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in Brief

STATEMENT OF JURISDICTION

The Missouri Supreme Court has jurisdiction over this attorney disciplinary matter pursuant to *Article V, Section 5 of the Missouri Constitution*, Supreme Court Rule 5, by common law and § 484.040 of the Revised Statutes of Missouri. (1994)

STATEMENT OF FACTS

A. Background

Respondent, Christi Fingal Griffin, was licensed as an attorney on April 28, 1984; took the Oath of Admission on May 5, 1984, and has upheld said oath at all times referred to herein. Respondent began her private practice as a ministry on October 12, 1984, and has continued to extensively serve her clients, the community, various civic, religious and charitable organizations and the Missouri Bar to that end.

Complainant¹ filed a complaint with the Office of the Chief Disciplinary Counsel on or about February 6, 2004, as a measure of gaining advantage in a pending lawsuit. **App. 446** Respondent intervened in said suit to protect more than \$63,000.00 advanced on behalf of Complainant under a contract prompting these proceedings. Said complaint as well as Complainant's counterclaim, committee testimony, state court deposition and subsequent disciplinary hearing testimony is replete with inaccuracies and false allegations.

This matter was referred to the Region XI Disciplinary Committee for investigation which involved only a review of Complainant's copy of the contract, an interview of Complainant and her daughter Ernestine Ross (Hereinafter "Ross")

¹ Complainant refers to Irene Green, the client represented by Respondent in all matters referred to herein. Ross authored and filed both false complaints.

and a truncated interview of Respondent. Although Respondent made available numerous documents, none were reviewed other than Respondent's original interlineated copy of the real estate contract in question. That contract was omitted from exhibits Informant presented to the Disciplinary Hearing Panel (hereinafter "Panel").

Although the matter was not properly investigated, the Committee found probable cause and issued a voluminous Information against Respondent. **App. 282-283²**. Respondent received the Information on or about March 30, 2005, and timely filed an extensive answer on or about June 6, 2006. **App. 85-88**. A Panel was appointed by the Chair of the Missouri Supreme Court Advisory Committee and a hearing set for September 27, 2005. After a series of seven re-scheduled dates, three hearings were conducted over a period of eight months in violation of **Rule 5.15**. The hearings concluded on May 26, 2006, before Respondent's case was completed.

Despite Complainant's un-refuted lack of veracity³, the lack of competent evidence, Informant and Panel having engaged in a series of improprieties

² Respondent adopts the Exhibits included in Informant's Appendices I and II and refers to each herein as App. _____ (Tr.)

³ The Chief Hearing Officer admitted off the record that Complainant lacked credibility.

including intimidation, omitting critical evidence, failing to review pertinent evidence, engaging in ex parte communications, disregarding Respondent's extensive Answer, discounting every scintilla of Respondent's credible testimony and ignoring years of legal, charitable and civic service, the Panel issued its Findings of Facts, Conclusions of Law and Recommendation on December 12, 2006. **App. 513-546** No copy of said Findings was received by Respondent.

B. Disciplinary History

Respondent acknowledges having been privately admonished in 1991 as a result of negligently violating Rule 4-7.2(d) by not listing an attorney's name in a published listing. Respondent also acknowledges having been privately admonished in 1996, for a violation of Rule 4-1.15(d). Respondent disagreed with the conclusion but did not appeal due to time constraints. Neither matters involved fraud, dishonesty, misrepresentation or deceit.

There is no other disciplinary history despite Respondent counseling and representing over 10,000 individuals and small businesses in bankruptcy matters and general practice for more than 22 years.

C. Relevant Facts Surrounding Factually Defective Complaint

Irene Green is an astute 67 year old woman who is sufficiently sophisticated in real estate and other legal matters that she successfully deceived Respondent and other attorneys into filing a total of eight bankruptcies on her

behalf while paying little or no fees and providing false information; **Resp. App. 4, (Tr. 55)**; who is sufficiently sophisticated that she repeatedly entered into real estate contracts and financing agreements without the assistance of counsel; **Resp. App. 5, (Tr. 72); Resp. App. 7, (Tr. 122)**; who has lied under oath in these proceedings, in state court proceedings and before the U.S. Bankruptcy Court; **Resp. App. 8, (Tr. 123); App. 135, (Tr.182, 183)** and has defrauded her creditors through deceptive use of the bankruptcy system; **Resp. App.7, (Tr. 123)**; who has committed fraud against the Internal Revenue Service, the Missouri Department of Revenue, the Missouri Department of Social Services, the Social Security Administration, the US Bankruptcy Court and the US Trustee by concealing income and assets and submitting fraudulent information **App. 167, (Tr. 64)** and who accepted payment of substantial sums of money on her behalf and benefited by deceit at the expense of Respondent. **Resp. App. 10. (Tr. 182)**

Caroline Fisher is a retired educator and the 82 year old mother of Respondent who worked in the St. Louis Public Schools system for over 45 years; who has suffered from a blood disorder for over 40 years and was diagnosed with Type 2 diabetes after her husband's death in 2002; who has continued to volunteer in her church and community despite her age and ill health, and who, at the request of Respondent, immediately gave almost her entire lump sum teacher's retirement for no other reason than to help another human being avoid the loss of

her home.

At all times herein Complainant was the owner of real estate at 5150-52 Waterman, and 4715 Page Avenue, both properties of which were the subjects of foreclosure proceedings. **Resp. App. 24**

At the pleading of Complainant's daughter, Geraldine Rhymes, (Hereinafter "Rhymes") Respondent assisted Complainant reorganize her debts and protect her property under Chapter 13 of the U.S. Bankruptcy Code. Contrary to Informant's assertion of self enrichment, this was done despite Complainant's meager income, the complexities and inherent problems of the case, the availability of more viable clients and payment of less than 1/5th of the court set attorneys fees. Although Respondent has stopped thousands of foreclosures and cured arrearages through Chapter 13 plans, Respondent's efforts in this case were unsuccessful because of Complainant's prior abuse of the system.⁴ **Resp. App. 24**

⁴ Complainant admitted only two prior filings to Respondent, Respondent discovered two others from documents on hand and additional information was not disclosed until the Motions for Relief were filed. The determination of abuse, however, is the sole province of the bankruptcy judge and varies from case to case. The determination in this case did not result in the court dismissing the case but applied as to the petitioning creditor for purposes of foreclosure.

Without the knowledge or advice of Respondent, Complainant entered into at least two contracts for the sale of her residence at 5150-52 Waterman and for the purchase of at least two other residences. **Resp. App. 6, (Tr. 100);** The second contract was induced by an inflated offer from Larry Wilson who intended to lure Complainant into accepting an enticing offer and bind her to the agreement until he could purchase the property at the foreclosure. **App. 484, (Tr. 15, 16); App. 500, (Tr. 78, 79)**

Evidence of Fraud

The primary basis for arguments espoused by Informant is the belief that Larry Wilson's intended to perform under any version of his contracts. A true depiction of this case, therefore requires an understanding of the actions and non-actions of Larry Wilson and his attorney, Cheryl Kelly (hereinafter "Kelly"). As such, the following chronicles Wilson's deeds.

Wilson initially contacted Complainant by letter on August 13, 2003, **Resp. App. 36**, making no reference to a pending foreclosure but wanting to purchase the property. The foreclosure ironically was six days later. **App. 302**

Although Wilson told Complainant that attorneys did not need to be involved, he had retained Kelly and chose to type the letter and contract portraying himself as just a recently retired neighbor who rehabbed properties as a hobby. Despite this portrayal, Wilson was, in fact, a sophisticated real estate investor in the process of rehabbing two high rise office buildings into residential

and office condominiums in the downtown business district. **Resp. App. 37, App. 491, (Tr. 44)**

Although Wilson negotiated deals for 37 years, and believed the Waterman property to be worth “\$90,000.00 to \$120,000.00” in its “deplorable condition” he offered \$10,000.00 to 40,000.00 more just to “eliminate conversation.” **App. 482 (Tr. 5), 485 (Tr.17)**

Wilson’s letter indicated he wanted to close “quickly” yet he created unnecessary delays up to the continued foreclosure date. Wilson used Kelly to resist every effort made by Respondent to resolve two minor issues and close before the foreclosure. (An MSD lien for \$702.87 and an incorrectly filed BJC lien) Through Respondent’s efforts the BJC lien was immediately released. **App. 313, App. 325, App. 487 (Tr. 17, 25); Resp. App. 38**

Frustrated by Respondent’s diligent representation of Complainant, Kelly eventually yelled, “[w]hy don’t you just let them foreclose?” (Foreclosure very seldom results in any surplus paid to the owner and any that is realized is far less than what would result from a private sale.) Knowing there was a pending Motion for Relief from Stay filed by Countrywide, **Resp. App. 21-26**, Kelly unnecessarily filed a three page Opposition to Debtor’s Motion to Sell filed in the U.S. Bankruptcy Court not only presenting more than 28 issues in opposition, but making statements that were clearly prejudicial to Complainant’s effort to extend the foreclosure sale, resolve the lien issues and gain permission to consummate the

sale. Most telling is paragraph 6 which states that “Wilson has no *obligation* to close the sale under the current circumstances.” (Emphasis added) **App. 301-305**

Wilson’s Opposition twice refers to “an entity designee” indicating that someone other than Wilson the neighbor was the potentially the intended purchaser. **App. 304** A later communication revealed the designee to be an LLC.

Wilson and Kelly called Respondent daily, strongly urging the sale, yet continually opposed every effort to close. Wilson’s contract called for a cash payment of \$130,000.00 yet his Opposition to Motion to Sale indicates only that he “likely had the funds” to pay. When asked to provide a copy of the cashier’s check for the \$130,000.00 that Kelly claimed to hold on behalf of Wilson, Kelly eventually admitted the cashier’s check was for only \$15,000.00. **App. 304, App. 313** Each communication was conveyed to Complainant.

When asked again to provide a copy of the “official contract” referred to in Wilson’s contract, for use as evidence of a more legitimate sale than the letter contract appeared, L.B.R. 9040-1; Kelly yelled at Respondent that she “didn’t have to give [her] s@%#.” **App. 313** She and Wilson then appeared in U.S. Bankruptcy Court the day of the foreclosure with plans to argue against the Motion to Sell, succeed at defeating Complainant’s efforts, then walk down the street ½ hour later to purchase the property at the foreclosure.

Although the ultimate purchase price at foreclosure is unknown due to the

bidding process, Wilson claims to have taken a \$130,000.00 cashier's check to the sale payable to the City of St. Louis. **App. 489 (Tr. 35) App. 500 (Tr.78)**

Wilson's contention that he would have paid the Sheriff \$130,000.00 for the Waterman property confounds the logic of such purchases and contradicts his purported desire, before and after the foreclosure date, to purchase the property free and clear of outstanding liens. Properties purchased at foreclosure are purchased subject to all liens. Wilson purportedly shredded the cashier's check after the foreclosure was cancelled; essentially shredding \$130,000.00. **App. 500 (Tr. 79)**

Following the sale, and in response to Respondent's demand to perform on behalf of her client, Wilson not only declined paying the "cost of bring [sic] this matter to a conclusion" as he had promised in his contract (the very consideration that created the binding affect) he then demanded numerous additional terms not present in the original contract including a lower price of \$125,000.00. **App. 291, App. 327**

When given the opportunity to close on no more than the original terms of his contract, even with Respondent "walking away from a considerable amount of [her] fees" he declined to do so. **App. 291, App. 425, 426** In fact, Wilson never presented an opportunity to close on his original contract. Every offer made included new and onerous terms that would have placed Complainant in breach upon failure to comply. **App. 327** (contract for \$125,000.00 and other conditions),

App. 359 (contract for \$130,000.00 suggesting Complainant pay escrow fees and making no provision for fees Complainant incurred), **App. 362 and 368** (ghost written contract for \$130,000.00 and multiple conditions added), **App. 401** (Contract for \$133,000.00 and multiple conditions added) Settlement with Wilson would have required signing a Mutual Release of Claims **App. 374** leaving Complainant with no rights to be made whole under the Simmons/Fingal contract. Additionally, the added terms of each offer left Complainant subject to breach. Once Complainant failed to meet any of the new terms she would have relinquished the so called \$130,000.00 sale to Wilson as well as her right to sue him for specific performance and damages.

Although Wilson could have enforced his binding contract once he filed his Petition for Specific Performance, the prayer requested he be “relieved from all further obligations under the Agreement” and, calling his own contract insufficiently definite, an alternative prayer requested that the “Court enter judgment declaring the contract between the parties is void and unenforceable against Plaintiff Larry Wilson” **Resp. App. 42** He purportedly wanted to purchase the property and paid Kelly for months of legal representation but immediately obtained a “full release of all claims and obligations” upon the first opportunity Complainant had no legal counsel. **App. 474 – A475**

The determined efforts of Wilson to avoid consummation of his contract and the eventual release of the contract not only under scores his insincerity but

also that a seasoned real estate investor with experience in rehabbing, and intimate knowledge of the Waterman neighborhood, did not believe the resale value of the property after rehab warranted an investment of \$130,000.00.

Additionally, any belief that Respondent was interfering in his contract would have resulted in a cross-complaint against Respondent and /or Complainant as threatened in the letter dated September 11, 2003. **App. 360**

Despite knowing Complainant was represented by counsel, Kelly or another attorney working on Wilson's behalf, prepared a contract on behalf of Wilson and directed him to deliver it directly to Complainant. **App. 368, App. 495 (Tr. 59, 60)** Despite Complainant's allegations against Respondent, she chose not to sign the agreement but rather brought it to Respondent.

Wilson claimed he could not close because title work disclosed a bankruptcy he knew nothing about, however, the bankruptcy was filed on August 19, 2003, the same date the title report was faxed. **App. 498 (Tr. 71), App. 348**

Kelly's unnecessarily combative and resistant attitude was the first indication that something was not right about Wilson's contract and the Mutual Release proved the suspicions right.

Following Advice of Legal Ethics Counsel

Believing at the time that Wilson's offer was sincere, Respondent filed a good faith bankruptcy petition on behalf of Complainant the day of the foreclosure

and stopped the sale. The intentions were to close on the Wilson contract and pay the mortgage balance in full. **App. 293** 11 U.S.C. § 301, § 362, and § 1322

To the exclusion of almost all other demands of an extremely busy practice, Respondent spent nearly every working moment of the entire week attempting to adjourn the foreclosure sale and consummate the contract to which Complainant was bound. Wilson and Kelly refused to close on the contract citing issues that could have been resolved at closing if not before and further refused to release Complainant from the contract despite the pending foreclosure. **Resp. App. 95 App. 302-305, 313, 325**

With the knowledge and consent of Complainant, Respondent sought other potential buyers for Complainant's Waterman property. No one, however would be able to purchase the property other than subject to Wilson's contract. **App. 145 (Tr. 234)** such a contract, however, would permit Respondent to persuade either Countrywide's attorney or the judge that one of the two contracts would provide a full payoff of the mortgage, thus buying more time. However, there was no interest with that level of risk. **Resp. App. 43-51 (Tr. 2-7) Resp. App. 72**

Two working days prior to the final foreclosure date, Respondent accurately concluded that Wilson's had no intentions of closing. Being unable to assist her client in any other manner and guided by the dictates of scriptures including but not limited to "[h]e that knoweth to do good, and doeth not to him it

is sin.” James 4:17 Respondent had more than sufficient funds to pay the mortgage arrearage to avoid her client lose what appeared to be more than \$70,000.00 in equity. **App. 223 (Tr. 22,23) App. 211 (Tr. 240)**

Respondent consulted with the Missouri Ethics Counsel, Sara Rittman (hereinafter “ Ethics Counsel” or “Rittman”) to ascertain an ethical manner to advance the approximate \$8,000.00 needed. **App. 100 (Tr. 44), App. 288.** There was no personal benefit for Respondent other than fulfilling her religious beliefs and nothing was expected in return other than to be repaid. Being able to help her client avoid foreclosure, complete the sale of her property and preserve her equity was sufficient gratification in itself.

Rittman advised Respondent that no funds could be advanced on behalf of Complainant but that she could purchase the property in a “genuine purchase” and “with the client’s consent”, meaning that Respondent “would have to be willing and able.” **App. 288** There was no other advice given or reference to an “arms length transactions and no reference to any specific rules.”

Respondent continued to pursue other options including investors, refinancing, adjourning the sale, and a letter to Kelly. Having exhausted virtually every other option available to legally and ethically protect her client, Respondent decided to risk her personal funds, that of a friend and her mother’s almost entire teacher’s retirement to purchase Complainant’s house and pay off Complainant’s mortgage.

