IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
NAREN CHAGANTI,	)	**Supreme Court #SC94181**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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ATTORNEYS FOR INFORMANT

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

This case is before the Court following Respondent's rejection of the disciplinary hearing panel's recommendation that he be suspended indefinitely from the practice of law without the right to reapply until after six months for violating Rule 4-4-2 and Rule 4-8.4(d) for communicating with a party known to be represented by another lawyer about the subject matter of the representation, without consent, and for conduct prejudicial to the administration of justice. **App. Vol. 4, pg. 629.**

Background and Disciplinary History

Respondent is Naren Chaganti, who was licensed as an attorney in Missouri on September 19, 2001. **App. Vol. 1, pg. 31.**[1] Respondent has no prior disciplinary history.

Respondent also is the sole owner and officer of Whispering Oaks RCF Management Company, Inc. ("Whispering Oaks"), a corporation registered with the Secretary of State of Missouri. **Vol. 3, pg. 559-561.**

In the spring of 2009, Lafayane Manse, a special inspector with Ameren UE ("Ameren"), was on the Whispering Oaks residential care facility premises. **App**. **Vol. 2, pg. 313 (Tr. 113).** During that visit, or a subsequent visit, Respondent learned that Mr. Manse was also a licensed HVAC contractor, with his own business, Manse Heating and Cooling. **App**. **Vol. 2, pg. 320 (Tr. 139-142).** Several of the air conditioning units at the

[1]The facts contained herein are drawn from the record on appeal, the testimony at the hearing, and the exhibits received. Citations to the record are denoted by the appropriate Appendix page, for example **"App. Vol.__, pg.__"**.

premises needed work, and Whispering Oaks entered into a maintenance contract with Mr. Manse, and Manse Heating and Cooling. **App**. **Vol. 2 pg. 334 (Tr. 194-195).** Subsequently, several of the air conditioning units failed and a dispute arose over work done by Mr. Manse and the dollar amount charged to Whispering Oaks. **App**. **Vol. 2, pg. 294 (Tr. 34-35).** Consequently, Respondent filed a lawsuit for Plaintiff, Whispering Oaks, in St. Louis County Associate Circuit Court, captioned: *Whispering Oaks RCF Management Company, Inc. v. Lafayane Manse and Manse Heating and Cooling*, Case No. 09SL-AC26857. (Ex. 1A - **App**. **Vol. 3, pg. 542-549).**

The Lawsuit

The Petition was file stamped July 21, 2009, and was in six counts: (1) Breach of Contract, (2) Unjust Enrichment, (3) Price Gouging, (4) Extortion, (5) Negligence and (6) Prima Facie Tort. **App**. **Vol. 3, pg. 511.** Respondent signed the Petition as "Attorney for Plaintiff." **App**. **Vol. 1, pg. 17.** Although the Petition mentioned that Mr. Manse initially came to the Whispering Oak's premises as an Ameren employee, all of the allegations of misconduct were directed solely to Mr. Manse and his HVAC business. **App**. **Vol. 3, pg. 511.** Ameren was not a party. **App**. **Vol. 3, pg. 511.**

Manse hired lawyer, Thomas DeVoto. **App**. **Vol. 2, pg. 32-33.** Minimal discovery was conducted over nearly three years, and the docket entries reflect repeated continuances. Ex. 1A - **App**. **Vol. 3, pg. 521-529.** On at least one occasion, a settlement conference was held. **App**. **Vol. 3, pg. 525-527.** Eventually, Judge Patrick Clifford dismissed the lawsuit without prejudice for failure to prosecute. **App**. **Vol. 3, pg. 407.** Respondent filed a motion

to set aside the dismissal, which was denied at a hearing on October 31, 2012. **App**. **Vol. 3, pg. 406.**

According to Mr. DeVoto, that while outside the judge's chambers, Respondent:

- got frustrated; **App. Vol. 2, pg. 295 (Tr. 41).**
- verbally confronted Mr. DeVoto and announced he was going to refile suit in the Circuit Court, and was going to turn this into a big lawsuit; **App. Vol. 2, pg. 295 (Tr. 41).**
- told Mr. DeVoto that because the lawsuit was dismissed he was going to contact Mr. Manse directly because you (i.e. Mr. DeVoto) no longer represented Mr. Manse and that Respondent was free to contact Mr. Manse directly; **App. Vol. 2, pg. 295 (Tr. 41);** and
- threatened to take the deposition of an Ameren representative "in order to try to hook Ameren for Mr. Manse's private business on the side." **App**. **Vol. 3, pg. 535.**

Following Respondent's statements, Mr. DeVoto told Respondent that if he contacted Mr. Manse directly Mr. DeVoto would report Respondent to the Bar Association. **App. Vol. 2, pg. 295 (Tr. 41).**

Mr. DeVoto had experience with Respondent before in other lawsuits and felt it wise to memorialize the verbal confrontation by dictating the following File Memorandum when he returned to his office. **App. Vol. 2, pg. 295 (Tr. 41)**:

> RE: MANSE, LAFAYNE (sic) – MEETING W/NAREN CHAGANTI AT THE END OF THE HEARING TO SET ASIDE THE DEFAULT

FROM: TCD

OCTOBER 31, 2012

At the end of the hearing to set aside the default on 10-31-12, Mr. Chaganti went on and on about how he needed to speak to my client, and that if he could speak to him, he knows that he would be able to get this matter resolved.

* * * * * * * * *

After that, Mr. Chaganti got mad; he told me he was going to file suit in the Circuit Court; he was going to make this into a big case; and the last thing he said was that he was going to contact my client. Chaganti said the case is dismissed; you no longer represent him and I have a right to contact him. I told Chaganti that if he contacted Mr. Manse that I would report him to the Bar Association.

Mr. Chaganti then threatened to take the deposition of somebody at Ameren UE in order to try to hook Ameren UE for Mr. Manse's private business on the side. Clearly, this is an abuse of discretion and it's not a too veiled threat to cause harm to the client without a legal use of process, and it is my intention if, in fact, Mr. Chaganti does that without any basis, whatsoever, I will report him to the Bar Association for that also. (Ex. 3 - **App**. **Vol. 3, pg. 535.**)

The Communication with Represented Opposing Party

The next day, November 1, 2012, Respondent mailed the following letter directly and only to Mr. Manse. **App. Vol. 2, pg. 314 (Tr. 117):**

NAREN CHAGANTI, ESQUIRE

[ON ATTORNEY LETTERHEAD]

November 1, 2012

Via First Class Mail

Lafayane Manse

440 Bluff Meadow Dr

Ballwin, MO 63021

Re: Whispering Oaks RCF Management Co Inc.

