IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
RICHARD TILLMAN NICHOLS	)	**Supreme Court #SC96112**
123 W. FRANKLIN	)	
CLINTON, MO 64735	)	
	)	
MO BAR NO. 60470	)	
	)	
Respondent.	)	

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Background and Disciplinary History

Respondent, Richard Tillman Nichols ("Respondent"), born March 20, 1981, was licensed to practice law in Missouri on April 16, 2008. The address Respondent designated in his most recent registration with the The Missouri Bar is 123 W. Franklin St., Clinton, MO 64735. Respondent has no disciplinary history.

Procedural History

The Office of Chief Disciplinary Counsel received complaints from Jamie McClanahan, Terry Boldt, Nancy Woody, and Mark Allen. On September 30, 2015, an Information was filed charging Respondent with violating the following Rules: Rules 4-1.3, 4-1.4, 4-1.6, 4-1.7, 4-1.16(d), 4-1.22, 4-8.1(a), 4-8.1(b), 4-8.4(c). **Rec. Vol. 1, p. 1.**[1] Respondent filed an Answer on November 6, 2015. **Rec. Vol. 1, p. 67**.

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[1]Citations to the Record are denoted by the appropriate Record Volume and page reference followed by a description of the cited material if it's not obvious from the preceding text, for example, **"Rec. Vol., p. _** (Certified Court File)." Citations to the testimony before the Disciplinary Hearing Panel are denoted by the appropriate Record Volume and page reference followed by the specific transcript page reference in parentheses and the identity of the witness, for example **"Rec. Vol. _, p. _** (Tr. _ (testimony of John Doe)". Citation to the deposition testimony admitted as exhibits by the Disciplinary Hearing Panel are denoted by the appropriate Record Volume and page

The Office of Chief Disciplinary Counsel received a complaint from Jeremy Rush. On November 4, 2015, Informant filed its First Amended Information charging the violations listed above with regard to complainants McClanahan, Boldt, Woody, and Allan, and with the following rule violations arising from Respondent's representation of complainant Jeremy Rush: Rules 4-1.3, 4-1.4, and 4-8.1(b). **Rec. Vol. 1, p. 37**. Respondent filed an Answer to First Amended Information on November 19, 2015. **Rec. Vol., p. 81**.

Per Rule 5.08(a), the Office of Chief Disciplinary Counsel opened investigation files, without have received complaints, regarding Respondent's handling of the bankruptcy cases of Jackie and Larry Jones, Vaughn and Rebecca Veach, Wendy and Jason Johnston, and Mark and Cindy Shanley. On December 11, 2015, Informant filed its Second Amended Information charging the violations listed above with regard to complainants McClanahan, Boldt, Woody, Allan, and Rush and with the following rule violations arising from Respondent's representation of Jackie and Larry Jones, Vaughn

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reference followed by the specific exhibit number, the identity of the deponent, and deposition page reference in parentheses, for example **"Rec. Vol. _, p. _** (Ex._, p. _, Dep. testimony of John Doe)". Citations to the Second Amended Information, and Respondent's First Amended Answer to Second Amended Information are denoted by the appropriate Appendix page reference followed by the specific paragraph number in parentheses, for example "**App. _** (Inf. ¶_, Ans. ¶ _)".

and Rebecca Veach, Wendy and Jason Johnston, and Mark and Cindy Shanley: Rules 4-.1, 4-1.3, 4-1.4, 4-8.1(b), and 4-8.4(d). **Rec. Vol. 1, p. 104**. On December 29, 2015, Respondent filed his Answer to Second Amended Information and Mitigation Claim Pursuant to Rule 5.285. **Rec. Vol. 1, p. 150**.

On November 12, 2015, the Advisory Committee chair appointed a disciplinary hearing panel to hear the case. **Rec. Vol. 1, p. 78**. On March 21, 2016, the first day of the disciplinary hearing, Respondent filed his First Amended Answer to Second Amended Information and Mitigation Claim Pursuant to Rule 5.285. **Rec. Vol. 2, p. 284.** Respondent's First Amended Answer to Second Amended Information and Mitigation Claim included extensive admissions of fact and as to violations of the Rules of Professional Conduct.

A hearing was held in this matter on March 21 and May 17, 2016 in Warrensburg and Jefferson City, Missouri, respectively, before Edward Clausen, Presiding Officer, Tom Dunlap, and Jay Seaver. In addition to Respondent, the following witnesses testified at the hearing: Brian Allen, Karla Meredith, Mark Shanley, Cynthia Phelps (fka Shanley), Wendy Johnston, Jackie Jones, Jeremy Rush, Nancy Woody, and Jamie McClanahan. Additionally, testimony was presented by the depositions of Mark Allen, Daniel Ross, Heather Dillman, Vaughn Veach, and Rebecca Veach.

The panel issued its decision on October 19, 2016. **App. A3**. The panel concluded Respondent Nichols violated Rules 4-1.1, 4-1.3, 4-1.6, 4-1.7, 4-1.4(a), 4-1.16(d), 4-1.22, 4-4.1, 4-8.1(a), 4-8.1(c), and 4-8.4(c), and recommended that he be

suspended indefinitely from the practice of law with no leave to reapply for six (6) months. **App. A77**. By letter dated November 16, 2016, disciplinary counsel advised the Advisory Committee that it would accept the hearing panel decision. **Rec. Vol. 3, p. 504**. By motion dated November 18, 2016, Respondent rejected the Panel's findings of fact, conclusions of law and recommendation of sanction. **Rec. Vol. 3, p. 505**. The record was filed with the Supreme Court of Missouri on December 19, 2016.

Facts Underlying Disciplinary Case

Jamie McClanahan -- Count I of the Information

Respondent Nichols represented Complainant Jamie McClanahan in a property line dispute, *Hoskins v. McClanahan*, Case No. 10BE-CC00063, in Benton County, Missouri. Respondent entered his appearance on or about December 20, 2010. **App. A79, A143** (Inf. ¶ 9; Ans. ¶ 9). In his First Amended Answer to Informant's Second Amended Information and Mitigation Claim Pursuant to Rule 5.285, Respondent admitted virtually all allegations contained in Count I of Informant's Second Information and admitted that he violated Rules 4-1.3, 4-1.4, 4-1.16(d), 4-8.1(a), and 4-8.1(b). **App. A143-A145** (Ans. ¶¶ 8 - 48).

Ms. McClanahan answered, executed, and sent her interrogatory responses to Respondent on March 13, 2011. **Rec. Vol. 12, p. 858** (Tr. 297 (testimony of McClanahan); **Rec. 1680** (Plaintiff's First Interrogatories to Defendant Jamie J. McClanahan, attached to Ex. 91 (Nichols' response to McClanahan complaint)). Respondent did not timely provide Plaintiff Hoskins with the responses and Plaintiff

Hoskins filed a motion to compel responses to his first interrogatories on June 27, 2011. **Rec. Vol. 20, p. 1721** (Ex. 92 (certified copy of McClanahan court file))**.** Plaintiff Hoskins' motion to compel was granted on August 1, 2011. **Rec. Vol. 20, p. 1721** (Ex. 92 (certified copy of McClanahan court file))**.**

Respondent still did not provide responses to the discovery and on September 11, 2011, Plaintiff Hoskins filed a motion for sanctions against the McClanahans for not complying with the court's order that they provide the discovery responses within seven days of the August 1, 2011 order. **Rec. Vol. 20, p. 1721** (Ex. 92 (certified copy of McClanahan court file))**.** Respondent finally provided the responses and filed the Certificate of Delivery for the discovery responses on October 5, 2011. **Rec. Vol. 20, p. 1721** (Ex. 92 (certified copy of McClanahan court file))**.**

Ms. McClanahan was not informed of these discovery issues. Respondent failed to communicate with Ms. McClanahan regarding hearing dates on plaintiff Hoskins motion to compel discovery and motion for sanctions. **App. A79, A143** (Inf. ¶ 10; Ans. ¶ 10)**; Rec. Vol. 12, p. 859** (Tr. 298 (testimony of McClanahan)). Respondent failed to inform Ms. McClanahan that plaintiff Hoskins had filed a motion to compel responses to his discovery requests or that plaintiff Hoskins had filed a motion for sanctions against defendants McClanahan. **App. A79, A143** (Inf. ¶ 10; Ans. ¶ 10)**; Rec. Vol. 12, p. 859** (Tr. 298 (testimony of McClanahan).

Respondent did not inform Ms. McClanahan that she had a right to a jury trial of the action and he waived the jury trial without consulting her at all. **Rec. Vol. 12, p. 844** (Tr. 283 (testimony of McClanahan)**; App. A79, A143** (Inf. ¶ 10; Ans. ¶ 10)**.**

Beginning in August 2012, Respondent Nichols did not communicate with Ms. McClanahan until one week before the November 2, 2012 trial, failing to return multiple calls from her. **Rec. Vol. 12, pp. 842-43** (Tr. 281- 82 (testimony of McClanahan))**; App. A79, A143** (Inf. ¶ 11; Ans. ¶ 11)**.** Although the case was a property line dispute, Respondent Nichols failed to obtain a survey on the subject property as instructed by Ms. McClanahan. **App. A79, A143** (Inf. ¶ 12; Ans. ¶ 12)**; Rec. Vol. 12, pp. 853-54, 885-87** (Tr. 292 – 93, 324 – 26 (testimony of McClanahan))**.**

Respondent Nichols did not interview all of the witnesses identified by Ms. McClanahan. **App. A79, A143** (Inf. ¶ 13; Ans. ¶ 13; **Rec. Vol. 12, p. 855** (Tr. 294 (testimony of McClanahan))**.** Respondent Nichols failed to adequately prepare for trial. **App. A79, A143** (Inf. ¶ 14; Ans. ¶ 14)**; Rec. Vol. 12, pp. 854-57** (Tr. 293 – 96 (testimony of McClanahan))**.**

At the conclusion of the trial on November 2, 2012, the trial judge announced that he would enter judgment for the plaintiff. **App. A144** (Ans. ¶ 15); **Rec. Vol. 12, p.** 843 (Tr. 282 (testimony of McClanahan))**.** After the trial judge announced his intention to enter judgment for the plaintiff, Ms. McClanahan told Respondent that she wanted to appeal the judge's ruling. **App. A80, A144** (Inf. ¶ 19; Ans. ¶ 19)**; Rec. Vol. 12, p. 844** (Tr. 283 (testimony of McClanahan))**.** Judgment was entered against Ms. McClanahan

on December 19, 2012. **Rec. Vol. 20, p. 1721** (Ex. 92 (certified copy of McClanahan court file))**.** Respondent did not inform Ms. McClanahan that the written judgment against her was entered on December 19, 2012. **App. A79, A144** (Inf. ¶ 15; Ans. ¶ 15). Respondent did not provide Ms. McClanahan with a copy of the December 19, 2012 judgment against her. **App. A79, A144** (Inf. ¶ 15; Ans. ¶ 15).

After the trial on November 2, 2012, Respondent failed to return Ms. McClanahan's telephone calls. **App. A80, A144** (Inf. ¶ 17; Ans. ¶ 17)**; Rec. Vol. 12, p. 851** (Tr. 290, 291, 300 (testimony of McClanahan))**.** After the trial on November 2, 2012, Respondent did not respond to emails Ms. McClanahan sent him on November 20, 2012, December 11, 2012, January 2, 2013, January 14, 2013, and January 24, 2013. **App. A80, A144** (Inf. ¶ 18, Ans. ¶ 18); **Rec. Vol. 20, p. 1793** (Ex. 93 (11/20/2012 email from McClanahan to Respondent)); **Rec. Vol. 20, p. 1796** (Ex. 95 (12/4 and 12/11/2013 emails from McClanahan to Respondent)); **Rec. Vol. 20, p. 1798** (Ex. 96 (1/2/2013 email from McClanahan to Respondent)); **Rec. Vol. 20, p. 1799** (Ex. 97 (1/14/2013 email from McClanahan to Respondent)); **Rec. Vol. 20, p. 1800** (Ex. 98 (1/24/2013 email from McClanahan to Respondent))**.**

By email to Respondent dated November 20, 2012, Ms. McClanahan expressed her dissatisfaction with Respondent's representation and asked: "What can we do to reverse this decision?" and "I need this to be corrected. Let me know how this can be accomplished." **Rec. Vol. 12, pp. 844-45, 882** (Tr. 283 – 84, 321 (testimony of McClanahan))**; Rec. Vol. 20, p. 1793** (Ex. 93, ¶¶ 1 and 14 (11/20/2012 email from

McClanahan to Respondent)). By email to Respondent dated November 29, 2012, Ms. McClanahan writes again: "I am hoping you have come up with an idea of something we can do." **Rec. Vol. 12, p. 846** (Tr. 285 (testimony of McClanahan)); **Rec. Vol. 20, p. 1795** (Ex. 94 (11/29/2012 email from McClanahan to Respondent))**.**

In his sole communication to Ms. McClanahan following the November 2, 2012 trial, on December 4, 2012, Respondent responds to Ms. McClanahan's November 29, 2012 email as follows: "I have resurrected your emails from the spam folder and marked you as safe. It appears that one of the three emails I received from you was an invitation to go shopping which may explain why they were flagged. I have been out of the office quite a bit lately and I have Court all afternoon today but I will get in touch with you as soon as possible." **Rec. Vol. 12, p. 846** (Tr. 285 (testimony of McClanahan); **Rec. Vol. 20, p. 1795** (Ex. 94 (11/29/2012 email from McClanahan to Respondent)). After that December 4, 2012, email, Respondent never communicated with Respondent again. **Rec. Vol. 12, pp. 847, 861** (Tr. 286, 300 (testimony of McClanahan)). Respondent Nichols never told Ms. McClanahan that he was withdrawing from her representation. **Rec. Vol. 12, p. 859** (Tr. 298 (testimony of McClanahan)). Respondent Nichols did not file an appeal. **App. A8, A145** (Inf. ¶ 33; Ans. ¶ 33); **Rec. Vol. 12, pp. 850-51** (Tr. 289 – 290 (testimony of McClanahan)).

