. On March 12, 2003, the Gilberts received a letter from the bankruptcy trustee, who had presided over their bankruptcy case, indicating that the bankruptcy trustee had learned of the Gilberts' worker's compensation settlement. **App. 29 (Tr. 93)**. The bankruptcy trustee requested an explanation as to why the Gilberts had not disclosed the award proceeds, however, the Gilberts could not reach the bankruptcy trustee and understood that the matter would be handled by Respondent. **App. 29 (Tr. 93); App. 242**. Though Respondent failed to respond to the bankruptcy trustee's inquiry, ultimately, the bankruptcy trustee did not require the Gilberts to relinquish the proceeds of the worker's compensation settlement.

Respondent agreed to hold the proceeds of the Gilberts' worker's compensation settlement in his bank account, but distribute the money to the Gilberts when they requested. **App. 18 (Tr. 47)**. The Gilberts first asked Respondent to withdraw money on their behalf in May, 2002. **App. 18 (Tr. 48)**. Following the discharge of the Gilberts' bankruptcy and as early as November, 2003, however, the Gilberts made a demand to

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any creditors who wish to attend. The bankruptcy trustee then has an opportunity to review the bankruptcy filings in the presence of the debtor(s).

Respondent for the entirety of the money remaining in Respondent's possession. **App. 239.** Respondent failed to remit the money to the Gilberts. **App. 30.** The Gilberts made numerous requests for Respondent to repay the full balance of the worker's compensation settlement, but Respondent repeatedly refused to remit the entirety of the sum. **App. 30 (Tr. 94).** After failing to return the money to the Gilberts, Respondent disclosed to the Gilberts that their money was gone. **App. 19 (Tr. 51).** Respondent first told the Gilberts that he had served as the attorney in a Vanguard Airlines case, but that the Court had seized all funds in Respondent's bank accounts, including the Gilbert's money, after Respondent lost the case. **App. 19 (Tr. 51).** Respondent's bank records indicate that the Gilbert's money was spent incrementally on personal items and not as part of a "court seizure." **App. 478-601.** Later in time, Respondent changed his account regarding the Gilbert's missing money and instead told the Gilberts that his secretary had stolen the Gilbert's money from Respondent's bank account. **App. 19 (Tr. 51).** Respondent states that he learned of his secretary's theft as early as one or two months after Respondent deposited the Gilbert's money in Respondent's bank account. **App. 89 (Tr. 330-331).** Respondent admits that after learning about the alleged theft by his secretary, he did not fire her, did not file a police report and did not institute a civil action to recover the funds. **App. 78-79 (Tr. 289-290).** The disciplinary hearing panel found that there was insufficient evidence to establish that Respondent's secretary was responsible for the misappropriation of funds and found, instead, that Respondent was directly responsible for the deposit of funds and the depletion of the account. **App. 607.**

After learning that his money was missing, Robert Gilbert felt that his trust had been violated and that Respondent was not acting in good faith. **App. 19 (Tr. 52)**. Respondent told the Gilberts that he would refund their money in periodic payments when he could afford to do so. **App. 71 (Tr. 260-261)**. Between May, 2002 and April, 2004, Respondent made small, incremental payments of money to the Gilberts. **App. 71 (Tr. 258-260); App. 238**. The Gilberts made repeated requests for payment. **App. 30 (Tr. 94)**. Sharon Gilbert maintained a log of payments made by Respondent in cash and by check. **App. 28-29 (Tr. 88-89); App. 238**. The Gilberts continued to request that Respondent return the remainder of the money through April, 2004, and by April, 2004, the full amount of the worker's compensation sum was remitted to the Gilberts. **App. 34 (Tr. 112); App. 244**. The Gilberts did not receive the \$500.00 sum given to Respondent at the time the Gilberts paid for bankruptcy costs. **App. 35 (Tr. 115)**.

The Gilberts attempted to contact Respondent by telephone, but were often unable to reach Respondent. **App. 18 (Tr. 49)**. The Gilberts did not receive return telephone calls when they left messages for Respondent and began writing letters in order to contact Respondent. **App. 18 (Tr. 49)**. The Gilberts repeatedly attempted to leave telephone messages for Respondent, but were often unable to do so because the voicemail box was full. **App. 19 (Tr. 52)**. Respondent did not respond to all of the Gilbert's letters, requiring them to write additional letters in order to maintain contact with Respondent. **App. 18 (Tr. 49)**. When Respondent moved from St. Joseph, Missouri to Branson, Missouri, and was still in possession of the Gilbert's settlement money, Respondent failed to inform the Gilberts that Respondent was moving and did not provide a

forwarding address or telephone number. **App. 19 (Tr. 52-53)**. The Gilberts learned that Respondent had moved only when a letter addressed to Respondent was returned by the Post Office with Respondent's new address in Branson. **App. 19 (Tr. 52-53); App. 174-178**.

The Gilberts requested copies of their court records and file documents, however, Respondent failed to provide such documents to the Gilberts. **App. 17 (Tr. 45)**. In November, 2003, Respondent told the Gilberts that he did not have any of their paperwork because their files did not survive Respondent's move from St. Joseph, Missouri to Branson, Missouri. **App. 22 (Tr. 62); App. 179**. At hearing, Respondent testified that his secretary had destroyed all of the Gilbert's files and had erased all of the Gilbert's documents from Respondent's computer. **App. 80-81 (Tr. 297-298)**. The Gilberts also requested an accounting of the money paid to Respondent, which was not received. **App. 30 (Tr. 96)**.

#### Richard Ward, Count III of the Information

In February, 2003, Richard Ward hired Respondent to represent him in a divorce action. **App. 36 (Tr. 119)**. Richard Ward owned a farm in Mound City, Missouri. **App. 36 (Tr. 119)**. On February 13, 2003, Respondent filed a Petition for Dissolution on behalf of Richard Ward in the Circuit Court of Holt County, Missouri, Case No. CV 503-9 DR, *In re the Marriage of Richard Lee Ward*. **App. 312-315**. On the petition, Respondent listed his address as Hawksbury Court in St. Joseph, Missouri. **App. 314**. On March 10, 2003, Richard Ward's wife, Carol Sue Ward, filed an Answer and Counter-Petition for Dissolution of Marriage. **App. 306-309**. The Counterclaim was

sent to Respondent at Hawksbury Court in St. Joseph, Missouri and Respondent received the counterclaim. **App. 81 (Tr. 298-299); App. 309.**

On March 12, 2003, the attorney for Richard Ward's wife, Carol Sue Ward, filed a Certificate of Service indicating that he had served First Interrogatories on Respondent. **App. 305.** The discovery was sent to Respondent at Hawksbury Court in St. Joseph, Missouri and was received by Respondent. **App. 81 (Tr. 299-300); App. 305.** On April 18, 2003, Respondent filed a Motion to Prevent the Sale of Property on behalf of Richard Ward. **App. 303-304.** On the Motion to Prevent the Sale of Property, Respondent listed his address as Hawksbury Court in St. Joseph, Missouri. **App. 303-304.** Respondent failed to file Interrogatory responses on behalf of Richard Ward within 30 days. **App. 301-302.** On July 21, 2003, the attorney for Carol Sue Ward filed a Motion to Compel and Motion for Sanctions alleging that Respondent failed to respond to discovery within 30 days, failed to respond to oral demands for discovery, failed to respond to written demands for discovery on May 6, 2003, May 16, 2003 and June 19, 2003, and requested that Richard Ward's pleadings be struck. **App. 301-302.** The motion was addressed to Respondent at Hawksbury Court in St. Joseph, Missouri. **App. 302.** Respondent failed to make Richard Ward aware that the Motion to Compel and Motion for Sanctions had been filed. **App. 37 (Tr. 123).** Respondent did not file a written response to the Motion to Compel and Motion for Sanctions. **App. 298.** The Motion to Compel and Motion for Sanctions was noticed for hearing on July 21, 2003 and the hearing took place on August 12, 2003. **App. 298-299.** Though the Circuit Court found that Respondent had been given due notice of the hearing, Respondent failed to appear and represent Richard Ward

on the Motion to Compel and Motion for Sanctions. **App. 298.** Respondent failed to inform Richard Ward that a hearing had been scheduled. **App. 37 (Tr. 123).** The Circuit Court ordered that Respondent provide discovery responses within ten days of the Order, August 12, 2003, and imposed sanctions of \$250.00 in attorney's fees against Richard Ward for Respondent's failure to provide discovery. **App. 298.**

