

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:**

**CHRISTI S. FINGAL-GRIFFIN,**

**Respondent.**

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**Supreme Court #SC88322**

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**INFORMANT'S REPLY BRIEF**

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**POINTS RELIED ON**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT FINGAL-GRIFFIN FOR VARIOUS VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT ARISING FROM HER SCHEME TO FINANCIALLY BENEFIT FROM THE PURCHASE OF HER CLIENT'S PROPERTY UNDER TERMS THAT WERE EXPLOITIVE, UNFAIR AND UNREASONABLE AND INTENDED TO BENEFIT RESPONDENT AT THE EXPENSE OF THE ATTORNEY-CLIENT RELATIONSHIP AND HER CLIENT'S INTERESTS.**

Rule 4-1.8(a), Rules of Professional Conduct

*In re Oliver*, 285 S.W.2d 648 (Mo. banc 1956)

*In re Littleton*, 719 S.W.2d 772 (Mo. banc 1986)

*ABA Standards for Imposing Lawyer Sanctions* (1991 ed.)

**POINTS RELIED ON**

**II.**

**DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT FINGAL-GRIFFIN ENTERED INTO A TRANSACTION WITH HER CLIENT FOR THE SOLE PURPOSE OF CARRYING OUT A SCHEME WHEREBY RESPONDENT SOUGHT TO FINANCIALLY BENEFIT FROM THE PURCHASE OF HER CLIENT'S PROPERTY TO THE DETRIMENT OF HER CLIENT, THEREBY CAUSING SERIOUS INJURY TO HER CLIENT, THE PUBLIC AND THE LEGAL SYSTEM.**

*In re Howard*, 912 S.W.2d 61 (Mo. banc 1995)

*In re Maier*, 664 S.W.2d 1 (Mo. banc 1984)

*In re Conner*, 207 S.W.2d 492 (Mo. banc 1948)

*ABA Standards for Imposing Lawyer Sanctions* (1991 ed.)

## ARGUMENT

### I.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT FINGAL-GRIFFIN FOR VARIOUS VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT ARISING FROM HER SCHEME TO FINANCIALLY BENEFIT FROM THE PURCHASE OF HER CLIENT'S PROPERTY UNDER TERMS THAT WERE EXPLOITIVE, UNFAIR AND UNREASONABLE AND INTENDED TO BENEFIT RESPONDENT AT THE EXPENSE OF THE ATTORNEY-CLIENT RELATIONSHIP AND HER CLIENT'S INTERESTS.**

The Respondent's Brief is rife with excuses, selective memory, factual misstatements and legal misinterpretation intended to sidestep personal and professional responsibility for her ethical misconduct. Respondent steadfastly pursues an approach wherein she blames others for her predicament, whether it be (i) her own client Irene Green for deceiving Respondent into spending time and money in the bankruptcy representation, or (ii) third-party purchaser Larry Wilson and his attorney, who Respondent asserts intended to anticipatorily breach the existing sale contract on the Waterman Property in order to acquire the property at a reduced price in foreclosure, or (iii) Legal Ethics Counsel Sara Rittman, who Respondent asserts counseled that Respondent could purchase her client's property without reference to any ethical rules or the fact that it had to be an arm's length transaction that was fair and reasonable to the client, or (iv) the Region XI Disciplinary Committee, which Respondent asserts failed to properly investigate the complaint, or (v) the Informant, who Respondent alleges engaged

in intimidation, *ex parte* communications and the omission of critical evidence, or (vi) the Disciplinary Hearing Panel, who Respondent asserts was biased and deprived her of her constitutional rights. Incredibly, Respondent believes in her own mind that her contract to purchase the Waterman Property was fair and reasonable, that she was legally entitled and religiously and morally required to personally profit from that real estate transaction, and that she, not her client, was the victim in this case. In truth, Respondent is guilty of pursuing a dishonest and fraudulent plan of the worst kind and lacks the moral character and honesty necessary to continue to hold a license to practice law in the State of Missouri.