Although Respondent was left at risk of having extended substantial funds on behalf of her client without a deed in exchange, the contract was designated as a “back-up contract” and provided for the deed to be exchanged at a later date, so that Complainant would be free to consummate the original contract with Wilson. That designation was solely for the protection of Complainant and an obvious detriment to Respondent. **App. 318, App. 438**

So as to avoid any allegations that Respondent caused Wilson not to perform prior to the foreclosure date, Respondent strongly urged Complainant and her daughters to go to Kelly’s office to get a copy of the \$130,000.00 cashier’s check as proof he could perform. As in all other requests made of Complainant, and despite the fact she agreed Wilson had lied to her, Complainant (nor any of her seven daughters) went to Kelly’s office because “she was busy”. **Resp. App. 40 (Tr. 7), App. 113 (Tr. 96)**

Since Wilson refused to consummate the contract or release Complainant up to the foreclosure date, at the urging of her daughters, Complainant authorized Respondent to contact an attorney on her behalf to prepare a contract for the purchase of the Waterman property. The terms of that contract mirrored the terms discussed with Complainant and at least four of her daughters in great detail the day before. **App. 116 (Tr. 106, 107)**

Upon completion of the contract at 5:30 p.m. the evening prior to the

August 26, 2003, foreclosure sale, with Countrywide refusing to voluntarily adjourn the sale, Wilson refusing to either perform under the contract or release Complainant, and Complainant unable to refinance, sell or otherwise stop the sale, Respondent and Simmons met with Complainant, and at various times two and three of Complainant's daughters to review and sign the contract. Respondent read every word out loud and extensively reviewed and explained the meaning of each provision of the contract and post closing lease. **App. 126 (Tr. 147, 148)**
App. 127 (Tr. 151),

Prior to Simmons' arrival at Green's residence, Respondent also discussed waiving any conflict of interest with her client and inquired if Complainant wanted to retain separate counsel. **App. 147 (Tr. 229, 230),** Never having engaged in a conflict of interest between clients or engaged in any business or financial transaction with a client, Respondent hurriedly prepared a simple Waiver of Conflict before rushing back out of the office that afternoon to meet with Attorney Chris Braumbaugh. Contrary to testimony given in her state court deposition and the hearing, Complainant was advised she could hire another attorney but declined to do so. During that conversation she was also advised that another law firm would prepare the contract. **App. 146 (Tr. 228, 229)**

Contrary to the claim that she thought the Simmons/Fingal contract was for \$130,000.00, **App. 123,** Complainant was advised that the total price was \$90,000.00 as clearly shown on the first page. **App 316** It also can be

extrapolated from the distribution of proceeds described on the last page of the contract that Complainant knew she was not being paid \$130,000.00. **App. 440**

Basic logic defies that Respondent would pay Complainant \$130,000.00 when Respondent had told Complainant that Wilson inflated his price only to lure her into signing his contract, but then turns around and pays her the same inflated price. Further, Complainant's deposition from the Committee Hearing acknowledged that she knew Respondent was paying off her mortgage for "about \$61,000.00" and further indicates twice that she believed she was going to receive \$40,000.00 in cash, a total of \$101,000.00, not \$130,000.00. **Resp. App. 51 (Tr. 18–20) Resp. App. 85-86 (Tr. 32, 33)** Even that, however, contradicts the plain language of the contract. And in her state court deposition Complainant clearly states she "wasn't going to get \$130,000.00." **Resp. App. 10**

Respondent also took full risk for the condition of the property which could not be inspected and had been obviously neglected. Trusting in the decency of Complainant, the terms of the contract provided that no deed would be transferred until after closing even though Respondent would have paid out over \$61,000.00 to payoff Complainant's mortgage and more than \$2,000.00 to bring Complainant's past due van payments current. That term left Complainant fully capable of consummating the Wilson contract.

Although the benefits offered under the Post Closing Lease were not part of

the sale price offered by Respondent nor a part of any negotiation, Respondent gratuitously included a post-closing lease (a separate document from the Real Estate Sales Contract) which provided that Complainant could occupy the premises rent free for up to nine months and potentially receive additional sums of money. The additional sum would be paid to Complainant even if a higher resale price resulted from improvement made by and at the sole expense of Respondent.

App. 129 (Tr. 160)

On the day of foreclosure, Respondent and Complainant appeared in court for the emergency hearings. Wilson and Kelly appeared with the intentions of orally opposing Debtor's Motion to Sell. Although more than 30 attorneys were present, Complainant did not feel the need to consult with them nor raise any issues to the judge. She fully understood the terms of the contract and was fully prepared to accept the benefits.

Respondent again explained the basic terms of the Contract and gave Complainant another chance to cancel. With Complainant's final consent Respondent delivered the money to Countrywide's attorney and announced Complainant's request for dismissal. Realizing that declaring the Wilson contract null and void held no legal affect, Respondent sent a letter to Kelly to determine Wilson's intentions regarding the contract and expressing Complainant's intent to file suit for fraud and breach of contract. Consistent with the term in his contract that bound Complainant to the agreement, Respondent demanded that Wilson

comply with those terms, including payment of Complainant's related legal fees.

Wilson and Kelly's constant and lengthy calls to Respondent over a period of seven days, each of which then needed to be conveyed to Complainant; their constant feigning insurmountable problems that then needed to be researched and addressed, the need to file a bankruptcy in order to stop the foreclosure, efforts to locate buyers, prepare motions and a contract and review a title report involved more than 40 hours of work.

Wilson, now being forced to comply with the terms of a contract he vehemently purported to want the week before, extended new contract offers that added conditions exceeding those of the original contract. Wilson had no lawful right to demand more.

Though she later claimed to not understand the terms of the contract, on or about October 18, 2003, Complainant requested an additional payment of nearly \$9,000.00 to stop foreclosure on the Page property.⁵ She chose only to understand that her mortgage would be paid off, that she would live rent free, and that she was entitled to the balance of the \$75,000.00 plus an additional \$15,000.00. **Resp. App. 54 (Tr. 34, 35)** She did not question any terms before or

⁵ Respondent had previously tendered the funds to Chase to cure the Page property but Complainant's daughter again failed to resume payments as repeatedly urged. Chase returned the tendered funds as insufficient to cure. **Resp. App. 27**

after the foreclosure date but accepted substantial payments on her behalf and then requested more. **App. 126 (Tr. 147, 148) App. 127 (Tr. 151)**

Complainant's recent change in behavior, sudden change in diction, and daughter's sudden "attitude" began to reveal less than honest intent. Though Respondent had substantially performed and the contract was then frustrated by the protracted but necessary negotiations with Wilson, Respondent agreed, but requested a voidable, unrecorded deed in exchange. Research arising from another case revealed that the "intent" of the parties controlled an exchange of deed.

The provisions specifically written into the contract that disbursements were to be made directly to the entities (i.e. Countrywide Mortgage, FMCC, Chase etc.) rather than to Complainant indicates Respondent's sole intent of assisting her client. Any confidence that the purchase of this property would yield a profit based on a \$120,000 to \$150,000.00 value is negated by the protection of the funds expended. **App. 438**

Complainants Lack of Credibility

Complainant's lack of credibility is documented as far back as her third bankruptcy case filed by another attorney in which she concealed from the U.S. Bankruptcy Court the accurate value of her real estate⁶ and later listed her

⁶ All facts pertaining to Complainant lack of credibility were gathered after her bankruptcy filing.

vehicle loan as co-signed, when in fact it was not. Both times to gain specific benefits of U.S. Bankruptcy Code. 11 U.S.C § 727, 11 U.S.C. §1322 **App. 169 (69-71) Resp. App. (27-29), Resp. App. 3 (Tr. 50) App. 4 (Tr. 55), Resp. App. 50** In a chart included in Respondent's Appendix and incorporated herein by reference, there is false testimony regarding Complainant's mortgage payments, her inability to read and write, and that she has failed to disclose income to the U.S. Bankruptcy Court, the Internal Revenue Services, the Missouri Department of Revenue, the Missouri Department of Social Services, the Social Security Administration and to Respondent. **Resp. App. 52 (Tr.), Resp. App. 52**

The chart delineates a profuse number of contradicted claims including that Complainant did not understand the Simmons/Fingal contract; that Wilson was unaware of a pending foreclosure, that she has disclosed, under oath, the value of her house as low as \$43,000.00 when she believed it was worth as much as \$200,000.00 and that she believed she was to receive \$130,000.00 under the contract. Based on any degree of accuracy of Complainant's claim that a similar house sold for \$200,000.00, Complainant would not have been entitled to a Chapter 7 discharge in 1998, due to the value of her home. (The Recorder of Deed, however shows no such transfer.)

Complainant claimed she did not authorize Respondent to file or dismiss

her bankruptcy case, forgetting she signed for each bankruptcy, one of the two voluntary dismissal's and was in court for the other. **Resp. App. 32, App. 186 (Tr. 140), App. 187 (Tr. 141)** Through these and many others contradicted claims, Complainant has proven that virtually none of her testimony is credible.

Respondent's History of Service and Integrity

Respondent's long history of service to her clients, and numerous private, civic and charitable organizations is inconsistent with the calculated fraud described in the Information and Informant's brief. Time spent by Respondent on behalf of one of the organizations listed in Respondent's resume resulted in a loss of income far in excess of any potential profit to be gain from the purchase of Complainant's house. **Resp. App. 54-56** Money was not a factor when serving these organizations, it was not a factor in each bankruptcy filed with little or no pay, it has not been a factor in the many Chapter 13 cases filed in which fees are never paid, and it was it a factor when serving Complainant.

In addition to the time devoted to pro-bono service for the majority of Respondent's clients, and time expended in service on numerous boards, in the year prior to being involved with Complainant, Respondent made donations to 34 different charitable and religious organizations, including \$10,000.00 annually, to the United Way alone. As a result of the time consumed by Complainant and the filing of her complaint, the number of organizations to which Respondent made contributions in subsequent years has been reduced to four. The United Way contribution has been reduced 10 fold.

While Respondent's resume lists civic and charitable boards on which Respondent has served, there are many other services that it does not. Those include being among the first responders to the American Red Cross the morning following September 11, 2001, **Resp. App. 115** participating in the Stand Down program for veterans sponsored by St. Louis University, mentoring law students and young attorneys through formal and informal mentoring programs, participating in programs with the St. Louis Public Schools, and serving on numerous church committees. Service is of significance as pointed out in *Matter of Smith*, and Respondent's extensive volunteer service is inconsistent with someone lacking moral character. 749 S.W. 2d 408 at 410

Between 1998–1999 alone Respondent served on six boards and committees directly or indirectly related to the resolution of the threatened teacher's strike against the Archdiocese of St. Louis. No other individual served in more capacities to avert that strike and reach a peaceful resolution. That service alone consumed over \$100,000.00 of Respondent's time through, at one point, semi-weekly meetings.

In 1999, in the midst of preparing for the anticipated visit of Pope John Paul, Respondent was granted the last non-Papal related engagement by now Justin Cardinal Rigali. That request was granted out of respect for the extensive volunteer service rendered to the Archdiocese of St. Louis by Respondent and resulted in Cardinal Rigali co-hosting a charitable dinner for civic leaders funded

solely at the cost of Respondent. **Resp. App. 58**

Contrary to the allegations, money is the least of Respondent's concerns in serving her clients and community. Respondent has always displayed an abiding respect and concern for all individuals regardless of the station in life and extends extraordinary compassion where ever possible. **Resp. App. 14-20**

Respondent's character is revealed most notably in Respondent's children, all three of whom are responsible and giving adults. Their character is recognized by many including Judge David Mason. **Resp. App. 59**

Respondent's oldest child taught brokers at Edward Jones until her recent move to Virginia where she started her own business and became active in volunteer work. Her husband was Assistant Pastor of St. James Church and now co-pastors a church in Virginia. Respondent's middle daughter is an exceptional mother who helps her husband in his business. And Respondent's son is an engineering student who has established a graphics business and extends himself wherever needed. Because children tend to learn what they live and live what they learn they each have a deep relationships with God,. "The tree is known by its fruit." Luke 6:43 Measured only by the character and integrity of Respondent's children, the spurious allegations of dishonesty, fraud and deceit are implausible.

Informant ignores and objected to evidence introduced that just months prior to Complainant's foreclosure, that Respondent discouraged a client from

abandoning the equity in her home, personally sought out the same real estate agent, notified the lender she was no longer abandoning the property, and took the appropriate actions through the bankruptcy court to provide for the sale of her property. While Respondent could have purchased this property from a young client so frustrated she wanted no more than to (and had) walk away , Respondent's efforts over and above that required resulted in her client realizing more than \$37,000.00 in profit. 11 U.S.C. § 362, 11 U.S.C. § 1322. If Respondent would walk away from an opportunity to benefit from the obvious \$37,000.00 equity already abandoned by this client, it makes little sense to become embroiled with a contested contract, state court suit and large law firm to make less money than Respondent would make with far less time and effort. **Resp. App. 60-66**

Informant also opposed the introduction of evidence that showed the same diligent efforts of Respondent months before that case in which Respondent was able to avail the use of the bankruptcy code to protect her client's property while personally seeking buyers for a \$300,000.00 property in the Central West that enjoyed substantial equity. **Resp. App. 67-68** In both instances, as in many before, neither client had previously abused the bankruptcy system, Respondent extended assistance beyond that anticipated by the bankruptcy attorney fee provisions, saved the equity in her clients' property and received no benefit from the client or anyone else for the efforts made on their behalf.

In the instant case, Complainant had exhausted the bankruptcy system then continued to engage in conduct that placed herself in peril. Despite the heightened demands of the case, Respondent accepted the case for a minimum fee, re-filed cases with no additional fee, diligently followed the myriad rules of the bankruptcy code and the Rules of Professional Conduct, and vigilantly and successfully fought against the unscrupulous acts of a devious neighbor and his attorney. All without a single bill or payment being demanded from the client beyond the initial fees.⁷

Before Respondent spoke to the Ethics Counsel and learned that Respondent could only assist her client by buying her client's house, Respondent had already expended over 40 hours of unpaid work vigilantly seeking to consummate the contract with Wilson. Respondent engaged in daily

⁷ Respondent had demand no additional fees for refilling the second case and was paid only for the additional work brought on for the involvement sought in the Clarkson contract beyond that of merely seeking permission of the bankruptcy court to sell the property. Upon release of that contract and re-filing a third bankruptcy case on behalf of Complainant, those fees were applied to the unpaid fees of the second case. No additional fees were demanded or paid for the continued representation.

conversations with Wilson and Kelly, filed a new bankruptcy, rushed to notify Countrywide's attorney to stop the foreclosure, engaged in efforts to adjourn the foreclosure, filed a Motion to Sell that Wilson chose to vigorously oppose, scheduled time away from the office to appear in court on a 108 page docket, sought to personally pay the approximately \$8,000.00 in arrearages if an interpretation of the Rule of Conduct would permit, and then took the time to seek direction from the Ethics Counsel to take whatever actions were appropriate.

With Wilson opposing the Motion to Sell, Respondent sought others buyers for the property, negotiated with buyers who called, and eventually saw no other options to save Complainant's home from foreclosure but to take the advice of the Ethics Counsel and buy the house in a "genuine purchase." Although Respondent was willing to go this extra mile, Respondent was not willing to do so alone. Respondent was entering into uncharted waters and wanted a co-buyer. If money was Respondent's concern, seeking to dilute any profits was not the most advantageous route. Respondent could have arranged to pay the Waterman arrearages only or the entire loan balance without the assistance of a third party reaping all of the so called "benefits" of the purchase without having to share the bounty with two others.

Once it was determined that purchasing the property was the last resort, entering into a "genuine purchase" became one of an investment. Clearly Respondent was not seeking to move into the property. Once owned, it would then need to be resold. It seems elementary that a property purchased for no other

purpose but for resell would be done minimally to receive back at least what was invested, and, if possible some amount in excess.

The climate of the bankruptcy system in 2003 was by all measure the most stressful for everyone in the history of the Eastern District of Missouri. In Respondent's 22 years of practice, Respondent has witnessed the court's moves to two new locations, the retirement and appointment of judges, the large influx of bankruptcy filings, the revision of fee payments, and the development of legal theories and has engaged in the long process of assisting the court in streamlining the system and promulgating new rules, but at no time in 22 years has the court engaged in the massive undertaking of converting to a paperless system and complete revision of all local rules and procedures to accommodate the new system. **Resp. App. 106**

Old forms and form documents had become obsolete, internet systems had to be put in place and learned. New soft ware had to be installed and understood. New forms had to be rewritten and mistakes had to be corrected. The court dockets quadrupled as the result of mistakes and interpretation of the new rules. Hearings were longer and time had become more of a premium than ever. As a result of the enormous stress imposed by these changes, many attorneys abandoned the field, several were disbarred, two died and at least one had a nervous break down. The attorney for Countrywide had brain surgery within a year of the hearing. Nerves were frayed and tension was high. Judge Schermer,

who, at the time was the only judge handling the Chapter 13 docket, had become intolerant. The Chapter 13 Trustee was feistier than ever. Yet, in the midst of these demands, Respondent not only took on Complainant's case but diligently fought on all sides on her behalf. In exchange, Respondent sought and received less than a thousand dollars.

In further deference to her client's interest, Respondent refrained from protecting herself by taking back a deed of trust as is customary when money is paid out for the purchase of property. Doing so was done in compliance with the U.S. Bankruptcy Code and in protection of Complainant. The result of paying out \$63,000.00 with no deed in exchange, left Respondent with no protection if Complainant breached the contract and Wilson succeeded in obtaining a release from his bogus deal. In deed, but for the lis pendens, Complainant would have succeeded in refinancing after the loan was paid in full. Repayment to Respondent is doubtful

After in-depth consideration and consultation with Simmons, Respondent offered to purchase Complainant's property for \$90,000.00. The \$90,000.00 plus the detriment to Respondent was more than valuable consideration for the purchase of an As Is property and represented the highest amount Respondent was willing to pay. Because of Complainant's daughter's distress in not receiving the \$130,000.00 insincerely offered by Wilson or the \$100,000.00 she released in order to accept Wilson's offer, Respondent and Simmons wanted to assuage her

disappointments by offering her free rent and the possibility in sharing in any higher resale price that may have been realized. Simmons was in full agreement.