On September 15, 2003, Respondent sent to Carol Sue Ward's attorney, and filed with the Circuit Court, a Motion to Set Aside Sanctions, alleging that he had not received notice of the Motion to Compel, the hearing, or the Court's Order, but had received notice of the Court's Order imposing sanctions through "word of mouth." **App. 296.** Respondent alleges that he had previously moved to Branson, Missouri and that the motions and court orders had not been received by Respondent. **App. 82 (Tr. 302).** However, Respondent acknowledges that he did not file a change of address with the Court or make the Court aware of his move. **App. 82 (Tr. 302); App. 245-316.** The Motion to Set Aside is the first Court document wherein Respondent provides his Branson address and was sent by Respondent to opposing counsel on September 15, 2003. **App. 245-316.**

Respondent failed to provide the requested discovery as ordered by the Court on or before its due date of August 22, 2003. **App. 246-247.** On September 16, 2003, the attorney for Carol Sue Ward sent to Respondent and filed with the Circuit Court a Motion for Sanctions and Dismissal, alleging that Respondent failed to comply with the Court's Order requiring Respondent to provide discovery and requesting that Richard Ward's pleadings be struck. **App. 290-291.** The Motion for Sanctions and Dismissal were

mailed to Respondent at his Hawksbury Court address in St. Joseph, Missouri. **App. 290-291.** Notice that the Motion for Sanctions and Dismissal would be called for hearing on October 14, 2003 was also sent to Respondent. **App. 292.** A hearing on Carol Sue Ward's Motion for Sanctions and Dismissal was held on October 14, 2003. **App. 246-247.** Respondent failed to appear and represent Richard Ward. **App. 246-247.** On October 14, 2003, the Circuit Court sustained Carol Sue Ward's Motion for Sanctions and dismissed the Petition of Richard Ward. **App. 246-247.** Respondent did learn of the Court's Order dismissing the pleadings of Richard Ward, but cannot account for how he learned of the Order. **App. 83 (Tr. 307-308).** On October 22, 2003, Respondent filed a Motion to Set Aside Dismissal and Reinstate Restraining Order, again alleging that he had received no notice of the motion or the hearing. **App. 288-289.** The Circuit Court denied Respondent's Motion to Set Aside. **App. 246-247.**

On February 9, 2004, the Court heard evidence solely on Carol Sue Ward's Counter-Petition for Dissolution of Marriage. **App. 277-278.** There was a dispute between Richard Ward and Carol Sue Ward as to the valuation of the marital property. **App. 245-316.** Because Richard Ward's pleadings had been struck, he was not allowed to testify at the dissolution hearing and the Circuit Court heard evidence on the valuation of marital property only from Carol Sue Ward. **App. 254-260.** Respondent examined Richard Ward on the stand under an offer of proof, however, the Court refused to receive the evidence. **App. 67 (Tr. 242); App. 254-260.** On March 8, 2004, the Court issued a Judgment Decreeing Dissolution of Marriage and attached a division of the marital assets. **App. 270-276.** Included in the division as marital assets was machinery and

equipment on which the bank held liens, some of which did not belong to Richard Ward. **App. 38 (Tr. 125)**. Richard Ward did not believe that the distribution was equitable. **App. 38 (Tr. 125)**.

On April 12, 2004, Respondent filed a Notice of Appeal to the Missouri Court of Appeals in *Richard Lee Ward v. Carol Sue Ward*, Missouri Court of Appeals, Western District, Case No. WD64033. **App. 263**. On appeal, Respondent contended that the Circuit Court erred in striking Richard Ward's pleadings, which led to an unfair and inequitable division of marital property and debts. **App. 254-260**. Respondent further argued that the Circuit Court lacked the essential facts necessary to value and assign the marital property and debts and that the evidence Respondent would have presented to the Court would have shown that the property considered to be marital property by the Court was actually owned by other individuals and not Richard Ward. **App. 254-260**. The Missouri Court of Appeals found that Rule 61.01(b)(1) provides that a Court may strike pleadings as sanctions for the failure to answer interrogatories, particularly when the disobedient party has shown a deliberate disregard for the Court. **App. 254-260**. The Missouri Court of Appeals further found that the Circuit Court did not abuse its discretion in striking Richard Ward's pleadings and refusing to accept Richard Ward's testimony at trial, as the record reflected that Respondent repeatedly failed to comply with discovery and the Court's orders. **App. 254-260**. The Missouri Court of Appeals determined that the Circuit Court made an equitable division of property and debts based upon the evidence presented to it, which consisted solely of the evidence presented by Carol Sue Ward. **App. 254-260**. The Circuit Court's Judgment was affirmed by the Missouri Court

of Appeals, Western District. **App. 254-260**. In order to pay his ex-wife the money awarded by the Circuit Court, Richard Ward was required to sell the farm that he had owned for approximately ten years. **App. 39 (Tr. 133)**.

Richard Ward paid Respondent approximately \$3000.00 for Respondent's representation in Richard Ward's divorce action. **App. 38 (Tr. 128); App. 317-318**. It was difficult for Richard Ward to communicate with Respondent. **App. 37 (Tr. 124)**. When Richard Ward left messages for Respondent, Respondent often failed to return the telephone calls. **App. 37 (Tr. 124)**.

The Unauthorized Practice of Law, Count V of the Information

Respondent represented the plaintiffs in the case of *Goddard v. Medicalodge*. **App. 40 (Tr. 136)**. Scott Logan and Jeff Brown, attorneys with the firm of Logan & Logan, represented the defendants. **App. 40 (Tr. 135-136)**. The case was originally filed in Jackson County, Missouri, wherein plaintiffs served discovery on the defendants and the defendants served discovery on the plaintiffs. **App. 321**. The defendants, represented by Jeff Brown and Scott Logan, filed timely objections, but the plaintiffs, represented by Respondent, filed no responses to discovery. **App. 321**. The case was dismissed in Jackson County, Missouri on defendant's motion and the case was refiled in Bates County, Missouri. **App. 321**. The defendants served a second set of discovery on the plaintiffs following the refiling in Bates County. **App. 321**.

Throughout the case, Jeff Brown engaged in periodic telephone calls with Respondent, usually regarding outstanding discovery. **App. 321**. On March 21, 2005, Jeff Brown received a letter from Respondent dated December 27, 2004. **App. 321;**

**App. 339-340.** Jeff Brown realized that the letter was misdated on the same day that it was received and made a notation on the letter indicating that it had been received on March 21, 2005 and not December 27, 2004. **App. 321; App. 339-340.** In the March 21, 2005 letter, Respondent indicates that the letter should be deemed a “golden rule” letter and demands discovery. **App. 339-340.** Further, Respondent stated that he would provide his expert at defendant’s expense, that he would like for a counter-offer of settlement to be made, and referred to the plaintiffs as “my clients.” **App. 339-340.** Respondent did not indicate in the letter that he had been suspended from the practice of law on December 21, 2004. **App. 339-340.**

On March 23, 2005, Jeff Brown participated in a telephone call with Respondent. **App. 322.** During the conversation, Respondent again asserted his contention that discovery was due and discussed possible settlement. **App. 322.** Jeff Brown told Respondent that he could not entertain settlement until he received the plaintiff’s medical records. **App. 322.** While speaking on the telephone with Respondent, Jeff Brown said that he would e-mail the discovery requests that had originally been served on Respondent, as Respondent stated that he could not find he discovery or had not received the discovery requests. **App. 322.** At that time, Jeff Brown was unaware that Respondent was suspended from the practice of law and Respondent did not inform Jeff Brown that he had been suspended from practice. **App. 322.**

On March 23, 2005, the same day that Jeff Brown spoke with Respondent on the telephone, Jeff Brown sent Respondent an e-mail in which he confirmed the details of the telephone conversation. **App. 322; App. 341.** On March 25, 2005, Jeff Brown generated

a letter to Respondent regarding the disputed discovery and the possibility of settlement. **App. 323; App. 342-343.** Jeff Brown first became aware that Respondent had been suspended from the practice of law after reading of the discipline in the Journal of the Missouri Bar on April 11, 2005. **App. 324.**