The Disciplinary Hearing Panel took evidence on this matter over the course of three hearing days. It was able to judge the veracity and character of each witness. In recommending discipline, the Panel found as follows:

“Considering that Respondent had the property appraised for \$150,000, and that one offer to purchase the property was \$130,000, the price paid by Respondent, approximately \$90,000, seemed to substantiate the opinion of the panel that Respondent was dealing primarily in her own behalf, and looking after her own best interests, rather than that of Ms. Green. Certainly, there was a conflict of interest, and improper dealing between an attorney and a client. . . . If the Respondent was truly concerned about her client, she would not be concerned about receiving the benefit of the bargain. . . . It is the panel’s opinion that Respondent, a sophisticated, well educated attorney, took advantage of a substantially less educated, less sophisticated, elderly individual, and that the

person that benefited primarily from the attorney client relationship was Respondent. **App. 515-516.**

Respondent's serious ethical violations warrant disbarment. In addition, Informant submits that disbarment is the only way that Respondent will finally understand and appreciate the seriousness of her violations of the Rules of Professional Conduct. The fact that Respondent steadfastly refuses to accept responsibility for her misconduct should not dissuade this Court from imposing the harshest discipline upon Respondent's license. To the contrary, Respondent's refusal to acknowledge the wrongful nature of her conduct is an aggravating circumstance under Section 9.22 of the *ABA Standards for Imposing Lawyer Sanctions* (1991 ed.).

While Respondent's Brief is rife with factual and legal errors and omissions, Informant will address and rebut only the most egregious misstatements and omissions.

**Respondent's contract to purchase the Waterman Property from her client speaks for itself.** The gist of Respondent's argument appears to be that the contract with her client to purchase the Waterman Property was fair and reasonable and that her client understood the terms and meaning of the contract. In addition, Respondent boldly asserts that she had a legal, moral and religious obligation to personally profit from the purchase of the Waterman Property. This is incorrect.

While Respondent repeatedly asserts that her contract to purchase the Waterman Property represented an extraordinary effort on her part to save her client's equity from foreclosure, a more accurate description is that the contract reflected an attempt by Respondent to carry out a scheme to misappropriate her client's equity by purchasing the

property for a purchase price far below its fair market value. The root of the various ethical violations that resulted from Respondent's scheme can be found in a simple review and analysis of the basic terms of the Real Estate Contract and Post-Closing Lease between Respondent and her client. That review establishes the following:

- Respondent agreed to buy the Waterman Property for \$90,000, an amount that Respondent knew to be substantially below the fair market value of the property as reflected by the other offers received by Green and by the fair market value opinion provided by an expert real estate agent retained by Respondent;
- The Contract provided that it was a "back-up contract" to the Wilson contract for \$130,000 and that if the Wilson purchase was consummated after the Countrywide loan was satisfied by Respondent, then Respondent would receive 75% of the difference between Respondent's contract and Wilson's contract, or \$30,000. In other words, Respondent would reap the benefit of any subsequent sale of her client's property for anything approaching its fair market value.
- The Post-Closing Lease, under which Green was permitted to retain possession for a limited period of time after Respondent closed on the purchase and became the owner of the Waterman Property, provided that Respondent would "retain any sale proceeds from the resale of the Waterman Property if the "net resale price" was \$130,000 or less. In other words, if Respondent actually acquired title to the Waterman Property and sold the property for \$130,000 or less, Respondent would take all of her client's equity in the property.

- The Post-Closing Lease further provided that the “net sale proceeds” from any resale above \$130,000 would be split with 75% of the “net sale proceeds” going to Respondent and 25% of the net sale proceeds going to Green if the property was sold by December 25, 2003; but every month after December 25, 2003, Green’s share of the “net sale proceeds” from any resale above \$130,000 would be reduced by 5%. Consequently, if the sale occurred after May 2004, then Green would receive nothing and Respondent would receive 100% of the resale proceeds. In other words, Respondent retained an increasing percentage of the proceeds of any resale of the Waterman Property.

Significantly, in her Brief, Respondent neither challenges nor disagrees with Informant’s interpretation of the terms of the Real Estate Contract and Post-Closing Lease. Instead, Respondent incorrectly asserts that she was placing her money at risk in purchasing the Waterman Property and that she therefore had a legal, moral and religious obligation to profit from that risk. Respondent is wrong on both counts: there was no risk and she had no legal, ethical, moral or religious right to promote her own financial interests above those of her client.