Although Respondent could have either required that Complainant vacate the property or charged rent for any time she or her daughter remained, the Post-Closing Lease was a gratuitous offer that granted her a right to sales proceed to which she was not entitled. The suggestion that Complainant was entitled to receive any more than the stated \$90,000.00 purchase price provided in the contract she had already signed in the event the property eventually sold for a higher price for any reason (change in market condition, time, or improvements made) is without merit. Once a deal is made you accept both the benefits and the risks of your bargain. Market places in all arenas are unpredictable. No appraisal, estimate, or guestimate defines the final selling price in any open market. Respondent assumed the risk that the Waterman property would be able to sell for at least \$90,000.00 plus the cost of sale and Complainant agreed to that price and the benefits of the Post-Closing Lease.

Communication with Client

Complainant's contention that Respondent failed to communicate with her is at odds with Complainant's referring buyers to Respondent and using Respondent to re-file her bankruptcies. Complainant did so knowing Respondent "was a nice lady" that had diligently communicated with both her, her daughters and potential buyers. **App. 145 (Tr. 224)** Trust arises from nothing else but

communication and action. Respondent's letter to Complainant dated September 5, 2003, not only reflects the detailed communication with client but included copies of letters to Kelly. **Resp. App. 38** In addition to providing copies, Respondent discussed each letter before it was mailed as well as Kelly's response thereto, Had there been no such communication or Complainant felt Respondent was interfering in fair and sincere offers from Wilson, she would have signed the contract prepared for Wilson and delivered to directly to Complainant. Instead she bought the copy to Respondent. Informant's conclusion that Respondent failed to communicate with Complainant is simply blatantly false and is based on nothing more than the self- serving statements of Complainant. This complaint was filed for no other reason than for Complainant to gain an advantage in state court proceedings. (Thus the cc: to Judge Dowd) **App. 509** Filing a false complaint was her only means of escaping the terms of a contract she understood and accepted and from which she had been unjustly enriched. Yet it was only after she received the benefit of her bargain, and could no longer wheedle funds she sought months later, did Complainant claim to have been deceived.

Without exception, Respondent communicated with Complainant regarding each and every phone call made be it Larry Wilson, Kelly, Clarkson, other investors, MSD and attorneys for her mortgage companies. L.B.R. 2093(B) Virtually every discussion and every action was immediately communicated to her in deft detail. Complainant deferred to the expertise of Respondent and never expressed instructions.

As with all clients, no matter what the situation Respondent refused to discuss any aspect of Complainant's case or sale of her house until Respondent received her permission to do so. **Resp. App. 69** Despite having to make additional phone calls and expend additional time trying to reach Complainant, Respondent complied with Rule 4-1.6.

Complainant has persisted in her false allegations out of fear of being sued for liable and slander as Respondent indicated in her response to the complaint. **Resp. App. 70** Nearly all of Complainant's allegations and account of events is either contrary to documented evidence, contradicts her own statements or is simply illogical as shown in the chart. **Resp. App. 71**

Complainant's claim that Respondent engaged in negotiations without her knowledge or consent is lacks credibility. As indicated in the Billing Statement prepared on or about May 1, 2004,⁸ Complainant appeared at Respondent office on October 16, 2003, after a failed attempt to advise her that a meeting with another attorney had been postponed due to the attorney's schedule. Respondent was preparing the October 16, 2003, letter to Wilson's new attorney, when

⁸ Respondent had never saddled Complainant with demands for payment of any of the thousands of dollars of attorney fees incurred until after her intended breach of contract. The billing statement was prepared from various notes in response to Defendant/Complainant's Motion for Production of Documents.

Complainant arrived unexpectedly. With it near completion, the letter was read word by word to Complainant and daughter, Ross. **App. 462, App. 427-428**

Contrary to Complainant's perjured testimony that she did not know about negotiations with Kelly and would have settled with Wilson, her actions reflect the opposite of her statements. **App. 120 (Tr.121-127)** She chose not to sign the Wilson contract delivered directly to her but instead brought it to Respondent, unsigned, nearly a month after the intended closing on the Simmons/Fingal contract. **App. 327, App. 462** It is also inconsistent with Complainant's contention that she wanted to sell to Wilson in that it was Complainant who contacted Respondent and requested disbursement of more funds under the Simmons/Fingal contract. **Resp. App. 12, Resp. App. 462**

Communications regarding Complainant's bankruptcies and contracts are documented in Respondent's Billing Statement, **App. 448-467**, as well as various transcripts. **App. 143, (Tr. 213)**

Respondent's Successful Efforts to Save Clients Property

Despite Complainant's inability to pay the full fees to file bankruptcy, Respondent immediately filed a Chapter 13 case in an effort to provide Complainant and daughter, Rhymes an opportunity to save her Rhymes' home from foreclosure. Contrary to the allegation, Respondent does not "advise" anyone to file bankruptcy but instructs clients as to the benefits and disadvantages of filing bankruptcy, presents other options, and accommodates the client's

decision. The decision was Complainant's as it was in previous filings.

Respondent disregarded "personal inconvenience" and "acted with commitment and dedication to the interest of the client" by taking on a case fraught with problems. Comments to Rules of Professional Responsibility 4-1.3

After the case was filed, Complainant disregarded the bankruptcy court notice and Respondent's advice to return with all required information to complete her case and avoid dismissal. L.B.R. 1007, L.B.R. 1017-1(B), Rule 4002, **App. 143, Tr. 214** Although all work had to be duplicated, Respondent re-filed her case without payment of fees for either case. **Resp. 53, 57**

Upon learning of the contract Complainant signed with Clarkson Realty (hereinafter Clarkson), Respondent engaged in discussions with Clarkson in an effort to complete the sale prior to foreclosure. **App. 450** After the automatic stay was lifted as to one of Complainant's properties (ensuring the same result on the other) and being assured Clarkson was prepared to proceed with his contract, Complainant choose to dismiss the bankruptcy and close on the Clarkson contract. **Resp. App. 13** Payment under that contract would have been sufficient to satisfy both mortgage companies.

Again, without relying on Respondent for advice, Complainant released Clarkson from their original contract due to insurability problems. Following a call from Clarkson, Respondent then engaged in discussions regarding their revised offer of \$100,000.00. Before that offer was resolved, Complainant then entered into the Wilson contract, again, with the knowledge of or consultation of

Respondent. At one point Respondent's time was so devoted to selling this property before the foreclosure took place, that Respondent was called by Clarkson and Wilson simultaneously. **App. 450**

Consistent with the Rule of Professional Conduct Respondent insisted on receiving Complainant's authorization to speak with either Clarkson, Wilson or Kelly before engaging in any conversations. **App. 450** With two offers on the table Respondent inquired of Complainant which offer she wanted to pursue (not knowing Complainant had already signed and was bound to the Wilson contract). Consistent with Wilson's intent of making an inflated offer of \$130,000.00 Complainant chose to pursue the Wilson contract. **App. 451**

As of August 19, 2003, all known clouds on the Waterman property were known and despite having only a sewer lien and incorrect judgment lien, Wilson and Kelly refused to close. Both matters could easily have been resolved by payment or escrow of funds at closing. Through numerous phone calls from Wilson and Kelly, both during and after office hours, expressing a false desire to close while repeating insincere objections to the outstanding liens, Respondent continued to resolve the feigned problems through numerous phone calls to MSD , the title company and the attorney holding the judgment lien. **App. 450-452**

As a result, the BJC lien was immediately removed. None of these efforts are a part of the duties of a bankruptcy attorney and such fees are not a part of the flat fee provision included in the bankruptcy. Rule 2016, L.B.R. 2016-3(1) L.B.R.

Indeed, though continuing to insist he was willing and able to close but for the liens Wilson's deposition reveals he claimed to be willing to deliver to the Sheriff a cashier's check in the amount of \$130,000.00 to purchase the Waterman property. That purchase would have been subject to payment of the same liens.

App. 500 (Tr. 78)

Despite his claim to have had a \$130,000.00 cashier's check on the day of the August 19, 2003, foreclosure, Wilson's attorney never escrowed the funds "upon request" as provided in his contract nor even produced proof of funds as requested. **App. 313** The only cashier's check ever produced was dated September 17, 2003; nearly one full month after the foreclosure. **App. 417**

With Wilson unwilling to perform under his contract and Complainant having exhausted her remedies, including the voluntary continuance of sale, Respondent sought the advice of a real estate attorney regarding the validity of Wilson's contract. Having bound herself to the Wilson contract, Complainant was no longer able to sell the property to either of the two other buyers.

Respondent offered to and did seek other buyers for the property through personal friends, Frank Simmons and Jesse Morrow (a real estate investor) and real estate agent, LaDonna Parker. **App. 453, 455, 456 .**

Complainant logically encouraged Respondent to make any contacts possible.

Within one day of learning that the Wilson contract was enforceable, that he was opposing the Motion to Sell, and that Countrywide was unwilling to

adjourn the sale, **App. 156 (Tr. 18, 19)** Respondent received a return phone call from Rittman.

Realizing Wilson's devious efforts, Respondent met with Complainant and five of her daughter and discussed the possibility of several family members joining together to refinance the loan. Each daughter rejected that option due to their own financial and credit problems. Such a loan, however, would have required the bankruptcy judge to impose a lengthy continued stay⁹ to provide for completion of the loan. That outcome was extremely unlikely.

Only when all other efforts had failed did Respondent consider Rittman's advice regarding the purchasing. That option, without reservation, was the last resort. In fact, Jesse Morrow was called *after* Rittman's advice. (Morrow did not return the phone call until the following Sunday morning at Respondent's home, viewed the property on Monday and called to express his disinterest. **App. 456**) Neither Simmons nor Respondent wished to purchase the property and did so only to help Complainant. **Resp. 42 (Tr. 18), Resp. 44 (Tr. 28-31)**

Notwithstanding the primary motive, leveraging risk with potential profit was a necessary incentive to gain the support of a third party as well as protect the funds invested. **Resp. 44 (Tr. 28-31)** If profiting from real estate investments was an

⁹ Refinancing would have required multiple co-signers, time for a scheduled appraisal, loan processing and a federally required waiting period before disbursement of funds.

interest of either, both could have taken available funds, gleaned the bankruptcy court records or foreclosure listings, taken time to inspect the subject property and taken far less risk than getting involved in a back up contract in which no deed was given in exchange and the possibility of court battle. Such an allegation defies logic.

Even in court the following morning, Respondent made one last chance to back out of the contract before the money was “put at risk” by handing it to Countrywide’s attorney. Although Respondent was willing to rescind an otherwise enforceable back-up contract, Respondent explained again in no uncertain terms that once the money was put at risk by paying off the loan, the provisions of the contract became binding. Respondent, along with two of her daughter expressed their understanding and agreement to proceed.

Respondent’s Subordination of Personal Gain for Her Client

Throughout the entire length of her representation Respondent consistently subordinated her personal interest to that of her client. By insisting that Complainant disclose the ownership status of her vehicle in compliance with pertinent laws more work was created for Respondent by having to reschedule Complainant, file the schedules separate from the petition, calculate the payments to be disbursed to the auto lender, eventually monitor the claim filed, file an objection to the usually objectionable claim, monitor the response to the objection, set the objection for hearing, attend the hearing and then prepare and submit a

final order on the claim. All for the same flat fee. 18 U.S.C. §152, 18 U.S.C. §157, 11 U.S.C. § 541, 11 U.S.C. 1306, 11 U.S.C. §1322, Rule 4002, Rule 1007, L.B.R. 3007-1, L.B.R. 9050-1, L.B.R. Rule 9060, **App. 143 (Tr. 214) App. 144 (Tr.217)** It also meant a substantial delay and decrease in payment of attorney fees over a period of years since the plan would require a significant portion of the plan payment to address the vehicle depreciation. L.B.R. 2016(3) **App. 293-296**

The insistence in properly disclosing the vehicle when it would have been far easier to have merely accepted Complainant's initial response, contradicts the Informant's allegation that Respondent lacks integrity and derogated her client's interest for her own.

Respondent did not demand a higher fee to file Chapter 13 even though it involved much more time and expertise than normal. Additionally Respondent declined most new clients during the week between the two foreclosure sales at a loss of nearly \$10,000.00.

Respondent sought numerous avenues to help her client avoid foreclosure including but not limited to negotiating with Wilson and Kelly, filing the motion to sell, seeking potential buyers and attempting to adjourn the sale.

Bankruptcy Filings

As indicated in the Table of Contents, practicing under the Bankruptcy Code requires compliance with a multitude of rules, codes section and laws. Those delineated are only a portion of those involved in each case and do not

include pertinent state and other federal laws. Each case filed for Complainant was done in full compliance and Informant can site none violated. Neither during the hearing nor in state court was any bankruptcy expert ever called as a witness to testify to any violations by Respondent. **Resp. App. 73**

In June, 2003, the full filing fee and Complainant's verified petition alone were filed to stop the foreclosure on Page. 11 U.S.C § 301,11 U.S.C § 349, 11 U.S.C. § 362. Although Respondent emphasized to Complainant and two of her daughters that she had to return with the information regarding her van with in the time allowed to complete her schedules, and that she was given written notice by the court when the documents were due, Complainant failed to provide the information. Calls to Respondent's house were met with no answer or busy signals and her case was ultimately dismissed. Rule 1007, L.B.R.1017, **App. 143 (Tr. 213-215)**

Representation in Negotiation of Real Estate Contract

If Respondent's motivation in purchasing Complainant property was personal gain, Wilson's offer of \$133,000.00 provided an opportunity for Respondent to immediately profit. Accept of that offer would have resulted in payment of the \$30,000.00 under the "back up provision", \$3,000.00 of legal fees paid via the Wilson contract and any additional amount charged directly to Complainant. Profit would have been immediate and would have avoided the loss of client fees that at that point far exceeded the 1/3 share of the proceeds. **App.**

327 Again, Informant's allegations defy common sense.

In addition to a guaranteed profit, settlement would also have relieved Respondent of the need to expend time and loose additional money representing Complainant in a state court suit. However, disregarding self-interest Respondent conveyed Complainant's disinterest in settlement and made clear to Wilson's attorney that she was "fully committed to representing Ms. Green to the end" in an effort to make Complainant whole. **App. 426** Complainant paid nothing and had nothing to pay for this commitment of time and resources.

Had Respondent encouraged Complainant to accept the settlement with the additional terms unlawfully added, would have been at the expense of Complainant relinquishing her right to sue Wilson to recoup the difference between his spurious offer and the fair market value paid under the Smmons/Fingal contract and would have subjected Complainant to the likely breach herself under the stringent, new terms. Upon her breach she would have left without the \$133,000.00 offer or the right to suit for damages.

Upon Complainant eventually saying she was tired and wanted to settle with Wilson and pay any attorney fees owed, Respondent consulted with Complainant about one final demand to close with Wilson. An easier route for Respondent would have been to accept her payment of out of the sale proceeds. That payment, however would have eroded much of Complainant's profit and would have been grossly unfair due to Wilson's egregious behavior that created

the unnecessary fees. Absent Wilson's unscrupulous meandering, Respondent would have expected no more than payment of the bankruptcy fees from Complainant. Complainant consented to a final effort to negotiate for terms consistent with Wilson's original contract and for compensation for her trouble and legal fees incurred.

Vigorous Defense Despite Absence of Pay

Contrary to any notion that Respondent's actions were self-serving and focused only on fees, Respondent vigorously and ethically represented Complainant in three bankruptcy filings, motions seeking relief from stay, the Motion to Sell and Wilson's opposition thereto although Complainant had paid only \$976.00 of the \$4,016.00 due. Although Complainant had no funds to pay Respondent for legal representation specifically related to the enforcement of the Wilson contract (distinguished from the bankruptcy legal representation of seeking permission to sell included in the flat fee) Respondent devoted more than 40 hours in one week alone vigorously protecting Complainant's interest. The majority of this representation was long before Rittman's advice.

Even if one incorrectly speculated that Respondent would have sought payment of these fees at closing, the prospect of the contract closing was becoming more and more elusive. Respondent would have fared better being paid fees by other clients rather than accrue them on an "if come" basis. Respondent's last concern or request from Complainant was for fees. Informant

has not produced a single document other than the Chapter 13 plan that called for payment of fees from Complainant prior to her betrayal. Allowing the foreclosure would have been the easiest and cheapest route for Respondent, however, Respondent engaged in nearly a hundred phone calls between Wilson and Kelly, interested buyers, MSD, title companies, a real estate agent, potential buyers, attorneys, the Missouri Bar and Complainant herself. Respondent filed bankruptcies, reviewed contracts, reviewed and prepared motions, wrote letters engaged in negotiations and appeared in court, all to protect her client's interests.

Personal Favors Sought to Assist Client

Seldom if ever does Respondent seek personal favors from family or friends finding it better to give than to receive. The unusual facts of this case, however, compelled Respondent to seek every avenue to avoid the tragic consequences of foreclosure.