Dear Mr. Manse:

You are probably aware by now that the suit I filed was dismissed for failure to prosecute. In accordance with the right to refile from such dismissals, I plan to refile the claim. When I refile the suit, I will add Ameren UE as a defendant in view that you solicited our business at Whispering Oaks while being on our property as an employee of Ameren UE. If you did not have insurance to cover your actions or omissions, perhaps Ameren UE might have the coverage for your actions. In order to avoid another suit, however, I urge you to discuss settlement out-of-court. I could not contact you until the suit was

dismissed in view that your attorney refused to permit direct discussion between us to settle the suit.

I will wait a few days to see if you accept the invitation to contact me and resolve the issue. Please note that the issue will not be resolved unless you place a larger sum of money to settle than he has offered. You should think seriously whether it is in your best interests to go to court again or to close this matter at this time.

Please do not hesitate to contact me if you have any questions and/or concerns.

Very truly yours,

/s/ /Naren Chaganti/

Naren Chaganti

(Ex. 5 - **Vol. 3, pg. 541**).

Upon receipt of Respondent's unexpected letter, Mr. Manse felt intimidated and was fearful he could lose his job if Ameren got brought into the matter. Mr. Manse chose to immediately contact his supervisor at Ameren to explain, before Ameren received a lawsuit and summons. Mr. Manse also contacted Mr. DeVoto. **App. Vol. 2, pg. 315 (Tr 118-119).**

Once Mr. Manse self-reported, he was charged with misconduct by Ameren and was the subject of two internal hearings over the next two weeks. Initially, Ameren found that Mr. Manse had violated company policy by soliciting personal business while on

company time. Mr. Manse filed a grievance with his union and was able to convince Ameren to reconsider the facts. After further consideration, Ameren dismissed the charges, but delivered a cautionary letter to Mr. Manse about conducting personal business while on company time. **Vol. 2, pg. 315 (Tr. 120); (**Ex. 8 - **App. Vol. 3, pg. 551-558).**

Following these events, as he told Respondent he would do, Mr. DeVoto filed a report concerning Respondent's conduct with the Office of Chief Disciplinary Counsel on November 16, 2012. (Ex. 2 - **App**. **Vol. 1, pg. 203-206).**

The Information and Answer

After the Region X Disciplinary Committee found probable cause, Informant filed a two-count Information against Respondent alleging a Rule 4-4.2 violation for unauthorized communication with a represented party and a Rule 4-8.4(d) violation for conduct prejudicial to the administration of justice. **App**. **Vol. 1, pg. 5.**

In his Answer, Respondent admitted he wrote a letter to Mr. Manse but denied the allegation that stated "without the consent from DeVoto, for the reason that this allegation is complex and implies that Mr. DeVoto's consent was either (sic) sought or [was] necessary to write the letter." Respondent also denied that Mr. DeVoto continued to represent Mr. Manse after October 31, 2012. **App**. **Vol. 1, pg. 30.**

Disciplinary Hearing Motion Proceedings

Prior to the disciplinary hearing, Respondent filed four motions. DeVoto filed one. All were ruled upon by Presiding Officer David Slavkin:

- Respondent's Motion to Dismiss **App. Vol. 1, pg. 36-38.**

  Denied **App. Vol. 1, pg. 221.**

- Respondent's Request for DeVoto to Produce File **App. Vol. 1, pg. 41-44.**

  Denied **App. Vol. 1, pg. 223.**

- DeVoto's Motion to Quash Subpoena **App. Vol. 2, pg. 248-254.**

  Deferred **Vol. 2, pg. 264-265.**

- Respondent's Motion to Bar Undisclosed or Incomplete Evidence **App. Vol. 2, pg. 266-268.**

  Deferred **App. Vol. 2, pg. 269.**

- Respondent's Motion to Compel **App. Vol. 2, pg. 276-277** .

  Denied **App. Vol. 2, pg. 282-283.**

The Disciplinary Hearing

The disciplinary hearing was held on January 23, 2014. Informant called three witnesses: Thomas DeVoto, Lafayane Manse, and Naren Chaganti. Informant's eight exhibits were marked and received into evidence. **App. Vol. 2, pg. 342 (Tr. 226-227);.** Respondent then testified in the narrative. Respondent's seventeen exhibits were marked and received into evidence. **App. Vol. 2, pg. 344 (Tr. 235).** Respondent rested. In lieu of closing arguments, Chairman Slavkin requested each party submit written legal citations and closing arguments. **App. Vol. 2, pg. 349 (Tr. 257-258).**

A summary of the testimony follows:

Testimony of Thomas DeVoto

Thomas DeVoto has worked as a lawyer in Missouri for 38 years with 150 jury trials and another 100 bench trials. (Ex. 2 – DeVoto's résumé at **App. Vol. 3, pg. 530-534)**. Mr. Manse came to Mr. DeVoto for legal representation following receipt of the Whispering

Oaks lawsuit. **App. Vol. 2, pg. 293 (Tr. 30-32).** The legal dispute arose out of maintenance questions after the failure of the air conditioning units which led to an evacuation at the Whispering Oaks facility. **App. Vol. 2, pg. 293 (Tr. 33-35).**

The court file minutes (Ex. 1 - **App. Vol. 3, pg. 391-398)** indicated very little activity for nearly three years. More than once Respondent asked Mr. DeVoto for permission to speak directly to Mr. Manse, but Mr. DeVoto refused. On occasion, at docket calls, Mr. DeVoto and Respondent would conduct settlement negotiations. At one of the settlement conferences, DeVoto believed they had the case settled, but after leaving the judge's chambers, Respondent demanded more money. Settlement negotiations ended. **App. Vol. 2, pg. 294-295 (Tr. 35-38).**

Eventually, Judge Clifford dismissed the lawsuit without prejudice for failure to prosecute. Respondent's motion to set aside the dismissal was denied at hearing on October 31, 2012. **App. Vol. 3, pg. 399.**

Immediately after the hearing, Respondent appeared frustrated and told Mr. DeVoto that, because the case was now dismissed, Mr. DeVoto no longer represented Mr. Manse and that Respondent was free to contact Mr. Manse directly. Respondent added that he was going to sue Ameren, Manse's primary employer, and turn this into a big lawsuit. Mr. DeVoto told Respondent that he still represented Mr. Manse in the matter and would report Respondent to the Bar Association if Respondent followed through with his threat to contact Manse. **App. Vol. 2, pg. 295 (Tr. 41).**

Mr. DeVoto had experience with Respondent before and felt it necessary to memorialize the confrontation by dictating a File Memorandum. **App**. **Vol. 2, pg. 296 (Tr. 42);** (*See* Ex. 3 - **App. Vol. 3, pg. 535**).