Also in March, 2005, Respondent telephoned the law office of Scott Logan and identified himself as J.C. Hambrick. **App. 40 (Tr. 137).** Respondent told Scott Logan that the defendant owed the plaintiff discovery. **App. 40 (Tr. 137).** Scott Logan responded that he did not believe that the defendants owed the plaintiff any discovery, but that the plaintiff did owe him discovery. **App. 40-41 (Tr. 137-138).** Respondent stated that he would like to try and resolve the case prior to going to trial. **App. 41 (Tr. 138).** Scott Logan responded by informing Respondent that he would require previously requested medical records before considering settlement. **App. 41 (Tr. 138).** At the time of the March, 2005 conversation with Respondent, Scott Logan was unaware that Respondent had been suspended from the practice of law on December 21, 2004. Respondent did not inform Scott Logan that Respondent had been suspended from the practice of law during the March, 2005 telephone conversation. **App. 41 (Tr. 139).** Scott Logan first learned that Respondent had been suspended from the practice of law in December, 2004 by reading the April, 2005 edition of the Missouri Bar Journal, one month after his conversation with Respondent and four months after Respondent's actual suspension. **App. 41 (Tr. 139).**

The Baileys, Count IV of the Information

In or around May, 2003, Ralph and Sharon Bailey (collectively “the Baileys”) retained Respondent to represent them in removing tax liens imposed by the Internal Revenue Service for back-owed taxes. **App. 42 (Tr. 145)**. The Baileys agreed to pay Respondent \$2,500.00 to represent them in removing the liens. **App. 43 (Tr. 146-147)**. Respondent agreed to remove the liens that had expired for collection, as well as to offer the Internal Revenue Service a compromise on the remaining liens. **App. 44 (Tr. 150)**. Respondent explained how the offer of compromise would be handled and gave the Baileys a form to be filled out as a rough draft. **App. 44 (Tr. 150-151)**. The Baileys owned a home in Tulsa, Oklahoma, which was disclosed to Respondent when the Baileys first returned the rough draft of the offer of compromise to the Respondent. **App. 44 (Tr. 151); App. 347-348**. The Baileys intended to have the liens removed and then to sell the home in Tulsa for the purpose of repaying the back-owed taxes. **App. 45 (Tr. 156)**. On June 9, 2004, Respondent directed a letter to the Baileys in which Respondent indicated that he had been in contact with the Internal Revenue Service, that he had prepared a lien withdrawal request, and that he had all of the necessary information from the Baileys to complete the offer of compromise. **App. 45-46 (Tr. 157-158); App. 349**.

In addition to the \$2,500.00 initially paid to Respondent for handling the lien removal, the Baileys paid Respondent \$3,000.00 in fees. (Tr. 163, Ex. 46). The Baileys did not believe that Respondent was performing any work towards obtaining the lien removals. **App. 45**. The relationship between Respondent and the Baileys was terminated on November 24, 2004. **App. 474-475**. From May, 2003 through November,

2004, Respondent failed to obtain an offer of compromise for the Baileys, nor were any of the expired liens removed. **App. 48 (Tr. 169)**. Following the termination of Respondent's representation, Ralph Bailey undertook to remove the liens himself and successfully obtained releases for his liens. **App. 48-49 (Tr. 169-170); App. 353-400**. It took Ralph Bailey approximately three weeks to obtain the lien removals. **App. 49 (Tr. 170)**.

The Baileys additionally retained Respondent to represent them in a contract dispute and unlawful detainer action, involving the Bailey's home. **App. 42-43 (Tr. 144-145)**. The Baileys agreed to pay Respondent \$1,500.00 to handle the matter. **App. 43 (Tr. 147)**. The Baileys had paid \$10,000.00 down on the home and believed they had an agreement with the seller whereby the seller would privately finance the home for one year, and thereafter allow the Baileys to refinance on their own. **App. 42 (Tr. 144-145)**. The alleged sellers then attempted to sell the Bailey's home. **App. 42 (Tr. 144-145)**. An unlawful detainer action was instituted in Stone County, Missouri by the seller in *Anthony Zurzolo v. Ralph Bailey*, Case No. CV604-444AC. **App. 401-471**. On or about October 28, 2004, the parties went to Court for a determination as to the right of immediate possession. **App. 440**. Court documents indicate that a hearing on the validity of the contract was to be held at a later date. **App. 440**. The Court determined that the contract was a lease, but that the Baileys had not been given proper notice to vacate and Respondent subsequently advised the Baileys to file an appeal. **App. 56 (Tr. 200-201)**.

On November 4, 2004, Respondent directed a letter to the Baileys, enclosing a bill for \$241.00 in court reporter fees and \$1,550.00 in unexplained attorney's fees. **App. 57 (Tr. 204); App. 472-473.** The Baileys paid the court reporter fees, but declined to remit the attorney's fees because they did not feel that they were getting adequate nor competent representation from Respondent. **App. 57 (Tr. 204-205).** Respondent demanded to be paid the attorney's fees the day that the November 4, 2004 letter was issued. **App. 57 (Tr. 205).** On November 24, 2004, Respondent directed another letter to the Baileys in which he stated that he was withdrawing from representing the Baileys in the unlawful detainer appeal, as well as other matters, because the bill for \$1,550.00 had not been paid. **App. 474-475.** On November 28, 2004, four days from Respondent's letter regarding his withdrawal from the Bailey's representation, Respondent directed a third letter to the Baileys in which Respondent stated the following:

Since I have already sent you a bill at a discount, I will leave it as is. I expect it to be paid. If not I will choose to collect it. I have practiced law since 1979, and although some clients have not or could not pay for the representation, I have never sued a client. I will make an exception in your case. I suggest you keep your mouth shut, stop the libelous statements about me, and pay your bill.

**App. 476-477.**

The Baileys had also hired Respondent to expunge the criminal conviction of Ralph Bailey, as well as to retitle a vehicle. **App. 42 (Tr. 145).** Ralph Bailey's mother had passed away, leaving a vehicle and title only in the name of Ralph Bailey's mother.

**App. 49 (Tr. 171).** Ralph Bailey was his mother's only heir and wished to take possession of the vehicle. **App. 49 (Tr. 171).** Respondent informed Ralph Bailey that he knew individuals in Independence, Missouri who could retitle the car in Ralph Bailey's name and Ralph Bailey therefore paid Respondent an additional \$100.00 for the representation. **App. 49 (Tr. 171-172).** Respondent failed to obtain a title for the vehicle. **App. 49 (Tr. 172).**

### **Respondent's History of Alcohol Abuse**

Respondent received a Driving While Intoxicated ("DWI") charge in the 1980s, as well as in 1998. **App. 88 (Tr. 326-327).** Respondent pled guilty with a suspended imposition of sentence. **App. 88 (Tr. 326-327).** Respondent received an additional DWI charge in 2001, and again received a suspended imposition of sentence. **App. 88 (Tr. 326-327).** Respondent currently has felony charges pending for a DWI received in 2003<sup>2</sup>. **App. 15-16; (Tr. 37-38); App. 88 (Tr. 326-327).**

Respondent often smelled of alcohol when meeting with the Baileys. **App. 48 (Tr. 167).** On July 11, 2004, Respondent visited the Baileys' home to obtain the Baileys'

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<sup>2</sup> Although the hearing examiner declined to admit the certified records of *State v. Hambrick*, and as such, the documents are not part of the current record, the Court may take judicial notice that, according to CASNET, *State v. Hambrick*, 03CR695954-01 (30<sup>th</sup> Judicial Circuit), was set for trial on May 18-19, 2006, the trial was subsequently continued, and a status conference has been ordered for October 12, 2006 to reset the trial date.

tax information. **App. 48 (Tr. 167)**. After failing to retrieve all of the information, the Baileys visited Respondent's home and observed that Respondent appeared to be very intoxicated, could not conduct a conversation, and repeatedly fell down. **App. 48 (Tr. 167)**.

Respondent claims that he quit drinking in 2004. **App. 88 (Tr. 326)**. Respondent did not enter a treatment facility at the time that he claims to have quit drinking. **App. 88 (Tr. 326)**. Respondent does not believe that any of the events that occurred with respect to the Gilberts, Richard Ward, the Baileys or the firm of Logan & Logan occurred as a result of his alcohol abuse. **App. 92 (Tr. 343-344)**.