Fair and Reasonable Terms of Real Estate Contract

Informant's Brief places considerable focus on the potential profit of Respondent, particularly the \$30,000.00 to be paid if Wilson consummated his contract after the foreclosure date. Informant's position is without merit. Informant ignores that common law also recognizes detriment as valuable consideration. Indeed, it was the mere "detriment" of Wilson's promise to cover the cost of his contract that bound Complainant to that agreement beyond the foreclosure date. Additionally, an attorney is not denied any personal advantage

or profit from a transaction if it is with information and “consent of the client.

Shaffer v Terrydale Mgt. Corp 648 S.W.2d 595, 605)

Compensation in the amount of \$10,000.00 for each investor for undertaking numerous risks including unknown repairs required by City inspection, structural damage, damage or injuries incurred in the wake of expired or inadequate insurance, uninsured impairments, cost of sale, and depreciation in property values as witnessed in the 1980s and recurring since this purchase, plus the \$30,000.00 invested is meager in comparison. In the real estate industry the mere value of saving someone’s home from the ramifications of foreclosure, including the long term affect on future credit is considered sufficient consideration in itself. *Moore v Seabaugh*, 684 S.W.2d 492, 496 (Mo.App. 1984) An entire industry has been created of purchasing homes prior to foreclosure to eliminate the consequences to homeowners.

As of the scheduled foreclosure of Complainant’s Waterman property on August 26, 2003, Wilson effectively breached the contract by failing to close “as soon as title work could be prepared”. **App. 291** As such, but for the risks undertaken by Respondent literally minutes prior to the foreclosure sale, Complainant owned no more than the right to enforce a contract, and an unexercised and unrealistic right to redeem the property. One minute after the foreclosure Complainant owned nothing. Despite absolutely no risk incurred by her client, including payment of attorneys fees regarding Wilson, the

Simmons/Fingal contract granted Complainant an equal split of proceeds over and above the \$90,000.00 purchase price in the unlikely event Wilson performed under his contract. As such, although Respondent/Simmons/Fisher risked 100% of the purchase price¹⁰, 100% of the risks involved in purchasing the property as is, and Respondent risked 100% of the legal time committed, Complainant risked nothing. Yet, even though Respondent purchased the property on August 25, 2003, and had paid out over \$63,000.00 on behalf of Complainant, had Wilson been forced to perform at any time after that date Complainant would still have been given \$90,000.00 (less the money paid out on her behalf) as well as an equal share of the \$40,000.00. Additionally, despite having expended more than \$9,000.00 worth of legal time alone at that point (as well as lost an equal amount in client income) Respondent would have received no more than an equal share.

While Complainant would have received \$0 in a foreclosure sale but for Respondents actions, she would have realized more than \$36,000.00 under the Simmons/Fingal contract.

The Simmons/Wilson Real Estate Sales Contract provided for the purchase of Complainant's Waterman property for the total price of \$90,000.00. No more and specifically "not less". **App. 316** Because of the extremely unusual circumstances of paying off the Complainant's mortgage before a deed was given

¹⁰ Respondent actually risked twice that of Simmons in that she would have reimbursed Fisher for any loss.

in exchange, and because Complainant needed and wanted to purchase another property, was behind in her van payments and wanted to stop the foreclosure of Complainant's Page property, the contract originally called for those payments to be made even before the deed was transferred. **App. 476** The price for a little known property, the advanced fees, the payment on Complainant's van, the lack of deed, the down payment for Complainant's new residence, the \$8,857.98 payment to bring the Page mortgage current, and the back-up contract provision were all provisions singularly to the benefit of Complainant. Not a single provision other than that to protect the property by insurance, and that requiring funds to be paid funds directly to third parties, was for the benefit or protection of Respondent.

The ensuing law suit and the instant bar complaint are the truest measure of the risks Respondent assumed

Funds Advanced Without Exchange of Deed

Various provisions of the U.S. Bankruptcy Code and Title 18 precludes the transfers of property that belongs to the bankruptcy estate. Rule 6004, 18 U.S.C. 153 With the filing of Complainant's bankruptcy petition on August 19, 2003, Complainant's property Waterman became property of the bankruptcy estate. 11 U.S.C. 301, Rule 1002, 11 U.S.C. 541 As such, the deed to the Waterman property could not be lawfully transferred to Wilson, Respondent or any other buyer without first obtaining permission from the U.S. Bankruptcy Court.

L.B.R. 9004-1

In compliance with those provisions and in recognition of the prior right of

Wilson under his contract, Respondent did not seek transfer of the deed to Complainant's property even though substantial funds were paid out on her behalf. As always, Respondent acted ethically in compliance with the law and in the best interest of her client. L.B.R. 2093-1. It is unclear how this fact is ignored.

No investor or anyone interested solely in profit would pay out substantial sums of money on nothing more than a promise to perform. An act of this magnitude is motivated only by Christian beliefs and a trust in the honesty and integrity of another human being. Such a faith in humanity is recognized when you live a life of honesty and trust. When your life is consumed by blaming, distrust, dishonesty and fault finding, it apparently is too difficult to believe in the generosity and integrity of someone else.

Gratuitous Provisions of Post Closing Lease

With the totality of the sale price being \$90,000.00 it is evident that the Post-Closing Lease was no more than a gratuitous memorialization of a generous offer to allow Complainant to remain in the property until the re-sale and to allow her some additional compensation in the event the re-sale price was more than anticipated. That compensation was, however, was in no way required by law or ethics. It was neither bargained for negotiated or requested. As such, no interpretation of the post-closing lease can be viewed as a detriment to Complainant. It was a gift given to Complainant out of sympathy for her expectation of receiving Wilson's dubious offer. As long as Respondent was

reimbursed for funds invested, giving more to Complainant was of no consequence. It was not, however, a requirement under the real estate sales contract. As a separate document it was no more than a beneficial right to live rent free in two units for nine months and to receive an additional portion of post-closing profits that belonged solely to Respondent.

Complainant was not bound to remain in the property pursuant to the Post-Closing Lease, had no obligations to perform and gave nothing in exchange for the benefits gained. As such, the Post-Closing Lease does not constitute a contract of any nature because Complainant gave nothing in exchange.

Even given a legal right under the Post-Closing Lease, it is unclear how the language of depreciating interest in the sales proceeds is not clear. Each line referring to the distribution of the net sale proceeds appearing on page four of the Post-Closing Lease indicates a smaller percentage going to the Lessee and larger percentage going to the Lessor. Page one of the lease distinguished the Lessee and Lessor. As indicated before, Complainant and her daughters heard and or read the contract and lease, asked pertinent questions and signed having received clarification of all issues.

Offer to Pursue State Court Suit With Out Pay

Several conversations with client as well as letters to Wilson's attorney indicated that Respondent was committed to representing Complainant in pursuing her claims against Wilson. This commitment to her client regardless of

Complainant's inability to pay, the cost and tenuousness of a state court lawsuit, reflects Respondent's commitment to her client and disregard for compensation or or personal comfort.

Risks Involved in Representing Client

From the inception of representing Complainant, there were risks inherent in her case. Clients with prior bankruptcy cases and particularly those with pending foreclosures almost always guarantee additional work for which counsel is seldom paid. With two properties involved that risk was doubled. Filing a bankruptcy for someone who had little income meant constant problems through the length of the case. Additional court appearance, answers, motions and negotiations are all time consuming activities that are inherent with a multiple filer. Addressing those issues also require additional time that precludes income from other clients. Nevertheless, Respondent could not ignore her Christian beliefs to help someone who has asked.

Respondent also risked getting involved in litigation with a law firm that would continuously fight as done in the Wilson matter. The acerbic and arrogant approach of Wilson's attorney placed Respondent in a disgruntled position that does not translate well to the flow of work.

Beyond the obvious risks of extending a substantial amount of money to an individual essentially unknown for an un-inspected property, Respondent risked the possibility of the very complaint now being addressed. While Respondent has always complied with every Rule of Professional Conduct to the best of her

knowledge as well as all other applicable laws, Respondent had been warned by her real estate agent not to get involved simply because of “the way people can be”. The potential for someone interpreting a Rule in some manner that would have to be addressed was anticipated as a possibility; that attorneys would go to the extent that they have to twist the facts, omit evidence, overlook the truth, confound statements, and engage in unethical practices in a relentless effort to punish Respondent, is a risk beyond imagination. As a result, the biggest risk of all has been the awareness of the flagrant unethical practices of attorneys even when claiming the unethical practices of Respondent.

Income Precluded by Representation of Client

Respondent has practiced for 23 years and built a substantial bankruptcy practice. While Respondent had begun shifting focus to a new field, the number of referrals and new clients continued to remain substantial. In fact, the shift in focus actually multiplied both work and clients. There was no lack of clients or need to increase Respondent’s work load.

In deed the prior year Respondent had significantly reduced her Yellow Page advertising to the smallest available. As such, for every minute spent on Complainant’s case, Respondent was unable to see and be paid by new clients. Particularly for the week before and the week following the foreclosure. Respondent had little time to do anything but address the needs of Complainant. The resulting loss of income far exceeded any potential profit from the sale of

Complainant's property.

Complainant's Benefits from Respondent's Actions

The facts of this case could not be more contrary to the notion that Complainant was harmed or potentially harmed.

Foreclosure: Although Complainant had far more problems than disclosed during her initial consultation, Complainant's primary objective in retaining Respondent was to save her property from foreclosure. That objective was met - twice. But for Respondent's efforts to find a buyer and actually extend personal funds to pay off Complainant's mortgage, Complainant had no remedies to save her house from foreclosure. Redemption was unrealistic, bankruptcy had been foreclosed, and refinancing only became an option after the foreclosure date because Respondent paid off the first mortgage and predatory lenders surfaced.

Page: Respondent's actions not only saved the Waterman property, but was also able to communicate with counsel on the Page property and stop foreclosure on that property as well.

Equity: Avoiding the foreclosure preserved Complainant's equity, eliminated the long term affects foreclosures have on future credit applications and insurances and saved three families from being homeless. Following the foreclosure Complainant would have been forced to move and would have had no funds to do so
Repossession: Funds advanced by Respondent also avoided the repossession of Complainant's vehicle and an eventual deficiency judgment.

Free rent: Complainant was given the right for her and her daughter's to live rent free in two units for up to nine months and did so for more than a year and a half until the lawsuit was settled. **App. 446**

Health: While Informant has pointed out Complainant's illnesses (only kidney problems were disclosed) Complainant admitted she now feels 100% better. The improvement in her health was undoubtedly a direct result of having someone else pay off her mortgage, avoiding homelessness and being freed of the mortgage her adult daughter continually failed to pay for more than four years. **App. 144 (Tr . 217)**

Had Complainant honored the contract with Respondent, she also would have been able to move into her new home (which she indicated that she wanted to do), escape the dependence of an adult daughter and son-in-law that "don't pay me nothin' and an adult daughter who kept her in bankruptcy. She also would have retained her right to sue Wilson and potentially be compensated for the emotional distress and harm he caused.

Contrary to Informant's assertion, there is not a single occasion of harm done to her client but rather numerous benefits that are immeasurable.

Termination of Attorney Client Relationship

Choice: Informant's brief also seeks disbarment for Respondent's failure to give Complainant an opportunity to retain an attorney to negotiate the Simmons/Fingal contract on Complainant's behalf and because Respondent did not abandon her

client and leave her unrepresented in enforcing the Wilson contract. Those positions are inconsistent with the testimony of Respondent that the inquiry was made if Complainant wanted another attorney as well as ignores the Complainant's right to be represented by the attorney of her choice. Respondent was that choice. **App. 146 (Tr 228, 229)** That Respondent's efforts at all times subordinated her own interests to that of Complainant indicates that Respondent's obligation to Complainant were not materially limited a responsibility to herself or others.

Conflict: Reference is also made to withdrawal as Complainant's attorney after Complainant breached the contract on October 20, 2003, following Complainant's request for an additional disbursement of nearly \$9,000,00 and Respondent's new demand for the deed in exchange for the disbursement. Only then did problems arise.

Although Respondent's efforts stopped the first foreclosure on the Page property, a new foreclosure sale was pending and Complainant sought more funds. Respondent owed no duty to disburse any additional funds to Complainant under the terms of the contract Respondent but was willing to risk additional funds to stop the Page foreclosure. Funds had been previously sent to bring the Page property current but were returned due to Rhymes' failure once again, to resume payments. **Resp. App. 76-78** In exchange, however, Respondent wanted a signed and notarized deed that would not be recorded but held and destroyed in the event an agreement was reached with Wilson.

Although Complainant and her daughters were living rent free in both the Waterman and Page properties, the Waterman property was now free and clear of any mortgage, and she requested additional funds Complainant now refused to sign over the deed in exchange. Subsequent conversations, the refusal to sign over the deed and sudden surprise that Complainant had any role under the contract other than receive benefits, indicated to Respondent that Complainant had no intentions to do any more than be unjustly enriched by Respondent's generosity.

During the course of that conversation, Respondent advised Complainant that she would be filing suit against her and that she should retain a new attorney. A letter advising her to retain an attorney was also mailed to her that same evening. **App. 510-511** Knowing Complainant's inaction throughout these proceedings, Respondent also sent her a directive giving her options to consider.

Among other criteria that did not apply under Rule 4-1.8, no adversarial relationship existed between Respondent and Complainant prior to her breach. fair and reasonable price was offered to save Complainant's house from foreclosure and Respondent promptly performed the following day. Had another attorney become involved, an undesired adversarial relationship would have ensued and Respondent would merely have withdrawn. With Wilson's opposition to the Motion to Sell and no funds to pay off the mortgage, the automatic stay would have been lifted and the foreclosure cried within the hour.

Indeed, Wilson consulted with his attorney following the bankruptcy hearing to determine what rights he had. **App. 490 (Tr. 39)** But for Respondent's continued vigorous representation of Complainant, Wilson could have sued her at some later date for specific performance. Respondent had advised Wilson's attorney that Complainant was "forced to enter into another contract on terms less favorable than those offered by Wilson in order to protect her property" and Wilson's attorney used that and other tactics to force Complainant into a breach. **App. 327-328**

History of Inability of Clients to Find Counsel

Throughout representation of Complainant, Respondent learned of Complainant's complacency. **App. (Tr. 224)** It became apparent that Complainant takes no action, speaks softly and feigns idiocy and helplessness to gain sympathy and help. After Complainant failed to complete her first bankruptcy, failed to arrive on time for her appointments, failed to have the call waiting feature added to her phone service so that Respondent could reach her pending the urgent bankruptcy hearings, foreclosure and lawsuit, or to expeditiously address issues involved in her case, Respondent concluded that Complainant would not seek out another attorney. As such, with the knowledge and consent of her client, counsel sought the intervention of attorneys on behalf of Complainant to handle matters in which Respondent did not feel sufficiently competent to handle. To wit: John King to review the Wilson contract, Chris

Braumbaugh to prepare the Simmons/Fingal contract, Jim Bass, John King, Dorothy White Coleman to represent Complainant in the equity suit and Bill Piper to prepare the deed. In each instance the attorneys would have been representing Complainant and had full access to the Simmons/Fingal contract for review.

Every effort Respondent made to locate counsel to intervene in the Wilson lawsuit was declined with the exception of Dorothy White Coleman who had to reschedule. It is unknown if she would have taken the case on a creative fee basis since the representation was no longer pursued.

Counsel for American Mortgage also sought representation for Complainant regarding Respondent's Motion to Intervene but said representation was declined.¹¹ Complainant would have been unable to have paid his initial retainer as any attorney would have demanded.

Respondent has for many years tried to refer clients to attorneys in other areas of expertise regarding matters of much less complexity. Countless referrals were fruitlessly made to Legal Services of Eastern Missouri. Regardless of the value Respondent saw in the case, clients more often than not reported back that the case was declined. The vast majority of attorneys with whom Respondent has

¹¹ Respondent called attorney Michael Graff following the discussion in Judge Dowd's chambers. Mr. Graff indicated, contrary to the attorney's claim, that he had initially advised he would not enter his appearance unless a retainer of \$3,000.00 was paid, and that he declined completely when advised that she was opposing Respondent specifically.

spoken – knowing bankruptcy clients have little or no money to pay fees – have indicated that they are already overburdened or they demand a fee the clients can not afford.

Respondent also received an anonymous phone call from an attorney with whom Complainant eventually consulted on her own. That attorney declined involvement as well.

Respondent's past knowledge, as well as actual efforts to assist clients find attorneys willing to take on cases of far less complexity, led Respondent to use the little time available to address the many complex issues involved in Complainant's case, rather spend time making fruitless attempts to seek out attorneys willing to get involved in a contentious battle.

In light of bankruptcy climate that placed extraordinary time constraints on bankruptcy attorneys at that time, (reference the 108 page docket upon which Complaint's Motion to Sell appeared) finding a bankruptcy attorney at that late date to represent Complainant would have been impossible. As such, Informant's suggestion that Respondent insist that Complainant retain an attorney with the necessary strong working knowledge of bankruptcy laws, rules and newly promulgated local rules, as well as a working knowledge of real estate law, whose office was open the Sunday afternoon the verbal agreement to purchase was reached, or who would have been available Monday evening once the contract was completed, and then again Tuesday morning to wait through a 108 page docket to

argue a contested case that was placed in his hands the day before is a proposition beyond reason.