After receiving no communication from Respondent Nichols, Ms. McClanahan instructed Respondent Nichols to send her file to a new attorney and that attorney also requested the file. **App. A80, A145** (Inf. ¶ 21; Ans. ¶ 21); **Rec. Vol. 12, pp. 848-49** (Tr.

287 – 88 (testimony of McClanahan)); **Rec. Vol. 20, p. 1798** (Ex. 96 (1/2/2013 email from McClanahan to Respondent)). Respondent Nichols did not send her file to the attorney identified by Ms. McClanahan. **App. A80, A145** (Inf. ¶ 22; Ans. ¶ 22); **Rec. Vol. 12, p. 850** (Tr. 289 – 90, 299 (testimony of McClanahan)).

Post-judgment, Ms. McClanahan cannot sell her lake property because the property lines on the property title are drawn by referencing the property line of the plaintiff, her neighbor, and by court's judgment that would push her opposite property line such that it would go through her neighbor's house. **Rec. Vol. 12, pp. 862-63** (Tr. 301 – 02 (testimony of McClanahan)). Ms. McClanahan lost 45 feet of lakefront as a result of the judgment. **Rec. Vol. 12, p. 874** (Tr. 313 (testimony of McClanahan)).

Informant's counsel wrote Respondent on March 18, 2013, and asked him to respond to Ms. McClanahan's complaint by April 1, 2013. **App. A80, A145** (Inf. ¶ 23; Ans. ¶ 23). Respondent did not provide a response to Ms. McClanahan's Complaint by April 1, 2013. **App. A80, A145** (Inf. ¶ 24; Ans. ¶ 24).

On April 1, 2013, Respondent faxed Informant's office a letter stating that he had received the complaint and had intended to hand-deliver his response on March 29, 2013 but that a schedule change "did not allow for [him] to travel to Jefferson City." **App. A80, A145** (Inf. ¶ 25; Ans. ¶ 25). Also in his April 1, 2013, correspondence, Respondent wrote that he would be in Jefferson City either April 2 or 3, 2013 and that he would hand-deliver his response to Ms. McClanahan's complaint then. **App. A80, A145** (Inf. ¶ 26; Ans. ¶ 26).

Respondent did not provide a response to Ms. McClanahan's response as he indicated he would on April 2 or 3, 2013. **App. A81, A145** (Inf. ¶ 27; Ans. ¶ 27).

On May 2, 2013, Mark Flanegin, Staff Counsel for Informant, called Respondent. Respondent was not available and Mr. Flanegin left him a message asking about his response that he had indicated he would deliver April 2 or 3, 2013. **App. A81, A145** (Inf. ¶ 28; Ans. ¶ 28). Respondent returned Mr. Flanegin's call on May 3, 2013, and stated he would hand-deliver his response on May 6, 2013. **App. A81, A145** (Inf. ¶ 29; Ans. ¶ 29). Respondent did not deliver his response on May 6, 2013. **App. A81, A145** (Inf. ¶ 30; Ans. ¶ 30).

On May 7, 2013, Mr. Flanegin again called Respondent about his response. **App. A81, A145** (Inf. ¶ 31; Ans. ¶ 31)). On May 9, 2013, Respondent returned Mr. Flanegin's call, but Mr. Flanegin was unavailable. Mr. Flanegin attempted to call Respondent two times that day, to no avail. **App. A81, A145** (Inf. ¶ 32; Ans. ¶ 32). Mr. Flanegin also called Respondent on May 10, 2013, and left Respondent messages. **App. A81, A145** (Inf. ¶ 33; Ans. ¶ 33).

Respondent's assistant, Annette Anderson, called Mr. Flanegin on May 10, 2013 and stated Respondent was out of the county that morning. Mr. Flanegin asked Ms. Anderson to have Respondent call him. **App. A81, A145** (Inf. ¶ 34; Ans. ¶ 34). Later on May 10, 2013, Respondent left Mr. Flanegin a voice message stating he would have the response at Informant's office the morning of May 13, 2013, and he stated he had problems with his

courier. **App. A81, A145** (Inf. ¶ 35; Ans. ¶ 35.) Respondent did not provide a response by May 13, 2013. **App. A81, A145** (Inf. ¶ 36; Ans. ¶ 36.)

Informant issued a subpoena for Respondent's appearance at Informant's office on May 28, 2013, and requiring him to bring a response to Ms. McClanahan's complaint and documents regarding Ms. McClanahan's case. **App. A82, A145** (Inf. ¶ 37; Ans. ¶ 37). Respondent appeared on May 28, 2013, and brought a written response to Ms. McClanahan's complaint. **App. A82, A145** (Inf. ¶ 38; Ans. ¶ 38).

Ms. McClanahan replied to Respondent's initial response, and, by letter dated June 10, 2013, Informant asked Respondent to provide a written response to Ms. McClanahan's June 6, 2013 correspondence by June 20, 2013. **App. A82, A145** (Inf. ¶ 39; Ans. ¶ 39). Respondent did not respond by June 20, 2013. **App. A82, A145** (Inf. ¶ 40; Ans. ¶ 40). Mr. Flanegin called Respondent's office on June 25, 2013, and left a message asking that Respondent return his call regarding his response. **App. A82, A145** (Inf. ¶ 41; Ans. ¶ 41).

Informant issued a subpoena for Respondent's appearance at Informant's office on October 3, 2013, and requiring him to bring a response to Ms. McClanahan's June 6, 2013 correspondence, and additional documents regarding Ms. McClanahan's case. **App. A82, A145** (Inf. ¶ 43; Ans. ¶ 43). Respondent appeared on October 3, 2013 and, during his sworn statement, produced a response to Ms. McClanahan's June 6, 2013 correspondence. **App. A82, A145** (Inf. ¶ 44; Ans. ¶ 44). Respondent's response to Ms. McClanahan's June 6, 2013 correspondence was dated June 17, 2013, and Respondent testified that he had mailed the response to Informant on or about June 17, 2013. **Rec. Vol. 21, pp. 1985-87**

(Ex. 109, pp. 7 – 9 (Respondent's sworn statement)); **App. A82, A145** (Inf. ¶ 45; Ans. ¶ 45).

By correspondence dated November 14, 2013, Informant requested that Respondent produce an electronic copy of the June 17, 2013 letter with all metadata intact, further explaining that the electronic copy should include the date created, the date modified, and the date printed. **App. A82-A83, A145** (Inf. ¶ 46; Ans. ¶ 46). By email dated November 15, 2013, Respondent stated that he could not "locate the original Microsoft Word file." He further wrote that he was "not sure if this was a problem with the transition of files to the back-up hard drive or if it was not saved at the time [he] drafted it." **App. A83, A145** (Inf. ¶ 47; Ans. ¶ 47). In paragraph 48 of his First Amended Answer to Second Amended Information, Respondent stated that "he had prepared the response and that he was unable to mail it to Informant." **App. A83, A145** (Inf. ¶ 48; Ans. ¶ 48). Respondent's sworn testimony on October 3, 2013 was not truthful. **App. A83, A145** (Inf. ¶ 48; Ans. ¶ 48).

Terry Boldt - Count II of the Information

Terry Boldt retained Respondent to represent him in a real estate lawsuit in August 2009. **App. A84, A145** (Inf. ¶ 50; Ans. ¶ 50). Mr. Boldt paid an advance fee of $2,000.00 for Respondent's services. **App. A84, A145** (Inf. ¶ 51; Ans. ¶ 51). Mr. Boldt's real estate lawsuit resolved shortly after Respondent was retained. **App. A84, A145** (Inf. ¶ 52; Ans. ¶ 52).

Mr. Boldt told Respondent to retain the remainder of the fees he had advanced to use for any other matters that arose. **App. A84, A145** (Inf. ¶ 53; Ans. ¶ 53). Respondent

also represented Mr. Boldt on three speeding tickets. **App. A84, A145** (Inf. ¶ 54; Ans. ¶ 54).

On February 28, 2014, Mr. Boldt asked Respondent to refund to him the unearned advance fees he had paid. **App. A84, A145** (Inf. ¶ 55; Ans. ¶ 55). Mr. Boldt also requested that the balance of the advance fee he paid be returned to him in his March 15, 2014 complaint to Informant. **App. A84, A145** (Inf. ¶ 56; Ans. ¶ 56). By letter dated April 2, 2014, Informant forwarded to Respondent Mr. Boldt's complaint. Respondent only returned the unearned fees to Mr. Boldt with a letter dated October 29, 2014. **App. A86, A145** (Inf. ¶ 72; Ans. ¶ 72).

Informant requested a response to Mr. Boldt's complaint by April 17, 2014. **App. A84, A145** (Inf. ¶ 57; Ans. ¶ 57). Respondent did not respond to Informant's April 2, 2014 letter regarding the Boldt complaint. **App. A84, A145** (Inf. ¶ 58; Ans. ¶ 58).

By letter dated May 7, 2014, Informant again requested a response to its letter dated April 2, 2014 and Mr. Boldt's complaint, and requested the response by May 16, 2014. **App. A85, A145** (Inf. ¶ 59; Ans. ¶ 59). Respondent did not respond to Informant's May 7, 2014 letter regarding the Boldt complaint. **App. A85, A145** (Inf. ¶ 60; Ans. ¶ 60).

By letter dated May 29, 2014, Informant again requested a response to its letter dated April 2, 2014 and Mr. Boldt's complaint, and encouraged Respondent to return Mr. Boldt's file to him. **App. A85, A145** (Inf. ¶ 61; Ans. ¶ 61). By letter dated June 11, 2014, Respondent wrote: "All of Mr. Boldt's files have been obtained and copied.… My

response to his complaint, along with a copy of his files, will be arriving at your office by the end of the week or the first of the following week." **App. A85, A145** (Inf. ¶ 62; Ans. ¶ 62). Respondent did not deliver to Informant the promised response to Mr. Boldt's complaint "by the end of the week [of June 11, 2014] or the first of the following week." **App. A85, A145** (Inf. ¶ 63; Ans. ¶ 63).

By letter dated June 19, 2014, Informant wrote Respondent regarding his failure to respond to Informant's requests. **App. A85, A145** (Inf. ¶ 64; Ans. ¶ 64). On July 23, 2014, Respondent was served with a subpoena to testify regarding Mr. Boldt's complaint, and to bring, *inter alia*, a response to Mr. Boldt's complaint and to bring other documents regarding or concerning his representation of Mr. Boldt on July 31, 2014. **App. A85, A145** (Inf. ¶ 65; Ans. ¶ 65).

On July 29, 2014, Attorney Sara Rittman wrote Informant and stated that she had been hired to represent Respondent and requested that his statement be delayed until at least August 25, 2014. **App. A86, A145** (Inf. ¶ 66; Ans. ¶ 66). On July 30, 2014, Informant agreed to delay Respondent's sworn statement but stated that Informant expected responses to all outstanding requests by August 25, 2014. **App. A86, A145** (Inf. ¶ 67; Ans. ¶ 67). Respondent did not provide responses to the outstanding requests by August 25, 2014. **App. A86, A145** (Inf. ¶ 68; Ans. ¶ 68).

On October 7, 2014, Informant caused Respondent to be served with a subpoena to testify regarding Mr. Boldt's complaint, and to bring, *inter alia*, a response to Mr. Boldt's complaint and to bring other documents regarding or concerning his

representation of Mr. Boldt on October 16, 2014. **App. A86, A145** (Inf. ¶ 69; Ans. ¶ 69). Respondent did not bring a response to Mr. Boldt's complaint with him on October 16, 2014. **App. A86, A145** (Inf. ¶ 70; Ans. ¶ 70). Respondent finally provided a written response to Mr. Boldt's complaint by fax on October 31, 2014. **App. A86, A145** (Inf. ¶ 71; Ans. ¶ 71).

Nancy Woody - Count III of the Information

Nancy Woody met with Respondent in February 2012 regarding Respondent representing Roland Johnson against a criminal domestic assault charge. **App. A87, A146** (Inf. ¶ 75; Ans. ¶ 75). The domestic assault charge against Mr. Johnson arose from an incident on February 6, 2012 wherein Ms. Woody was the victim of the alleged domestic assault by Mr. Johnson. **App. A87, A146** (Inf. ¶ 76; Ans. ¶ 76). On or about February 8, 2012, Ms. Woody advanced Respondent $1,500 in fees to represent Mr. Johnson. **Rec. Vol. 8, p. 731** (Tr. 204 (testimony of Woody)); **App. A87, A146** (Inf. ¶ 77; Ans. ¶ 77). When Ms. Woody met with Respondent, she told him that Mr. Johnson had, in fact, assaulted her, and described her assault by Mr. Johnson to Respondent. **Rec. Vol. 8, pp. 735-36** (Tr. 208 – 209, 219 (testimony of Woody)). Respondent led Ms. Woody to believe he wouldn't have any contact with Mr. Johnson until he got out of jail on his parole violation in October 2012. **Rec. Vol. 8, pp. 733-34, 789** (Tr. 206 – 207, 262 (testimony of Woody)); **Rec. Vol. 13, p. 990** (Tr. 429 (testimony of Respondent)).