**POINTS RELIED ON**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-1.15 (a) and (b) IN THAT RESPONDENT FAILED TO EXERCISE FIDUCIARY RESPONSIBILITY IN SAFEKEEPING THE GILBERTS' SETTLEMENT PROCEEDS AND FAILED TO PROMPTLY DELIVER THE GILBERTS' SETTLEMENT PROCEEDS TO THE GILBERTS.**

*In re Schaeffer*, 824 S.W.2d 1, (Mo. banc 1992)

*In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994)

*In re Williams*, 711 S.W.2d 518 (Mo. banc 1986)

Rule 4-1.15(a)(b)

ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer Client Relationship*

§ 45:501 (2005)

**POINTS RELIED ON**

**II.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-3.3(a)(1) and (2) and 4-8.4(c) IN THAT RESPONDENT FAILED TO DISCLOSE THE GILBERTS' SETTLEMENT PROCEEDS TO THE BANKRUPTCY COURT AND MADE A FALSE STATEMENT OF MATERIAL FACT TO THE BANKRUPTCY COURT BY ATTESTING TO THE ACCURACY OF THE GILBERTS' BANKRUPTCY PETITION THOUGH THE SETTLEMENT PROCEEDS WERE NOT DISCLOSED ON THE PETITION.**

*In re Carey and Danis*, 89 S.W.2d 477 (Mo. banc 2002)

*In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997)

*In re Hochberg*, 17 F.Supp. 916 (W.D. Pa. 1936)

Rule 4-3.3(a)(1)(2)

Rule 4-8.4(c)

**POINTS RELIED ON**

**III.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-5.5(a) IN THAT HE PRACTICED OR ATTEMPTED TO PRACTICE LAW BY ENGAGING IN SETTLEMENT NEGOTIATIONS AND REQUESTS FOR DISCOVERY WITH OPPOSING COUNSEL WHILE SUSPENDED.**

*In re Reza*, 743 S.W.2d 411 (Mo. banc 1988)

*Disciplinary Counsel v. Alexicole, Inc.*, 822 N.E.2d 348 (Oh. 2004)

*State ex rel. Okla. Bar Ass'n v. Malloy*, 2006 WL 1479627

Rule 4-5.5(a)

**POINTS RELIED ON**

**IV.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 5.27, 4-8.4(c) AND 4-8.4(d) IN THAT HE ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION BY FAILING TO INFORM OPPOSING COUNSEL THAT RESPONDENT WAS SUSPENDED FROM THE PRACTICE OF LAW WHILE AT THE SAME TIME ENGAGING IN SETTLEMENT NEGOTIATIONS AND DEMANDS FOR DISCOVERY.**

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

*In re Haggerty*, 661 S.W.2d 8 (Mo. banc 1983)

*In re Donaho*, 98 S.W.3d 871 (Mo. banc 2003)

Rule 4-8.4(c)(d)

Rule 5.27

**POINTS RELIED ON**

**V.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULES 4-1.1 and 4-1.3 IN THAT RESPONDENT FAILED TO PRODUCE DISCOVERY RESPONSES IN RICHARD WARD'S DIVORCE PROCEEDING, FAILED TO RESPOND TO MULTIPLE MOTIONS FOR SANCTIONS, AND FAILED TO APPEAR AT HEARINGS ON RICHARD WARD'S BEHALF, RESULTING IN THE DISMISSAL OF RICHARD WARD'S PLEADINGS.**

ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer-Client Relationship*

§ 31:403 (2005)

Rule 4-1.1

Rule 4-1.3

Rule 4-8.4(c)(d)

Rule 5.27

**POINTS RELIED ON**

**VI.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-1.4(a) IN THAT RESPONDENT FAILED TO COMMUNICATE WITH THE GILBERTS AND RICHARD WARD AND FAILED TO KEEP THE PARTIES INFORMED AS TO THE STATUS OF THEIR LITIGATION.**

ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer Client Relationship*

§ 31:501 (2005)

Rule 4-1.4(a)

**POINTS RELIED ON**

**VII.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-1.3 and 4-1.5 IN THAT RESPONDENT FAILED TO DILIGENTLY PURSUE THE REMOVAL OF IRS LIENS ON BEHALF OF THE BAILEYS WHILE ACCEPTING THOUSANDS OF DOLLARS IN FEES WHICH CONSTITUED THE ACCEPTANCE OF EXCESSIVE OR UNREASONABLE FEES.**

Rule 4-1.3

Rule 4-1.5

**POINTS RELIED ON**

**VIII.**

**THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE  
DISBARMENT IS APPROPRIATE WHEN A LAWYER:**

- a. KNOWINGLY CONVERTS CLIENT PROPERTY;**
- b. MAKES A FALSE STATEMENT, SUBMITS A FALSE DOCUMENT, OR IMPROPERLY WITHHOLDS MATERIAL INFORMATION WITH THE INTENT TO DECEIVE THE COURT;**
- c. ENGAGES IN INTENTIONAL CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION;**
- d. KNOWINGLY FAILS TO PERFORM SERVICES FOR A CLIENT OR ENGAGES IN A PATTERN OF NEGLIGENCE;**
- e. KNOWINGLY ENGAGES IN CONDUCT THAT IS A VIOLATION OF A DUTY OWED TO THE PROFESSION; AND**
- f. DEMONSTRATES THAT THE LAWYER DOES NOT UNDERSTAND THE MOST FUNDAMENTAL LEGAL DOCTRINES OR PROCEDURES.**

*In re Stormont*, 873 S.W.2d 227 (Mo. banc 1994)

*In re Kazanas*, 96 S.W.3d 803 (Mo. banc 2003)

*In re Crews*, 159 S.W.3d 355 (Mo. banc 2005)

Rule 5.27

## ARGUMENT

### I.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-1.15 (a) and (b) IN THAT RESPONDENT FAILED TO EXERCISE FIDUCIARY RESPONSIBILITY IN SAFEKEEPING THE GILBERTS' SETTLEMENT PROCEEDS AND FAILED TO PROMPTLY DELIVER THE GILBERTS' SETTLEMENT PROCEEDS TO THE GILBERTS.**

A disciplinary hearing panel's recommendation is advisory in nature. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005). This Court conducts a de novo review of the evidence and reaches its own conclusions of law.<sup>3</sup> *Id.* Discipline will not be imposed unless professional misconduct is proven by a preponderance of the evidence. *Id.*

Rule 4-1.15(a) requires a lawyer in possession of client money to keep such funds in a separate account from that of the attorney. Rule 4-1.15(b) states that upon receiving funds in which a client has an interest, a lawyer shall promptly notify the client and promptly deliver the funds to the client. Rule 4-1.15 has been interpreted to, among other things: (a) require an attorney to segregate client funds, (b) safeguard the client's funds, and to (c) prohibit an attorney from using a client's funds for his own purposes

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<sup>3</sup> The standard of review is the same for all Points Relied On contained in Informant's Brief. Consequently, Informant has only set forth the standard of review under Point I and incorporates the standard of review into all other Points as though fully set forth.

(misappropriation). ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer Client Relationship* § 45:501 (2005).

When an attorney deposits client funds into an account used by the attorney for his own purpose and not the clients, and particularly when the account balance is reduced to an amount less than the amount of the funds being held for the client, it is characteristic of misappropriation. *In re Schaeffer*, 824 S.W.2d 1, 5 (Mo. banc 1992). This Court has consistently recognized that the misappropriation of a client money is among the most egregious violations of the Rules of Professional Conduct, so much so, that it is worthy of disbarment. *In re Griffey*, 873 S.W.2d 600, 603 (Mo. banc 1994); *In re Charron*, 918 S.W.2d 257, 262 (Mo. banc 1996); *In re Schaeffer*, 824 S.W.2d at 5 (Mo. banc 1992). This Court has further recognized that the failure of an attorney to remit settlement proceeds to a client is totally incompatible with ethical standards and that absent very persuasive mitigating factors, the offending attorney should be disbarred. *In re Houtchens*, 555 S.W.2d 24, 26 (Mo. banc 1977).

In the present action, Respondent convinced the Gilberts that their settlement proceeds, amounting to over \$10,000, would best be placed in Respondent's bank account. When the Gilberts expressed hesitation about placing the funds in Respondent's bank account, Respondent assured the Gilberts that the money would be available to them whenever they might need. A prudent attorney would have instructed the Gilberts to disclose all of their assets to the Bankruptcy Court, or would have instructed the Gilberts as to the consequences of failing to do so. Respondent, however, convinced the Gilberts to relinquish their money by informing them that the Bankruptcy Court would likely take

the Gilberts' settlement proceeds to pay creditors if the money was found in the Gilberts' bank account. Respondent was in fact so eager to procure the Gilberts' settlement proceeds that he traveled to their home and to Robert Gilbert's place of business to have the check endorsed on the same day that the check arrived from the insurance company. In the present action, client money was not placed in Respondent's care as a natural result of the representation. Respondent took affirmative steps to obtain the Gilberts' settlement proceeds and to place them in his own bank account.