Mr. DeVoto learned from Mr. Manse that Mr. Manse received a letter dated November 1, 2012, directly from Respondent threatening to refile the Whispering Oaks lawsuit and add Ameren as a defendant. (*See* Ex. 5 - **App. Vol. 3, pg. 541**). Mr. DeVoto filed a report with the OCDC. **App. Vol. 3, pg. 587-591.** Mr. DeVoto described his frustration in the situation as follows: "The primary basis of the relationship with the client is the attorney-client privilege. The trust that a client has to have in order for you to help them has to be there. It's the foundation of our representation. And that is so fundamentally true that I simply couldn't believe that a practicing, licensed attorney, knowing that is the foundation of our relationship with our client clients, would contact a represented client. And to some extent, in my opinion, you know, using your license to bully someone also aggravated me." **App. Vol. 2, pg. 296 (Tr. 45).**

On cross examination, Mr. DeVoto testified that he gave Informant's counsel a copy of the File Memorandum in a personal meeting in June, 2013. **App. Vol. 3, pg. 297 (Tr. 50-51).** Respondent then moved to strike DeVoto's entire testimony because Mr. DeVoto failed to produce documents pursuant to the pre-hearing subpoena. Chairman Slavkin denied Respondent's oral motion and Respondent's pre-hearing Motion to Bar, holding that Mr. DeVoto's production of his File Memorandum and other select non-privileged documents to Informant's counsel did not waive Mr. Manse's attorney-client privilege. **App. Vol. 3, pg. 300 (Tr. 59).**

Mr. DeVoto testified that his representation of Mr. Manse started when he was first retained and continues to this day. Mr. DeVoto testified that Ameren would not be a legitimate party to the lawsuit and he saw no reason to contact them. **App. Vol. 2, pg. 302 (Tr. 68-69).**

Respondent orally moved for an order to "open up" DeVoto's file to "look at what's there, and maybe produce what is not privileged." Chairman Slavkin ruled: "Based on the fact that, although you invited to do so, you have not articulated a specific reason why you need that, it is again denied. Let's move on." **App. Vol. 2, pg. 308 (Tr. 106).** This ruling also addressed the issue of access to client documents in Mr. DeVoto's Motion to Quash prior to the hearing.

Testimony of Lafayane Manse

Lafayane Manse is 57 years old and is a special inspector for Ameren UE where his job is to investigate theft of electrical service. He is also a licensed mechanical contractor in St. Louis County with his own business called Manse Heating & Cooling. **App. Vol. 2, pg. 313 (Tr. 112-113).**

Mr. Manse hired Mr. DeVoto as his attorney after he was served with the lawsuit papers. Mr. DeVoto continues to be Mr. Manse's attorney to this day regarding the dispute with Respondent. **App. Vol. 2, pg. 314 (Tr. 115).**

Mr. Manse was generally aware of the progress of the lawsuit, including negotiations, knew that the lawsuit was dismissed, and that the motion to set aside was denied. **App. Vol. 2, pg. 314 (Tr. 115-116).**

When Mr. Manse received the November 1, 2012 letter his reaction was "shock, disbelief, and fear." He wasn't expecting communication from Respondent. He felt threatened **(App. Vol. 2, pg. 316 (Tr. 125))** and feared that his employer would be brought into the dispute and might have concern that company policy was somehow violated. Mr. Manse was afraid of termination. He made the decision to self-report to his supervisor, and Ameren immediately began a fact-finding investigation. **App. Vol. 2, pg. 315 (Tr. 118-119)**.

Over a two week period, Ameren held two hearings. (*See* Ex. 8 - **App. Vol. 3, pg. 551-558**). Initially, Mr. Manse was found to have violated company policy. He appealed by filing a grievance with the union. Eventually, Ameren decided to forego imposing discipline, but delivered a letter to Mr. Manse reminding him of his obligation not to engage on Company time in any conduct to operate his HVAC business or that otherwise creates personal gain, "and that he will be subject to disciplinary action for any future infraction." **App. Vol. 2, pg. 315 (Tr. 118-120);** (Ex. 8 - **App. Vol. 3, pg. 551-558**).

Testimony of Naren Chaganti

Respondent is 48 years old and is licensed to practice law in Missouri, California and before the United States Patent and Trademark Office. He is on inactive status with Virginia and Washington, D.C. **App. Vol. 2, pg. 332 (Tr. 118-190).** He identified his attorney letterhead as the same one he used to respond to Legal Ethics Counsel in this disciplinary matter. **App. Vol. 2, pg. 332 (Tr. 189);** (Ex. 7 - **App. Vol. 3, pg. 550**).

In addition to his law practice, Respondent is involved with Whispering Oaks. He also helps his brother by defending medical malpractice lawsuits against him. He also once

owned a software company in Virginia which is inactive. **App. Vol. 2, pg. 333 (Tr. 191-192).**

Whispering Oaks is incorporated to run a residential care facility on property owned by an LLC. Whispering Oaks is in good standing but not currently licensed by the State of Missouri. Whispering Oaks filed its own tax return, is separate from Respondent's law practice, and maintains separate books. Respondent is the only shareholder and officer of the corporation. **App. Vol. 2, pg. 333 (Tr. 192-194).**

Manse Heating & Cooling performed work while at the Whispering Oaks facility based on an oral contract between Whispering Oaks and Mr. Manse, and Manse Heating & Cooling. Respondent listed himself as "Attorney for Plaintiff" on the Petition he filed. Respondent did not name himself as a party to the lawsuit. Ameren was not listed as a defendant. Mr. DeVoto appeared for Mr. Manse and Manse Heating & Cooling. **App. Vol. 2, pg. 334 (Tr. 194-197).**