Shortly after Ms. Woody advanced Respondent $1,500, Ms. Woody asked Respondent to represent her in several adult abuse/stalking matters that she had filed on

February 10, 2012 and that had been filed against her, and in her efforts to obtain the return of certain property. **App. A87, A146** (Inf. ¶ 78; Ans. ¶ 78); **Rec. Vol. 23, p. 2351** (Ex. C (adult abuse petition for protection)). The adult abuse matters were filed by and filed against Mr. Johnson's father and sister. **App. A87, A146** (Inf. ¶ 79; Ans. ¶ 79). The property that Ms. Woody hired Respondent to get back was being held by Mr. Johnson's father and sister. **Rec. Vol. 8, p. 732** (Tr. 205 (testimony of Woody)). Ms. Woody asked Respondent to use the fees she previously had advanced to him for her representation in these adult abuse/stalking and property matters. **Rec. Vol. 8, p. 732** (Tr. 205 (testimony of Woody)); **App. A88, A147** (Inf. ¶ 81; Ans. ¶ 81).

Respondent agreed to represent Ms. Woody in the adult abuse/stalking and property matters and to apply the advanced fees Ms. Woody previously had paid him. **Rec. Vol. 8, p. 732** (Tr. 205 (testimony of Woody); **App. A88, A147** (Inf. ¶ 82; Ans. ¶ 82). Respondent did not ask Ms. Woody to consent to him representing both Ms. Woody and Mr. Johnson while Respondent was representing Mr. Johnson against charges for assaulting Ms. Woody. **Rec. Vol. 8, p. 735** (Tr. 208 (testimony of Woody)). Respondent did not inform Ms. Woody that everything she told him would be passed on to Mr. Johnson and, to the contrary, told her he would have no contact with Mr. Johnson until he was released from jail on his parole violation in October 2012. **Rec. Vol. 8, pp. 733-34** (Tr. 206 – 207 (testimony of Woody)); **Rec. Vol. 13, p. 990** (Tr. 429 (testimony of Respondent)). Respondent revealed information Ms. Woody had told him about the adult

abuse matters and the property dispute to Mr. Johnson. **Rec. Vol. 8, p. 740-41; Vol. 9, p. 773** (Tr. 213 – 214, 246 (testimony of Woody)).

Mr. Johnson asked Respondent to tell Ms. Woody to drop the case she had filed against his sister. **Rec. Vol. 9, pp. 776-77** (Tr. 249 - 50 (testimony of Woody)). All of the adult abuse cases were dismissed on or about March 21, 2012. **Rec. Vol. 23, p. 2343** (Ex. B (Case.Net dockets and case dismissals)).

Respondent spoke to Ms. Woody about the assault and she told him Mr. Johnson had assaulted her. **Rec. Vol. 8, pp. 735-36** (Tr. 208 – 209, 219 (testimony of Woody)). Respondent later cross-examined Ms. Woody at the preliminary hearing regarding the charges against Mr. Johnson that he had assaulted Ms. Woody. **Rec. Vol. 8, pp. 736-37** (Tr. 209 -210 (testimony of Woody)). While cross-examining her regarding her assault by Mr. Johnson, Respondent questioned Ms. Woody's truthfulness. **Rec. Vol. 8, p. 736; Vol. 10, p. 778** (Tr. 209, 251 (testimony of Woody)).

Respondent did not inform Ms. Woody that anything she told him might be used against her in court. **App. A88, A147-A148** (Inf. ¶ 84; Ans. ¶ 84). Respondent saw "the potential for" a conflict of interest, but he did not discuss any potential conflict of interest with Ms. Woody. **Rec. Vol. 9, p. 773** (Tr. 246 (testimony of Woody)); **Rec. Vol. 12, p. 975** (Tr. 414 (testimony of Respondent)). Respondent did not discuss with Ms. Woody the unusual situation that she was advancing money to defend the man who had assaulted her. **Rec. Vol. 9, p. 780** (Tr. 253 (testimony of Woody)).

Beginning in April 2012, Ms. Woody began contacting Respondent both by telephone and by correspondence, asking for a refund of the remainder of the fees she had advanced and stating that she no longer wished to pay for Mr. Johnson's defense. **App. A88, A148** (Inf. ¶ 85; Ans. ¶ 85). Respondent refused to refund to Ms. Woody the unearned advanced fees. **Rec. Vol. 17, p. 1496** (Ex. 64 (Woody's first complaint against Respondent); **see App. A148** (Ans. ¶ 86).

Ms. Woody filed a complaint with Informant in August 2012 regarding Respondent's refusal to refund the advanced fees. **Rec. Vol. 17, p. 1496** (Ex. 64 (Woody's first complaint against Respondent); **App. A88, A148** (Inf. ¶ 87; Ans. ¶ 87)). Respondent cross-examined Ms. Woody with regard to her assault by Roland Johnson after Respondent had refused to refund the money she paid him and after she had filed a complaint with Informant regarding Respondent. **Rec. Vol. 9, p. 761** (Tr. 234 (testimony of Woody); **Rec. Vol. 13, p. 994** (Tr. 433 (testimony of Respondent)).

Ms. Woody contacted the Missouri Bar Fee Dispute Program. **App. A88, A148** (Inf. ¶ 88; Ans. ¶ 88). Respondent agreed to participate in the Missouri Bar Fee Dispute Program. **Rec. Vol. 8, p. 738** (Tr. 211 (testimony of Woody)); **App. A88, A148** (Inf. ¶ 89; Ans. ¶ 89). Respondent agreed to be bound by the decision of the arbitrator assigned through the Missouri Bar Fee Dispute Program. **App. A88, A148** (Inf. ¶ 90; Ans. ¶ 90). Respondent submitted to the arbitrator, Colleen Joern Vetter, a response to Ms. Woody's complaint dated April 4, 2013. **App. A88, A148** (Inf. ¶ 91; Ans. ¶ 91). Respondent

participated in a hearing before Ms. Vetter on April 17, 2013. **App. A89, A148** (Inf. ¶ 92; Ans. ¶ 92).

On May 8, 2013, Ms. Vetter issued her decision finding that Respondent owed Ms. Woody a refund in the amount $895. **Rec. Vol. 17, p. 1496** (Ex. 66 (arbitration decision)); **Rec. Vol. 8, p. 738** (Tr. 211 (testimony of Woody)); **App. A89, A148** (Inf. ¶ 93; Ans. ¶ 93). When Respondent still hadn't complied with the arbitrator's decision almost a year later, Ms. Woody another filed a complaint with Informant on or about May 5, 2014. **Rec. Vol. 18, p. 1508** (Ex.67 (Woody's second complaint against Respondent); **Rec. Vol. 8, p. 738** (Tr. 211 (testimony of Woody)). Respondent did not refund the unearned advanced fees to Ms. Woody until October 13, 2014, over two years since her first request for a refund in April 2012, one year and five months after the arbitrator's decision in May 2013, and five months after she filed a complaint with Informant in May 2014. **Rec. Vol. 8, pp. 738-39** (Tr. 211 – 212 (testimony of Woody)); **Rec. Vol. 13, p. 991** (Tr. 430 (testimony of Respondent)); **App. A89, A148** (Inf. ¶ 95; Ans. ¶ 95).

By letter dated May 22, 2014, Informant forwarded to Respondent Ms. Woody's complaint and requested a response by June 6, 2014. **App. A89, A148** (Inf. ¶ 96; Ans. ¶ 96). Respondent did not respond to Informant's May 22, 2014 letter regarding Ms. Woody's complaint. **App. A89, A148** (Inf. ¶ 97; Ans. ¶ 97).

By letter dated June 20, 2014, Informant again requested the information regarding Ms. Woody's complaint that previously was requested by letter dated May 22,

2014, and requested the response by June 30, 2014. **App. A89, A148** (Inf. ¶ 98; Ans. ¶ 98). Respondent did not respond to Informant's June 20, 2014 letter regarding Ms. Woody's complaint and file. **App. A89, A148** (Inf. ¶ 99; Ans. ¶ 99).

On July 23, 2014, Respondent was served with a subpoena to testify regarding Ms. Woody's complaint, and to bring, *inter alia*, a response to Ms. Woody's complaint and to bring other documents regarding or concerning his representation of Ms. Woody's on July 31, 2014. **App. A89, A148** (Inf. ¶ 100; Ans. ¶ 100). On July 29, 2014, Attorney Sara Rittman wrote Informant and stated that she had been hired to represent Respondent and requested that his statement be delayed until at least August 25, 2014. **App. A90, A148** (Inf. ¶ 101; Ans. ¶ 101).

On July 30, 2014, Informant agreed to delay Respondent's sworn statement but stated that Informant expected responses to all outstanding requests by August 25, 2014. **App. A90, A148** (Inf. ¶ 102; Ans. ¶ 102). Respondent did not provide responses to the outstanding requests by August 25, 2014. **App. A90, A148** (Inf. ¶ 103; Ans. ¶ 103).

On October 7, 2014, Respondent was served with a subpoena to testify regarding Ms. Woody's complaint, and to bring, *inter alia*, a response to Ms. Woody's complaint and to bring other documents regarding or concerning his representation of Ms. Woody on October 16, 2014. **App. A90, A148** (Inf. ¶ 104; Ans. ¶ 104). Respondent did not bring a response to Ms. Woody's complaint with him on or by October 16, 2014. **App. A90, A148** (Inf. ¶ 105; Ans. ¶ 105). Respondent finally provided a written response to

Ms. Woody's complaint by fax on October 31, 2014. **App. A90, A148** (Inf. ¶ 106; Ans. ¶ 106).

Mark Allen -- Count IV of the Information

Mark Allen retained Respondent to represent him against domestic assault charges in 2009 and 2012. **App. A91, A149** (Inf. ¶ 109; Ans. ¶ 109). Mr. Allen entered a guilty plea to the second charge on July 15, 2012. **Rec. Vol. 20, pp. 1808-09** (Ex. 104, Deposition of Mark Allen (hereafter "Dep. testimony of M. Allen") pp. 7 – 8).

Mr. Allen terminated Respondent's representation in November 2012. **Rec. Vol. 20, pp. 1809, 1832-33** (Ex. 104, pp. 8, 31 – 32 (Dep. testimony of M. Allen)). In 2012, Mark Allen retained new counsel, Daniel Ross, to represent him in post-conviction relief proceedings, and requested Respondent to send his file to his new counsel. **Rec. Vol. 20, pp. 1809-11** (Ex. 104, pp. 8 – 10 (Dep. testimony of M. Allen)); **see also App. A149** (Ans. ¶ 110). Mark Allen wrote Respondent and asked him to send his file to Dan Ross. **Rec. Vol. 20, pp. 1810, 1814** (Ex. 104, pp. 9, 13 (Dep. testimony of M. Allen)). On November 16, 2012, Mr. Ross wrote Respondent asking for Mark Allen's file. **Rec. Vol. 14, p. 1123** (Ex. 14 (11/16/2012 letter from Ross to Respondent); **Rec. Vol. 20, pp. 1869-70** (Ex. 105, Deposition of Daniel Ross (hereafter "Dep. testimony of Ross") pp. 8 – 9)); **App. A91, A149** (Inf. ¶ 111; Ans. ¶ 111). Dan Ross's paralegal, Heather Dillman, left voice mail messages for Respondent asking for Mark Allen's file. **Rec. Vol. 14, p. 1131** (Ex. 20 (Dillman notes); **Rec. Vol. 20, pp. 1900-02** (Ex. 106, Deposition of Heather

Dillman (hereafter "Dep. testimony of Dillman") pp. 11 – 13); **App. A91, A149** (Inf. ¶ 112; Ans. ¶ 112).

On January 7, 2013, during a telephone conversation with Mr. Ross's paralegal, Heather Dillman, Respondent stated that he would need a written authorization from Mark Allen to release his file. **Rec. Vol. 14, p. 1131** (Ex. 20 (Dillman notes); **Rec. Vol. 20, pp. 1902-03** (Ex. 106, pp. 13 – 14 (Dep. testimony of Dillman)); **App. A92, A149-A150** (Inf. ¶ 113; Ans. ¶ 113). Mark Allen executed an authorization for Respondent to turn over his file to Mr. Ross. **Rec. Vol. 20, pp. 1813-14, 1843** (Ex. 104, pp. 12 – 13, 42 (Dep. testimony of M. Allen); **Rec. Vol. 14, p. 1108** (Ex. 8, pp. 1, 3 (Dawson notary book)). Mark Allen mailed Respondent an authorization to release his file to Mr. Ross. **Rec. Vol. 20, p. 1834** (Ex. 104, p. 33 (Dep. testimony of M. Allen)).

Mark Allen also called Respondent and told him to release his file to Mr. Ross. **Rec. Vol. 20, pp. 1832-33** (Ex. 104, p. 31 – 32 (Dep. testimony of M. Allen)); **App. A92, A150 (**Inf. ¶ 116; Ans. ¶ 116). Respondent did not send Mark Allen's file to Mr. Ross. **Rec. Vol. 20, p. 1885** (Ex. 105, p. 24 (Dep. testimony of Ross)); **Rec. Vol. 20, p. 1898** (Ex. 106, p. 9 (Dep. testimony of Dillman)). After Mark Allen called Respondent asking him to release his file to Mr. Ross, Respondent never again took a call from Mark Allen or returned any of his calls. **Rec. Vol. 20, pp. 1812-13** (Ex. 104, pp. 11 -12 (Dep. testimony of M. Allen)); **see also App. A150** (Ans. ¶ 117).