Respondent’s attempt to justify her right to receive the “benefit of her bargain” by claiming that there was significant risk in her purchase of the Waterman Property from her client is inconsistent with the facts. Respondent learned from her representation of Green that Clarkson Realty had offered \$120,000 for the Waterman Property, that Wilson had offered \$130,000 for the Waterman Property, and that both offers were substantially more than the existing Countrywide debt owed by Green on the property. **App. 111-112**

(Tr. 85-87); 291-292; 468-473. As a result, Respondent knew that her client had significant equity in the Waterman Property. In order to confirm this fact, Respondent arranged for a real estate agent to visit the Waterman Property and to provide Respondent with her opinion of the fair market value of the property. **App. 8; 40.** The agent estimated that the Waterman Property was worth approximately \$150,000.00 in its “as is” condition and would be worth substantially more if the condition of the property was upgraded. **App. 198-199 (Tr. 186-189).**

Clearly, there was little if any risk associated with Respondent’s purchase of the Waterman Property from her client. To the contrary, Respondent knew that her client had substantial equity in the property, that the property could easily be marketed for substantially more than the contract price and that she stood to make a windfall profit from the transaction. Under these circumstances, Respondent’s reliance on an alleged heightened risk factor to justify her scheme should be summarily rejected for what it is: a weak attempt to justify her plan to misappropriate her client’s equity for her own benefit and to the extreme detriment of her client.

**Respondent had no legal right or moral or religious obligation to profit from her purchase of the Waterman Property.** Respondent variously claims throughout her Brief that she had a legal, moral and religious right and obligation to personally and financially benefit from the “risk” that she was taking in purchasing the Waterman Property from her client. Respondent seeks to justify her actions by quoting Christian scripture and claiming that there is a “mandate to those of Christian faith to be good stewards over whatever wealth has been granted them.” Incredibly, Respondent claims

that investing \$90,000 in the Waterman Property without some degree of profit would have been irresponsible and inconsistent with her religious beliefs. **Respondent Brief at 93.** She also claims that the Panel's decision violates Respondent's right to engage in free enterprise, constitutes a taking of property without due process and violates her freedom of religion. These assertions are misplaced and ignore Respondent's ethical responsibilities to her client.

Respondent was not simply an independent contractor who had a right to negotiate with Irene Green in a manner such that she would receive the greatest profit possible from her purchase of the Waterman Property. She was not free to pay as little for the property as possible in order to maximize her profit and to fulfill her obligations to her Christian faith. She was not free to engage in the pursuit of free enterprise and profit through the exploitation and manipulation of her client.

Instead, Respondent was in an existing attorney-client relationship with Irene Green and therefore had a fiduciary responsibility to deal with her client with a very high degree of fidelity and good faith. *In re Oliver*, 285 S.W.2d 648, 655 (Mo. banc 1956). She failed in this case to do so as evidenced by the following:

- Respondent gained confidential information from her client Irene Green regarding the value of the Waterman Property and used that information to the extreme detriment of her client by entering into a sale contract that was not fair and reasonable;
- Respondent misused the trust and faith that her client placed in her as her attorney to self-deal and to enrich herself to the expense of her client;

- Respondent engaged in obstructive conduct to cause Wilson to refrain from purchasing the Waterman Property, all without the knowledge or consent of her client;
- Respondent failed to provide her client with a reasonable opportunity to seek the advice of independent counsel regarding the transaction; and
- Respondent failed to fully disclose the nature of the transaction in a manner that could be reasonably understood by her client.

Regardless of Respondent's rationalizations to the contrary, her conduct as described above does not comport with her ethical obligations in the context of an existing attorney-client relationship. In that context, Respondent committed an act of fraud, dealt in a purposefully deceitful manner with her client and sought to dishonestly enrich herself at the expense of her client. Such misconduct warrants Respondent's disbarment. *In re Littleton*, 719 S.W.2d 772, 778 (Mo. banc 1986).

**Respondent failed to follow the advice of Legal Ethics Counsel.** Respondent incorrectly asserts that Legal Ethics Counsel Sara Rittman authorized Respondent's purchase of the Waterman Property from her client and that "there was no other advice given or reference to an arms length transaction and no reference to any specific rules."