On May 13, 2002, Respondent deposited the Gilberts' settlement proceeds into a bank account on which Respondent was the sole signator. According to Respondent's agreement with the Gilberts, as well as the Stipulation for Compromise and Settlement issued by the Division of Worker's Compensation, Respondent was entitled to \$2,734.06 in attorney's fees from the \$10,936.24 settlement proceeds issued to Robert Gilbert. Respondent was thereafter in possession of \$8,202.18 belonging to the Gilberts. On the same day that the Gilberts' settlement proceeds were deposited into Respondent's bank account, several checks were written from Respondent's account, totaling \$5,412.50. By the time that the checks written on May 13, 2002 had cleared on May 20, 2002, the balance in Respondent's account was \$7,572.60.

Respondent testified at hearing that his secretary was responsible for writing the checks on May 13, 2002. However, Respondent presented no evidence, other than his own testimony, to substantiate such a claim. Further, Respondent's bank records indicate that the monies in Respondent's account, including the Gilberts' settlement proceeds, were spent incrementally, over time, on daily ATM withdrawals, trips to the gas station,

restaurants, and personal purchases from Target, Osco Drug and Wal-Mart. Even were the checks from May 13, 2002, written by someone other than Respondent, the bank records make clear that the majority of the Gilberts' settlement proceeds were misappropriated after the May 13, 2002 checks had cleared from the bank. For instance, ATM withdrawals were made on almost a daily basis. There exists no evidence to suggest that Respondent's bank would have issued Respondent's secretary an ATM card without Respondent's authority when Respondent's secretary had no signatory authority on the account. Respondent, however, preposterously opines that the bank must have issued his secretary an ATM card without his knowledge. By July 15, 2002, the funds in Respondent's bank account had dwindled to \$758.94.

Respondent's averment that his secretary was responsible for the depletion of the Gilberts' settlement proceeds is incredible on several fronts. To begin, Respondent originally told the Gilberts that their money was seized by a Court after Respondent lost a case involving Vanguard Airlines. Respondent later changed his account and stated that the money was stolen by Respondent's secretary. Further, Respondent admits that he learned of his secretary's alleged theft as early as one to two months after Respondent came into possession of the Gilberts' settlement proceeds. Nevertheless, Respondent did not fire his secretary, did not file a report with the authorities and did not file a civil action to recover any of the lost funds. Finally, even after Respondent contends that he learned of his secretary's unsubstantiated theft, the withdrawals from Respondent's account continued in the same fashion as they had from the time that the Gilberts' money was deposited. After Respondent claimed to have learned of his secretary's misconduct,

pharmaceutical purchases were made in the exact same amount of \$49.69 on multiple occasions and ATM withdrawals were made consistently in the amount of \$100.00 or \$150.00. Respondent was the fiduciary responsible for safeguarding the Gilberts' settlement money and the evidence makes clear that Respondent was the person responsible for misappropriating the funds.

Even were Respondent's unsubstantiated claims regarding the theft of the Gilberts' money by Respondent's secretary to be believed, this Court has recognized that the unintentional mishandling of client funds is a serious violation that can justify disbarment. *In re Williams*, 711 S.W.2d 518, 522 (Mo. banc 1986). Respondent would be equally responsible for the misappropriation of funds, were they to have occurred by fault of Respondent's secretary in that Respondent's failure to supervise his support staff allowed the theft to occur. The disciplinary hearing panel, however, found that there was insufficient evidence to establish that Respondent's secretary was responsible for the misappropriation of funds and found, instead, that Respondent was directly responsible for the deposit of funds and the depletion of the account.

In an effort to negate the egregious misconduct that occurred when Respondent misappropriated the Gilberts' money, Respondent has repeatedly reiterated that all of the Gilberts' money was eventually repaid to the Gilberts. Not only does Respondent fail to recognize the serious nature of his offense, he also misstates the truth. It took approximately two years for Respondent to relinquish the entirety of the sum owed to the Gilberts. Further, the making of restitution is no defense to the misappropriation of client

funds. *In re Schaeffer*, 824 S.W.2d 1, 5(Mo. banc 1992) (citing *In re Mentrup*, 665 S.W.2d 324, 325 (Mo. banc 1984)). This Court has previously stated:

[R]estitution does not deprive the public of its right to be protected against an unsafe member of a privileged class. Nor does it deprive the courts of their right to have attorney officers who are conscious of their high duty to the public, to the courts and to their profession[.] . . . A restitution does not automatically make one fit, who has already proven himself unfit.

*In re Kohlmeyer*, 327 S.W.2d 249, 252 (Mo. banc 1959) (citing *In re Conner*, 207 S.W.2d 492(Mo. banc 1948)). In this case, the Gilberts repeatedly requested the return of all of their money and Respondent failed to oblige. Respondent's eventual repayment of the Gilberts' money is inconsequential to the fact that Respondent misappropriated the Gilberts' settlement funds and has violated Rule 4-1.15. Further, Respondent failed to return the \$500.00 sum that was given to Respondent by the Gilberts at the time that the Gilberts paid Respondent's attorney's fees for the bankruptcy litigation. Respondent has misappropriated the Gilberts' money and has failed to return the entirety of the sum to the Gilberts. As such, Informant respectfully prays that Respondent be disciplined.

## II.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-3.3(a)(1) and (2) and 4-8.4(c) IN THAT RESPONDENT FAILED TO DISCLOSE THE GILBERTS' SETTLEMENT PROCEEDS TO THE BANKRUPTCY COURT AND MADE A FALSE STATEMENT OF MATERIAL FACT TO THE BANKRUPTCY COURT BY ATTESTING TO THE ACCURACY OF THE GILBERTS' BANKRUPTCY PETITION THOUGH THE SETTLEMENT PROCEEDS WERE NOT DISCLOSED ON THE PETITION.**

Rule 4-3.3(a)(1) prohibits a lawyer from knowingly making a false statement of material fact to a tribunal and Rule 4-3.3(a)(2) prohibits a lawyer from failing to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting in a fraudulent act by the client. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 4-8.4(c).

Receipt of settlement proceeds, no part of which are deposited into a debtor's bank account and no part of which are used to pay creditors, is sufficient to establish grounds for belief that a debtor has concealed assets in violation of the United States Bankruptcy Act. *In re Hochberg*, 17 F.Supp. 916, 919 (W.D. Pa. 1936). Misrepresentation to the court is "an affront to the fundamental and indispensable principle that a lawyer must proceed with absolute candor towards the tribunal." *In re Carey and Danis*, 89 S.W.3d

477, 498 (Mo. banc 2002) (quoting *In re Caranchini*, 956 S.W.2d 910, 919-920 (Mo. banc 1997)). An attorney owes the public a duty of honesty and breach of that trust warrants severe discipline. *Id.*

In the present action, Respondent filed the Gilberts' bankruptcy petition on April 4, 2002. The Gilberts' bankruptcy petition was then dismissed on April 24, 2002. Robert Gilbert's settlement was approved by the administrative law judge on May 3, 2002 and the check was issued shortly thereafter. By the time that the Gilberts' bankruptcy action was reinstated on May 16, 2002, Respondent was aware that the Gilberts had received a settlement check for over \$10,000. In fact, Respondent had deposited the check into his own bank account three days prior. Nevertheless, Respondent did not include the settlement check as an asset on the Gilberts' bankruptcy petition, despite the fact that Respondent had drafted the petition. Included in the Gilberts' bankruptcy petition was a Declaration Re: Electronic Filing, on which Respondent signed under penalty of perjury declaring that he had reviewed the debtors' information and that it was complete and correct to the best of Respondent's knowledge. At no time did Respondent amend the Gilberts' bankruptcy petition or amend the Declaration Re: Electronic Filing.