Mr. Ross sent Respondent an authorization executed by Mark Allen to release Mark Allen's file to Mr. Ross. **Rec. Vol. 14, p. 1126** (Ex. 16 (letter from Ross to Nichols

enclosing release); **Rec. Vol. 20, pp. 1875-76** (Ex. 105, p. 14 – 15 (Dep. testimony of Ross)); **Rec. Vol. 20, p. 1905** (Ex. 106, p. 16 (Dep. testimony of Dillman)); **App. A92, A150** (Inf. ¶ 118; Ans. ¶ 118). On March 1, 2013, during a telephone conversation with Ms. Dillman, Mr. Ross's paralegal, Respondent stated that he had received the authorization executed by Mr. Allen to release the files to Mr. Ross and that he would send them the files the following week. **Rec. Vol.** testimony of**, p. 1906** (Ex. 106, p. 17 (Dep. testimony of Dillman)); **Rec. Vol. 14, p. 1131**(Ex. 20 (Dillman notes)); **App. A92, A150** (Inf. ¶ 119; Ans. ¶ 119).

Mark Allen executed a Power of Attorney in favor of his brother Brian Allen. **Rec. Vol. 14, p. 1092** (Ex. 3 (Mark Allen POA in favor of Brian Allen)); **Rec. Vol. 14, p. 1094** (Ex. 4 (Mark Allen POA in favor of Brian Allen)); **Rec. Vol. 20, pp. 1820-23** (Ex. 104, pp. 19 – 22 (Dep. testimony of M. Allen)). Brian Allen asked Respondent to release Mark Allen's file to him. **Rec. Vol. 4, pp. 563-66, 571-72; Vol. 5, p. 578-79** (Tr. 36 – 39, 44 – 45, 51 – 52 (testimony of Brian Allen)). Respondent refused to release Mark Allen's files to Brian Allen when he held Mark Allen's power of attorney. **Rec. Vol. 4, pp. 562-65; Vol. 5, pp. 579-80** (Tr. 34 – 38, 52 - 53(testimony of Brian Allen)).

Mark Allen subsequently executed a Power of Attorney in favor of Karla Allen Meredith. **Rec. Vol. 14, p. 1096** (Ex. 5 (Mark Allen POA in favor of Karla Allen Meredith)); **Rec. Vol. 14, p. 1099** (Ex. 6 (Mark Allen POA in favor of Karla Allen Meredith)); **Rec. Vol. 20, pp. 1823-26 (**Ex. 104, pp. 22 – 25 (Dep. testimony of M. Allen); **Rec. Vol. 5, p. 583-85** (Tr. 56 – 58 (testimony of Karla Meredith (fka Allen)).

Karla Allen asked Respondent to release Mark Allen's file to her. **Rec. Vol. 5, p. 586** (Tr. 59 (testimony of Karla Meredith (fka Allen))). Respondent refused to release Mark Allen's files to Karla Allen, when she held Mark Allen's power of attorney. **Rec. Vol. 5, pp. 586-87, 590** (Tr. 59 – 60, 63 (testimony of Karla Meredith (fka Allen))).

Respondent falsely testified during his October 16, 2014 sworn statement, and at the hearing regarding this matter, that he had released Mark Allen's files to Karla Allen. **Rec. Vol. 5, pp. 586-87, 590** (Tr. 59 – 60, 63 (testimony of Karla Meredith (fka Allen))); **see also App. A151** (Ans. ¶ 122). Respondent told Karla Meredith (fka Allen) that he had received an authorization to release the file to Mr. Ross from Mr. Allen and that he had sent the file to Mr. Ross. **Rec. Vol. 5, p. 587** (Tr. 60 (testimony of Karla Meredith (fka Allen))).

On April 23, 2013, Dan Ross and Karla Meredith (fka Allen), together, called Respondent and left a message regarding their efforts to get Mark Allen's file and asking Respondent to call Mr. Ross back so they could figure out how to get the file once and for all. **Rec. Vol. 20, pp. 1880-81** (Ex. 105, pp. 19 – 20 (Dep. testimony of Ross)); **Rec. Vol. 5, pp. 587-88** (Tr. 60 – 61 (testimony of Karla Meredith (fka Allen))). Respondent did not return the April 23, 2013 call to Mr. Ross. **Rec. Vol. 20, p. 1881** (Ex. 105, p. 20 (Dep. testimony of Ross)).

In his June 8, 2014 complaint to Informant, Mark Allen included Respondent's failure to turn over Mark Allen's file to Dan Ross. **Rec. Vol. 14, p. 1084** (Ex. 1 (Mark Allen complaint); **Rec. Vol. 20, pp. 1815-16** (Ex. 104, pp. 14 – 15 (Dep. testimony of M.

Allen)). Respondent did not send or release Mark Allen's file to Mark Allen or to his new counsel, Mr. Ross, even after he received the complaint Mark Allen filed with Informant wherein Mark Allen complained the Respondent wouldn't release his file to Mr. Ross. **Rec. Vol. 20, p. 1847** (Ex. 104, p. 46 (Dep. testimony of M. Allen)); **Rec. Vol. 20, p. 1885** (Ex. 105, p. 24 (Dep. testimony of Ross)); **see App. A151 (Ans. ¶ 125).**

Respondent has not produced the entirety of Mark Allen's file to Informant, stating that he is unable to retrieve it on a removable hard drive to which he moved it. **App. A93, A151** (Inf. ¶ 126; Ans. ¶ 125, ¶ 126). Respondent reported to Informant that one of the reasons he transferred certain files to a hard drive was because the City of Clinton, for which he is City Attorney, had received threats from Anonymous. **Rec. Vol. 12, p. 904** (Tr. 343 (testimony of Respondent)).

By letter dated July 9, 2014, Informant forwarded to Respondent Mark Allen's complaint and requested a response by July 23, 2014. **App. A93, A151** (Inf. ¶ 127; Ans. ¶ 127). Respondent did not respond to Informant's July 9, 2014 letter regarding the Allen complaint. **App. A93, A151** (Inf. ¶ 128; Ans. ¶ 128).

On July 23, 2014, Respondent was served with a subpoena to testify regarding Mark Allen's complaint, and to bring, *inter alia*, a response to Mark Allen's complaint and to bring other documents regarding or concerning his representation of Mark Allen on July 31, 2014. **App. A93, A151** (Inf. ¶ 129; Ans. ¶ 129). On July 29, 2014, Attorney Sara Rittman wrote Informant and stated that she had been hired to represent Respondent and requested that his statement be delayed until at least August 25, 2014. **App. A93,**

A151 (Inf. ¶ 130; Ans. ¶ 130). On July 30, 2014, Informant agreed to delay Respondent's sworn statement but stated that Informant expected responses to all outstanding requests by August 25, 2014. **App. A93, A151** (Inf. ¶ 131; Ans. ¶ 131). Respondent did not provide responses to the outstanding requests by August 25, 2014. **App. A94, A151** (Inf. ¶ 132; Ans. ¶ 132).

On October 7, 2014, Respondent was served with a subpoena to testify regarding Mark Allen's complaint, and to bring, *inter alia*, a response to Mark Allen's complaint and to bring other documents regarding or concerning his representation of Mark Allen on October 16, 2014. **App. A94, A151** (Inf. ¶ 133; Ans. ¶ 133). Respondent did not bring a response to Mr. Allen's complaint with him on or by October 16, 2014. **App. A94, A151** (Inf. ¶ 134; Ans. ¶ 134).

During Respondent's statement given on October 16, 2014, Respondent stated that he would provide a written response to Mr. Allen's complaint by October 31, 2014. **App. A94, A151** (Inf. ¶ 135; Ans. ¶ 135). Respondent did not provide a written response to Mr. Allen's complaint by October 31, 2014. **App. A94, A151** (Inf. ¶ 136; Ans. ¶ 136). By email dated November 10, 2014, counsel for Informant told Respondent's counsel that a written response to Mr. Allen's complaint had not been received. **App. A94, A151** (Inf. ¶ 137; Ans. ¶ 137). Respondent never submitted a written response to Mr. Allen's complaint. **App. A94, A151** (Inf. ¶ 137; Ans. ¶ 137).

Jeremy Rush - Count V of the Information

Jeremy Rush retained Respondent to represent him in a Chapter 7 bankruptcy. **App. A95, A153** (Inf. ¶ 141; Ans. ¶ 141.) Respondent agreed to represent Mr. Rush for the fee of $1,200, which included the bankruptcy filing fee and attorney fee. **App. A95, A153** (Inf. ¶ 142; Ans. ¶ 142.) Mr. Rush paid Respondent $1,200 on or about March 26, 2013. **App. A95, A153** (Inf. ¶ 143; Ans. ¶ 143.) Respondent filed Mr. Rush's Chapter 7 Voluntary Petition on May 20, 2013, and paid the $306 filing fee. **App. A96, A153** (Inf. ¶ 144; Ans. ¶ 144.)

Mr. Rush completed a course on personal financial management on June 18, 2013, and was issued a Certificate of Debtor Education. **App. A96, A153** (Inf. ¶ 146; Ans. ¶ 146.) Mr. Rush forwarded the Certificate of Debtor Education to Respondent to file with the Bankruptcy Court. **App. A96, A153** (Inf. ¶ 147; Ans. ¶ 147.) On June 25, 2013, Respondent wrote Mr. Rush and told him that there were "no additional measures that must be taken on our part" and that he "should receive a discharge in about two months." **App. A96, A153** (Inf. ¶ 148; Ans. ¶ 148.)

On July 24, 2013, the Bankruptcy Court clerk issued a Notice to Debtor(s) stating that the debtor's certification of completion of the Instructional Course Concerning Personal Financial Management had not been filed, and warning that if the certification isn't timely filed "the case may be closed with **NO Discharge**," and that, thereafter, if the debtor moved to reopen the case to allow the filing of the Certification, the debtor would have to pay the full reopening filing fee. **Rec. Vol. 19, p. 1600** (Ex. 86 (certified copy of

Rush court file); **App. A96, A153** (Inf. ¶ 149; Ans. ¶ 149). Respondent was sent the July 24, 2013 Notice to Debtor(s) by the court's CM/ECF electronic mail system**. App. A96, A153** (Inf. ¶ 150; Ans. ¶ 150).

On September 5, 2013, the Bankruptcy Court clerk issued a "**FINAL**" notice stating that the Certification of Completion of Instructional Course Concerning Personal Financial Management must be filed within 30 days of the Notice, that if it isn't filed within 30 days, the case may be closed with "**NO Discharge**," and that if a motion to reopen is filed to allow the filing of the certification, the debtor would have to pay the full reopening filing fee. **Rec. Vol. 19, p. 1600** (Ex. 86 (certified copy of Rush court file); **App. A96-A97, A153** (Inf. ¶ 151; Ans. ¶ 151). Respondent was sent the September 5, 2013 "**FINAL**" Notice to Debtor(s) by the court's CM/ECF electronic mail system. **App. A97, A153** (Inf. ¶ 153; Ans. ¶ 153). Respondent never notified Mr. Rush that any filings were missing in his case. **App. A97, A153** (Inf. ¶ 152; Ans. ¶ 152).

On October 15, 2013, the Bankruptcy Court issued its Final Decree and closed Mr. Rush's case without a Discharge. **Rec. Vol. 19, p. 1600** (Ex. 86 (certified copy of Rush court file); **App. A97, A153** (Inf. ¶ 154; Ans. ¶ 154). Respondent was sent the October 15, 2013 Final Decree and closure notice by the court's CM/ECF electronic mail system. **App. A97, A153** (Inf. ¶ 155; Ans. ¶ 155.) Mr. Rush received a notice from the Bankruptcy Court that his case had been closed without entry of discharge. **Rec. Vol. 8, p. 727** (Tr. 200 (testimony of Rush); **App. A97, A153** (Inf. ¶ 156; Ans. ¶ 156).

After his bankruptcy case was dismissed without discharge, creditors again began calling Mr. Rush. **Rec. Vol. 8, p. 727** (Tr. 200 (testimony of Rush)). Mr. Rush tried repeatedly to reach Respondent regarding the closure of his case without discharge. **App. A97, A153** (Inf. ¶ 158; Ans. ¶ 158). In or about February 2015, Mr. Rush finally reached Respondent regarding the closure of his case without discharge. **App. A97, A153** (Inf. ¶ 159; Ans. ¶ 159). During that telephone conversation, Respondent told Mr. Rush that he would need to pay $200 more because there was a mix-up and he had to reopen the case. **Rec. Vol. 8, p. 726** (Tr. 201 (testimony of Rush)). During that telephone conversation in or about February 2015, Respondent told Mr. Rush that he would find out why his case had been dismissed without discharge and let Mr. Rush know. **App. A98, A153** (Inf. ¶ 161; Ans. ¶ 161).

On August 3, 2015, Mr. Rush called Respondent's office and Respondent's secretary scheduled a phone conference for Mr. Rush and Respondent to take place at 3:45 pm on August 5, 2015. **App. A98, A154** (Inf. ¶ 163; Ans. ¶ 163). On August 5, 2015, Respondent did not call Mr. Rush at 3:45 pm. **App. A98, A154** (Inf. ¶ 164; Ans. ¶ 164). When Mr. Rush called Respondent's office on August 5, 2015, at or around 4:00 pm, Respondent was out of the office. **App. A98, A154** (Inf. ¶ 165; Ans. ¶ 165). Respondent has not communicated with Mr. Rush since February 2015. **Rec. Vol. 8, pp. 728-29** (Tr. 201 – 202 (testimony of Rush)).