**Respondent Brief at 21.** This assertion is contrary to the clear and convincing record evidence in this case.

On August 22, 2003, Respondent contacted Ms. Rittman and inquired whether she could advance Green the necessary funds to pay the Countrywide loan and thereby keep the Waterman Property out of foreclosure. **App. 100-102 (Tr. 44-50); 288.** Ms. Rittman

advised Respondent that she could not ethically advance her client the funds, but that Respondent could purchase her client's property provided that the transaction was a "genuine" purchase, meaning that the sale would have to be an arm's length transaction and would have to comply in all respects with the requirements of Rule 4-1.8(a) of the Rules of Professional Conduct. **App. 100-102 (Tr. 44-50); 105-106 (Tr. 61-67); 288.** Those requirements are clear and unambiguous and include that the transaction with Green be fair and reasonable, that Green have an opportunity to seek the advice of independent counsel and that Green consent to the transaction in an independent writing separate from the sale contract. **App. 105-106 (Tr. 61-67).** Respondent failed to comply with those requirements.

The evidence clearly established, and the Disciplinary Hearing Panel correctly found, that Respondent's scheme to acquire the Waterman Property from her client Green constituted a violation of Rule 4-1.8(a). Specifically, the terms of the Real Estate Contract and the Post-Closing Lease between Respondent and her client were not fair and reasonable and were not the produce of an arm's length transaction. Moreover, Respondent did not give Green a reasonable opportunity to seek the advice of independent counsel regarding the transaction. Finally, Green did not consent to the transaction in a separate writing from the transactional documents.

**Respondent obstructed Larry Wilson's purchase of the Waterman Property in order to carry out her own scheme to purchase the property from her client.**

While Respondent's contract to purchase the Waterman Property would have effectively deprived her client of most of her equity in the property, Respondent stood to gain more

economically if she herself purchased the property instead of Larry Wilson. Thus, if Larry Wilson closed on his contract to purchase, then the “back up” provision of Respondent’s contract with her client would have been triggered and Respondent would have collected 75% of the difference between Respondent’s purchase price (\$90,000) and the price paid by Wilson (i.e., \$130,000). However, if Wilson decided not to close on his purchase contract, Respondent would have acquired title and thereafter stood to receive the entire resale purchase price up to \$130,000 and an increasing percentage of the resale purchase price above \$130,000.

Respondent repeatedly claims that Larry Wilson never intended to close on his contract to purchase the Waterman Property and that he and his attorney delayed the closing in order to purchase the property at a reduced price at foreclosure. There is simply no record evidence to support this claim. To the contrary, the Disciplinary Hearing Panel correctly found that Respondent’s client Irene Green desired to sell the Waterman Property to Wilson and that Wilson stood ready, willing and able to consummate such sale. However, the Panel found that Respondent purposefully interfered with and hindered the sale by sending Wilson and his attorney a series of letters intended to cause Wilson to refrain from purchasing the Waterman Property in furtherance of her scheme to financially benefit from her own purchase of the Waterman Property. **App. 540-541.**

**Respondent’s client did not understand or consent to the transaction in writing.** Respondent asserts that her client gave her informed consent to the transaction with Respondent as required by Rule 4-1.8(a) by executing the Real Estate Contract.

Respondent further alleges that she read the contract in detail to her client Green prior to her client's execution of the contract. The record evidence and the requirements of Rule 4-1.8 suggest otherwise.

Irene Green did not understand the terms or the ramifications of either the Real Estate Contract or the Post-Closing Lease. Green believed that Respondent was purchasing the Waterman Property for \$130,000. **App. 114 (Tr. 98-100)**. Respondent failed to review or explain the purchase terms of the contract to either Green or Green's daughters. **App. 116-117 (Tr. 10-110)**. Green signed the Real Estate Contract without any understanding of its terms, including the fact that Respondent was purchasing the Waterman Property for the sum of \$90,000. **App. 116-117 (Tr. 108-109)**. Green believed that Respondent and Simmons were purchasing the Waterman Property for \$130,000, the same purchase price as Wilson had agreed to pay. **App. 114 (Tr. 98-99); 116 (Tr. 108)**.

With regard to the Post-Closing Lease, Respondent failed to explain the terms and meaning of Paragraph 20 of the Post-Closing Lease to Green, under which Green would be charged a monthly penalty for each month that Respondent was unable to re-sell the Waterman Property after the closing. **App. 119 (Tr. 118-120)**.