Respondent believed his settlement demands to settle the legal dispute were not being communicated by Mr. DeVoto to Mr. Manse and wanted to speak directly to Mr. Manse. Mr. DeVoto never gave Respondent permission to speak to Mr. Manse. **Vol. 2, pg. 335 (Tr. 198).**

Respondent denied the verbal confrontation with Mr. DeVoto at the courthouse following the denial of the motion to set aside. He denied telling Mr. DeVoto he was going to refile the lawsuit in circuit court, was going to make this into a big case, and was going to take a deposition of somebody at Ameren in order to try to hook Ameren for Mr. Manse's private business on the side. Respondent denied asking if he could communicate directly

with Mr. Manse. Respondent denied that Mr. DeVoto told Respondent that if Respondent contacted Mr. Manse directly Mr. DeVoto would report him to the Bar. **Vol. 2, pg. 337 (Tr. 207-210).**

Respondent admitted drafting the November 1, 2012, letter using his official attorney letterhead identified in (Ex. 7 - **App. Vol. 3, pg. 550)**. Respondent is not sorry that Mr. Manse almost lost his job and denied that the letter was a violation of Rule 4-4.2. **App. Vol. 2, pg. 340 (Tr. 219-220).**

In response to questioning from the Panel, Respondent stated he had been sanctioned before in court. In Harrisburg, Pennsylvania, Respondent was sanctioned $5,000 for "unnecessary delay." Respondent was sanctioned $20,000 by Judge Shaw in the Eastern District Federal Court for "failure to bring a client to a deposition, and attendant paperwork." **App. Vol. 2, pg. 340 (Tr. 220-224).**

Respondent then testified in the narrative:

Respondent is a native of India; he has a bachelor and master's degrees in electrical engineering. He went to school in Salt Lake City to study electrical engineering and computer science. Then, he went to the University of Texas at Arlington and received a master's degree in computer science. He went to law school at George Washington University and graduated with honors in 1998, and went to work at Pennie & Edmonds, a Washington D.C. law firm to do patent work. Then, he became in-house counsel with Sun Microsystems. He came to Missouri, obtained his license and started a solo practice. **App. Vol. 2, pg. 336 (Tr. 228-229).**

Respondent had numerous interests before becoming a lawyer. He was writing firmware and software. He was developing complex telecommunications software. He had a business on the side that developed voice-recognition systems and complex telecommunication switching software. And then, he also ran a business on the side to provide consulting for telecommunication companies. **App. Vol. 2, pg. 342 (Tr. 229).**

As "owner, manager, officer, director, corporate official of this company, [Respondent] ran into [Mr. Manse] while [Mr. Manse] was [on the Whispering Oaks premises]. [Respondent] offered to give [Mr. Manse] the job of maintaining the HVAC systems." **App. Vol. 2, pg. 344 (Tr. 235).**

On a hot day later that summer, several of the air conditioning units failed. Respondent called Mr. Manse who showed up around 10:00 p.m. Residents had been evacuated and the police, fire department, and state inspectors were there. Respondent described it as a chaotic situation. **App. Vol. 2, pg. 344-345 (Tr. 237-238).**

Mr. Manse worked late into the night and got the units working but with no cold air coming out. **App. Vol. 2, pg. 345 (Tr. 239).**

Respondent testified that the next day he contacted another company and got the situation under control. **App. Vol. 2, pg. 345 (Tr. 239-240).**

Respondent demanded a refund and other damages from Mr. Manse. They attempted to settle the dispute, without success. So, Respondent filed the Whispering Oaks lawsuit. **App. Vol. 2, pg. 345 (Tr. 241).**

Respondent testified that during the course of the lawsuit, Mr. DeVoto gave the impression he was not conveying the settlement discussions to Mr. Manse. **App. Vol. 2, pg. 345-346 (Tr. 241-242).** Respondent testified as follows:

"Why was he not settling? It didn't make any rational sense to me that Lafayane Manse, who is a business guy, a heating and air-conditioning guy, who I thought was a – you know, even though he made that event on June 19th, he tried to take advantage, I thought a rational person, especially somebody running a business, would not be incurring this kind of legal cost if he knew that I was going to settle for a small amount." **App. Vol. 2, pg. 340 (Tr. 242-243).**

"I sensed that Mr. Manse was kept in the dark about what I was saying to Mr. DeVoto. So I waited until the case is dismissed. I wrote a letter to him. At least now sit down and talk." **App. Vol. 2, pg. 347 (Tr. 246).**

Respondent claimed that "he didn't threaten. There was nothing threatening about requesting a settlement from somebody with whom you have a dispute. The fact that I had a law license doesn't prevent me from communicating—I mean I go to a gas station and pump gas in my thing. That is a contractual thing. That doesn't mean I have to do the transaction through the owner's attorney to pump the gas. If I – if they owed me 5 more dollars, I could directly go and tell them you owe me $5, give it to me." **App. Vol. 2, pg. 347 (Tr. 246).**

"I didn't think at the time and I don't think now that there is anything inherently illegal with a person with a law license communicating." **App. Vol. 2, pg. 347 (246-247).**

Respondent continued: "A second thing that I would like to say about this that Mr. DeVoto is not telling the truth, which is very important. Mr. DeVoto, I don't know when he drafted that [File Memorandum]. It is quite unusual to have a conversation with a lawyer and then go to his office and type it. He didn't produce other similar memoranda." "It is my view that he is the one that instigated Mr. Manse to go and file this Ameren UE thing in order to cause this so-called emotional distress. So the conversations that Mr. DeVoto mentions in his October 31st memorandum to himself are not accurate. They didn't happen on that day. He didn't ask me not to contact him. I didn't ask his permission, because the case is over, he's gone as far as I'm concerned." **App. Vol. 2, pg. 347 (Tr. 247).**

Respondent added, Manse "didn't have any reason in my opinion to go (sic) shocked, confused, or whatever he said. He already had representation. This is just a continuation of the previous litigation." **App. Vol. 2, pg. 347 (Tr. 249).**

"So going to Rule 4.2, it says, in representing a client, my position is that I'm representing my own business. And, I also didn't know that Mr. DeVoto continued to represent [Mr. Manse]. And another point that I would like to make is that comment 4 says, Parties to a matter may communicate directly with each other. So I also think that under that rule, under that comment, this communication would not have been in violation." **App. Vol. 2, pg. 348 (Tr. 250-251).**