Respondent took affirmative steps to conceal the Gilberts' settlement proceeds from the Bankruptcy Court. Not only did Respondent submit a document to the Bankruptcy Court in which Respondent attests to the accuracy of the disclosures, Respondent counseled the Gilberts not to disclose the proceeds to the bankruptcy trustee. Respondent made a false submission to the court in his filing of the bankruptcy documents, while at the same time failing to disclose a material fact that was necessary

and relevant to the litigation at hand. Respondent attended the Gilberts' creditor's meeting and never disclosed to the bankruptcy trustee that the Gilbert's had received over \$10,000 in assets that had yet to be reported. Respondent is guilty of dishonesty, misrepresentation and deceit before the Court. Accordingly, Informant respectfully requests that Respondent's license to practice law be disciplined.

### III.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULE 4-5.5(a) IN THAT HE PRACTICED OR ATTEMPTED TO PRACTICE LAW BY ENGAGING IN SETTLEMENT NEGOTIATIONS AND REQUESTS FOR DISCOVERY WITH OPPOSING COUNSEL WHILE SUSPENDED.**

Rule 4-5.5(a) provides that “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.” When an attorney represents another individual during discovery or in settlement negotiations, that attorney is engaged in the practice of law. *Disciplinary Counsel v. Alexicole, Inc.*, 822 N.E.2d 348, 350 (Oh. 2004). Though it may sometimes be difficult to define the practice of law, it is clear that the general definition includes mailing discovery demands and attempting to settle client claims. *State v. Hunt*, 880 P.2d 96, 100 (Wa. 1994).

In the present action, the Respondent was suspended for a period of six months on December 21, 2004. Nevertheless, Respondent continued to send letters to opposing counsel on behalf of his client in the Medicalodge litigation. In his correspondence, Respondent referred to the plaintiff as “my client” and stated that the letter should be considered a “golden rule letter.” Respondent demanded discovery and Respondent asked that the defendants propose a settlement figure, in an attempt to settle the plaintiff’s claim. Respondent’s letter to defense counsel, Jeff Brown, was dated December 21, 2004. However, Jeff Brown testified that he received the letter in March, 2005. Jeff

Brown's testimony is substantiated by the telephone call and e-mail correspondence that followed Respondent's golden rule letter. Respondent's actions demonstrate that Respondent was engaged in the practice of law.

This Court has held that an attorney's unauthorized practice of law while under previous suspension is worthy of further discipline. *In re Reza*, 743 S.W.2d 411 (Mo. banc 1988). A lawyer's willful disregard of a court's disciplinary order is a serious matter that "undermines the authority of the judicial system and erodes the public trust in our profession." *State ex rel. Okla. Bar Ass'n v. Malloy*, 2006 WL 1479627 (citing *State ex rel. Okla. Bar Ass'n v. Patterson*, 28 P.3d 551, 560 (Ok. 2001)). Respect for judicial rulings is imperative to the administration of justice. *Id.*

Though Respondent was suspended by this Court on December 21, 2004, Respondent continued to practice law during the spring of 2005. Respondent deliberately disobeyed the Order of this Court and did so on more than one occasion. Respondent's misconduct is exacerbated by the intentional attempt to mask his misconduct in misdating his March, 2005 letter to Jeff Brown. Respondent engaged in telephone calls with opposing counsel and directed written correspondence to the same. As such, Respondent has violated Rule 4-5.5(a) and Informant respectfully requests that Respondent be disciplined.

#### IV.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 5.27, 4-8.4(c) AND 4-8.4(d) IN THAT HE ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION BY FAILING TO INFORM OPPOSING COUNSEL THAT RESPONDENT WAS SUSPENDED FROM THE PRACTICE OF LAW WHILE AT THE SAME TIME ENGAGING IN SETTLEMENT NEGOTIATIONS AND DEMANDS FOR DISCOVERY.**

Rule 5.27(f) requires a disciplined attorney to notify opposing counsel in pending litigation of a suspension or disbarment within 30 dates from the date of the discipline. In the present action, Respondent failed to notify Scott Logan and Jeff Brown, both of whom served as opposing counsel in the Medicalodge litigation, of Respondent's December 21, 2004 suspension. Neither Scott Logan nor Jeff Brown learned of Respondent's suspension until they read that Respondent had been suspended in the April, 2005 edition of the Missouri Bar Journal.

Rule 4-8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 4-8.4(d) provides that it is professional misconduct for an attorney to engage in conduct that is prejudicial to the administration of justice. Accordingly, this Court has stated that questions of honesty go to the heart of the fitness to practice law and that the practice of law is a privilege accorded only to those who demonstrate the requisite moral character. *In re*

*Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996); *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003 (quoting *In re Haggerty*, 661 S.W.2d 8, 10 (Mo. banc 1983))).

The disciplinary hearing panel determined that in communicating with Jeff Brown and Scott Logan and representing to both that he was licensed to practice law, Respondent engaged in misrepresentation and conduct that is prejudicial to the administration of justice. Respondent's conduct in dealing with opposing counsel is representative of willingness to disregard the rules of this Court and the ethical standards expected of Missouri's practicing attorneys. Accordingly, Informant respectfully requests that this Court discipline Respondent.

V.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULES 4-1.1 and 4-1.3 IN THAT RESPONDENT FAILED TO PRODUCE DISCOVERY RESPONSES IN RICHARD WARD'S DIVORCE PROCEEDING, FAILED TO RESPOND TO MULTIPLE MOTIONS FOR SANCTIONS, AND FAILED TO APPEAR AT HEARINGS ON RICHARD WARD'S BEHALF, RESULTING IN THE DISMISSAL OF RICHARD WARD'S PLEADINGS.**

Rule 4-1.1 compels a lawyer to provide competent representation to a client and Rule 4-1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client. At the core of the duty of diligence is a lawyer's obligation to perform in a timely manner the work for which he or she was hired. ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer-Client Relationship* § 31:403 (2005).

In the present action, Respondent wholly neglected the representation of Richard Ward, failing to act diligently or with the preparation necessary to act competently. Court records reveal, and Respondent's own testimony confirm, that Respondent repeatedly failed to provide discovery responses on behalf of Richard Ward. Further, Respondent failed to file a written response to opposing counsel's first motion to compel and motion for sanctions. More egregious was Respondent's failure to attend the hearing, which resulted in an assessment of attorney's fees against his client, Richard Ward. On September 15, 2003, Respondent filed a Motion to Set Aside Sanctions. Respondent's motion alleged that Respondent had moved to Branson, Missouri and had

not received notice of the hearing. Respondent admits, however, that he did not file a change of address with the Court. In fact, in all of the court documents filed from February, 2003 to September 15, 2003, Respondent lists a St. Joseph, Missouri address. Motions and notices by opposing counsel and the Court were therefore sent to Respondent's St. Joseph address.

Respondent's history of misrepresentation and deceit cast doubt on his averment that he did not receive notice of hearings in Richard Ward's case. Somehow, Respondent consistently managed to learn that a motion had been filed or that sanctions had been imposed just a few short days after the Court's orders. The Court denied Respondent's Motion to Set Aside, but the motion makes clear that even were Respondent's contentions legitimate, as of September 15, 2003, Respondent was aware that he was not receiving notification of filings and hearings.

Respondent's Motion to Set Aside was sent to opposing counsel on September 15, 2003 and is the first document in the court filings to list Respondent's Branson address. Opposing counsel sent his second Motion for Sanctions and Dismissal and Notice of Hearing to Respondent on September 16, 2003, at Respondent's address in St. Joseph, Missouri. It is very likely that opposing counsel had not yet received Respondent's September 15, 2003 motion listing Respondent's Branson address. Respondent continued in his failure to provide discovery responses. Though Respondent claims he was aware that he was not receiving motions from the Court or opposing counsel, Respondent failed to check the court docket, the court file, or to follow-up with opposing counsel.

Respondent failed to attend the Motion for Sanctions and Dismissal on behalf of Richard Ward and Richard Ward's pleadings were ultimately struck. Richard Ward testified and Respondent agreed that the valuation of marital assets as set forth by the Court in Richard Ward's divorce proceeding was not accurate. However, Richard Ward was not allowed to testify and the Court considered no evidence pertaining to Richard Ward's account of the valuation. The Missouri Court of Appeals upheld the Circuit Court's determination and Richard Ward was forced to sell his farm. In the case of Richard Ward, Respondent's lack of competence and diligence resulted in substantial harm to his client and establishes a violation of the Rules of Professional Conduct.