On or about August 24, 2003, Respondent also had Green sign a one-page document which stated "I, Irene Green, do hereby waive any potential conflict with my attorney, Christi S. Fingal arising out of the sale/purchase of my property and representation of me in bankruptcy." **App. 315**. Green signed the waiver because Respondent "wanted me to", but Green had no understanding of its meaning or effect.

**App. 115 (Tr. 101-104).** The document clearly did not meet the requirements of Rule 4-1.8(a)(3) that the client consent to the transaction in a separate writing.

Green signed the Real Estate Contract, Post-Closing Lease and Waiver of Conflict despite the fact that she did not understand them. Moreover, Green relied upon Respondent for legal advice and believed, based upon Respondent's statements, that signing the documents was in her best interest. In other words, in executing the documents, Green was relying on Respondent to protect and look out for Green's best interests. **App. 118 (Tr. 114).**

In point of fact, Respondent was only interested in her own best interests and the best interests of her partners, Frank Simmons and Caroline Fisher. Respondent knew that her client had significant equity in the Waterman Property, knew that her client was in financial difficulty, knew that her client was unsophisticated and physically frail and knew that her client was relying on her for advice. Rather than fulfill her fiduciary duty as an attorney, Respondent used the attorney-client relationship with Green to her own benefit and placed her own financial interests above those of her client. In so doing, Respondent violated Rule 4-1.8(a).

**Respondent rejects the Rule 4-1.8(a) requirement that her client be given a reasonable opportunity to seek the advice of independent counsel regarding the transaction.** Respondent asserts that she should not have been required to give her client Irene Green an opportunity to seek the advice of independent counsel regarding Respondent's purchase of the Waterman Property from her client because "the offer was not going to change" and another attorney would not have been able to force Respondent

to do pay more for the property. **Respondent's Brief at 100-102.** The fact that Respondent makes such an argument is illustrative of her lack of understanding of her ethical responsibilities.

Rule 4-1.8(a) prohibits business transactions between a client and her lawyer unless the terms of the transaction are fair and reasonable. The attorney must clearly prove that her adverse interest was disclosed to the client and was “perfectly understood”. *In re Weier*, 994 S.W.2d 554, 558 (Mo. banc 1999). In order to ensure that such disclosure has occurred and that the client possesses such perfect understanding, the rule requires that the client be given a “reasonable opportunity” to seek the advice of independent counsel regarding the transaction. Respondent all but admits that her client was not given such a reasonable opportunity to consult with independent counsel regarding Respondent's contract to purchase the Waterman Property. This failure only corroborates the testimony of Irene Green that Respondent did not review the contents and meaning of the contract with her and that Ms. Green did not have a basic understanding of the terms under which Respondent was acquiring a possessory interest in the property.

Respondent's claim that a consultation with independent counsel would not have caused Respondent to pay more for the property and would only have resulted in a foreclosure on the Waterman Property is spurious. Independent counsel would have immediately perceived that Respondent was taking unfair advantage of her client's predicament by purchasing the property at significantly less than its fair market value. Such counsel may have been able to advise the bankruptcy court of the fact that

Respondent had not dealt fairly with her client and might have sought a delay in the foreclosure proceedings in order to either: (i) allow Larry Wilson to close on his purchase contract, or (ii) to seek another qualified buyer who was willing to pay fair market value for the property, or (iii) permit Irene Green to seek a new lawyer who understood her ethical responsibilities. Respondent, however, failed to give her client a reasonable opportunity to consult with independent counsel.<sup>1</sup> She thereby violated Rule 4-1.8(a).

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<sup>1</sup> Significantly, Respondent also neglected to advise the bankruptcy court of the fact that she had entered into a transaction with her client to purchase the Waterman Property. Had she done so, the court could have reviewed the terms of that purchase contract and made its own determination as to whether the transaction was fair and reasonable and taken appropriate remedial action, including delaying the foreclosure sale. The Panel correctly found that Respondent violated Rule 4-3.3(a)(1) by failing to advise the bankruptcy court of her personal involvement in the financial matters of her client. **App. 542.**

## II.

**DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT FINGAL-GRIFFIN ENTERED INTO A TRANSACTION WITH HER CLIENT FOR THE SOLE PURPOSE OF CARRYING OUT A SCHEME WHEREBY RESPONDENT SOUGHT TO FINANCIALLY BENEFIT FROM THE PURCHASE OF HER CLIENT'S PROPERTY TO THE DETRIMENT OF HER CLIENT, THEREBY CAUSING SERIOUS INJURY TO HER CLIENT, THE PUBLIC AND THE LEGAL SYSTEM.**

Throughout her Brief, Respondent attempts to sidestep personal and professional responsibility for her misconduct by claiming that she assumed “great personal risk and subordinated her own interest” in her representation of her client Irene Green.