The Disciplinary Hearing Panel's Decision

On March 12, 2014, the Disciplinary Hearing Panel filed a detailed Decision finding Respondent violated Rule 4-4.2 and 4-8.4(d) and recommended a six month suspension. **App. Vol. 4, pg. 629-638:**

The Panel found that after having been warned by Mr. DeVoto not to contact his client, Respondent, in his capacity as attorney for Whispering Oaks, sent the letter of November 1, 2012, directly to Mr. Manse with the intent to intimidate Mr. Manse and force a larger settlement. Upon receipt of the letter, Mr. Manse "became very concerned about the implication of a joinder of Ameren in a lawsuit, including the impact on Manse's employment with Ameren if it was joined, and determined that it was in his best interest to self-report to Ameren the dispute with Whispering Oaks and the threat of Ameren's joinder in litigation." As a result, Ameren instituted disciplinary proceedings against Mr. Manse eventually resulting in the delivery of a cautionary letter to Mr. Manse. **App. Vol. 4, pg. 632.**

The Panel noted that Respondent "appeared *pro se* at [his disciplinary] hearing and much of his defense consisted of efforts to constrain Informant from introducing evidence and injecting Respondent's perception of the facts underlying the hearing through the cross-examination of Informant's witnesses. Respondent's behavior at the hearing showed poor judgment. He became visibly angry at several points during the hearing, although he managed to keep his anger somewhat in check. Respondent was far too emotionally invested in the disciplinary hearing to objectively consider the issues before the Panel." **App. Vol. 4, pg. 632.**

The Panel found Mr. DeVoto's File Memorandum to be a valid business record and Mr. DeVoto's testimony provided facts consistent with the content of the exhibit. **App. Vol. 4, pg. 633.**

In addition, the Panel found that the Petition supported Informant's arguments that Respondent violated Rule 4-4.2. "In that Petition, Whispering Oaks is clearly identified throughout as the plaintiff in the [St. Louis] County Litigation. The Petition is consistent throughout in asserting that Whispering Oaks, the entity, suffered damages by reason of the actions of Manse and his company, and sought to have damages awarded to Whispering Oaks. In fact, in the various prayers for relief, requests are made that Whispering Oaks be awarded its attorney's fees. The Petition bears a signature block identifying Respondent as "Attorney for Plaintiff." " **App. Vol. 4, pg. 633-634.**

The following were the Panel's conclusions of law:

- The Panel concluded that the findings above demonstrate Respondent violated Rule 4-4.2 and Rule 4-8.4(d). **App. Vol. 4, pg. 634**
- Respondent was working in a representative capacity as the attorney for Whispering Oaks. Nowhere in any document or conversation called to the Panel's attention by Respondent is Respondent reflected as acting in anything other than a "representative capacity." **App. Vol. 4, pg. 635.**
- Respondent's knowledge of Mr. DeVoto's representation of Mr. Manse subsequent to the dismissal of the litigation may be inferred from various circumstances brought to the Panel's attention. DeVoto's memorandum and testimony established that Respondent's contacting Mr. Manse would precipitate a bar complaint. **App. Vol. 4, pg. 635.**

- The subject of Mr. DeVoto's representation of Mr. Manse were the outstanding claims of Whispering Oaks, the same claims that Respondent threatened to refile in his November 1, 2012, letter. **App. Vol. 4, pg. 635-636.**
- The Panel concluded that Respondent's argument that he was permitted to contact Mr. Manse because he was an officer of the corporation is belied by his interactions with Mr. DeVoto and Mr. Manse. In addition, throughout the St. Louis County litigation, Respondent requested DeVoto's permission to meet with Mr. Manse and did not proceed when that permission was not forthcoming. **App. Vol. 4, pg. 636.**
- Exhibit 5 states that Respondent was now free to contact Mr. Manse because the suit was dismissed – he did not argue that he was contacting Mr. Manse as an officer of the reference corporation. **App. Vol. 4, pg. 636.**
- The Panel concluded that this is precisely the type of over-reaching which Comment [1] of Rule 4-4.2 sought to avoid and thus violates Rule 4-8.4(d). **App. Vol. 4, pg. 636-637.**

The Panel recommended the following sanction:

1. The Panel concluded that the improper communication warrants suspension under Standard 6.32 of the Standards for Imposing Lawyer Sanctions because Respondent engaged in conduct he knew was improper and that communication caused injury or potential injury to a party. **App. Vol. 4, pg. 637.**
2. The Panel concluded that Respondent's behavior falls within Comment [8] to Rule 4-4.2 and the Panel concluded that Respondent sought to evade the requirements of the Rule by closing his eyes to the obvious. **App. Vol. 4, pg. 637.**

3. The Panel added: "Respondent barely skirts the application of Standard 7.1, suggesting disbarment, since his violation comes close to falling within the prohibition of actions with an intent to obtain a benefit for the lawyer and his entity." **App. Vol. 4, pg. 637.**

4. The following aggravating factors were present: Respondent's selfish motive, Respondent's refusal to acknowledge the wrongful nature of his conduct, and the vulnerability of Mr. Manse. **App. Vol. 4, pg. 638.**

5. Accordingly, the Panel unanimously recommended that Respondent be suspended indefinitely, and that Respondent be permitted to apply for reinstatement after six months. **App. Vol. 4, pg. 638.**

Following the Panel's findings, conclusions, and recommendations, Respondent filed a letter of rejection **(App. Vol. 4, pg. 640-641)**, and the Informant filed a letter of acceptance. **App. Vol. 4, pg. 642.** Informant filed the record in this case on May 12, 2014.

Respondent's Post-Decision Conduct

On April 17, 2014, Respondent filed a new Petition in the Circuit Court for the County of St. Louis, Case No. 14SL-CC01258 captioned: *Naren Chaganti and Whispering*

Oaks RCF Management Co., Inc. v. Union Electric Company d/b/a Ameren UE, LaFayne (sic) Manse d/b/a Manse Heating & Cooling. **SR pg. 632-642.**[2]

Respondent listed himself in paragraph 1 as "an assignee of the right to collect from this cause of action for Whispering Oaks RCF Management Co Inc." The separate counts of the lawsuit against Mr. Manse appear identical to the ones in the dismissed lawsuit. There is a new count for negligence against Ameren UE. **SR pg. 639-640.**

The Petition is signed by attorney, Naren Chaganti, "For Plaintiffs." **SR pg. 641.**

[2] Informant's Motion to file Supplemental Record was sustained by the Court on June 6, 2014. References to the Supplemental Record are denoted by the appropriate page, for example "**SR pg. ___**".