## VI.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED RULE 4-1.4(a) IN THAT RESPONDENT FAILED TO COMMUNICATE WITH THE GILBERTS AND RICHARD WARD AND FAILED TO KEEP THE PARTIES INFORMED AS TO THE STATUS OF THEIR LITIGATION.**

Rule 4-1.4 provides that an attorney shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. Keeping a client informed entails informing the client of court dates, motions and pleadings filed on their behalf, dismissals, and changes in the lawyer's contact information, as well as providing copies of documents and responding to client telephone calls and letters. ABA/BNA Lawyers Manual on Professional Conduct, *Lawyer Client Relationship* § 31:501 (2005).

Richard Ward testified that it was difficult for him to communicate with Respondent. When Richard Ward left messages for Respondent, Respondent often failed to return the telephone calls. More importantly, Respondent failed to inform Richard Ward as to the status of his litigation. Respondent failed to inform Richard Ward that there were pending motions for sanctions in his case, failed to inform him of hearing dates, and failed to inform him when sanctions had been imposed against Richard Ward.

The Gilberts attempted to contact Respondent by telephone, but were often unable to reach Respondent. When the Gilberts did not receive return telephone calls from Respondent, they began writing letters. The Gilberts' multiple letters to Respondent

evidence their frustration and repeatedly reiterate that they are unable to reach Respondent. Respondent's contact with the Gilberts was so infrequent that when Respondent moved from St. Joseph, Missouri to Branson, Missouri, and was still in possession of the Gilberts' settlement money, Respondent failed to inform the Gilberts that Respondent was moving and did not provide a forwarding address or telephone number.

Respondent also failed to keep the Gilberts informed as to the status of their litigation. When the Gilberts' bankruptcy petition was dismissed for Respondent's failure to comply with multiple Show Cause Orders requiring the amendment of the petition and addition of matrixes and schedules, Respondent told the Gilberts only that the petition was dismissed because Sharon Gilbert's middle initial was missing. Respondent's conduct runs afoul of even the most basic of principles in that he failed to communicate with his clients. As such, Informant requests that Respondent's license to practice law be disciplined.

## VII.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE RESPONDENT VIOLATED RULES 4-1.3 and 4-1.5 IN THAT RESPONDENT FAILED TO DILIGENTLY PURSUE THE REMOVAL OF IRS LIENS ON BEHALF OF THE BAILEYS WHILE ACCEPTING THOUSANDS OF DOLLARS IN FEES WHICH CONSTITUED THE ACCEPTANCE OF EXCESSIVE OR UNREASONABLE FEES.**

Rule 4-1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client and Rule 4-1.5 requires that attorney's fees be reasonable. Respondent violated both Rules in that he accepted thousands of dollars in fees to remove liens levied on the Baileys, but performed little to no work on the matter.

The Baileys paid Respondent approximately \$5,500.00 to remove liens levied on the Baileys for back-owed taxes. Over the course of approximately 18 months, Respondent was unsuccessful in obtaining a lien removal for any of the Baileys liens. Respondent testified at hearing that he was unsuccessful in obtaining a lien removal because the Baileys had failed to disclose the full value of their home and failed to disclose Ralph Bailey's conviction for obstruction of justice. Though the disciplinary hearing panel was unable to form a basis of belief on the matter, the Baileys testified that they disclosed all information to Respondent from the inception of their professional relationship.

Even had the Baileys neglected to inform Respondent of Ralph Bailey's history or failed to disclose the full value of their home, neither fact likely prevented Respondent

from obtaining the lien removals, as Respondent proffered. In fact, documents obtained from the IRS indicate that Ralph Bailey, a layman, was successful in removing virtually all of the Baileys' liens within a three week time period following Respondent's withdrawal. Respondent did not refund any of the fees accepted from the Baileys, making his \$5,500.00 fee unreasonable in light of the work performed. For violation of Rules 4-1.3 and 4-1.5, Respondent should be disciplined.

## VIII.

### **THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE DISBARMENT IS APPROPRIATE WHEN A LAWYER:**

#### **a. KNOWINGLY CONVERTS CLIENT PROPERTY;**

When considering the level of discipline to impose for violation of the Rules of Professional Conduct, this Court has considered the propriety of the sanctions under the American Bar Association model rules for attorney discipline (“ABA Standards”). *In re Crews*, 159 S.W.3d 355, 360 (Mo. banc 2005). The ABA Standards dictate that disbarment is the appropriate sanction when an attorney knowingly converts client property and causes injury or potential injury to a client. This Court stated in the matter of *Griffey* that an attorney deceives and defrauds a client when the attorney fails to safeguard client money. *In re Griffey*, 873 S.W.2d 600, 603 (Mo. banc 1994). The Court further reiterated its consistent position that where an attorney misappropriates client money, disbarment is the appropriate remedy. *Id.* See also *In re Charron*, 918 S.W.2d 257 (Mo. banc 1996); *In re Schaeffer*, 824 S.W.2d 1 (Mo. banc 1992); and *Matter of Mendell*, 693 S.W.2d 76 (Mo. banc 1985).

In the present action, Respondent set about to obtain and hold the Gilberts’ money and proceeded to use those funds for his own purpose. Though Respondent has proffered numerous excuses for his conversion of the Gilberts’ funds, none of Respondent’s defenses are substantiated by evidence. The bank records tell the truth of what happened to the Gilberts’ money and it was not seized by a Court and it was not stolen by Respondent’s secretary. The Gilberts’ money was spent by Respondent. From the time

that the money was deposited in Respondent's bank account, Respondent used the Gilberts' money, day by day, until \$700.00 remained a mere eight weeks after the money was deposited. It took Respondent, however, almost two full years to remit the full sum of the money owed to the Gilberts.

Assuming, *arguendo*, that Respondent's secretary was responsible for the conversion of the Gilberts' funds, disbarment remains the appropriate remedy for Respondent's conduct. Even unintentional misappropriation of funds can warrant disbarment. *Matter of Williams*, 711 S.W.2d 518, 521-522 (Mo. banc 1986). For Respondent's secretary to have been responsible for the disappearance of the Gilberts' funds, Respondent's secretary would have had to forge checks from Respondent's account for a minimum of two full months, without Respondent ever having known. Further, Respondent's secretary would have had to obtain an ATM card from Respondent's bank, and proceeded to make almost daily withdrawals, without Respondent's knowledge. Of course, the bank records indicate that Respondent's secretary was not a signator on the account and it is virtually impossible to believe that the bank would have issued an ATM card without Respondent's authority. But were such events to have occurred as alleged by Respondent, Respondent's failure to supervise his secretary and inexcusable failure to act as a responsible fiduciary of the Gilberts' funds, nevertheless warrants disbarment.

Respondent's misappropriation of the Gilberts' money resulted in harm to Respondent's clients. The Gilberts repeatedly requested that their money be returned to them, but to no avail. As such, the ABA Standards dictate that Respondent be disbarred.

**b. MAKES A FALSE STATEMENT, SUBMITS A FALSE DOCUMENT,  
OR IMPROPERLY WITHHOLDS MATERIAL INFORMATION WITH  
THE INTENT TO DECEIVE THE COURT;**

This Court determined that “[m]isconduct involving subterfuge, failing to keep promises, and untrustworthiness undermine public confidence in not only the individual but in the bar.”

In the case of *In re Storment*, where a Missouri attorney counseled his client to lie on the witness stand during a court recess, this Court determined that 1) a public reprimand is only appropriate if an attorney is negligent in determining whether statements or documents are false; 2) suspension is only appropriate where the attorney knows that the false statements are being submitted to the court but takes no remedial action; and 3) disbarment is appropriate where the attorney makes an intentionally false statement to the court or improperly withholds information. *In re Storment*, 873 S.W.2d 227 (Mo. banc 1994). In the *Storment* matter, this Court found that the attorney’s affirmative actions in counseling a client to lie before the court constituted misconduct worthy of disbarment. *Id.*

Further, the ABA Standards classify a rule violation involving dishonesty to a court as a violation of the duty owed to the legal system and states:

Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes

serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

In the present action, Respondent was well aware that the Gilberts had received over \$10,000 in assets that had not been reported the bankruptcy court. Moreover, Respondent counseled the Gilberts not to disclose the existence of the settlement proceeds. Respondent signed and dated a document in which he attests to the completeness and accuracy of the Gilberts' bankruptcy filings and he submitted those documents to the Court. Further, Respondent affirmatively participated in the Gilberts' failure to disclose the funds to the bankruptcy trustee by repeatedly counseling the Gilberts not to make the disclosure.