By letter dated September 15, 2015, Informant forwarded to Respondent Jeremy Rush's complaint and requested a response by September 29, 2015. **App. A98, A154**

(Inf. ¶ 167; Ans. ¶ 167.) Respondent did not respond to Mr. Rush's complaint on or before September 29, 2015. **App. A98, A154** (Inf. ¶ 168; Ans. ¶ 168.)

On September 29, 2015, Respondent confirmed that he had received Mr. Rush's complaint and stated that he anticipated retaining Ms. Rittman and that he would "get confirmation as soon as possible." **App. A98, A154** (Inf. ¶ 169; Ans. ¶ 169). By letter dated October 5, 2015, Informant again wrote Respondent and asked for a response to Mr. Rush's complaint on or before October 9, 2015. **App. A98, A154** (Inf. ¶ 170; Ans. ¶ 170). Respondent did not respond to Mr. Rush's complaint on or before October 9, 2015. **App. A99, A154** (Inf. ¶ 171; Ans. ¶ 171).

On October 9, 2015, Respondent replied that he "anticipate[d] having Ms. Rittman represent me on this complaint but I have not been able to get that confirmed as of this time. I expect to either have her representation confirmed by the first of next week or I will otherwise send my response directly to your office." **App. A99, A154** (Inf. ¶ 172; Ans. ¶ 172). Respondent never responded to Mr. Rush's complaint or otherwise communicated with Informant about Mr. Rush's complaint after his October 9, 2015 letter. **App. A99, A154** (Inf. ¶ 173; Ans. ¶ 173). By check dated March 24, 2016, after the first day of the disciplinary hearing at issue herein, Respondent refunded Mr. Rush $1,200. **Rec. Vol. 22, p. 2265** (Ex. 111 (Rush refund check)).

Larry Cletus Jones and Jacquelyn Ray Jones - Count VI of Information

Larry Cletus Jones and Jacquelyn Ray Jones ("the Jones") retained Respondent to represent them in a Chapter 7 bankruptcy. **Rec. Vol. 8, p. 705** (Tr. 178 (testimony of Jackie Jones)); **App. A100, A155** (Inf. ¶ 176; Ans. ¶ 176). Respondent agreed to represent the Jones for the fee of $1,200, which included the filing fee and attorney fee. **Rec. Vol. 8, pp. 706-07** (Tr. 179 – 180 (testimony of Jackie Jones)); **App. A100, A155** (Inf. ¶ 177; Ans. ¶ 177).

The Jones borrowed the $1,200 from World Finance Corporation to pay Mr. Nichols' to represent them. **Rec. Vol. 8, pp. 708-08** (Tr. 181 – 182 (testimony of Jackie Jones); **Rec. Vol. 23, p. 2267** (Ex. 112 (payday loan contracts)). The Jones paid Respondent $1,200 on or about January 3, 2013. **Rec. Vol. 8, p. 707** (Tr. 180 (testimony of Jackie Jones); **App. A100, A155** (Inf. ¶ 178; Ans. ¶ 178).

Respondent filed the Jones' Chapter 7 Voluntary Petition on April 19, 2013, and paid the $306 filing fee. **Rec. Vol. 18, p. 1518** (Ex. 73 (certified copy of Jones file); **App. A100, A155** (Inf. ¶ 179; Ans. ¶ 179). The Jones each completed a course on personal financial management on May 14, 2013, and each was issued a Certificate of Debtor Education. **Rec. Vol. 8, pp. 710-13** (Tr. 183 – 186 (testimony of Jackie Jones); **App. A100, A155** (Inf. ¶ 181; Ans. ¶ 181). The Jones took Respondent copies of the Certificates of Debtor Education and authorized the training provider, InCharge Debt Solutions, to send the Certificates directly to Respondent to file with the Bankruptcy

Court. **Rec. Vol. 8, pp. 711-12** (Tr. 184 - 185 (testimony of Jackie Jones); **App. A100, A155** (Inf. ¶ 182; Ans. ¶ 182).

The Jones attended the creditors meeting in Kansas City with Respondent. **Rec. Vol. 8, p. 710** (Tr. 183 (testimony of Jackie Jones)); **App. A100, A155** (Inf. ¶ 183; Ans. ¶ 183). At the conclusion of the creditors meeting, Respondent told the Jones that the matter was taken care of and that he didn't need anything else from them. **Rec. Vol. 8, pp. 714-15** (Tr. 187 – 188 (testimony of Jackie Jones)); **App. A100, A155** (Inf. ¶ 184; Ans. ¶ 184).

On June 23, 2013, the Bankruptcy Court clerk issued a Notice to Debtor(s) stating that the debtor's certification of completion of the Instructional Course Concerning Personal Financial Management had not been filed, and warning that if the certification isn't timely filed "the case may be closed with **NO Discharge**," and that, thereafter, if the debtor moved to reopen the case to allow the filing of the Certification, the debtor would have to pay the full reopening filing fee. **Rec. Vol. 18, p. 1518** (Ex. 73 (certified copy of Jones file)); **App. A100-A101, A155** (Inf. ¶ 185; Ans. ¶ 185). Respondent was sent the June 23, 2013 Notice to Debtor(s) by the court's CM/ECF electronic mail system. **App. A101, A156** (Inf. ¶ 186; Ans. ¶ 186).

On July 22, 2013, the Bankruptcy Court clerk issued a "**SECOND & FINAL**" notice stating that the Certification of Completion of Instructional Course Concerning Personal Financial Management has "NOT BEEN FILED," that if it is not received by the last day to object to the discharge of the debtor the case may be closed with "**NO**

Discharge," and that if a motion to reopen is filed to allow the filing of the certification, the debtor would have to pay the full reopening filing fee. **Rec. Vol. 18, p. 1518** (Ex. 73 (certified copy of Jones file)); **App. A101, A156** (Inf. ¶ 187; Ans. ¶ 187). Respondent was sent the July 22, 2013 "**SECOND & FINAL**" notice to Debtor(s) by the court's CM/ECF electronic mail system. **App. A101, A156** (Inf. ¶ 188; Ans. ¶ 188.) Respondent never notified the Jones that any filings were missing in their case. **Rec. Vol. 8, p. 710** (Tr. 183 (testimony of Jackie Jones)); **App. A101, A156** (Inf. ¶ 189; Ans. ¶ 189).

On August 27, 2013, the Bankruptcy Court issued its Final Decree and closed the Jones' case without a Discharge. **Rec. Vol. 18, p. 1518** (Ex. 73 (certified copy of Jones file)); **App. A101, A156** Inf. ¶ 190; Ans. ¶ 190). Respondent was sent the August 27, 2013 Final Decree and closure notice by the court's CM/ECF electronic mail system. **App. A101, A156** (Inf. ¶ 191; Ans. ¶ 191).

The Jones received the August 27, 2013 Notice to Creditors and Other Parties of Interest from the Bankruptcy Court. **Rec. Vol. 8, pp. 721-22** (Tr. 194 – 195 (testimony of Jackie Jones)); **App. A101, A156** (Inf. ¶ 192; Ans. ¶ 192). After receiving the August 27, 2013 Notice to Creditors and Other Parties of Interest, the Jones went to Respondent's office and asked him why the Notice had been issued and what the Notice meant. **Rec. Vol. 8, pp. 721-22** (Tr. 194 – 195 (testimony of Jackie Jones); **App. A102, A156** (Inf. ¶ 193; Ans. ¶ 193). Respondent told the Jones that there was some paperwork

he forgot to file and that he would get that done. **App. A102, A156** (Inf. ¶ 194; Ans. ¶ 194).

Respondent never told the Jones that a show cause order had been entered and that if they didn't provide certain information their case would be dismissed. **Rec. Vol. 8, p. 710** (Tr. 183 (testimony of Jackie Jones)). Respondent did not communicate to the Jones that he was unsuccessful in completing their case or that their case had been closed without discharge. **App. A102, A156** (Inf. ¶ 195; Ans. ¶ 195.) The Jones believed their debts had been discharged by the bankruptcy court until November 2015 when contacted by Informant. **Rec. Vol. 8, pp. 706, 715-16, 722** (Tr. 179, 188 - 189, 195 (testimony of Jackie Jones); **App. A102, A156** (Inf. ¶ 196; Ans. ¶ 196).

Ms. Jones informed Respondent that she had discovered that their bankruptcy did not go through and she wanted her file and a refund of the fees they paid. **Rec. Vol. 8, p. 706-07** (Tr. 179-80 (testimony of Jackie Jones); **App. A102, A156** (Inf. ¶ 197; Ans. ¶ 197 - 199.) Ms. Jones went to Respondent's office on November 11, 2015, and picked up a file Respondent or his assistant had compiled. **Rec. Vol. 8, pp. 706-07** (Tr. 179 – 180 (testimony of Jackie Jones); **App. A102, A156** (Inf. ¶ 203; Ans. ¶ 203). Respondent included with the file a check refunding the $1,200 they had paid him. **Rec. Vol. 8, p. 707** (Tr. 180 (testimony of Jackie Jones)); **Rec. 1517** (Ex. 72 (Jones refund check)); **App. A103, A156** (Inf. ¶ 204; Ans. ¶ 204).

By letter dated November 5, 2015, Informant forwarded to Respondent the docket sheet from the Jones' bankruptcy case and requested a response by November 19, 2015

as whether he had failed to communicate and diligently represent the Jones. **App. A103, A156** (Inf. ¶ 205; Ans. ¶ 205). Respondent did not respond to Informant's complaint regarding the Jones' bankruptcy on or before November 19, 2015. **App. A103, A156** (Inf. ¶ 206; Ans. ¶ 206).

Vaughn Eugene Veach and Rebecca Lyn Veach -- Count VII of the Information

Vaughn Eugene Veach and Rebecca Lyn Veach ("the Veaches") retained Respondent to represent them in a Chapter 7 bankruptcy. **Rec. Vol. 21, p. 1919** (Ex. 107, Deposition of Vaughn Veach (hereafter "Dep. testimony of V. Veach") p. 6); **Rec. Vol. 21, pp. 1953-54** (Ex. 108, Deposition of Rebecca Veach (hereafter "Dep. testimony of R. Veach") pp. 5 – 6); **App. A104, A157** (Inf. ¶ 209; Ans. ¶ 209). Respondent agreed to represent the Veaches for the fee of $1,300, which included the filing fee and attorney fee. **App. A104, A157** (Inf. ¶ 210; Ans. ¶210). The Veaches paid Respondent $1,300. **App. A104, A157** (Inf. ¶ 211, Ans. ¶211).

Respondent filed the Veaches' Chapter 7 Voluntary Petition on July 12, 2011, and paid the $299 filing fee. **App. A104, A158** (Inf. ¶ 213; Ans. ¶ 213). On July 14, 2011, the Bankruptcy Court issued an "Order for the Debtor(s) to Show Cause why the order for relief should not be set aside, these bankruptcy proceedings dismissed and, if applicable, the discharge be denied or revoked for failure to file the DECLARATION RE: ELECTRONIC FILING in the appropriate manner. Said Declaration Re Electronic Filing has not been filed. It was due on the same date as the petition was filed." **Rec. 1138** (Ex. 22 (certified copy of Veach file)); **App. A104, A158** (Inf. ¶ 215; Ans. ¶ 215).

Respondent was sent the July 14, 2011 Order to Show Cause regarding the Declaration Re: Electronic Filing by the court's CM/ECF electronic mail system. **App. A104, A158** (Inf. ¶ 216; Ans. ¶ 216).

On July 14, 2011, the Bankruptcy Court also issued an "Order to Debtor(s) to Show Cause why the order for relief should not be set aside and these bankruptcy proceedings dismissed for failure to provide Debtor(s) Evidence of Employer Payments (60 days) or Debtor(s) Evidence of NO Employer Payments." **Rec. Vol. 14, p. 1138** (Ex. 22 (certified copy of Veach file)); **App. A104, A158** (Inf. ¶ 217; Ans. ¶ 217). Respondent was sent the July 14, 2011 Order by the court's CM/ECF electronic mail system. **App. A105, A158** (Inf. ¶ 218; Ans. ¶ 218). Respondent did not notify the Veaches that the Court had issued any show cause orders. **Rec. Vol. 21, pp. 1924-25** (Ex. 107, p. 13 – 14 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1988** (Ex. 108, p. 10 (Dep. testimony of R. Veach)).

On August 5, 2011, Respondent filed the Declaration Re: Electronic Filing. **App. A105, A158** (Inf. ¶ 219; Ans. ¶ 219.) On August 5, 2011, Respondent filed the Debtor's evidence of no employer payments. **App. A105, A158** (Inf. ¶ 220; Ans. ¶ 220.)

Rebecca Veach completed a course on personal financial management on August 5, 2011, and Vaughn Veach completed a course on personal financial management on August 6, 2011, and each was issued a Certificate of Debtor Education. **Rec. Vol. 15, p. 1211** (Ex. 23 (V. Veach debtor education certificate)); **Rec. 1212** (Ex. 24 (R. Veach debtor education certificate)); **Rec. Vol. 21, pp. 1925-26** (Ex. 107, p. 14 – 15 (Dep.

testimony of V. Veach)); **Rec. Vol. 21, pp. 1988-90** (Ex. 108, p. 10 – 12 (Dep. R. Veach)). The Veaches provided Respondent with copies of the Certificates of Debtor Education to file with the Bankruptcy Court. **Rec. Vol. 21, pp. 1926-27** (Ex. 107, p. 15 – 16 (Dep. testimony of V. Veach)); **Rec. Vol. 21, pp. 1989-90** (Ex. 108, p. 11 – 12 (Dep. testimony of R. Veach)).