POINTS RELIED ON

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:

(A) REPRESENTING A CLIENT AND COMMUNICATING ABOUT THE SUBJECT MATTER OF THE REPRESENTATION WITH A PERSON RESPONDENT KNEW TO BE REPRESENTED BY ANOTHER LAWYER IN THE MATTER, WITHOUT CONSENT, IN VIOLATION OF RULE 4-4.2; AND

(B) ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d).

Rule 4-4.2

Rule 4-8.4

In re Atwell, 115 S.W.2d 527 (Mo.App. 1938)

In re Madison, 282 S.W.3d 350 (Mo. banc 2009)

POINTS RELIED ON

II.

THIS COURT SHOULD SUSPEND RESPONDENT'S LICENSE INDEFINITELY, WITH NO LEAVE TO REAPPLY FOR REINSTATEMENT FOR SIX MONTHS.

In re Madison, 282 S.W.3d 350 (Mo. banc 2009)

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

In re Warren, 888 S.W.2d 334 (Mo. banc 1994)

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

ARGUMENT

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:

(A) REPRESENTING A CLIENT AND COMMUNICATING ABOUT THE SUBJECT MATTER OF THE REPRESENTATION WITH A PERSON RESPONDENT KNEW TO BE REPRESENTED BY ANOTHER LAWYER IN THE MATTER, WITHOUT CONSENT, IN VIOLATION OF RULE 4-4.2; AND

(B) ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d).

Standard of Review of Disciplinary Hearing Panel Decision

"Although this Court gives considerable weight to the panel's suggestions, it is well-settled that a Disciplinary Hearing Panel's recommendations are advisory in nature." *In re Donaho*, 98 S.W.3d 871, 873 (Mo. banc 2003). In a disciplinary proceeding, this Court reviews the evidence *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005) Professional misconduct must be proven by

a preponderance of the evidence before discipline will be imposed. *In re Crews*, 159 S.W.3d at 358.

(A) The Rule 4-4.2 Violation

Missouri Supreme Court Rule 4-4.2 states:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Rule 4-4.2 contributes to the proper functioning of the legal system by protecting a represented party in a matter against possible overreaching by another lawyer who is participating in the matter, interference by the lawyer with the client-lawyer relationship, and the uncounselled disclosure of information relating to the representation. Comment [1] Mo. S. Ct. Rule 4-4.2.

This Court in *State v. Chandler*, 605 S.W.2d 100, 111 (Mo. banc 1980) cited as authority *In re Atwell*, 115 S.W.2d 527 (Mo.App. 1938) which summarizes the timeless tenet barring direct communication with a protected client:

> *Negotiations with Opposite Party*--A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer

> most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.
>
> This is a rule of conduct which the lawyers of this state must observe. It has a salutary purpose. The rule is to prohibit lawyers from taking advantage of litigants who are represented by counsel. It has always been a recognized rule of conduct, regardless of any written rule, that a lawyer should avoid dealing with the clients of other lawyers. This is for the protection of the client. A client who has selected counsel is entitled at all times to the advice and guidance of such counsel selected. If lawyers representing adverse interests seek to compromise or settle matters directly with litigants represented by counsel, then they are ignoring the relationship that exists for the protection of the litigants.[3]

[3]More recently, this Court discussed Rule 4-4.2 in *State ex.rel. Pitts v. Roberts*, 857 S.W.2d 200 (Mo. banc 1993), focusing on the tangent of whether the rule's protection extends to current and former employees of a represented organization, a matter which is not at issue here.

The application of the plain language of the "no contact rule" is seen in Missouri Supreme Court Advisory Committee Formal Opinion 90:

> Missouri Supreme Court Rule 4 provides that it is improper for a lawyer to communicate in any way upon the subject of controversy with a party represented by Counsel. A person retains a lawyer to represent and advise him respecting a controversy with a party represented by Counsel. Rule 4 is designed to allow the lawyer to function properly in his role free from interference by opposing Counsel. The sending of copies of correspondence to opposing Counsel's client is within the proscription of the Rule and improper unless by expressed consent. [Canon 7 – DR7-104(A)(1); Rule 4-4.2].

"There is probably no provision of the Canons of Ethics more sacred between competing lawyers than the prohibition against communicating with another lawyer's client on the subject of the representation. Such knowing communication constitutes the grossest sort of unethical conduct." *State of Florida v. Yatman*, 320 So.2d 401, 402-03 (Fla. 1975).

Respondent's non-consented communication[4] with Mr. Manse on November 1, 2012, violated Rule 4.2 because: (1) while representing a client, (2) he communicated about the subject of the representation, (3) with a person he knew was represented by another lawyer in the matter.

A Lawyer in a Representative Capacity

A lawyer who owns a corporation can speak on behalf of the corporation in a legal dispute, but only in a representative capacity. *Joseph Sansone Co. v. Bay View Golf Course*, 97 S.W.3d 531, 532 (Mo.App. 2003) (emphasis added). In Missouri, a corporation is not a natural person and may not represent itself in legal matters, but must act solely through licensed attorneys. *Joseph Sansone Co.*, 97 S.W.3d at 532. Therefore, when Respondent wrote to Manse saying he was going to refile the Whispering Oaks lawsuit, he was necessarily in a representative capacity.