**Respondent Brief at 116.** She refuses to acknowledge that she violated the Rules of Professional Conduct and claims that she was victimized by an “astute 67 year old woman who is sufficiently sophisticated in real estate and other legal matters that she successfully deceived Respondent. . . .” **Respondent Brief at 11.** Respondent’s “spin” on her misconduct is unconvincing and failed to persuade the Disciplinary Hearing Panel, which correctly found that Respondent carried out a scheme to financially benefit from the purchase of the Waterman Property and violated various ethical rules in the process.

It is well established that the purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged their professional duties to clients, the public, the legal system and the legal profession. *ABA Standards for Imposing Lawyer Sanctions* (1991 ed.), Standard 1.1. This Court has held

that the purpose of such proceedings is to preserve the courts and the profession from the ministrations of those who, by their actions, degrade the administration of justice and demonstrate their unfitness to serve the courts as officers thereof. *In re Maier*, 664 S.W.2d 1, 2 (Mo. banc 1984); *In re MacLeod*, 479 S.W.2d 443, 445 (Mo. banc 1972).

Through her prior discipline and her conduct in this case, Respondent has amply demonstrated her degradation of the administration of justice and her unfitness to serve as an officer of the court. Her misconduct evidences dishonest and deceitful behavior directed at her client, the very person to whom she owed a fiduciary duty and a very high degree of fidelity and good faith. See *In re Howard*, 912 S.W.2d 61, 62 (Mo. banc 1995). By favoring her own financial interests and those of other third parties over those of her client, Respondent has demonstrated that she lacks character and is unfit to practice law. Under these circumstances, and for the reasons stated in Informant's main brief, disbarment is warranted.

Respondent relies on the Missouri Court of Appeals decision in *McRentals, Inc. v. Barber*, 62 S.W.3d 684 (Mo.App. W.D. 2001) to support her assertion that her conduct was consistent with the requirements of the Rules of Professional Conduct.

**Respondent's Brief at 87.** The *McRentals* case is distinguishable and provides no support for Respondent's position. *McRentals* involved the appeal of a legal malpractice claim involving the execution of an employment and stock option agreement. The Court noted that the client was an astute businessman with a bachelor's degree in accounting and a master's degree in business and that he had been involved in purchasing, operating and selling various businesses. *Id.* At 688. As to the substantive evidence, the Court in

*McRentals* noted that the client admitted he had read and understood the agreement prior to executing it and that he had been given an express opportunity to seek the advice of independent counsel. On this basis, the Court found no violation of Rule 1.8.

In the case at bar, the client Irene Green was an elderly woman living off of disability income. She had a high school education and was unsophisticated regarding real estate transactions and bankruptcy procedures. In addition, she suffered from various physical disabilities, including diabetes, heart surgery, cataracts, arthritis and kidney disease that required that she undergo dialysis three times per week. **App. 108 (Tr. at 74-75); 121 (Tr. at 128)**. Moreover, Green testified that Respondent did not review the real estate contract and post-closing lease with her, that she did not understand the documents and that she believed that Respondent was purchasing the Waterman Property for \$130,000, the same price being paid by Larry Wilson. **App. 114-116 (Tr. at 98-108)**. Finally, Green testified that Respondent did not advise her that she had a right to consult with independent counsel regarding the transaction. **App. 114 (Tr. at 100)**. The facts in this case are clearly distinguishable from the *McRentals* case.

Respondent raises various state and federal constitutional objections to these proceedings and to any discipline that this Court might impose upon her. Specifically, she alleges that the disciplinary proceedings violated her due process rights (**Respondent's Brief at 69**), her religious freedom (**Respondent's Brief at 106**), her free speech rights (**Respondent's Brief at 106**), her right against involuntary servitude (**Respondent's Brief at 78**), and her right to contract (**Respondent's Brief at 105**).