Efforts to Locate Substitute Counsel for Her Client

Due to Complainant's lack of diligence in other matters, the complexities of the issues involved in Complainant case and the lack of funds for her to retain counsel, it would have been difficult for Complainant to locate an attorney to represent her in these matters. Indeed, upon Respondent's withdrawal, Complainant was unable to retain another attorney and appeared pro-se in the Wilson lawsuit. In her complaint, Complainant indicates she "can not afford an attorney" even without having to pay a mortgage. As such, despite the constraints on Respondent's time,

Respondent sought attorneys interested in taking the case on a contingency fee basis. None were.

Refusal to Abandon Client Despite Lack of Pay

Though not her responsibility, Respondent sought out attorneys to represent Complainant and expected from the beginning, a state court judge reviewing every detail of both contracts. Complainant's eventual representation by Legal Services of Eastern Missouri followed the unsuccessful efforts of the attorney for American Mortgage locating private counsel. Unlike all other cases Respondent has referred to Legal Services office, Complainant's case was later accepted only because it involved an attorney's purchase of a client's property. Though Complainant's

new attorney mistakenly stated that Respondent could not purchase her client's property (period), he nor any other attorney was able to state what actions could have been taken under the circumstances to save Complainant's property from foreclosure. The result, therefore of being represented by another attorney at the contract level would have done nothing more than generate attorney fees without the foreclosure being stopped.

Once Wilson filed suit, Respondent immediately sought the intervention of new counsel for Complainant and continued to represent her in the interim. Contrary to the inference of wrong doing drawn from Respondent's continued representation, abandoning Complainant would not have resulted in her locating new counsel. Complainant's proven complacency and lack of income would have assured nothing more than a judgment releasing Wilson of any "obligations" and depriving her of her rights and claims. That result abrogates the spirit of the law.

The Hearing Panel's Decision

The decision of the Disciplinary Hearing Panel lacks honesty and integrity and should not be given weight; likewise the recommendation of Informant. Both resulted from predetermined outcomes that violate Respondent's right to due process *Article I § 10 Due Process of Law*. The manner in which Respondent's Hearing was conducted over a five month period violates the spirit of the law as expressed in Supreme Court Rule 78.01 That rule defines the conduct of the triar of fact in conducting the relevant hearing and measures fairness and abuse of

discretion by whether the “ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration.”

Lack of Adequate Hearing Time Resulting In An Inadequate Record

Respondent’s ability to maintain any continuity of thought was eroded by the protracted proceedings which drug out over an eight month period. However, recognizing an inability to find wrong doing on the facts, Informant has resorted to unsubstantiated and illogical interpretations to reach conclusions that otherwise fail.

Although the basis of this Complaint involve various bankruptcy laws, an area that involves the interpretation of many complex state and federal laws and rules, at no point did Informant’s counsel present an expert bankruptcy witness nor quoted a single law or rule. The same was true in the state court proceedings. While Respondent had to make many difficult and complex decisions within a matter of hours, it has taken nearly three years to of relentless pursuit, volumes of appendices, multitudes of contradictory testimony, misstatements of law, disregard of the words of the Rules of Professional Conduct and US Bankruptcy Code, incorrect recitation of facts, confounding the truth, omission of relevant evidence, intimidation, excessive accusations, rejection of credible testimony, excessive scorn, and a disproportionate fishing expedition to prove what has been considered glaring violations of the Rules. If any violation existed, such violation(s) would have been obvious with the facts at hand. Resort to devious tactics, failure to

provide Respondent a full and impartial hearing, and failure to consider the evidence introduced, indicates Informant's lack of faith in the underlying allegations.

During the state court proceedings, Complainant's attorney deposed Respondent for over eight hours. Frank Simmons' and Respondent's real estate agent were also extensively deposed as were attorneys John King and Chris Braumbaugh. Although contradictions or violations of any Rules were sought none were found. Informant's counsel undoubtedly had these depositions made available to him and certainly scoured them for any contradictions or violations. Had any violations of the rules of ethics or any contradiction weighing on Respondent's credibility been found, Informant would certainly have offered those depositions as evidence or subpoenaed the deponents to testify at the hearing. The absence of these depositions speaks loudly to the consistency and credibility of Respondent's testimony throughout each proceeding. Not only did the presiding officer exceed the time frame in which hearings are to be held and concluded pursuant to Supreme Court Rule 5.15; they were stretched out over an eight month period from the date set for the initial hearing (150 days longer than the 90 days allowed) and continued on seven different occasions. More than once Respondent was given no more than one days notice. Such frequent and lengthy continuances affected the continuity of Respondent's case, created an excessive burden and unduly squandered Respondent's time in preparation. Ultimately the hearings

were concluded despite the inadequate time for Respondent to address the unprecedented number of allegations.

Article I § 10 of the Missouri Constitution guarantees “[t]hat no person shall be deprived of ...property, without due process of law.” While Respondent is ultimately afforded a hearing before the Missouri Supreme Court de novo, that hearing is based on a record established during the Disciplinary Hearing. That hearing is in itself, therefore, part and parcel of the due process afforded all citizens of the State of Missouri. If that hearing is defective, then due process has been denied. That protection mirrors the *14th Amendment of the U.S Constitution*.

As due process pertains to the manner hearings were conducted in the instant case, that process violated Missouri Supreme Court rules of procedure; was neither fair nor impartial, denied Respondent adequate time to cross examine Informant’s witness, to present all witnesses, to testify or introduce and explain evidence. *In Bradley v Fisher* the U.S. Supreme Court held that “the power of a court to remove an attorney from membership in the bar should never be exercised without ... affording him ample opportunity of explanation and defense.” (1872, U.S.) 13 Wall 335, 20 L ed 646 That explanation and defense of charges includes, as described in *United States ex rel. Wedderburn v Bliss* (1898) 12 App DC 485, “... an opportunity to adduce testimony in contradiction of them, an opportunity for argument upon the testimony and upon the law and the facts, and all this before a proper tribunal competent to render judgment...” (1898) 12 App

DC 485

The lack of any reference to the language of the pertinent rules themselves at any time during the hearings inherently negates an “opportunity for argument” on the laws themselves. The few hours allotted Respondent to address the 93 paragraph Information, along with constantly interrupted testimony drug out over a five month period of time, before an unquestionably biased tribunal meets none of the standard described in *Wedderburn*.

Failure to Acknowledge Mitigating Circumstances

Throughout the Disciplinary Hearing, the Information and Informant’s Brief there has never been a single acknowledgment of any mitigating
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circumstances in Respondent’s case. Although the term mitigating refers to circumstances that should lessen the consequences of an action, Informant’s Brief disregards any such circumstances and focuses only on those contrived acts that would be considered aggravating.

Throughout the 93 paragraph Information and the 14,977 word brief used to support disbarment of Respondent, not one word acknowledges the unjustified opposition Respondent faced by Wilson and his counsel, the changed provisions in Wilson’s contract following the foreclosure date, Wilson’s counsels’ blatant disregard for the rule of law, Complainant’s lack of cooperation at various stages, extreme time constraints, or Complainant’s acknowledged lack of veracity.

Not one time through out these proceedings has a single act of Respondent

been recognized as anything other than calculating, deceitful and fraudulent.

In the relentless quest of Respondent's disbarment, Informant now references the language of A.B.A. Rule 3.0 which states that:

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

- (a) the duty involved;
- (b) the lawyer's mental state
- (c) the actual or potential injury caused by the lawyer's misconduct; and the existence of aggravating or mitigating circumstances.

As to duty, it has been held that "[i]t is a fair characterization of the lawyer's

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responsibility in our society that he stand as a "shield"... in defense of right and to ward off wrong." *In re Carey*, 89 S.W. 2nd 477 at 482 (Mo. banc 2002). Using this as a measure of duty, Respondent perceived that a third party intended harm against her client, and made gallant and successful efforts to defend that client against the intended wrong. To that end, Complainant's interest was more than served.

The only mental state of Respondent that would be pertinent in this case is that of suffering from the same level of stress and exhaustion that plagued virtually all members of the bankruptcy bar during a transition to a paperless system. That transition required complete revision and adaptation of local rules, revision of all bankruptcy forms, and numerous errors by everyone creating long

dockets and duplicate efforts.

Despite the enormous stress created by this transition, Respondent devoted her full time, energy and resources to defending her client against a determined opponent represented by a formidable law firm. Time was a premium and attacks relentless. Yet, these efforts are ignored in the Panel's Findings.

The lack of actual or potential harm to client is obvious from the outcome. Respondent's legal and personal efforts stopped the foreclosure, paid off Complainant's mortgage in full, saved a second property from foreclosure, saved her van from repossession, avoided three families from eviction, improved her credit standing, preserved her legal rights and ultimately improved her health. That element of Rule 4-1.8 clearly fails. The fact that Complainant wisely chose to exercise her right to freely engage in an informed business transaction with her attorney does not render the client injured. Complainant clearly benefited to an immeasurable degree from Respondent's generous act and those facts should not be ignored.

Despite Respondent's belief that she made every effort to avoid violating a single bankruptcy law or Rule, should such have occurred, there are numerous mitigating circumstances. Complainant's bankruptcy actions prior to retaining Respondent created additional challenges not attendant to most cases.

Additionally, Complainant's repeated acts of entering into and out of contracts without consulting with Respondent, as well as failing to inform

Respondent of pending foreclosures and relevant information created time constraints that constantly placed Respondent at risk of committing malpractice in reference to other clients and in having to make multitudes of immediate decisions. That time constraint made it impossible to scrutinize, research, consult and dissect every possible contingency that Informant took three years to consider. While hind sight is always 20/20, neither Informant's counsel, nor at least four other attorneys pointing fingers at Respondent have made one viable suggestion that would have protected her client against the unscrupulous tactics leading her into certain foreclosure.

Documented evidence shows that the contract between Wilson and Complainant was not consummated following the foreclosure date not because of any demand of Complainant's legal fees, but because Wilson made additional demands that exceeded the scope of the original contract terms. Twice Respondent indicated a willingness to forgo fees, **App. 426, App. 428** Each letter from Respondent to Wilson's attorneys referenced such additional terms in addition to his contractual obligation to pay all "costs".

The Information and Informant's brief make repeated reference to the fair market value of Complainant's property as being at least \$130,000.00 even though documented evidence refutes the values given. Respondent offered into evidence the state court depositions of Complainant and Wilson indicated that both believed the Waterman property to be worth as little as \$90,000.00, **App. 485 (Tr. 17)** Complainant's value being determined by the City of St. Louis appraisal and

Wilson's based on the deplorable condition of the property. Clarkson's offer of \$120,000.00 was reduced to \$100,000.00 due to electric problems identified during an inspection. The \$150,000.00 value initially suggested by Respondent's real estate agent was quantified by indicating "after some repairs", thus not worth \$150,000.00 in its current state. And Respondent offered into evidence the City of St. Louis real estate appraisal reports of several properties in the 5100/5200 block of Waterman that indicated the value of the property being worth \$97,000.00 two years after the contract was entered into. **Resp. App. 96, 97**

The money originally offered by Complainant to inadequately compensate Respondent for the time and money expended on her behalf was based on the maximum loan amount approved by a lender of \$72,000.00.¹² Based on general standards used by mortgage lenders a typical equity cushion of 10% to 20% would place the value of the Waterman property between \$80,000.00 and \$87,000.00.

Although Respondent subpoenaed the records of the mortgage lender, that subpoena was opposed by their attorney. Since the lender would have lost its commission on the new loan if judgment was entered in favor of Respondent, the assumption can be drawn that they opposed disclosing these records because their own appraisal of the property was far less than \$150,000.00.

¹² This information was given by a representative of American Mortgage who appeared in court with Complainant during the state court proceedings.

Just as Informant's brief fails to acknowledge any mitigating circumstances it also disregards every effort made by Respondent on behalf of Complainant. Even more so, every action intended for good, no matter how beneficial to Complainant, was twisted to reflect deceit.

The funds advanced to Complainant's mortgage company without the benefit of a deed, was viewed as no more than an effort to save the property for Respondents' own benefit. The funds advanced for Respondent's van and attempted to be advanced to stop the foreclosure on Complainant's Page property, were simply ignored. The substantial loss of Respondent's income during the period of representing Complainant is never addressed. Even the act of seeking guidance from the Missouri Ethics Counsel was viewed as suspect. Apparently an act of such devious calculation that Respondent purportedly planned the call even before knowing the result.

The provision to allow Complainant to live rent free is glossed over while focus is placed on a provision gratuitously given to provide additional funds to Complainant and to encourage Complainant and her daughter to maintain both units in a more habitable condition so as not to discourage the properties' sale. The absence of a definition of the phrase "net retail price" in a contract written by another attorney was illuminated to be so defective as to justify disbarment.

Efforts to protect Complainant against new, post-foreclosure terms in the Wilson contract that were detrimental to Complainant were dismissed as the basis for rejecting the offers to settle, and the Informant insists on making attorney fees

the focal point of Respondent's letters to Wilson's attorney while disregarding every other basis for demanding compliance with the terms of the original contract and offering to "substantially reduce my fees." Had Respondent allowed Complainant to succumb to the egregious demands of Wilson and demanded attorney's fees from her profits under either contract, Respondent would have been accused of failing to diligently represent my client.

Informant ignores the volumes of work performed by Respondent and the minimal amount of fees paid while belaboring the point of fees assessed - only after Complainant betrayed Respondent and breached the contract and allowed her daughter to publicly impugn her character.

Informant ignores the legal fees initially waived in the Faulkner matter and an attorney's right to be paid for multiple cases. **Resp. App. 74-78** Notwithstanding that order, Complainant's fees, as with Faulkner would have been waived but for her incredible betrayal of trust. There was no legal obligation, however, to do so.

Most of the Information and the allegations contained in Informant's brief, focuses on the contrived self-interest of Respondent. Language is used to leave the "inescapable conclusion" that personal gain and self dealing was the motive for Respondent's efforts; that every act and step in representing Complainant was a devious "scheme" carefully planned to reap the benefits of purchasing Complainant's house. Yet nothing in the Information or Informants

brief supports that contention other than Complainant's unreliable testimony. And nothing could be more contrary to the truth. Only a devious mind could misconstrue every selfless act, every generous provision and every vigilant defense of Complainant as being a carefully devised "scheme".

Informant's counsel has chosen to ignore the documented evidence that Respondent has been counsel in nearly 5000 bankruptcy cases filed since 1989 alone. **Resp. App. 105** That Respondent handled thousand's of foreclosures and has counseled thousands of others and that all have been in "dire straights". Yet Respondent has no disciplinary history for fraud, deceit, dishonesty or misrepresentation. Informant's brief ignores the documented evidence from just one case that shows that Respondent routinely walks away from thousands of dollars owed by clients "in serious financial trouble". **Resp. App. 74-78**

Informant ignore Respondent's vigilant efforts beyond the call of duty to enforce the Wilson contract, to void the Wilson contract for other buyers to perform and to locate other buyers in the light of Wilson's anticipated breach.

Informant ignores Respondent's extensive volunteer service and, indeed the lack of prior discipline for fraud that contravenes depiction of lack of character and deceit painted throughout Informant's brief.

Allegations that Respondent placed her own interests before that of the client flies in the face of virtually every aspect of this case and the long history of Respondent's service to the Bar and to the community. The suggestion by Informant that Respondent should be disbarred because she did not provide legal

services to Complainant without compensation is not only a violation of Respondent's constitutional right against involuntary servitude, it is inconsistent with decades of legal practice. *13th Amendment, U.S. Constitution*

The suggestion that Respondent should have provided legal services to Complainant without compensation for any reason let alone in a case involving the degree of complexity, time, exclusion of other income, and personal imposition, is the height of hypocrisy. While condemning Respondent for ultimately issuing a billing statement when responding to a state court Motion to Produce nearly a year after extending the services (Complainant's unsuccessful effort to prove Respondent had overstated fees in letters to Wilson's attorney) Disciplinary Hearing Panel (hereinafter DHP) member Doreen Dodson presumably felt justified being paid fees to represent Midwest BankCenter in which she vigorously defended the bank's actions through several costly appeals where multiple judges determined that her client's action harmed and deceived thousands of consumers.

It also directly contradicts Informant's counsel's representation of the Land Clearance for Redevelopment Authority, as well as many others. When paid for his services, Informant's counsel defends the right to evict an "elderly woman in a wheel chair" in order to gain profit for his client. As such, age does not factor into this ongoing litigation to displace a woman in her 70s against her will. While Informant condemns Respondent's for eventually expecting payment for

protecting her client from loss of her home and providing nine months of free rent, the printed opinion of the Circuit Clerk for the City of St. Louis Clerk's, states that Informant's counsel took advantage of his "poor aunt". Although Informant's counsel claimed to have "bargained in good faith" with the elderly widow who holds a 99 year rent free lease, her attorney claims he did not. The offer made was, in the view of two attorneys, clearly inadequate. New laws have been established to insure that such individuals are no longer railroaded into lowball offers for their property by those seeking profit.

Similarly, an advertisement placed in the St. Louis Lawyer's Journal by the Chair of the DHP in this matter seeks to defend attorneys who have been accused of engaging in unethical practices. While it is suggested by the Chair, by Informant's counsel and by the members of the DHP that Respondent be suspended or disbarred for seeking reasonable fees for successfully representing her client, their own conduct reflects the continued hypocrisy and contradictions of the standard to which Respondent is held. Clearly when substantial fees are paid to defend the unethical practices of their clients, each of three attorney's involved in Respondent's DHP hearing lower the bar and argue a much more liberal interpretation of the Rules of Professional Conduct.