In addition, as the Panel concluded: "Nowhere in any document or conversation called to the Panel's attention by Respondent is Respondent reflected as acting in anything other than a "representative capacity." The Petition is consistent throughout in asserting that Whispering Oaks, the entity, suffered damages by reason of the actions of Manse and his company, and sought to have damages awarded to Whispering Oaks. In fact, in the various prayers for relief, requests are made that Whispering Oaks be awarded its

[4]Respondent admitted that he neither asked permission of nor received consent from Mr. DeVoto to communicate directly with Mr. Manse following the October 31, 2012. **App. Vol. 2, pg. 337-338 (Tr. 209-210).**

attorney's fees. The Petition bears a signature block identifying Respondent as "Attorney for Plaintiff." " **App. Vol. 4, pg. 635.**

Furthermore, the November 1, 2012, communication was on Respondent's attorney letterhead; the same letterhead he uses for all of his attorney business. (*See* Ex. 7 - **App. Vol. 3, pg. 550).**

Respondent, however, disagrees contending that Rule 4-4.2 does not apply to him because, as sole owner of Whispering Oaks, he is a *party* to the matter, and Comment [4] permits *parties* to communicate directly with each other. **App. Vol. 4, pg. 604.**

Respondent is neither a party to the dispute nor is he Whispering Oaks. As Respondent testified, Whispering Oaks is a residential care facility management corporation, a separate entity under the laws of the State of Missouri. Whispering Oaks files its own tax returns and has rights and obligations separate from those of Respondent and his law practice. **App. Vol. 4, pg. 604.**

Respondent's contention that he is one and the same with Whispering Oaks is further belied by what he wrote to Mr. Manse in his November 1, 2012, letter: "I could not contact you until the suit was dismissed in view that your attorney refused to permit direct discussion between us to settle the suit." Respondent recognized the prohibition on direct communication due to his status as a lawyer representing Whispering Oaks. (Ex. 5 - **App. Vol. 3, pg. 552).**

Even *pro se* lawyers who actually are parties to a legal dispute are constrained by Rule 4-2 in the majority of jurisdictions because *pro se* lawyers bring professional skill and legal knowledge to the table and retain presumptively unfair advantage over opposing

parties. *See, e.g.*, Center for Professional Responsibility, American Bar Association, Annotated Model Rules of Professional Conduct 402 (6th ed. 2007) citing D.C. Ethics Op. 258 (1995); *also see In re Knappenberger*, 108 P.3d 1161 (Or. 2005) (lawyer violated anti-contact rule by speaking to two of his employees about action they just brought against him in federal court; "independent justification" defense rejected); *Vickery v. Comm'n for Lawyer Discipline*, 5 S.W.3d 241 (Tex.App. 1999) (lawyer represented himself in domestic relations proceeding cannot contact wife directly); *In re Haley*,126 P.3d 1262 (Wash. 2006) (canvassing decisional law and prospectively holding that lawyer representing himself is representing a client within meaning of Rule 4.2(a)); *but see Pinsky v. Statewide Grievance Committee*, 578 A.2d 1075, 1079 (Conn. 1990) (where bank sought to evict a lawyer tenant, lawyer's direct communication with bank agent did not violate Rule 4.2 because "there was no evidence that suggests that the letter was written by [Pinsky] in a representative capacity.")

Communication about the Subject Matter of the Representation

In a contractual type legal dispute such as this, the subject matter of the representation is the dispute itself. Respondent's letter to Manse to negotiate the dispute clearly concerned the subject matter of the representation. Missouri Rule 4-4.2 is based on the Model Rule and is currently in force in substantially similar form in all U.S. jurisdictions. Its roots can be found in Canon 9 of the 1908 ABA Canons of Professional Ethics, which advised that: "[a] lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake

to negotiate or compromise the matter with him, but should deal only with his counsel." *See Restatement (Third) of the Law Governing Lawyers Sec. 99 cmt. B (2000).*

The Lawyer's Actual Knowledge of Representation

There was no clearer proof of Respondent's knowledge of the attorney-client relationship between Mr. DeVoto and Mr. Manse in the matter than Mr. DeVoto's admonition to Respondent on October 31, 2012 not to contact Mr. Manse. Mr. DeVoto's contemporaneous File Memorandum confirms the verbal exchange at the courthouse. The Panel found both Mr. DeVoto's testimony and his File Memorandum persuasive. **(App. Vol. 4, pg. 633).**

Respondent feigns ignorance that Mr. DeVoto continued to represent Mr. Manse "in the matter." Respondent contends that once the lawsuit was dismissed (without prejudice), the attorney-client relationship ended. The word "matter," however, is broader than the petition filed to litigate it and necessarily includes the contractual dispute between Whispering Oaks and Mr. Manse.

Respondent acknowledges the same in his November 1 letter:

> I will wait for a few days to see if you accept the invitation to contact me and resolve the issue. Please note that the issue will not be resolved unless you place a larger sum of money to settle than he has offered. (emphasis added); (Ex. 5 - **App. Vol. 4, pg. 541**).

The issue to which Respondent was referring in his letter was the dispute over the work done and money owed Whispering Oaks. That matter exists whether or not a lawsuit exists, and Respondent knew Mr. DeVoto was Mr. Manse's attorney for negotiating a resolution to the matter. More tellingly, while arguing in his narrative that Mr. Manse's feelings of harassment and intimidation were unjustified, Respondent admitted that, "[the letter was] a continuation of the previous litigation." **App. Vol. 2, pg. 346 (Tr. 249).**

Furthermore, the no-contact prohibition in Missouri protects "persons," without any requirement that the person be involved in a pending lawsuit. "Actual knowledge [of representation] may be inferred from the circumstances. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing his eyes to the obvious." Comment [8] Mo. Sup. Ct. Rule 4-4.2; Mo. Sup. Ct. Rule 4-1.0(f) (emphasis added).

Respondent's novel theory that the attorney-client relationship ends when a lawsuit is dismissed without prejudice would be a dangerous precedent for those members of the public in the State of Missouri who have a lawyer defending them in a legal dispute. According to Respondent's theory, unless a lawsuit is pending, the represented party lacks protection from direct contact by the opposing lawyer. Therefore, a lawyer who has filed a lawsuit and is unhappy with the progress of settlement negotiations can dismiss the lawsuit without prejudice in order to communicate directly with the opposing, represented party.

For those situations when a lawyer might be unclear as to whether a person is represented on a particular matter, the lawyer can seek a court order (Comment [6] Mo. Sup. Ct. Rule 4-4.2) or ask the person's lawyer if the person is represented in the matter

before making the communication. *See* Fl. Ethics Op. 09-1 (Dec. 10, 2010) and Co. Ethics Op. 69 (June 19, 2010).

In summary, Respondent, while in a representative capacity for Whispering Oaks, communicated about the subject matter of the representation directly with Mr. Manse, whom Respondent knew was represented by Mr. DeVoto in the matter, in violation of Rule 4-4.2.