On September 15, 2011, the Bankruptcy Court clerk issued a Notice to Debtor(s) stating that the debtor's certification of completion of the Instructional Course Concerning Personal Financial Management had not been filed, and warning that if the certification isn't timely filed "the case may be closed with **NO Discharge**," and that, thereafter, if the debtor moved to reopen the case to allow the filing of the Certification, the debtor would have to pay the full reopening filing fee. **App. A105, A158** (Inf. ¶ 223; Ans. ¶ 223). Respondent was sent the September 15, 2011 Notice to Debtor(s) by the court's CM/ECF electronic mail system. **App. A105, A158** (Inf. ¶ 224; Ans. ¶ 224). Respondent did not notify the Veaches that the Court had issued a notice regarding missing Certifications of Completion of Instructional Course Concerning Personal Financial Management. **Rec. Vol. 21, pp. 1927-28** (Ex. 107, p. 16 – 17 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1990** (Ex. 108, p. 12 (Dep. testimony of R. Veach)); **App. A105, A158** (Inf. ¶ 225; Ans. ¶ 225).

The Veaches provided Respondent with their 2010 tax returns. **Rec. Vol. 21, p. 1929** (Ex. 107, p. 18 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1990** (Ex. 108, p. 13 (Dep. testimony of R. Veach)); **App. A104, A157** (Inf. ¶ 212; Ans. ¶ 212). On

October 7, 2011, the Trustee filed a Request for Dismissal Order due to the failure of the debtors to provide the Trustee with required tax returns. **Rec. Vol. 14, p. 1138** (Ex. 22 (certified copy of Veach file)). Respondent was sent the October 7, 2011 Notice to Debtor(s) by the court's CM/ECF electronic mail system. **App. A106, A158** (Inf. ¶ 227; Ans. ¶ 227.)

Respondent did not file a response to the October 7, 2011 Trustee's Request for Dismissal Order. **App. A106, A158** (Inf. ¶ 228; Ans. ¶ 228). Respondent did not tell the Veaches he was missing their tax return. **Rec. Vol. 21, p. 1929** (Ex. 107, p. 18 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1993** (Ex. 108, p. 15 (Dep. testimony of R. Veach)). Respondent did not notify the Veaches that the Trustee had filed a Request for Dismissal Order. **App. A106, A158** (Inf. ¶ 229; Ans. ¶ 229.) Respondent never notified the Veaches that any filings were missing in their case. **Rec. Vol. 21, p. 2001** (Ex. 108, p. 23 (Dep. testimony of R. Veach); **App. A106, A158** (Inf. ¶ 230; Ans. ¶ 230).

On October 11, 2011, the Court issued its Order of Dismissal Without Prejudice dismissing the case pursuant to the Trustee's Request for Dismissal Order. **App. A106, A158** (Inf. ¶ 231; Ans. ¶ 231). Respondent was sent the October 11, 2011 Order dismissing case by the court's CM/ECF electronic mail system. **App. A106, A158** (Inf. ¶ 232; Ans. ¶ 232). On October 27, 2011, the Court issued its Final Decree and Closing Case. **App. A106, A158** (Inf. ¶ 233; Ans. ¶ 233). Respondent was sent the October 27, 2011 Final Decree and Closing Case by the court's CM/ECF electronic mail system. **App. A106, A158** (Inf. ¶ 234; Ans. ¶ 234). Respondent did not notify the Veaches that

the Court had dismissed their case without discharge. **Rec. Vol. 21, p. 1936** (Ex. 107, Dep. testimony of V. Veach p. 25)); **Rec. Vol. 21, p. 1996** (Ex. 108, p. 18 (Dep. testimony of R. Veach)); **App. A106, A158** (Inf. ¶ 235; Ans. ¶ 235).

The Veaches received the October 11, 2011 Order of Dismissal Without Prejudice by mail from the Bankruptcy Court**.** **Rec. Vol. 21, p. 1936** (Ex. 107, p. 25 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1996** (Ex. 108, p. 18 (Dep. testimony of R. Veach)); **App. A106, A158** (Inf. ¶ 236; Ans. ¶ 236). When they received the Order of Dismissal Without Prejudice, the Veaches thought their bankruptcy had been completed. **Rec. Vol. 21, p. 1936** (Ex. 107, p. 25 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1997** (Ex. 108, p. 19 (Dep. testimony of R. Veach)). Thereafter, however, the Veaches' creditors began to call them. **Rec. Vol. 21, pp. 1936-37** (Ex. 107, pp. 25 – 26 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1997 (**Ex. 108, p. 19 (Dep. testimony of R. Veach)).

After receiving the October 11, 2011 Order of Dismissal Without Prejudice, the Veaches called Respondent's office multiple times but were told by his assistant that he was unavailable and that she would give him a message to call them. **Rec. Vol. 21, pp. 1937-38** (Ex. 107, pp. 26 – 27 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1998** (Ex. 108, p. 20 (Dep. testimony of R. Veach)); **App. A106, A158** (Inf. ¶ 237; Ans. ¶ 237). Respondent never returned the Veaches' calls and never spoke or otherwise communicated with the Veaches regarding the dismissal of their bankruptcy proceeding.

Rec. Vol. 21, pp. 1937-38 (Ex. 107, pp. 26 – 27 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 1998** (Ex. 108, pp. 20 – 21 (Dep. testimony of R. Veach)).

The Veaches had to retain new counsel, re-take, and pay for, the required credit counseling classes, pay to re-file their petition, and pay attorneys' fees to their new counsel. **Rec. Vol. 21, pp. 1939-40** (Ex. 107, pp. 28 – 29 (Dep. testimony of V. Veach)); **Rec. Vol. 21, pp. 1999-2000** (Ex. 108, Dep. testimony of R. Veach pp. 21 – 22)); **App. A107, A159** (Inf. ¶ 239; Ans. ¶ 239). Respondent did not refund the $1,300 the Veaches paid him. **Rec. Vol. 21, p. 1938** (Ex. 107, p. 27 (Dep. testimony of V. Veach)); **Rec. Vol. 21, p. 2001** (Ex. 108, p. 23 (Dep. testimony of R. Veach)); **App. A107, A159** (Inf. ¶ 240; Ans. ¶ 240)).

By letter dated November 5, 2015, Informant forwarded to Respondent the docket sheet from the Veaches' bankruptcy case and requested a response by November 19, 2015 as whether he had failed to communicate and diligently represent the Veaches. **App. A107, A159** (Inf. ¶ 241; Ans. ¶ 241). Respondent did not respond to Informant's complaint regarding the Veaches' bankruptcy on or before November 19, 2015. **App. A107, A159** (Inf. ¶ 242; Ans. ¶ 242).

Jason Troy Johnston and Wendy Kay Johnston -- Count VIII of the Information

Jason Troy Johnston and Wendy Kay Johnston ("the Johnstons") retained Respondent to represent them in a Chapter 7 bankruptcy. **Rec. Vol. 6, p. 659** (Tr. 132 (testimony of Wendy Johnston); **App. A108, A160** (Inf. ¶ 245; Ans. ¶ 245). Respondent agreed to represent the Johnstons for the fee of $1,200, which included the filing fee and

attorney fee. **App. A108, A160** (Inf. ¶ 246; Ans. ¶ 246). The Johnstons paid Respondent $1,200 on or about February 15, 2013. **App. A108, A160** (Inf. ¶ 247; Ans. ¶ 247). Respondent filed the Johnstons' Chapter 7 Voluntary Petition on August 24, 2013, and paid the $306 filing fee. **App. A108, A160** (Inf. ¶ 248; Ans. ¶ 248).

The Johnstons provided Respondent with the information he requested, including the evidence regarding employer payments. **Rec. Vol. 17, p. 1459** (Ex. 47 (pay stub fax)); **Rec. Vol. 7, pp. 666-67, 670-74** (Tr. 139 – 140, 143 – 147 (testimony of Wendy Johnston)). On August 26, 2013, the Bankruptcy Court issued an Order to Show Cause for failure to upload a creditor matrix. **App. A108, A160** (Inf. ¶ 251; Ans. ¶ 251). In response, on August 27, 2013, Respondent uploaded a creditor matrix. **App. A108, A160** (Inf. ¶ 252; Ans. ¶ 252).

On August 27, 2013, the Bankruptcy Court issued an Order to Show Cause for failure to provide Debtor(s) Evidence of Employer Payments or Affidavit of Debtor(s) Evidence of No Employer Payments. **App. A108, A160** (Inf. ¶ 253; Ans. ¶ 253). Also on August 27, 2013, the Bankruptcy Court issued an Order to Show Cause for failure to file the Declaration re: Electronic Filing. **App. A109, A160** (Inf. ¶ 254; Ans. ¶ 254). Respondent did not respond to either of the August 27, 2013, Orders to Show Cause. **App. A109, A135, A160** (Inf. ¶ 255; Ans. ¶ 255). Respondent did not notify the Johnstons that the Bankruptcy Court had issued Show Cause Orders. **Rec. Vol. 7, p. 667** (Tr. 140 (testimony of Wendy Johnston)); **App. A109, A160** (Inf. ¶ 256; Ans. ¶ 256).

On September 20, 2013, the Bankruptcy Court issued its Order Dismissing Case for failure to comply with court orders. **App. A109, A160** (Inf. ¶ 258; Ans. ¶ 258). Respondent did not seek to re-open the Johnstons' case despite their requests that he do so. **Rec. Vol. 7, pp. 674-75, 681-82, 700-01** (Tr. 147 – 148, 154 – 155, 173 – 174 (testimony of Wendy Johnston)).

Ms. Johnston began receiving calls from creditors after the bankruptcy was dismissed. **Rec. Vol. 7, p. 684** (Tr. 157 (testimony of Wendy Johnston)). Also after her bankruptcy case was dismissed, Mrs. Johnston was sued by one of her creditors and a judgment was entered against her. **Rec. Vol. 7, p. 695** (Tr. 168 (testimony of Wendy Johnston)).

On or about July 29, 2014 Sherri L. Wattenbarger, attorney with Office of the U.S. Trustee, filed United States Trustee's Motion for Disgorgement requesting that Respondent be required to disgorge his entire fee. **Rec. Vol. 17, p. 1374** (Ex. 44 (certified copy of Johnston court file); **App. A109, A160** (Inf. ¶ 260; Ans. ¶ 260.) Respondent did not file a response specifically to the allegations in the U.S. Trustee's Motion for Disgorgement. **Rec. Vol. 17, p. 1374** (Ex. 44 (certified copy of Johnston court file); **App. A109, A136, A160** (Inf. ¶ 261; Ans. ¶ 261.) On or about August 19, 2014, Respondent filed a Certification of Disgorgement of Fees stating that he had refunded the attorneys' fees paid by the Johnstons. **App. A109, A160** (Inf. ¶ 262; Ans. ¶ 262.) Respondent refunded the Johnstons the $1,200 they had paid him. **Rec. Vol. 7, p. 681** (Tr. 154 (testimony of Wendy Johnston)).

By letter dated November 5, 2015, Informant forwarded to Respondent the docket sheet from the Johnstons' bankruptcy case and requested a response by November 19, 2015 as whether he had failed to communicate and diligently represent the Johnstons. **App. A110, A160** (Inf. ¶ 263; Ans. ¶ 263). Respondent did not respond to Informant's complaint regarding the Johnstons' bankruptcy on or before November 19, 2015. **App. A110, A160** (Inf. ¶ 264; Ans. ¶ 264).

Mark A. Shanley and Cynthia Ann Shanley -- Count IX of the Information

Mark A. Shanley and Cynthia Ann Shanley ("the Shanleys") retained Respondent to represent them in a Chapter 7 bankruptcy. **Rec. Vol. 5, p. 603** (Tr. 76 (testimony of Mark Shanley)); **Rec. Vol. 6, p. 647** (Tr. 120 (testimony of Cynthia Phelps fka Shanley)); **App. A110, A161** (Inf. ¶ 267; Ans. ¶ 267). Respondent agreed to represent the Shanleys for the fee of $1,250, which included the filing fee and attorney fee. **Rec. Vol. 5, p. 604** (Tr. 77 (testimony of Mark Shanley)); **App. A110, A161** (Inf. ¶ 268; Ans. ¶ 268). The Shanleys paid Respondent $1,250 to represent them. **App. A110, A161** (Inf. ¶ 269; Ans. ¶ 269).

The Shanleys each completed a credit counseling course on September 8, 2014, and each was issued a Certificate of Counseling. **App. A111, A161** (Inf. ¶ 270; Ans. ¶ 270). The Shanleys provided the Certificates of Counseling to Respondent. **App. A111, A161** (Inf. ¶ 272; Ans. ¶ 272).

Respondent filed the Shanleys' Chapter 7 Voluntary Petition on December 10, 2014, and paid the $335 filing fee. **Rec. Vol. 15, p. 1224** (Ex. 34 (certified copy of

Shanley court file)); **Rec. Vol. 5, p. 605** (Tr. 78 (testimony of Mark Shanley)); **App. A111, A161** (Inf. ¶ 273; Ans. ¶ 273). On December 11, 2014, the Bankruptcy Court clerk issued a Clerk's Notice that the debtor's certification of completion of the Credit Counseling course not been filed, and warning that if the certification wasn't filed by 5:00 pm "TODAY, the case will be referred for DISMISSAL." **App. A111, A161** (Inf. ¶ 275; Ans. ¶ 275). Respondent was sent the December 11, 2014 Clerk's Notice regarding the debtor's certification of completion of the Credit Counseling course by the court's CM/ECF electronic mail system. **App. A111, A161** (Inf. ¶ 276; Ans. ¶ 276). Also on December 11, 2014, the Bankruptcy Court issued an "Order to Show Cause" because '[t]he Certification text entry by Debtor(s) Attorney regarding the Rights and Responsibilities Agreement has not been entered," and warning that "if the Certification has not been entered within 21 days, the attorney may be ordered to disgorge any fees already received or the Trustee will be ordered to not make payments on attorney fees in the case, whichever is applicable…." **App. A111-A112, A161** (Inf. ¶ 277; Ans. ¶ 277). Respondent was sent the December 11, 2014 Order to Show Cause regarding the Rights and Responsibilities Agreement by the court's CM/ECF electronic mail system. **App. A112, A161** (Inf. ¶ 278; Ans. ¶ 278).