The nondisclosure of funds by the Gilberts constituted a fraud on the Bankruptcy Court and on the judicial system. Respondent was an active participant in that fraud. Courts rely on attorneys to be honest and forthright in their practice of law. However, Respondent's actions demonstrate his disregard for the legal system and his lack of moral character.

**c. ENGAGES IN INTENTIONAL CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION;**

The ABA Standards set forth that disbarment is the appropriate remedy for an attorney who engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation. In the present action, Respondent, engaged in multiple acts of dishonesty, fraud, and misrepresentation.

Respondent failed to disclose to Jeff Brown and Scott Logan that Respondent had been suspended from the practice of law, while continuing to attempt to negotiate a settlement on behalf of Respondent's client. Respondent went so far as to misdate correspondence sent to Jeff Brown. Respondent actively participated in perpetrating a fraud on the U.S. Bankruptcy Court, by counseling the Gilberts not to disclose assets and submitting false documents to the Court. Respondent was dishonest in his representations to the Gilberts as to why he failed to safeguard the money that Respondent held in trust for the Gilberts. Respondent has demonstrated that he lacks the requisite moral character required to practice law and should therefore be disbarred.

**d. KNOWINGLY FAILS TO PERFORM SERVICES FOR A CLIENT OR  
ENGAGES IN A PATTERN OF NEGLIGENCE;**

This Court has stated that the public should be able to rely on an attorney's devotion to his client's interests. *In re Donaho*, 98 S.W.2d at 873 (Mo. banc 2003). In Respondent's case, however, Respondent disregarded the interests of his clients and in the case of Richard Ward, Respondent wholly failed to represent Richard Ward in a diligent and competent manner.

The ABA Standards classify Rule violations regarding diligence, competence and communication as violations of duties owed to clients and states:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Were Respondent's lack of diligence and competence in representing Richard Ward an isolated incident of misconduct, disbarment would unlikely be an appropriate remedy. Taken in conjunction with Respondent's misappropriation of client funds, lack of candor before a tribunal and pattern of dishonesty, however, it is clear that Respondent's conduct is worthy of disbarment.

In the case of Richard Ward, Respondent knowingly failed to perform client services. Respondent acknowledged that under the Rules of Civil Procedure, the recipient of discovery has 30 days to produce answers or responses. Yet, Respondent produced none such responses in Richard Ward's case. Respondent repeatedly failed to respond to motions for sanctions and repeatedly failed to attend hearings on Richard Ward's behalf. At the conclusion of litigation, and as a result of Respondent's failure to act, Richard Ward was assessed \$250.00 in attorney's fees, had his pleadings struck, received a disproportionate disbursal of marital property, and was forced to sell his farm. There is no reason, excuse or rationale offered by Respondent that could justify Respondent's actions with respect to Richard Ward's litigation.

Respondent's pattern of neglect is further demonstrated by his representation of the Baileys. Though Ralph Bailey was able to obtain lien removals in a matter of weeks, Respondent accepted over \$5,000.00 in attorneys fees from the Baileys and in 18 months,

was wholly unsuccessful in obtaining even one lien removal. Respondent's lack of diligence and competence indicates that Respondents should appropriately be disbarred.

**e. KNOWINGLY ENGAGES IN CONDUCT THAT IS A VIOLATION OF  
A DUTY OWED TO THE PROFESSION; AND**

The ABA Standards state that disbarment is appropriate when a lawyer knowingly violates a court order or rule and causes serious or potentially serious interference with a legal proceeding. The ABA Standards further dictate that disbarment is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for himself.

In the present action, Respondent was suspended by this Court on December 21, 2004. Yet, Respondent continued to practice law by corresponding with opposing counsel, making demands for discovery and attempting to negotiate settlements. Respondent's actions are in direct contravention to the Order of this Court and demonstrates Respondent's knowing disregard for the Court's authority. Further, Respondent was compelled by Order of this Court and by Rule 5.27 to give notice of his suspension to opposing counsel at the time of his suspension. However, Respondent failed to provide such notice to Jeff Brown and Scott Logan, resulting in interference in the legal system. Jeff Brown and Scott Logan spent months engaged in correspondence and negotiations with Respondent, who was not authorized to practice law. The appropriate sanction for Respondent's conduct is disbarment.

**f. DEMONSTRATES THAT THE LAWYER DOES NOT UNDERSTAND THE MOST FUNDAMENTAL LEGAL DOCTRINES OR PROCEDURES.**

Respondent has a disciplinary history dating back eight years. Despite having received two admonitions and a six-month suspension, Respondent continued a systematic pattern of Rule violation, culminating in the most egregious offense of misappropriation of client funds. This Court has stated that disbarment is reserved for clear cases of severe misconduct where an attorney is “demonstrably unfit to practice law.” *In re Frank*, 885 S.W.2d 328, 334 (Mo. banc 1994). The Court has also recognized that multiple offenses tend to reveal a pattern of misconduct and has imposed disbarment where an attorney has committed numerous violations of the Rules of Professional Conduct. *In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997). Respondent’s representation of the Gilberts, Richard Ward and the Baileys, demonstrate that Respondent is unfit to practice law. Further, Respondent’s dishonesty and deceit demonstrate that Respondent lacks the moral character necessary to be a worthy practitioner.

In determining the level of discipline to be imposed, the Court must consider aggravating and mitigating circumstances. *In re Kazanas*, 96 S.W.3d 803, 808 (Mo. banc 2003). The ABA Standards provide for, and the disciplinary hearing panel in Respondent’s case found, that the following constituted aggravating factors in Respondent’s case: (1) Prior disciplinary offenses; (2) pattern of misconduct; (3) multiple offenses; and (4) refusal to acknowledge the wrongful nature of his conduct.

The disciplinary hearing panel further noted that “[d]uring the entire course of the proceeding, Respondent would either have an explanation or refuse to address directly the allegations of rule violations.” The disciplinary hearing panel was unable to find any mitigating factors.

Informant submits that Respondent’s history of alcohol abuse is another factor that weighs in favor of Informant’s disbarment. Though alcoholism can be considered a mitigating factor in appropriate cases, ABA Standards on mitigating factors set forth that alcoholism is considered a mitigating factor only when there is medical evidence of the dependency, the dependency caused the misconduct, the Respondent’s recovery from the dependency has been demonstrated by meaningful and sustained rehabilitation, and that recovery from the dependency makes the reoccurrence of misconduct unlikely.

The disciplinary hearing panel did not find any mitigating circumstances in Respondent’s case. Likewise, Respondent argued vehemently that his history of DWIs and alcohol abuse was irrelevant to the proceedings and bore no relation to his representation of the Gilberts, the Baileys or Richard Ward. None of the criteria as set forth by the ABA Standards for mitigating evidence were offered in Respondent’s case. As such, the disciplinary hearing panel appropriately refused to consider Respondent’s alcohol abuse as a mitigating factor. Respondent’s history, however, cannot be denied or overlooked in the Court’s evaluation of Respondent’s fitness to practice law. Respondent has accumulated two DWI convictions and a third DWI charge in a five year period and offered no evidence of steps taken toward rehabilitation. Even if Respondent had presented evidence of abstinence and an ongoing commitment to rehabilitation,

Respondent's alcohol abuse would not ameliorate the need for Respondent's disbarment, as Respondent's egregious conduct makes clear that he is unfit to practice law.

Respondent has consistently demonstrated that he lacks the moral character and the fitness to practice law and as such, the Informant respectfully requests this Court order that Respondent be disbarred.

**CONCLUSION**

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests this Court find that Respondent violated Rules 4-1.1; 4-1.3; 4-1.4; 4-1.5; 4-1.15; 4-3.3(a)(1); 4-3.3(a)(2); 4-5.5; 4-8.4(c); 4-8.4(d); and 5.27, and that Respondent be disbarred. The Chief Disciplinary Counsel further respectfully requests that all costs in this matter be taxed to Respondent.

Respectfully submitted,

OFFICE OF  
CHIEF DISCIPLINARY COUNSEL

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ATTORNEYS FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of September, 2006, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First

Class mail to:

John C. Hambrick, Jr.  
275 Mills Hollow Rd.  
Branson, MO 65616

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Shannon L. Briesacher

**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 14,150 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.

\_\_\_\_\_  
Shannon L. Briesacher

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