(B) The Rule 4-8.4(d) Violation

Respondent's letter of November 1, 2012, is not only a violation of Rule 4-4.2, but Respondent's intent to harass, intimidate, and threaten Mr. Manse constitutes conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d).

At the hearing, Respondent stated he wanted to communicate directly with Mr. Manse to make sure Mr. Manse knew the dollar amount of Respondent's settlement demands. **App. Vol. 2, pg. 335 (Tr. 198).** That testimony was disingenuous. In his letter of November 1, Respondent did not reiterate a dollar amount, but instead told Mr. Manse that he was going to add Ameren as a defendant unless Mr. Manse offered more money. Respondent intended to intimidate Mr. Manse. Mr. Manse's reaction of shock and fear was foreseeable and hoped for—just not in the way Respondent conceived. Not surprisingly, Manse believed the only way to keep his job was to self-report to his supervisor and live with the consequences, before Respondent served Ameren with a summons and lawsuit. As the Panel noted, Respondent's conduct is precisely the type of over-reaching which Comment [1] of Rule 4-4.2 sought to avoid.

The prejudicial effect on the administration of justice by Respondent's harassment of a protected client is similar to that seen in *In re Madison*, 282 S.W.3d 350 (Mo. banc 2009) where this Court suspended the Respondent for six months for harassing and impugning the integrity of two judges. *See In re Madison*, 282 S.W.3d at 358-63 (finding a Rule 4-8.4(d) violation for causing harm to persons who are part of the justice system).

ARGUMENT

II.

THIS COURT SHOULD SUSPEND RESPONDENT'S LICENSE INDEFINITELY, WITH NO LEAVE TO REAPPLY FOR REINSTATEMENT FOR SIX MONTHS.

This Court has relied on the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") to determine the appropriate discipline to be imposed in attorney discipline cases. *See, e.g.*, *In re Madison*, 282 S.W.3d at 360; *In re Crews*, 159 S.W.3d 355, 360-61 (Mo. banc 2005); *In re Warren*, 888 S.W.2d 334 (Mo. banc 1994); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994).

ABA Standard 3.0 states that a court will look at four primary factors in determining which sanction is appropriate: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury the conduct cause; and (4) aggravating and mitigating circumstances. The definitions section of the ABA provides that the term "injury" includes harm to the legal system or the profession, that acting with "intent" means having "a conscious objective or purpose to accomplish a particular result," and that acting with "knowledge" means "a conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish" that result. *In re Madison*, 282 S.W.3d at 360.

Respondent violated a duty to the legal system by communicating with Mr. Manse about the subject matter of the representation. Respondent intentionally wrote the letter of November 1, 2012, to Mr. Manse, despite being warned by Mr. DeVoto not to communicate with his client. According to Respondent's presumptuousness: "I sensed that Mr. Manse was kept in the dark about what I was saying to Mr. DeVoto. So I waited until the case is dismissed. I wrote a letter to him. At least now sit down and talk." "The fact that I had a law license doesn't prevent me from communicating – I mean I go to a gas station and pump gas in my thing. That is a contractual thing. That doesn't mean I have to do the transaction through the owner's attorney to pump the gas. If I – if they owed me 5 more dollars, I could directly go and tell them you owe me $5, give it to me." **App. Vol. 2, pg. 347 (Tr. 246).**

What Respondent did was reprehensible and unbecoming a lawyer and officer of the court. As a result of receiving Respondent's letter, Mr. Manse felt threatened and intimidated by Respondent and suffered the fear of losing his primary job. Mr. Manse withstood an internal investigation and two hearings. Mr. Manse will forever live with a black mark in his personnel file.

As the Panel held in its thorough and well-supported Decision, Respondent's improper communication warrants suspension under Standard 6.32 of the Standards for Imposing Lawyer Sanctions because Respondent engaged in conduct he knew was improper and that communication caused injury to a party. "In fact, Respondent barely skirts the application of Standard 7.1, suggesting disbarment, since his violation comes

close to falling within the prohibition of actions with an intent to obtain a benefit for the lawyer and his entity." **App. Vol. 4, pg. 637.**

In addition to the misconduct, significant aggravating circumstances are present, particularly with Respondent's latest conduct in refiling the Whispering Oaks lawsuit "as an assignee of the right to collect from this cause of action for Whispering Oaks RCF Management Co Inc." **SR pg. 632-642**. Respondent's substantial experience in the practice of law and the vulnerability of Mr. Manse are indisputable, but it's Respondent's continuing refusal to acknowledge the wrongful nature of his conduct which is beyond rational. By assigning the Whispering Oak's cause of action to himself, so he can proceed *pro se* and avoid the effect of a possible suspension, Respondent is "thumbing his nose" at the disciplinary system.

Based upon the violations clearly established in this case, Informant agrees with the Panel's recommendation that this Court indefinitely suspend Respondent from the practice of law with no leave to apply for reinstatement until after six months.

CONCLUSION

On November 1, 2012, after being warned the day before by attorney, Thomas DeVoto, not to contact his client, Lafayane Manse, Respondent wrote a letter on his attorney letterhead directly to Mr. Manse, without consent, threatening to refile the Whispering Oaks lawsuit and to add Mr. Manse's employer as a defendant, unless Mr. Manse puts more money on the table. This case is an example of a straightforward rule (not communicating with a represented client) that is learned by law students in a basic ethics class that was brazenly and intentionally violated by Respondent for the sole purpose of harassing and frightening Mr. Manse. Once violated, it had serious and far-reaching consequences that resulted in disciplinary proceedings by Mr. Manse's employer and almost cost Mr. Manse his job. Respondent litigated the Whispering Oak's matter through threats and intimidation (DeVoto knew this; that's why he drafted his File Memorandum). Respondent's conduct is clearly a violation of Rules 4-4.2 and 4-8.4(d).

In order to protect the integrity of the profession, Informant respectfully requests that this Court enter an order indefinitely suspending Respondent from the practice of law with no leave to apply for reinstatement until after six months.

Respectfully submitted,

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ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June 2014, the Informant's Brief was sent through the Missouri Supreme Court e-filing system to Respondent:

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713 The Hamptons Lane
Town & Country, MO 63017

Respondent

_____
Marc A. Lapp

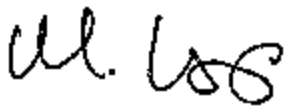
CERTIFICATION: RULE 84.06(c)

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 9325 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and



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Marc A. Lapp