On December 11, 2014, the Bankruptcy Court issued an "Order for the Debtor(s) to Show Cause why the order for relief should not be set aside, these bankruptcy proceedings dismissed and, if applicable, the discharge be denied or revoked for failure to file the DECLARATION RE: ELECTRONIC FILING in the appropriate manner. Said

Declaration Re Electronic Filing has not been filed. It was due on the same date as the petition was filed." **App. A112, A161** (Inf. ¶ 279; Ans. ¶ 279). Respondent was sent the December 11, 2014 Order to Show Cause regarding the Declaration Re: Electronic Filing by the court's CM/ECF electronic mail system. **App. A112, A161** (Inf. ¶ 280; Ans. ¶ 280). On December 11, 2014, Respondent filed the Shanley's Certificates of Counseling. **App. A112, A161** (Inf. ¶ 281; Ans. ¶ 281).

On December 12, 2014, the Bankruptcy Court entered an "Order for the Debtor(s) to Show Cause in writing why the order for relief should not be set aside, these bankruptcy proceedings dismissed and, if applicable, the discharge be denied or revoked for failure to provide the Summary of Schedules, Schedule I, and Schedule J on the new forms which became effective 12/01/2013." **App. A112, A161** (Inf. ¶ 282; Ans. ¶ 282). Respondent was sent the December 12, 2014 Order to Show Cause regarding the use of outdated forms for the Summary of Schedules, Schedule I, and Schedule J by the court's CM/ECF electronic mail system. **App. A113, A161** (Inf. ¶ 283; Ans. ¶ 283).

On December 31, 2014, the Bankruptcy Court clerk issued its "Order Dismissing Case for failure to file the DECLARATION RE: ELECTRONIC FILING; Summary of Schedules, Schedule I, and Schedule J on the new forms with became effective 12/01/2013." **App. A113, A161** (Inf. ¶ 284; Ans. ¶ 284). Respondent was sent the December 31, 2014 "Order Dismissing Case" by the court's CM/ECF electronic mail system. **App. A113, A161** (Inf. ¶ 285; Ans. ¶ 285.)

The Shanleys signed the Declaration re: Electronic Filing on December 10, 2014. **Rec. Vol. 17, p. 1369** (Ex. 40 (Respondent's email with Declaration re: Electronic Filing); **Rec. Vol. 5, pp. 606-07** (Tr. 79 – 80 (testimony of Mark Shanley)). The Shanleys did not take any documents with them when they left Respondent's office after signing the documents necessary to file bankruptcy. **Rec. Vol. 5, p. 606** (Tr. 79 (testimony of Mark Shanley)). In his response to Informant regarding his representation of the Shanleys, Respondent claimed the Shanleys took the Declaration re: Electronic Filing with them when they left his office on December 10, 2014. **Rec. Vol. 17, p. 1367** (Ex. 39 (Respondent's response re Shanleys)).

Respondent also claimed to have called the Shanleys to come back into the office to sign a new Declaration re: Electronic Filing, but "they were not able to come in," "they lived 30 minutes from his office outside Creighton," and they were "out of town at one point." **Rec. Vol. 17, p. 1367** (Ex. 39 (Respondent's response re Shanleys)). Respondent did not call the Shanleys to come in and sign a new Declaration re: Electronic Filing. **Rec. Vol. 5, p. 607** (Tr. 80 (testimony of Mark Shanley)). The Shanleys never lived near Creighton and Mr. Shanley doesn't "even know where it's at." **Rec. Vol. 5, p. 607** (Tr. 80 (testimony of Mark Shanley); **Rec. Vol. 6, p. 647** (Tr. 120 (testimony of Cynthia Phelps fka Shanley)). The Shanleys did not go out of town in December 2014. **Rec. Vol. 6, p. 648** (Tr. 121 (testimony of Cynthia Phelps fka Shanley).)

In response to Informant's request for production of documents, however, Respondent produced to Informant on March 1, 2016, a copy of the Declaration re

Electronic Filing signed by the Shanleys on December 10, 2014. **Rec. Vol. 17, p. 1369** (Ex. 40 (Respondent's email with Declaration re: Electronic Filing)); **Rec. Vol. 12, p. 896** (Tr. 335 (testimony of Respondent)). Respondent had the Declaration re: Electronic Filing in his files but he failed to file it. **Rec. Vol. 12, pp. 898-99** (Tr. 337 -338 (testimony of Respondent)).

Respondent filed the bankruptcy case using outdated forms. **Rec. Vol. 12, p. 899** (Tr. 338 (testimony of Respondent)); **Rec. Vol. 16, p. 1224** (Ex. 34 (certified copy of Shanley's court file)). Respondent admits that there was not anything particularly complicated about the Shanley's case. **Rec. Vol. 12, p. 899** (Tr. 338 (testimony of Respondent)).

On January 26, 2015, the Bankruptcy Court issued its Final Decree and closed the Shanley's case without a discharge of their debts. **App. A113, A162** (Inf. ¶ 288; Ans. ¶ 288). Respondent was sent the January 26, 2015 Final Decree and closure notice by the court's CM/ECF electronic mail system. **App. A113, A162** (Inf. ¶ 289; Ans. ¶ 289).

The Shanleys received the December 31, 2014 Order of Dismissal Without Prejudice by mail from the Bankruptcy Court. **Rec. Vol. 6, pp. 649-50** (Tr. 122 – 123 (testimony of Cynthia Phelps fka Shanley); **App. A113, A162** (Inf. ¶ 290; Ans. ¶ 290.) Immediately after receiving the December 31, 2014 Order of Dismissal Without Prejudice, the Shanleys called Respondent several times but were unable to talk to him and he didn't return their call. **Rec. Vol. 5, p. 609** (Tr. 82 (testimony of Mark Shanley)). After they were unable to reach Respondent by telephone, Mr. Shanley went to

Respondent's office to ask him why the December 31, 2014 Order of Dismissal Without Prejudice had been issued and what the Order meant. **Rec. Vol. 5, pp. 609-10** (Tr. 82 – 83 (testimony of Mark Shanley)). Respondent stated that the Court had changed the forms and that he had used old forms. **Rec. Vol. 5, p. 610** (Tr. 83 (testimony of Mark Shanley)); **Rec. Vol. 6, pp. 649-50** (Tr. 123 – 124 (testimony of Cynthia Phelps fka Shanley)); **App. A114, A162** (Inf. ¶ 295; Ans. ¶ 295). Respondent told the Shanleys that he would re-open the file and pay the additional fee himself. **App. A114, A162** (Inf. ¶ 296; Ans. ¶ 296).

The Shanleys made another appointment with Respondent and they went to his office and signed documents a second time in January or February 2015. **Rec. Vol. 5, pp. 610-11** (Tr. 83 – 84 (testimony of Mark Shanley)); **Rec. Vol. 6, pp. 650-51** (Tr. 123 – 124 (testimony of Cynthia Phelps fka Shanley)). The Shanleys waited for another Court date, but didn't get notice of one. **Rec. Vol. 5, p. 615** (Tr. 88 (testimony of Mark Shanley)); **App. A114, A163** (Inf. ¶ 298; Ans. ¶ 298).

On March 5, 2015, Cynthia Shanley stopped by Respondent's office to check on the status of their bankruptcy. **Rec. Vol. 17, p. 1364** (Ex. 37 (Respondent's message log)); **Rec. Vol. 6, pp. 651-52** (Tr. 124 – 125 (testimony of Cynthia Phelps fka Shanley)). Respondent's secretary told the Shanleys that the bankruptcy trustee would take a longer period of time to proceed because their case had been re-opened. **Rec. Vol. 5, p. 611-12** (Tr. 84 – 85 (testimony of Mark Shanley)).

Mr. Shanley called the bankruptcy court on March 9, 2015 to ask about a court date and was told that their bankruptcy had not been re-filed. **Rec. Vol. 16, p. 1343 (Ex. 36** (Mark Shanley phone records0); **Rec. Vol. 5, p. 615 (**Tr. 88 (testimony of Mark Shanley)). Mr. Shanley went in to Respondent's office to ask why their bankruptcy hadn't been re-filed. **Rec. Vol. 5, p. 617** (Tr. 90 (testimony of Mark Shanley)). Respondent said they had to sign a third set of documents. **Rec. Vol. 5, p. 617** (Tr. 90 (testimony of Mark Shanley)).

The Shanleys signed a third set of documents to file with the bankruptcy court on March 11, 2015. **Rec. Vol. 5, pp. 618-20 (Tr. 91 – 93 (testimony of Mark Shanley)); Rec. Vol. 6, p. 654** (Tr. 127 (testimony of Cynthia Phelps fka Shanley)). Respondent filed a Motion to Reopen the Shanleys' bankruptcy case on March 23, 2015. **App. A114, A163** (Inf. ¶ 300; Ans. ¶ 300). On March 23, 2015, the Court entered its "order of the Court Denying, without prejudice, the Debtors Motion to Reopen the case as well as Vacate the Dismissal and Reinstate the case. Debtor removed the paragraph regarding the extension of deadlines per Local Rule 1017-1E. The Motion may be re-filed on the correct form, which can be found on the Court's website…." **App. A114-A115, A163** (Inf. ¶ 301; Ans. ¶ 301).

On March 24, 2015, Respondent filed another "Motion to Reopen this Chapter 7 Case Proceed with case and obtain a discharge…." **App. A115, A163** (Inf. ¶ 302; Ans. ¶ 302). On March 27, 2015, the Court entered its Order of the Court denying the motion to reopen the chapter case "AS UNTIMELY." **App. A115, A163** (Inf. ¶ 303; Ans. ¶ 303).

Respondent did not call to the Shanleys and tell them that he was unsuccessful in re-opening their case or that their case had been closed without discharge. **Rec. Vol. 6, pp. 622, 636** (Tr. 95, 109 (testimony of Mark Shanley)); **Rec. Vol. 6, p. 655** (Tr. 128 (testimony of Cynthia Phelps fka Shanley)). Mark Shanley called Respondent's office multiple times and his call either was not answered or he was told Respondent was unavailable. **Rec. Vol. 16, p. 1343** (Ex. 36 (Mark Shanley phone records)); **Rec. Vol. 5, pp. 609-10, 612; Vol. 6, pp. 622, 644** (Tr. 82 – 83, 85, 95, 118 (testimony of Mark Shanley); **Rec. Vol. 6, p. 655** (Tr. 128 (testimony of Cynthia Phelps fka Shanley)). Between January 5, 2015 and April 3, 2015, Mr. Shanley's phone records reflect that Mr. Shanley called Respondent eleven times, and Respondent called Mr. Shanley once. **Rec. Vol. 16, p. 1343** (Ex. 36 (Mark Shanley phone records)).

When the Shanleys couldn't reach Respondent by phone or get a return call from him, Mark Shanley went to Respondent's office on multiple occasions in an effort to find out what was going on with his case, but Respondent would not meet with him. **Rec. Vol. 5, pp. 609-10, 612; Vol. 6, pp. 622, 644** (Tr. 82 – 83, 85, 95, 117 (testimony of Mark Shanley)). Mark Shanley called the Court again and was told the case had been dismissed. **Rec. Vol. 5, p. 621; Vol. 6, p. 636** (Tr. 94, 109 (testimony of Mark Shanley)). Mark Shanley went into Respondent's office and told Respondent's assistant that he knew the case had been dismissed and that he wanted his file and his money back. **Rec. Vol. 6, pp. 622-23** (Tr. 95 – 96 (testimony of Mark Shanley)); **Rec. Vol. 17, p. 1364** (Ex. 37 (Respondent's office log re Shanleys)).

The night before Mr. Shanley picked up their file and the refund check, Respondent called Mark Shanley and told him he would pay to re-file the Shanley's case. **Rec. Vol. 6, p. 623** (Tr. 96 (testimony of Mark Shanley). Mark Shanley told Respondent that the situation had been going on too long and that he wanted his file and money back. **Rec. Vol. 6, p. 623** (Tr. 96 (testimony of Mark Shanley).

Respondent's assistant called Mark Shanley and told him she had his file and check ready. **App. A116, A164** (Inf. ¶ 313; Ans. ¶ 313). Mark Shanley went into Respondent's office and Respondent's assistant gave him his file and a check dated April 3, 2015 refunding the monies they had paid him. **Rec. Vol. 6, p. 624** (Tr. 97 (testimony of Mark Shanley)); **Rec. Vol. 6, p. 656** (Tr. 129 (testimony of Cynthia Phelps fka Shanley)); **App. A116, A164** (Inf. ¶ 314; Ans. ¶ 314). Respondent's secretary asked Mark Shanley not to file a disciplinary complaint against Respondent. **Rec. Vol. 6, p. 624** (Tr. 97 (testimony of Mark Shanley)).