None of these constitutional arguments can mitigate the clear ethical violations present in this case and the ultimate discipline that should be imposed by this Court.

It is well-settled that a license to practice law is not a *right* over which the courts have no control, but is merely a *privilege* which is dependent upon the attorney “remaining a fit person to exercise the privileges granted him.” *In re Conner*, 207 S.W.2d 492 (Mo. banc 1948). This Court has affirmed that attorney disciplinary proceedings are neither civil nor criminal, but are *sui generis* proceedings, the purpose of which is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession. *In re Kazanas*, 96 S.W.3d 803, 807-808 (Mo. banc 2003); *In re Sparrow*, 90 S.W.2d 401 (Mo. 1935). As a result, the Court has held that various constitutional protections are inapplicable to attorney disciplinary proceedings. *See In re Cupples*, 952 S.W.2d 226, 233 (Mo. banc 1997) (right to confront witnesses inapplicable to disciplinary proceedings); *In re Westfall*, 808 S.W.2d 829, 837 (Mo. banc 1991) (lawyer’s right of free speech may be restricted where false statements are made with reckless disregard for their falsity); *In re Shunk*, 847 S.W.2d 789, 791 (Mo. banc 1993) (full faith and credit provision of United States Constitution does not bar the Court from addressing attorney discipline based on criminal case in Texas).

Respondent’s claim that she has been denied her constitutional right to due process should be summarily rejected. The Disciplinary Hearing Panel in this case conducted a hearing over the course of three days, the vast majority of which was utilized by Respondent in presenting witnesses and exhibits. The Panel gave great leeway to Respondent to offer testimony and exhibits and she took full advantage of the

opportunity, as reflected by the size of the record in this case. In its decision, the Panel made the following specific findings:

“At the conclusion of the hearing, the panel requested that the parties each submit their Proposed Findings of Fact, Conclusions of Law and Proposed Recommendation. The parties were given a specific date by which to submit the same, and Informant did in fact submit everything timely. On the day the Proposed Findings and Conclusions were due, Respondent filed a letter with the Office of Chief Disciplinary Counsel, asking in effect that the panel be removed, that counsel for the Informant be removed, and setting forth numerous other allegations. . . . Although the initial time for filing the Proposed Findings of Fact and Conclusions of Law had expired, and although Respondent was in receipt of all of the filings by the Informant, and had the ability to use the same in drafting her own, the panel still provided Respondent additional time in which to supply her Proposed Findings of Fact and Conclusions of Law. Contrary to Respondent’s allegations in her letter and in her proposals, it is the opinion of the panel that they bent over backwards to be patient and cooperative with Respondent, and granted her tremendous leeway to say virtually anything she wanted at the hearing, and to offer virtually any exhibit she chose to offer. The panel tried to help Respondent focus on the relevant issues of the hearing, and the allegations that were pending.”

**App. 514.**

The Disciplinary Hearing Panel afforded Respondent full due process rights in the manner in which it conducted the hearing in this case.

## CONCLUSION

Respondent committed professional misconduct (i) by taking a pecuniary interest in her client's property under terms that were not fair and reasonable to her client in order to carry out a scheme to financially benefit at the expense of her client, (ii) by using information relating to the representation to the disadvantage of her client without obtaining her client's consent after consultation, (iii) by failing to abide by her client's decisions concerning the objectives of the representation, (iv) by failing to consult with her client as to the means by which the objectives of the representation were to be pursued, (v) by failing to keep her client reasonably informed about the status of the matter for which Respondent was providing representation, (vi) by continuing to represent her client despite the fact that the representation was materially limited by Respondent's own interests and by Respondent's responsibilities to third persons, (vii) by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation in her representation of her client, and (viii) by engaging in conduct that is prejudicial to the administration of justice in her representation of her client. The presence of prior misconduct, the vulnerability of the victim of Respondent's dishonest behavior and Respondent's refusal to take responsibility for, or even acknowledge, the nature and extent of her wrongdoing require disbarment.

Respectfully submitted,

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ATTORNEY FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of April, 2007, two copies of Informant's Reply Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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Parc Frontenac  
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Alan D. Pratzel

**CERTIFICATION: RULE 84.06(c)**

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 5,747 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

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Alan D. Pratzel