On March 30, 2006, the Chief Hearing Office suggested that rather than purchase the house for \$90,000.00, Respondent should have allowed the foreclosure to take place and then just given the \$90,000.00 to Complainant to redeem the property after foreclosure. **App. 200- 201 (Tr.** That suggestion was

illogical on several grounds and flies squarely in the face of the Rule 4-1.8(e), the written notes of the Advisory Counsel as well as the Advisory Counsel's testimony. **App. 101 (Tr. 45), App. 88**

That suggestion that Respondent should have used the right of redemption to save Complainant's property rather than buy it, was an inaccurate interpretation of the law done solely to intimidate Respondent into negotiating with Informant for a punishment less severe than the threatened disbarment.

The Chief Hearing Officer, having claimed to have redeemed property in the past, should have known that Complainant could have met none of the numerous requirements of R.S.Mo. 443.410. **App. 221 (Tr. 15-22)** In the case of *Euclid Terrace Corp. v Golterman Enterprises, Inc.* the court states that the "[o]wner of equity of redemption can effect statutory redemption only in the manner and on the conditions prescribed by statute." 327 S.W.2d 542. (App 1 1959) (Emphasis added) The complexities of that statute are explored in a treatise written by Attorney Jeffrey Weisman. **Resp. App. 97-101** and Respondent's case of *In re: Polly Smith* is cited in V.A.M.s as the controlling case law on redemption after foreclosure. 169 BR 659 (Bkrtcy. E.D. Mo 1994) Once the property was foreclosed, Complainant would have lost all rights to enforce the Wilson contract. With all of Complainant's funds being used to secure and relocate to another residence, Complainant would be unable to pay the arrearage and regular monthly payment on her van let alone pay an attorney to engage in such a

fruitless battle. Certainly none to pay the other costs attendant to a redemption under Missouri law.

Further, to suggest in essence, that Respondent's failure to use funds, in such a manner is grounds for suspension or disbarment constitutes a violation of Missouri Constitution Article I §10 prohibiting the taking of property without due process and the *13th Amendment of the US Constitution*, prohibiting involuntary servitude. Those same violations occurred through the blatant suggestion that Respondent should have performed legal services for Complainant pro-bono and that there should have been no expectation of even the possibility of profit. **App. 249-250 (Tr. 128-132)**

Informant's counsel understandably did not include the original complaint, the transcript of the Disciplinary Committee hearing nor Complainant's state court deposition at the hearing level or in Informant's Appendix. Almost every word spoken by Complainant and daughter Ross held absolutely no truth and would have provided fodder for contradictions. Informant again chose to omit the original Complaint filed February 2, 2004, #23,959 which detailed far more inconsistencies in Complainant's story than the complaint now included in Informant's Appendix. **Resp. App. 102-104, App. 509**

Not only would it have been difficult for Informant's attorney to juggle the numerous contradictions in Complainant's complaint and various testimony, it would have revealed that Informant's counsel engaged in various leading questions and interruptions of testimony in the absence of Respondent. **App. 79-**

87 (Tr. 10, 30, 31, 32, 35)

Informant also concealed Respondent's billing statement from the list of exhibits presented to Respondent and members of the Hearing Panel, then used the statement during the hearing to ambush Respondent with questions from several of its 310 entries. Panel Members Richard Bender and Doreen Dodson joined in with very specific questions regarding the billing statement making it

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apparent that they had been provided a copy before hand and engaged in ex parte communications regarding its details. (Hearing 3/30/3006)

For anyone that recognizes that giving back is key to a meaningful life, the actions of Respondent would not be viewed with such suspicion. While Hearing Panel member, Moisy Shopper's line of questions regarding Respondent's effort to comply with the Rule of Professional Conduct by seeking advice from the Advisory Counsel suggests some calculated diversion, Informal Opinion 2006-0071 as noted in the Precedent indicates that some interpretation of the Rule was, in fact, possible when there is a reasonable certainty that the funds advanced would be immediately refunded. **App. 212 (Tr. 242, 243), Resp. App. 93**

In the instant case there was a reasonable certainty of any funds advanced on behalf of Complainant being immediately refunded to Respondent by consummation of the sales contract with Wilson. Respondent had in her possession a contract from Wilson for \$130,000.00 through which Complainant was entitled to payment. A check representing payment to the personal injury

client in the Informal Opinion had no more value than what was considered to be a legitimate sales contract. Both paper documents in the hands of the attorney would ultimately result in disbursement to the client. But for his fraud, Wilson's contract was as good as an insurance check referred to in the Opinion.

Although the facts are different, the Opinion shows that there are unique applications and interpretations of Rule 4 1.8(e). As such, the suggestion that Respondent's mere inquiry into some creative exception to this Rule similar to that provided in Informal Opinion 2006-0071 is further evidence of some sinister, calculated fraud exemplifies the extent to which any finding of wrong doing has been sought.

Respondent's Proposed Findings of Fact and Conclusions of Law

Respondent hand delivered to the office of the Chief Disciplinary Hearing Officer a copy of Respondent's Proposed Findings of Fact and Conclusions of Law. Copies were hand-delivered or mailed to all other parties. While other communications regarding this matter have been forwarded to the Court by the Office of the Chief Disciplinary Counsel as a part of the records, Respondent's proposed finding were not. Respondent has requested the Office of the Chief Disciplinary Counsel forward a copy to the Court as a part of the record.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD FIND THAT RESPONDENT FINGAL

GRIFFIN VIOLATED NONE OF THE RULES OF PROFESSIONAL CONDUCT IN THE ZEALOUS AND COMPETENT REPRESENTATION OF HER CLIENT, THAT THE PURCHASE OF HER CLIENT'S PROPERTY WAS DONE ON TERMS THAT WERE FAIR AND REASONABLE AND RESULTED IN SUBSTANTIAL BENEFIT TO THE CLIENT, THAT WERE DONE AT THE EXTRAORDINARY RISK, SACRIFICE AND PERSONAL EXPENSE OF RESPONDENT AND UNDERTAKEN IN COMPLIANCE WITH ALL APPLICABLE LAWS AND RULES.

POINTES RELIED ON

II.

NO DISCIPLINE OF RESPONDENT FINGAL GRIFFIN IS APPROPRIATE IN THIS CASE WHERE RESPONDENT UNDERTOOK COMPLEX AND TIME CONSUMING REPRESENTATION OF HER CLIENT WITHOUT REGARD TO COMPENSATION AND INCURRED GREAT PERSONAL FINANCIAL RISK TO SUCCESSFULLY ACCOMPLISH HER CLIENT'S GOAL TO SAVE HER PROPERTY FROM FORECLOSURE.

ARGUMENT

I

THE SUPREME COURT SHOULD FIND THAT RESPONDENT FINGAL GRIFFIN VIOLATED NONE OF THE RULES OF PROFESSIONAL

CONDUCT IN THE ZEALOUS AND COMPETENT REPRESENTATION OF HER CLIENT, THAT THE PURCHASE OF HER CLIENT'S PROPERTY WAS DONE ON TERMS THAT WERE FAIR AND REASONABLE AND RESULTED IN SUBSTANTIAL BENEFIT TO THE CLIENT THAT WERE DONE AT THE EXTRAORDINARY RISK, SACRIFICE AND PERSONAL EXPENSE OF RESPONDENT AND UNDERTAKEN IN COMPLIANCE WITH ALL APPLICABLE LAWS AND RULES.

Respondent agrees that the duty owed by a lawyer to a client is one of "utmost good-faith and the highest loyalty and devotion to her client's interest" as stated by Informant. Respondent's diligent representation of Complainant in a series of related matters exemplifies such good-faith, loyalty and devotion.

Before resorting to the final act of purchasing Respondent's property, Respondent persistently engaged in every possible effort to forestall foreclosure, consummate the Wilson contract and find other buyers once his intentions became apparent. Only after each of these efforts failed did Respondent take on the enormous risks of purchasing her client's property with nothing more than a promise in return.

In the absence of any risk assumed by Complainant, Respondent saved her client's home and her client's daughter's home from foreclosure, her van from repossession as well as whatever measure of equity she enjoyed in her house. The benefits given Complainant under the contract were more than fair and reasonable to Complainant and clearly put Complainant's interests before Respondent's own

personal interest, and the interest of her friend and her mother. Rule 4-1.8

Respondent vigorously represented Complainant in each bankruptcy and contract and committed herself to representing Complainant against the fraudulent acts of Wilson in state court despite Green's inability to pay. Respondent acted competently and ethically in filing a Chapter 13 to accommodate resolution of her delinquent mortgages and the sale of her house. 11 U.S.C. § 301, 11 U.S.C. § 362, 11 U.S.C., 11 U.S.C § 1321 and § 1322, Rule 1002, L.B.R. Rule 1002-1, L.B.R. Rule 3015-2 and L.B.R. Rule 3015-3 and faced with an imminent order allowing Countrywide to foreclose one half hour after the hearing, acted competently and ethically in dismissing the case. 11 U.S.C. 362, 11 U.S.C § 1307. Rule 1017

Respondent expended and detailed numerous hours representing Complainant and was entitled to be compensated. Since Respondent would have been negligent in allowing her client to breach the contract by transferring the deed to Respondent resulting in Green's abandonment of any claim against Wilson for breach of contract and common law fraud, she subordinated her own interests and that of her friend and mother by paying out funds without a deed in exchange. Although Respondent made no demands for Complainant to pay the substantial fees that had accumulated, she would have been negligent in making no effort to seek payment of the fees from the individual responsible for creating them.

In the matter of *In re Snyder*, 35 S.W. 3d 380 (Mo banc 2000) the court not only found the attorney's fees for successful results "unquestionably due him" but also found the fees owed as mitigating circumstances of acquiring an interest in

his client's residence without the client's knowledge. at 386 Just as the transfer of property is allowed under Rule 4-1.5 to pay fees is per se is the right to acquire an interest in a client's property with the client's consent and upon fair and reasonable terms under Rule 4-1.8 Respondent met all of the criteria of that rule.

In a case with very similar facts to the one at hand, *McRentals, Inc. v Barber* involved (albeit more sophisticated parties and transactions) an attorney who entered into a business transaction with clients who declined to have the attorney discuss the matter with independent counsel and later used the bar complaint process to falsely claim they did not understand the terms. As in the instant case, the clients fabricated a web of inconsistencies in an attempt to avoid the contract. Like Respondent, the attorney had the clients sign a written waiver of conflict contemporaneously with the contract, "reviewed and discussed the agreement with the parties and gave each party a copy of the agreement" making every effort to make the agreement "crystal clear so there would be no misunderstanding" at 698, 699 Like the instant case, the clients claimed the attorney retained the only copy of the agreement although later testimony proved otherwise. at 699 While the court applied the standard of heightened scrutiny required under Rule 4-1.8, it found that the clients lacked credibility, that detriment to the promise benefit to the promise if sufficient consideration to support a contract and that as such, the attorney had not taken undue advantage of the clients and did not warrant discipline.

Informant has emphasized that Respondent was more concerned about her own fees rather than the interest of her client. Notwithstanding the right to be compensated and to anticipate payment of those fees, in deference to Complainant's income, Respondent requested no payments from Complainant until after her breach. The fees requested at that time were in an amount authorized by the US Bankruptcy Court as a flat fee for each of the cases required to be filed to protect Complainant and those related directly to the Clarkson and Wilson contracts. L.B.R. 2016-3. That allegation, however, disregards documented evidence that Respondent filed Complainant's first bankruptcy case for a minimal portion of the fees typically charged for a Chapter 13 case despite the fact that Complainant's case was complicated by prior filings, two delinquent properties, and a pending foreclosure; that Respondent filed subsequent cases without payment of any additional fees whatsoever (other than those credited from payment of Clarkson contract fees); that Respondent represented Complainant constantly and vigorously in the bankruptcy cases and in the Wilson contract despite the lack of fees paid; that Respondent did not demand payment of any fees from Complainant despite funds being available via the Simmons/Fingal/Green contract; that Respondent subordinated payment of even her bankruptcy fees so that sufficient funds would be available to Complainant in order to purchase her new house and bring current the mortgage on her daughter's residence; that the hourly statement ultimately submitted at the request of her attorney in the state court matter was billed at a rate at or less than those

customary for Respondent's experience; that many paying clients were declined, and that Complainant frequently waives payment of fees as indicated in the Faulkner documents.

Indeed, Respondent went beyond the call of duty to represent her client in all aspects of her representation. Contrary to the contentious suggestion that Respondent's effort were self serving, numerous other options were open to Respondent that would have been far less intrusive and far more profitable.

Respondent could have declined representation at the beginning or at any future time and simply continue with a profitable bankruptcy practice representing clients with far fewer problems and greater ability to pay.

An attorney lacking moral character could have taken advantage of Complainant's claim that the Waterman property was worth \$43,000.00, by using "fear tactics" and pointing out the problems created by the numerous prior bankruptcies and serious long term affects of foreclosure then offer to buy her house for the loan balance and sufficient money to move and bring the Page property current. An offer of \$70,000.00 for a house purportedly worth \$43,000.00, the prospect of avoiding two foreclosures and a bankruptcy and the ability to buy another home, coming from an unscrupulous attorney would have been appealing.

An unethical attorney could have sent a straw party to make an offer similar to the one above, paying no more than a small fee for the service or could have

sent Simmons to enter into the same deal as above and split the profits. Or an unethical attorney could have demanded more money for the Chapter 13 once the inevitable motion(s) were filed even though precluded by local rule.

An unethical attorney could have waited for the inevitable motion for relief from stay to be granted then purchase the property at foreclosure directly or through a straw party at a much lower price as Wilson intended to do.

An unethical attorney lacking moral character could have engaged in a number of scenarios that did not involve paying out over \$63,000.00, relying on the decency of her client to transfer the deed at a later time or getting involved in a contentious battle.

In light of the totality of the facts surrounding this case, the fair and reasonable terms of the contract, and Respondent's vigorous representation of Complainant, even in the absence of pay, reflects Respondent's generosity, moral character, and subordination of her own interest. Informant's contrived suggestion that Respondent's actions were deceitful, fraudulent and self-serving are ill-conceived.

Informant's brief specifically acknowledges that disbarment is appropriate absent mitigating circumstances, quoting Rule 4.31 in part: when a lawyer without the informed consent of client:

(a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and

causes serious harm of potentially serious harm to the client. (italics added)

Had the specific language been considered by the Panel, there could not have been a finding that Respondent violated Rule 4-1.8 or that Standard 4.3 applies.

The language of Rule 4-1.8(a) specifically required an absence of the client's informed consent. The contract signed not only by Complainant but signed and witnessed by two of her daughters attests to the fact that Complainant did, in fact, consent. Respondent as well as Respondent's son testified under oath before the Panel, that Respondent read the contract in detail to Complainant and her daughters. That same sworn testimony was given by Frank Simmons in a state court deposition that Informant undoubtedly had available to him..

With that in mind, a finding that Complainant was not informed requires giving greater weight to a witness that has shown a complete lack of credibility than to Respondent's son who Hearing Panel member Doreen Dodson acknowledged off the record was "a very nice young man." or Respondent in which the only evidence against her credibility is the unreliable testimony of the Complainant.

Rule 4-1.8 requires an additional finding that the lawyer had an interest that was adverse to the client with an intent to benefit the lawyer or another. Respondent's interest in saving Complainant's property from foreclosure was not adverse to but in concert with client's interest in having it saved. The intent of acquiring any interest in the property was the benefit of Complainant not

Respondent. Any conclusion that saving Complainant's property from foreclosure was anything but adverse to Complainant would be erroneous. That fair and reasonable terms for *all parties* involved was a necessary element in attaining Complainant's goal is critical. Absent an adverse interest the Rule does not apply. However, arguendo, any benefit that may have inured to Respondent or Simmons was the safety net that buttressed the enormous risk of extending \$63,000,00 on her behalf.

The suggestion that Respondent should have expected no benefit nor buffered the investment against the possibility of loss, exceeds the appropriateness of the Panel's role and violates Respondent's right to engage in free enterprise, would constitute a taking of property without due process, and violates Respondent's freedom of religion.

While few would risk \$63,000.00 plus hundreds of hours of legal time on behalf of a client, Respondent's right to do so within the prevue of Rule 4-1.8(a) does not abrogate her right to act responsibly toward the money that she has been entrusted. Christian scripture reads "[i]f you are unfaithful with worldly wealth, who will entrust you with the riches of heaven." Luke 16:11 Jesus also emphasizes the importance of the responsible handling of money in his parable of the nobleman who gave 10 gold coins to ten of his servants. Those who invested the money and made a profit were rewarded with more, the servant who buried his coins to keep them safe angered the nobleman and had his coins taken away

and given to the others. Luke 19:12-26

Clearly there is a mandate to those of Christian faith to be good stewards over whatever wealth has been granted them. Investing \$90,000.00 in a property AS IS without some expectation of protection of that investment and potentially some degree of profit, would have been irresponsible and inconsistent with Respondent's religious beliefs.

Both *Art.1 §5 of the Missouri Constitution* and the *First Amendment of the US Constitution* guarantee the free exercise of ones religion. Informant's suggestion the Respondent be disbarred for acting within her religious beliefs negates her constitutional rights.

Had the actual language of the Rule of Professional Conduct been considered during the Disciplinary hearing or even cited in the Information, it would have been apparent that Rule 4-1.8(a) did not apply. Rule 4-1.8 regarding prohibited transactions as it existed at all times during these events read:

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, or pecuniary interest adverse to a client unless:
 - (1) the transactions and the terms upon which the acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that could be reasonably understood by the client.

(2) the client is given reasonable opportunity to seek independent

counsel in the transaction; and

(3) the client consent in writing thereto

(emphasis added)

In a recent case argued by Respondent before the Eighth Circuit Court of Appeals Bankruptcy Appellate Panel, it was reiterated that “one must start with the language of the statute itself.” *In re Griffin*, 352 B.R. 475 (8th Cir. BAP 2006) Respondent’s persistence in reviewing the actual language of the controlling statute, resulted in a long held interpretation of the statute being overturned and a history of incorrect rulings being corrected. Interpolations based on partial readings of a statute as done throughout these proceedings, guarantee improvident conclusions.

As such, applying the facts of this case to the actual language of the Rule does not result in a finding of violations. Considering first the lack of veracity of Informant’s witness, a lack of any evidence to discount the validity of Respondent’s testimony, and the documented evidence, it can only be concluded that the terms of the transaction were fair and reasonable to the client, transmitted in terms reasonably understood by the client, that the client was given a reasonable opportunity to seek counsel and that the client consented in writing. No language of the rule unambiguously requires the opportunity to seek counsel to be in writing nor does it state that the specific requirements be disclosed in a writing separate

from the actual agreement. Additionally, the Comments to Rule 4-1.8 merely states that such a writing is “advisable”, not required.

Indeed the language of the newly promulgated Missouri Rules of Professional Conduct and the spirited discussion regarding the “in writing” requirement in a 2002 ABA Journal, underscores the absence of clarity on the requirement of written disclosures. The change in the Missouri Rule did not occur until three years after the transactions in this case.

FAIR AND REASONABLE TERMS

Informant contends that Respondent has engaged in fraud, deceit and dishonesty for purchasing her client’s house for \$90,000.00. The house, however, was purchased AS IS, essentially sight unseen, had been determined to need complete electrical rewiring, had undoubtedly not received basic maintenance for years, had fecal matter on the carpet the day the contract was signed, could have had severe structural damage and roofing problems, had the largest portion of the lot encumbered for use as a parking garage for a neighboring residence, would need an inspection and therefore repairs prior to resale to another party, was purchased for the benefit of the client and would have to be resold to a third party.

Informant’s position is unreasonably and blindly based on several factors. None, however, have any validity as the measure of the value of the property or the amount that a property should be bought AS IS.

Informant’s brief references an offer made by Clarkson Realty for \$120,000.00. Without comment, the brief notes that the offer was later reduced to \$100,000.00

due to insurability problems. Informant never produced testimony from Clarkson and adduces no knowledge of the basis of this offer. As a realty company, however, Clarkson engaged in real estate investments, rehabs and sales; had more knowledge of the ability to resale the property than Respondent or even the real estate agent upon which Respondent relied. Clarkson may also have had engaged in a more thorough inspection. A realty company would have no real estate fees for to pay, has a crew of carpenters, etc. to rehab the property and add substantial value; purchases rehab material at discounted prices. Clarkson was not offering the seller free rent for two units. Clarkson would also have a base of potential buyers providing an opportunity to re-sale the property more quickly and minimize his risk. As such, assuming actual payment of \$100,000.00 before the foreclosure sale, Clarkson could afford to offer a slightly higher price.

Respondent purchased this property to assist her client. There was no intent to rehab the property and increase its value unless it failed to re-sale for at least \$90,000.00 plus costs. The real estate fees alone to re-sale the property adds an additional \$5,400.00 to the cost of Respondent's investment.

Informant also blindly maintains that the fair market value of the Waterman property was \$150,000.00 as the real estate suggested but ignores that the estimated value was conditioned upon a " little fixing up like painting and carpeting." Carpeting and painting two units would have cost at least \$15,000.00. and would have necessitated replacing the badly damaged window frames.

Complainant's property was in need of far more than "fixing up" Any investment of this nature to receive the benefit of a \$150,000 resale would not inure to Complainant.

It also ignores the evidence that Respondent offered that shows three different agents valued Respondent's house at approximately the same price, lending validity to the accuracy of their opinions. The closest offer, however was \$50,000.00 less than the list price. Real estate prices vary greatly.

In the bankruptcy case of *In re Paegler*, two state-licensed appraisers reached "significantly divergent values" that differed by some \$90,000.00. The Court noted that one appraiser's value was "less than half the value fixed" by another. Values were set at \$170,000.00 by one appraiser, \$107,600.00 assessed by the tax assessor, and \$84,833 appraised by another appraiser.

Although Respondent purchased the property 'AS IS' affording Respondent none of the protections of a normal purchase, Informant would have Respondent bear the entire risk of loss. Thus using the Paegler criteria, if Respondent had purchased the property for \$150,000.00 as Informant seems to suggest, and the property sold for a price equal to the lower value in Paegler (50% lower than the highest appraisal) that 50% error ratio, would have resulted in Respondent losing \$75,000.00. If purchased for \$130,000.00, Respondent would have lost \$65,000.00; at \$120,000.00, the loss would have been \$60,000.00 and if Respondent had matched Clarkson's so called amended offer of \$100,000.00, the loss would have been \$50,000.00.

As a non-licensed appraiser, Parker was only giving an estimate. Neither formal appraisals nor informal estimates are a guaranteed measure of the actual value. If the property was over valued and could not be resold at that price, Respondent would have sustained a substantial loss.

Informant's position clearly fails to take into consideration that "[i]f promisor gets what he bargains for there is no failure of consideration although what he receives becomes less valuable or of no value at all." *Union Pacific Railroad Co. v Kansas City Transit Co.* (App. 1966) 401 S.W.2nd 528. Had the property brought resulted in a resale figure less than the amount paid, Respondent would not have been heard in any attempt to rescind the contract but would have been held to the value of her bargain.

Additionally, in the nine month period that Respondent's contract allowed for the sale of the property, any number of factors could have (and eventually did) affect the value of the property. Notwithstanding potential catastrophic damages, and waste, numerous economic factors could have created a decidedly downward turn in the market. Indeed, such a turn was witnessed in the 1980s and again within the last year. Numerous foreclosures have occurred as a result. Property values decreased and loans were called in due to deflated equity cushions.

The resale of real estate necessarily requires an increase over and above the initial purchase price if for no other reason than to pay the attendant fees. Common practice of any enterprise also anticipates the future value of present

dollars, the time and efforts of the investor and the cost of risk. Informant's suggestion that the expectation of purchasing an AS IS property as an investment in a market where all figures are unknown and determined only by a future buyer, but without the possibility of realizing any degree of profit at some given time is simply beyond the prudence of an ordinary man. To have expected Respondent to recruit another party to engage in such imprudent behavior regardless of the motive, is beyond common sense.

Since "valuable consideration may consist of some right, interest, profit or benefits accruing to one party or some forbearance, loss or responsibility given, suffered or undertaken by the other" as stated in *Melton v ACF Industries, Inc.* (App. 1966) 404 S.W. 2d 772, the detriment of Respondent's risk, refraining from the legal right of receiving the deed in exchange for payment and the benefits provided Complainant added to the cash price of \$90,000.00 indicates that Respondent acted more than fairly and reasonably with Complainant.

The allegation that Respondent should have terminated the attorney-client relationship with her client pursuant to Rule 4-1.16 is untenable considering the unique factors of this case, including that "representation would result in violation of the Rule of Professional Conduct." In addition to the fact that no rules were violated as required by Rule 4-1.16 Informant's position ignores the fact that Wilson was represented by one of the largest law firms in St. Louis virtually guaranteeing protracted and expensive litigation as occurred in the first week of

the bankruptcy. It is unrealistic to believe that an attorney would have been located on a Sunday evening - when the agreement to purchase and terms of purchase were reached by Simmons and Respondent - that they would have gotten involved in the complex proceedings, that they would have done so without pay, that they were sufficiently skilled both in bankruptcy and real estate law, and that time permitted involvement by Monday evening and Tuesday morning. *No* skilled bankruptcy attorney would have had the time on one days notice.

Even had an attorney been located with such late notice, Complainant had no money to pay any fee demanded. Respondent's withdrawing simply would have left Complainant unrepresented both in the bankruptcy and with respect to Wilson's contract.

The position that Respondent should have insisted that Complainant retain separate counsel or withdraw sooner from representing Complainant under ignores the language of Rule 4-1.8 and Rule 4-1.16 and falsely presupposes that Complainant having a separate attorney would have changed any of the terms of the contract. Not only does Rule 4-1.8 not mandate insistence on retaining separate counsel but the purchase price had been well thought out, was determined by a number of factors, including the deplorable condition and lack of maintenance of the property and reflected the most Respondent and Simmons were willing to risk. The offer was not going to change. The result of another attorney's involvement, therefore would have been no more than a retraction of the offer and ultimately foreclosure.

This and various positions of Informant are based on the incorrect notion that Respondent was interested in purchasing Complainant's property. The purchase was done for Complainant's benefit and as such it is misguided to believe that another attorney was going to force Respondent to do more than they were willing to do. Additionally, Wilson's vigorous opposition before and after the foreclosure sale guaranteed a costly and protracted battle by any attorney representing Complainant. Add to that the double cost of legal representation arising from any new attorney having to consulting in great length and detail with Respondent as well as to review the same information for which Complainant had already incurred fees, insisting that Complainant hire another attorney knowing she had no funds to do so, would have done no more than increase her costs and completely erode and likely exceed any benefit gained. The only result of Complainant hiring separate counsel, short of that attorney offering more money, taking no deed, paying off the mortgage and subordinating his or her rights to the Wilson contract, all by the 10:00 bankruptcy hearing the next day, would have been a revocation of Respondent's offer. In short, Respondent insisting on Complainant hiring another attorney would not have resulted in a change in the offer or in any benefit to Complainant.

Respondent knew she and Simmons had made an offer that was fair and reasonable and that it would stop the foreclosure and save Complainant's equity. Beyond the purchase price being consistent with the fair market value for an

AS IS property, it also allowed Complainant to bring her second property current in payments, save her van from repossession, provide a down payment for a new house, and preserve her right to seek payment of her legal fees, recover the money lost between the Wilson's false contract and the actual price sold as well as be awarded punitive damages. Since, Respondent/Simmons were not willing to pay any more than the amount offered regardless of the involvement of another attorney, the only result of retaining one would have been simply the loss of Complainant's home in the foreclosure sale the following day.

Having already engaged in efforts to locate counsel for Complainant and knowing that Complainant had been influenced by Respondent's daughter in refusing to transfer the deed on October 21, 2003, Respondent sent a detailed letter and Directive providing Complainant an opportunity to understand the status of the case and to continue being represented by Respondent until another attorney could be found. The only services being provided at that point was seeking other counsel and monitoring the state court time table. (Three attorneys declined the case and one postponed an appointment.) Informant chides Respondent on one hand claiming Respondent failed to communicate then seeks disbarment for doing so to allow her client an opportunity to make an informed decision regarding representation.

Informant goes beyond using the age, health and professional relationship of a client as subjecting the transaction to "heightened scrutiny" as dictated in *In re Snyder*. 35 S.W. 3d 380 (Mo banc 2000) Informant attempts to use them as

indicia requiring something over and above the same fair dealing that should be expected in any transaction. Acceptance of Informant's view would result in the aged and infirmed being barred from the benefits of engaging in a free market.

If the facts of Complainants age, health or status as Respondent's client called for a purchase price over and above that which would have been paid to any other individual given the same set of circumstances as Informant seems to suggest, the purchase simply would not have been made. The ultimate result of that indicia, therefore, would have been the foreclosure of Complainant's property.

The suggestion that any potential equity that Complainant enjoyed (measured definitively only by the purchase of a similarly situated property) should not be used to buffer the risks undertaken would have foreclosed any prudent person from getting involved. Charity does not require stupidity. That suggestion by Informant simply is not reasonable nor is it supported by law. It also ignores that "[i]f promisor gets what he bargains for there is no failure of consideration although what he receives becomes less valuable or of no value at all" the purchase of Complainants property As Is, subjected Respondent to enormous risk of loss. *Union Pacific Railroad v Kansas City Transit Co.* (App. 1966) 401 S.W.2d 528

Further, the back up provision providing for \$30,000.00 to be paid to Respondent, Simmons and Fisher and \$100,000.00 to Complainant is consistent with contingency fee agreements used by attorneys and sanctioned by the courts

for decades. In a 2003 economic survey conducted by the Missouri Bar, “the largest percentage of respondents that negotiate contingency fee arrangements with their clients report they charge between 30% – 34% of the settlement proceeds.” With increased risks of a trial, that figure increases to as much as 50% of the gross proceeds. Clearly, the 23% contingent provision in this case is far less and no different standard should be used for the risk undertaken for Respondent, regardless of capacity, than for any other attorney. **Resp. App. 94, App. 502**

Contingency fee agreements take into account the time and costs expended at the risk of little or no return, those same factors apply to funds expended by Respondent. Applying such a double standard to Respondent than to any other is a denial of equal protection of the law guaranteed by the *14th Amendment of the U.S. Constitution*. “To apply the law in one manner to one particular group and then apply it in yet another manner to another group, could not more clearly be a denial of equal protection.” *Niemotko v Maryland* 1951

Respondent’s Exhibits A through LLLLL were offered into evidence, the majority of which were offered into evidence in the absence of Doreen Dodson and without opportunity for explanation. As such, Respondent’s evidence could not be given adequate weight or relevance nor be admitted subject to Respondents’ response to Counsel’s objections. Further, only upon the record being reviewed by assistant counsel of the Office of the Chief Disciplinary Counsel was it determined that records given to Informant and each of the Panel members could no longer be located – by anyone. Had Respondent’s evidence and entire record

been reviewed by the Panel as required, the missing documents would have been noticed long before reaching the OCDC.

Article I § 13 of the Missouri Constitution prohibits any law that impairs the obligation of contracts. Informant's biased treatment of the evidence adduced that gives greater weight to the testimony of a deceptive witness than to the corroborated testimony of Respondent and which is unsupported by logical conclusions drawn from documented evidence, resulted in a recommendation of disbarment that essentially disregards the binding terms of a valid contract.

The record as a whole lacks "competent and substantial evidence" that the terms of Respondent's contract with Complainant was unfair, unreasonable and obtained without her consent and opportunity to seek counsel. As such, Informant's use of untenable testimony and histrionic arguments to arouse the sympathy of the Court in order to obtain Respondent's disbarment based on the terms of a mutually agreed contract is tantamount to impairing that contract in violation of Missouri's Constitution.

In review of the Panels findings or the Informant's recommendation, *Article V § 18 of the Missouri Constitution* calls for a determination that the

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findings are authorized by law and are supported by "competent and substantial evidence upon the whole record." The record in this case contains virtually no competent evidence to support the recommendations made. Interpretation of the

Rule of Professional Conduct in the manner advanced by Informant would be to alter the substantive rights of Respondent and therefore violate *Article V Section 5 of the Missouri Constitution*.

Article I § 5 of the Missouri Constitution recognizes

“That all men have an indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; [and] that no person shall, on account of his religious ... belief, be rendered ineligible to any ... trust ... in this state.”

That Respondent should merely ignore the scurrilous and false accusations against her and bow to Informants recommendation of disbarment is further grounds from disbarment is a gross violation of Respondent’s right to free speech.

Article I § 8 of the Missouri Constitution guarantees

“That no law shall be passed impairing the freedom of speech no matter by what means communicated; that every person be free to say, write or publish, or otherwise communicate whatever he will on any subject.”

The *1st Amendment of the U.S. Constitution* guarantees the same freedom“

It is inconceivable, even under the most favorable circumstances, that a law requires an attorney, or anyone who extends assistance of this magnitude to a client, to waive any expectation of compensation for the investment made. The

extenuating circumstances created by Complainant's actions make such a suggestion one that exceeds that of a reasonable man. Simmons / Respondent were not merely making a charitable donation of a few thousand dollars as often done in the past, they each made a \$30,000.00 investment with the minimum expectation of it being repaid and the hope of it being increased. The potential for profit was far outweighed by the potential for loss. While Simmons was willing to come out of the contract whole having accomplished no more than assisting his friend's client avoid the loss of her home and equity, he undertook the enormous risk of buying a property essentially sight unseen with the primary hope of avoiding a loss and the possibility of realizing a profit. Such a position, by an individual or attorney, is part and parcel of any investment. It is not a measure of fraud.

Risk is always possible and profit is always hoped. It is part of our system of free enterprise of which Informant believes Respondent should not participate. However, absent a degree of confidence that Simmons' funds would not be lost, in addition to the possibility that the property could later sell for a higher price (by the vagaries of the market, at a later date or as the result of improvements) Simmons would have been unwilling to co-purchase the property. In that event Respondent, would have been unwilling to go it alone.

The possibility of Simmons and Respondent realizing some degree of profit from their investment is obvious from the "back-up provision". No effort

was made to hide that fact and indeed, the contract itself was ultimately to be scrutinized in state court as a basis of Complainant's damages.

The hope of realizing profit from an investment is consistent with the tenets of free enterprise and strongly emphasized in scripture. The parable of the nobleman who gave ten of his servants ten coins to invest in trade illustrates the expectation of good stewardship. Luke 19:11-24 Expending \$90,000.00 on an investment that had no possibility of profit but enormous potential of loss, exceeds the poor stewardship of the servant who buried his coins for safe keeping. When both scripture and free enterprise encourage good stewardship and profitable investing, it is contrary to both principles to seek disbarment of an attorney for engaging in the mere possibility.

The end result of purchasing Complainant's property discounts the Panel finding that "Respondent violated Rule 4-1.8(b) by using information relating to the representation of her client to the client's disadvantage that the client did not consent to such usage and that information was gleaned from prior representation of client to devise a scheme is completely without truth or merit.

Informant's accusation that Respondent "gleaned" information during the attorney-client relationship to further Respondent's own financial interest illustrates the histrionic measures used to characterize Respondent in a negative light. Information provided Respondent through the normal course of representation was not "gathered slowly and laboriously"¹³ but in the effort to

¹³ Random House Unabridged Dictionary

assist Complainant successfully save her home from foreclosure.

Logic supports Respondent's contention that Complainant consented to seeking buyers for her property and using whatever information necessary to secure one and her deposition contradicts the position that she did not give permission to do so. **App. (Tr. 224)** Further, the comments of Rule 4-1.2 states that "[a] lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation..." Many factors were considered in reaching a purchase price and the prior offers (albeit inflated) gave some assurance that the property could be resold. The information, therefore, was not used to the disadvantage of the client but to her advantage. But for some measure of worth, no offer would have been made and the foreclosure would have occurred.

The insistence that Respondent have withdrawn at any time sooner than done ignores the realities of this case. On October 21, 2003, Respondent sent Complainant a letter and Directive presenting options for her consideration following a disruptive attempt to prematurely pay Complainant nearly \$9,000.00 as requested in exchange for the deed. Not only had Respondent's daughter, Ross¹⁴, appeared to unduly influence Complainant's decision not to transfer the

¹⁴ Ross was living rent free in Complainant's second unit and stood to lose if Complainant's moved to a single family residence as intended.

deed, her loud and acerbic protestations made it impossible to properly discuss matters with Complainant or ascertain Complainant's true intentions free of her overbearing influence. (Rhymes was fully in agreement with the exchange.) Providing Complainant an opportunity to consider various factors and to make her own decision, was consistent with Respondent's ethical obligations under the circumstances. Once it was apparent that Complainant freely chose to become adversaries, Respondent withdrew.

Respondent had been reluctant to abandon Complainant in the midst of negotiations with Kelly or during Wilson's lawsuit since it was unlikely another attorney would expend the necessary amount of time and effort in representation of Complainant. Very few if any would have taken on a client's ninth bankrupt for no additional payment or have tackled the Motions for Relief from stay or gotten involved in the details of two hostile real estate sales contracts for. It is probably safe to say that no other attorney would have purchased the house and certainly not with an advanced payment of over \$63,000.00 without taking back a deed. Yet, Respondent continued to protect her client's interest and promised to do so to the end.

While several of the many rules cited against Respondent require an application of the facts with an interpretation of the law, several others are clear on their face and are clearly disputed by documented evidence and/or Complainant's contradicted testimony.

Rule 4-1.2(a) Respondent abided by her client's decisions regarding the objectives of representation and succeeded in attaining those objectives. Absent the ability to save her property through bankruptcy, Complainant's alternative was to sell her property and stop the foreclosures of both Waterman and Page. Through diligent efforts, Respondent purchased the property, saved both properties, preserved Complainant's right to pursue Wilson's contract and saved her van from repossession. Had Complainant wanted to close on the contract with Wilson after the foreclosure, Wilson provided her an opportunity to do so by delivering a contract directly to Complainant. She chose not to sign.

Rule 4-1.2(a) Further, the means in which the objectives were pursued where at all times thoroughly discussed with and agreed to by Complainant. Each letter written to Kelly was discussed before mailing with a copy sent to Complainant.

Rule 4-1.4 Respondent communicated frequently with Complainant about every aspect of her case and letters and signed bankruptcy documents refute Complainant's claim that she did not.

Informant seeks disbarment of Respondent citing the *In re Oberhellmann* 873 S.W.2d 851, however the court holds in that case that disbarment is appropriate when a lawyer, with the intent to deceive the court, makes a false statement or submits a false document to a court. Neither occurred in this instance.

As all others, the allegation that Respondent engaged in conduct prejudicial

to the administration of justice is wholly without merit. Disclosure of any post petition information regarding debtor's case must be done by proper procedures including written, verified and filed documents. Bankruptcy Rule 2016(b), Rule 4001, Rule 4002, Rule 6004, Rule 1007, Rule 1008, Rule 8011, L.B.R. § 1009-1, L.B.R. 9004, L.B.R. 5005, L.B.R. 9013, Such disclosures are not done by oral announcement. Respondent ethically addressed the two motions without disclosing confidential information that may have prejudiced Complainant in enforcing the Wilson contract. Following dismissal of the case, the court no longer had jurisdiction nor interest in Complainant's the post-petition/ post dismissal transactions. Bankruptcy Rule § 1307(b) reads

On request of the debtor at any time... the court *shall* dismiss
a case under this chapter. (emphasis added)

Dismissal of a Chapter 13 case at the request of the debtor is not discretionary. Upon dismissal, the US Bankruptcy Court lacked jurisdiction over the matter and the bankruptcy estate was dissolved. Any requirement or need to disclose information no longer existed. The transcript of the hearing before the U.S. Bankruptcy Court reveals that no false statement of any fact or law was ever made to the court, nor was there ever an omission of material fact prohibited by Rule 4-3.3 (a). **Resp. App. 31-33**

Again, review of the actual language of Rule 4-3.3 reveals that no such violation occurred. The language of that rule reads in part:

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

Indeed, raising irrelevant issues before a judge dispensing with a 108 page docket, particularly in a dismissed case, would not be welcomed. Judge Schermer has made it clear on numerous occasions that such irrelevant issues are never welcomed during any docket. After dismissal, the requirement to file disclosures was moot.

Respondent vehemently refutes the allegations that she engaged in any conduct that was dishonest, fraudulent, deceitful, or misrepresentative in any aspect of her Representation of Complainant. Respondent further refutes any view of her actions in saving Complainant's home from foreclosure as being a detriment to her client. In *In re Warren*, a case where it was found the attorney acted with dishonesty, threats, engaged in physical violence and had been found guilty of criminal non-support of his children; the Court still ruled that disbarment was "inappropriate in discipline... as it is 'reserved only for cases of severe misconduct where it is clear the attorney is not fit to continue in this profession.'" 888 S.W. 2d 334 at 366 (Mo. banc 1994) Citing *In re Shunk*, 857 S.W. 2nd 789, 792 (Mo bank 2003)

The doctrine of substantial compliance, which "is an equitable one designed to avoid hardship in cases where the party does all that can be reasonably expected" also suggests that any interpretation resulting in a finding of a violation should be "viewed in light of the underlying statutory provisions." *F v*

County of Sonoma 719 S.W.2d 1001, 1008 (9th Cir. 1983). Any interpretation suggesting violation of any Rule of Professional Conduct ignores the time factors, the diligent efforts made on the clients behalf, the relentless and fraudulent opposition offered by opposing counsel, the lack of any harm done to Complainant, positive affects of the outcome on Complainant’s health, the reliance on advice given, the lack of regard for Respondent’s own personal interests, the fairness of the contract, and ultimately the successful outcome of Respondent’s efforts on behalf of her client. In the matter of *McBride* the Court noted that the Respondent “has fully cooperated with this investigation. Respondent contends that like *McBride* there was no offense (if any) that would “reflect adversely on his honesty”, Respondent “did not betray the trust or confidence of any client, nor did [s]he jeopardize the representation of [her] client before any court. [S]he has not displayed a flagrant or cavalier disregard for the law.” *In re McBride* 938 S.W.2d at 908 (italicized words added) To the contrary, the record shows Respondent has complied with every law and rule relevant to this case.

II

NO DISCIPLINE OF RESPONDENT FINGAL GRIFFIN IS APPROPRIATE WHERE RESPONDENT UNDERTOOK COMPLEX AND TIME CONSUMING REPRESENTATION OF HER CLIENT WITHOUT REGARD TO COMPENSATION AND INCURRED GREAT PERSONAL FINANCIAL RISK TO SUCCESSFULLY ACCOMPLISH HER CLIENT’S

GOAL TO SAVE HER PROPERTY FROM FORECLOSURE.

Informant having proved none of the allegations by a preponderance of the evidence, there should be no finding of violations and no need to apply ABA Standards for misconduct.

CONCLUSION

As cited in the case of in *Matter of Smith* 749 S.W.2d 406 (Mo banc 1988) “In disciplinary proceedings the finding and conclusions ... are advisory and it remains the Court’s duty to determine the credibility of witnesses, review the evidence and make its own determination of the facts.” *In re Shiff*, 542 S.W. 2d 771 (Mo Banc 1976) “Further, a lawyer will be disciplined only if such action is warranted by a preponderance of the evidence.” *In re Conaghan*, 613 S.W.2d 626 (Mo banc 1981)

Respondent’s has always been devoted to God and exhibits that devotion through service to others. Respondent’s law practice was begun as a ministry and continued when meeting Complainant. That fact, however, does not vitiate a right to just compensation for services rendered, the right to enter into a fair and reasonable contract, nor the right to pursue state court actions for its enforcement.

Although every effort has been made to impugn Respondent’s character, Informant could not site a single contradiction out of the hundreds of facts, exhibits and lengthy depositions available. Every accusation of fraud, deceit, dishonesty, misrepresentation and self dealing is unfounded and supported only by the tainted testimony of Complainant. numerous instances exist in which

Respondent clearly subordinated her own monetary and personal interests to that of her client as well as complied with all laws under the US Bankruptcy Code and Rules of Professional Conduct.

The contract to purchase Complainant's house was entered into solely to assist Complainant and not for personal gain. That fact remains true notwithstanding the right to receive any "benefit of her bargain" along with the risks incurred. The overwhelming weight of the evidence shows that Larry Wilson's offer of \$130,000.00 was inflated and that \$90,000.00, particularly with other valuable consideration and detriment assumed was more than fair and reasonable to her client.

Respondent assumed great personal risk and subordinated her personal interest and that of others by paying out in excess of \$63,000.00 on behalf of Complainant, without taking the deed to the Waterman property. At the same time Respondent acted diligently in protecting her client's right to consummate the Wilson contract and transfer the deed. The misguided notion that those who use their God given gifts productively should be forced, by government action, to make additional sacrifices to support those whose personal choice is to rely on government aid (and, in the case of Complainant, often abuse of public and private resources) is the cause of generational dependence of individuals who are rewarded for failure and inaction. That mentality not only penalizes those who have availed themselves of free education, consistently sacrificed and worked

to provide for them selves by forcing them, even beyond taxation, to compensate for the poor choices of others, it also robs “the less fortunate” of the motivation for self reliance. It deprives them of the self-esteem that accompanies independence and is the reason that the number of second generation welfare recipients has doubled in the last twenty years. It does not, however, provide justification for depriving a lawyer of a property right earned by years of sacrifice, diligence and hard work.

The suggestion that Respondent simply disregard great personal sacrifice, betrayal and substantial loss of income that directly resulted from Complainant’s deceit and breach of contract, to voluntarily release her client from an obligation through which her client received an enormous benefit, only to be paid a mere fraction of what had been expended, over steps the bounds of Informant’s legal right, duty or responsibility. While Respondent greatly admires the enormity of the bishop’s selfless act of charity in the face of betrayal by the one he helped in *Les Miserables*, forgiveness of that magnitude had not yet been achieved. Such acts of generosity and forgiveness to any degree are not imposed by rule of law.

Based on the manner in which these proceedings have been conducted and the views expressed in both in the Disciplinary Hearing and Informant’s Brief, the Disciplinary Process appears to be conducted without the constitutional protections that exists in other realms of the legal system. The hearings were scheduled over a five month period, examination of the Complainant was curtailed, verbal testimony was limited, intimidation by false information was

frequent and the bulk of the evidence relied on is untrustworthy testimony.

Respondent would have breached her duty of diligence to have allowed Wilson to fraudulently engage in conduct that directly resulted in her client's financial loss, emotional stress and substantial fees without seeking redress in a negotiation process. Respondent, as would any other attorney, had a duty to seek not only payment of her client's fees promised under the Wilson contract but also to insure that no greater contractual terms were imposed on her client.

At great odds with the notion that Respondent should have provided legal services pro-bono to resolve Complainant's many years of poor choices is the right to be free of involuntary servitude. When coupled with disbarment, Informant's position that Respondent should not have sought payment of Complainant's fees but rather should have waived them, violates the protection of the 13th

Amendment.

Faced with the imminent loss of her client's home, Respondent competently represented her client despite the strenuous opposition of third parties, lack of payment or her client's inability to pay in the future. Respondent exhibited competence in filing her client's bankruptcies and engaged in the vigorous defense of her client. To conclude that Respondent should be disciplined in any manner for competently, generously and vigorously representing her client under the circumstances presented is holding an attorney to a standard no human could meet.

It is clear Respondent did not engage in fraud, dishonesty, deceit or misrepresentation. Respondent communicated with Complainant and acted within the bounds of Complainant's objectives. Respondent did not represent Complainant at any time where the representation adversely affected the client. Respondent's contract with Complainant was fair and reasonable, transmitted in writing that was reasonably understandable, was entered into with the written consent of Complainant and after Complainant was given an opportunity to seek the advice of independent counsel. Respondent timely withdrew as Complainant's attorney after careful determination that divergent interests had arisen and did not make any false statements or fail to disclose a material fact to a tribunal. to find otherwise requires that the following to be true:

Complainant's testimony is reliable and competent - it is not.

Larry Wilson intended to consummate his contract – he did not

The record reflects fraud, dishonesty or deceit of Respondent – it does not

Respondent's extensive pro-bono service supports self-interest – it does not

Respondent has shown lack of credibility – she has not

Complainant's property was worth at or near \$130,000.00 – it was not

Respondent's purchase price was unfair and unreasonable – it was not

Respondent harmed or potentially harmed her client – she did not

Respondent's potential gain outweighed substantial risks – it did not

Respondent failed to abide by her client's decisions – she did not

Respondent failed to consult with her client – she did not

Complaint was motivated by anything but victory in state court – she was not
Respondent placed herself and third parties before her client – she did not
Respondent used information to the disadvantage of her client – she did not
Respondent failed to competently & diligently represent her client – she did not
Respondent received a full and impartial hearing – she did not
Respondent’s evidence was fully reviewed and considered – it was not
Respondent should have abandoned her client in the midst of opposition – she
should not
Respondent’s representation of client was materially limited – it was not
Respondent engaged in conduct prejudicial to justice – she did not
Complainant’s age and illness made her vulnerable – it did not
Complainant’s behavior was calculating and deceitful – it was

The unbelievable in the eyes of someone accustomed to taking property from another, is the ordinary in the practice of an attorney whose life has been devoted to assisting those with limited incomes and dire situations. Respondent has been blessed “beyond that that could be asked for or imagined.” Ephesians 3:20 Respondent has been blessed with three healthy children whose character and generosity are sources of great pride, and more material things than ever sought. Giving back is part and parcel of a person raised by parents of compassionate and generous spirits. Even as an alcoholic with little to give, Respondent’s father gave of himself and respected every individual of every station of life. It is a legacy that Respondent would not trade for the riches of any

sober and wealthy CEO.

Respondent lives by the example of her parents and the dictates of these of the adages: “To those to whom much has been given, much is expected.” And “service is the rent we pay for the space we take up on earth.” Gratefulness is all that is expected and the mere knowledge of the help extended is far more enriching than the money Informant mistakenly believes was of such great import.

Complainant was neither harmed nor potentially harmed by the dedicated representation of Respondent, but conversely received immeasurable benefit by Respondent’s commitment to her plight. Complainant retained her home, has benefited from the equity preserved, has retained her van, has been saved from the consequences of foreclosure and enjoys improved health.

Respondent did not engage in conduct that was prejudicial to the administration of justice but was forthright in following a complexity of rules and procedures. Respondent has enjoyed a lengthy career with extensive service to the Bar, the church and community, and has competently executed her duty in the practice of law. Respondent displayed the utmost of care in following the rule of law and maintaining the integrity of the profession and has displayed honesty and trust worthiness in doing so.

Informant has not met the burden of proving by the preponderance of the evidence that Respondent violated any Rules of Professional Conduct. Those allegations raised against Respondent have been rebutted and proven to the

contrary. Respondent having violated none of the Rules of Professional Conduct, no discipline is appropriate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of Respondents' Brief, Appendix and a disk containing the Brief in Word format have been Hand Delivered to the following this 16th day of April, 2007.

Alan Pratzel
Office of the Chief Disciplinary Counsel
3335 American Avenue
Jefferson City MO 65109-1079

Christi Fingal Griffin

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 5.03;
2. Complies with the limitations contained
3. Contains 27,890 words, according to Microsoft Word, the word processing system used to prepare this Brief; and
4. That Norton Anit-Virus software was used to scan the disk for viruses that the disk is virus free.

Christi Fingal Griffin