After their bankruptcy was dismissed without discharge on December 31, 2014, the Shanleys were getting calls from creditors, and Mrs. Shanley was sued regarding a debt. **Rec. Vol. 6, pp. 642-43** (Tr. 115 – 116 (testimony of Mark Shanley)); **Rec. Vol. 6, p. 655** (Tr. 128 (testimony of Cynthia Phelps fka Shanley)).

By letter dated November 19, 2015, Informant forwarded to Respondent the docket sheet from the Shanley's bankruptcy case and requested a response by December 4, 2015 as to whether he had failed to communicate and diligently represent the Shanleys. **App. A116, A164** (Inf. ¶ 315; Ans. ¶ 315). Respondent did not respond to Informant's

complaint regarding the Shanleys' bankruptcy on or before December 4, 2015. **App. A116, A139, A164** (Inf. ¶ 316; Ans. ¶ 316).

Respondent's Rule 5.285 Mitigation Claim

Informant first filed an information against Respondent on September 30, 2015. **Rec. 1.** Respondent first consulted with Anne Chambers, LCSW, on October 14, 2015. **Sealed Rec. Vol. 24, p. 2487** (Ex. D-3 (Chambers records)).

Respondent filed answers to the Information and the First Amended Information on November 6 and November 19, 2015, in which he did not plead a Rule 5.285 mental disorder. **Rec. Vol. 1, pp. 67, 81.** On or about December 28, 2015, Respondent first plead that he had a mental disorder in response to Informant's Second Amended Information. **App. 150** (Answer to Informant's Second Amended Information and Mitigation Claim). Thereafter, Respondent first consulted psychologist Stanley Bier, PhD, on January 18, 2016. **Sealed Rec. Vol. 24, p. 2458** (Ex. D-2 (Bier records)).

Respondent submitted to an independent mental health examination by Deborah Doxsee, PhD, on March 19, 2016. **Sealed Rec. Vol. 25, p. 2550** (Ex. D-6 (Doxsee report)). In her report, Dr. Doxsee listed these "diagnostic impressions" with regard to Respondent: Generalized Anxiety Disorder, Adjustment Disorder with Anxiety and Depressed Mood, and Obsessive Compulsive features. **Sealed Rec. Vol. 25, p. 2562** (Ex. D-6 (Doxsee report)). Dr. Doxsee found that, "to a reasonable degree of psychological certainty," Respondent has a "mental disorder" as defined by Rule 5.285 "such that [his] disorder impaired the judgment, cognitive ability, or volitional or emotional functioning

of [] Respondent." **Sealed Rec. Vol. 25, p. 2563** (Ex. D-6 (Doxsee report)). Dr. Doxsee found that, "to a reasonable degree of psychological certainty," Respondent's "mental disorder caused or had a direct and substantial relationship to [Respondent's] professional misconduct." **Sealed Rec. Vol. 25, p. 2563** (Ex. D-6 (Doxsee report)). Dr. Doxsee found that, "to a reasonable degree of psychological certainty," Respondent has the ability to manage the impairment for a meaningful and sustained period of successful functioning." **Sealed Rec. Vol. 25, p. 2563** (Ex. D-6 (Doxsee report)). Dr. Doxsee found that, "to a reasonable degree of psychological certainty," recurrence of Respondent's misconduct is unlikely. **Sealed Rec. Vol. 25, p. 2563** (Ex. D-6 (Doxsee report)).

Dr. Doxsee noted that Respondent had failed to follow through with Anne Chambers' recommendation that he see a psychiatrist, such recommendation reflected in her notes as early as December 17, 2015. **Sealed Rec. Vol. 25, p. 2563** (Ex. D-6 (Doxsee report); **Sealed Rec. Vol. 24, p. 2485** Ex. D-3 (Chambers records); **Sealed Rec. Vol. 24, pp. 2388-2389 (Confidential Transcript ("Conf. Tr.") 34-35)** (testimony of Respondent)). On March 19, 2016, Dr. Doxsee also recommended that Respondent see a psychiatrist. **Sealed Rec. Vol. 25, p. 2563** (Ex. D-6 (Doxsee report)). Dr. Bier also recommended Respondent see a psychiatrist who could prescribe medication. **Sealed Rec. Vol. 24, pp. 2358, 2378-2379** (Conf. Tr. 4, 24-25) (testimony of Respondent)). Dr. Doxsee also noted that Respondent has not been consistent with taking his prescribed medication in the past. **Sealed Rec. Vol. 25, p. 2563** (Ex. D-6 (Doxsee report); see also

Sealed Rec. Vol. 25, pp. 2367, 2368, 2381-85 (Conf. Tr. 13, 14, 27-32) (testimony of Respondent)). Even as of the date of the hearing, Respondent was not taking his medication as prescribed. **Sealed Rec. Vol. 24, pp. 2367, 2381-85, 2396-98, 2405-16** (Conf. Tr. 13, 27-31, 42-44, 51-62 (testimony of Respondent)); see also **Sealed Rec. Vol. 24, pp. 2438-49 (**Ex. D-1 (Bernhardt records); **Sealed Rec. Vol. 25, pp. 2569-71 (**Ex. E (prescription medication bottle)).

Dr. Doxsee reported that Respondent "has yet to have the opportunity to obtain appropriate treatment for his particular mental health concern." **Sealed Rec. Vol. 25, p. 2564** (Ex. D-6, Appendix A (Doxsee report)). Dr. Doxsee reported that "[t]reatment will not cure this disorder." **Sealed Rec. Vol. 25, p. 2564** (Ex. D-6, Appendix A (Doxsee report)). Dr. Doxsee clarified: "If the respondent exercises his ability to manage the mental disorder then the misconduct is unlikely to recur." **Sealed Rec. Vol. 25, p. 2564** (Ex. D-6, Appendix A (Doxsee report)). Dr. Doxsee wrote: "If the mental disorder continues to go untreated it will continue to interfere with the respondent's ability to practice law." **Sealed Rec. Vol. 25, pp. 2564-2565** (Ex. D-6, Appendix A (Doxsee report)). Dr. Doxsee wrote: "The respondent's recent problems with responsiveness to the OCDC and his attorney demonstrate that he is still impacted by symptoms." **Sealed Rec. Vol. 25, p. 2565** (Ex. D-6, Appendix A (Doxsee report)).

Dr. Doxsee wrote: "The respondent has only had complete identification of his mental health concerns over the last few months. And, as yet, he has not had psychopharmacologic treatment of his mental health concerns and only recently

embarked on treatment through non-pharmacologic methods – cognitive behavioral therapy." **Sealed Rec. Vol. 25, p. 2565** (Ex. D-6, Appendix A (Doxsee report)). Respondent did not schedule an appointment with a psychiatrist until after his independent mental health examination with Dr. Doxsee. **Sealed Rec. Vol. 24, pp. 2392-93** (**Conf. Tr. 38-39** (testimony of Respondent)). Respondent missed the first appointment he made with a psychiatrist due to a scheduling misunderstanding and hadn't seen the psychiatrist as of the final day of his disciplinary hearing. **Sealed Rec. Vol. 24, pp. 2400-2402** (**Conf. Tr. 46-48** (testimony of Respondent)).

With regard to monitoring, Dr. Doxsee wrote: "Once the respondent has met with a psychiatrist and begun pharmacologic management and found an effective medication regimen; and once he has demonstrated additional progress in continued psychological treatment; it will be reasonable to expect that he will reach a point such that he will be able to self-monitor, alone and/or with his health care providers, for any increase in or exacerbation of symptoms." **Sealed Rec. Vol. 25, p. 2566** (Ex. D-6, Appendix A (Doxsee report)).

Respondent delayed seeking psychiatric help until after he had his independent mental health examination because Dr. Bier said there was a possibility that if he received treatment for his diagnosed mental health issues, they might not "manifest on an IME." **Sealed Rec. Vol. 24, pp. 2379, 2392-93** (Conf. Tr. 25, 38-39 (testimony of Respondent)).

Respondent testified that he has stopped taking medicine as prescribed in the past because he didn't like being dependent on it. **Sealed Rec. Vol. 24, pp. 2381-82** (Conf. Tr. 27-28 (testimony of Respondent)).

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.1 IN THAT RESPONDENT FAILED TO PROVIDE HIS CLIENTS (RUSH, JONES, VEACH, JOHNSTON, SHANLEY) COMPETENT REPRESENTATION.

In re Charron, 918 S.W.2d 257 (Mo. banc. 1996)

In re Ehler, 319 S.W.3d 442 (Mo. banc. 2010)

Rule 4-1.1

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.3 IN THAT RESPONDENT FAILED TO ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING HIS CLIENTS (McCLANAHAN, RUSH, JONES, VEACH, JOHNSTON, SHANLEY).

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

Rule 4-1.3

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.4(a) IN THAT RESPONDENT FAILED TO KEEP HIS CLIENTS (McCLANAHAN, ALLEN, RUSH, JONES, VEACH, JOHNSTON, SHANLEY) REASONABLY INFORMED AND TO RESPOND TO HIS CLIENTS' REQUESTS FOR INFORMATION.

In re Ehler, 319 S.W.3d 442 (Mo. banc 2010)

Rule 4-1.4(a)

IV.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.6 IN THAT RESPONDENT FAILED TO KEEP INFORMATION HE OBTAINED FROM HIS CLIENT (WOODY) CONFIDENTIAL.

Rule 4-1.6

V.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT REPRESENTED BOTH THE ACCUSED DEFENDANT AND THE ACCUSED DEFENDANT'S VICTIM (WOODY) IN VIOLATION OF RULE 4-1.7.

State ex rel. Horn v. Ray, 325 S.W.3d 500 (Mo.App. 2010)

Okeani v. Superior Court of Maricopa County, 871 P.2d 727 (Ariz. App. 1993)

Rule 4-1.7

VI.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT FAILED TO TAKE REASONABLE STEPS TO PROTECT HIS CLIENT'S INTERESTS IN VIOLATION OF RULE 4-1.16(d) IN THAT HE DID NOT RETURN CLIENT FILES (McCLANAHAN, ALLEN), HE DID NOT TIMELY REFUND UNEARNED FEES (BOLDT, WOODY), HE DID NOT PROVIDE HIS CLIENT WITH A COPY OF THE TRIAL COURT JUDGMENT (McCLANAHAN), AND HE DID NOT PRESERVE HIS CLIENT'S RIGHT TO APPEAL (McCLANAHAN).

In re Coleman, 295 S.W.3d 857 (Mo. banc 2009)

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

Rule 4-1.16(d)

VII.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.22 IN THAT HE DID NOT SECURELY STORE HIS CLIENT'S FILE (ALLEN) FOR TEN YEARS AFTER TERMINATION OF THE REPRESENTATION.

Rule 4-1.22

VIII.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-4.1 IN THAT HE MADE FALSE STATEMENTS OF MATERIAL FACT TO THIRD PERSONS (ALLEN).

In re Krigel, 480 S.W.3d 294 (Mo. banc. 2016)

Rule 4-4.1

IX.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-8.1(a) AND 4-8.1(c) IN THAT, IN CONNECTION WITH DISCIPLINARY MATTERS, RESPONDENT KNOWINGLY MADE FALSE STATEMENTS OF MATERIAL FACT (McCLANAHAN, BOLDT, WOODY, ALLEN, RUSH) AND HE KNOWINGLY FAILED TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF DISCIPLINARY INVESTIGATIONS (McCLANAHAN, BOLDT, WOODY, ALLEN, RUSH, JONES, VEACH, JOHNSTON, SHANLEY).

In re Farris, 472, S.W.3d 549 (Mo. banc 2015)

Rule 4-8.1

X.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-8.4(c) IN THAT RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION DURING THE REPRESENTATION OF HIS CLIENTS (WOODY, ALLEN).

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

Rule 4-8.4(c)

XI.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE TO PRACTICE LAW WITH NO LEAVE TO REAPPLY FOR TWO YEARS BECAUSE RESPONDENT KNOWINGLY VIOLATED MULTIPLE RULES OF PROFESSIONAL CONDUCT MULTIPLE TIMES, INCLUDING OBLIGATIONS HE OWED HIS CLIENTS, AND CAUSED AN INJURY OR POTENTIAL INJURY.

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

In re Tessler, 783 S.W.2d 906, 908-10 (Mo. banc 1990)

In re Waldron, 790 S.W.2d 456, 461 (Mo. banc 1990)

In re Belz, 258 S.W.3d 38, 44 (Mo. banc 2008)

ABA Standards for Imposing Lawyer Sanctions (1986 Ed., as amended 1992)

Rule 5.225

Rule 5.285

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.1 IN THAT RESPONDENT FAILED TO PROVIDE HIS CLIENTS (RUSH, JONES, VEACH, JOHNSTON, SHANLEY) COMPETENT REPRESENTATION.

"The findings of fact, conclusions of law, and the recommendations from the DHP are advisory. This Court reviews the evidence *de novo*, independently determining all issues pertaining to the credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed." In re Crews, 159 S.W.3d 355, 358 (Mo. banc 2005), citing *In re Snyder*, 35 S.W.3d 380, 382 (Mo. banc 2000).

Missouri Rule of Professional Conduct 4-1.1 provides that a lawyer shall provide competent representation to a client. "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonable necessary for the representation." Rule 4-1.1. In *In re Ehler*, 319 S.W.3d 442, 448-49 (Mo. banc. 2010), this Court found that the respondent demonstrated a lack of competence requiring discipline where she failed to properly calculate and disburse proceeds from the sale a marital property. Ehler also was found to have acted incompetently because she failed to

provide her client interrogatories to complete and such failure resulted in the court entering a default judgment against her client. *Id*. In *In re Charron*, 918 S.W.2d 257, 261 (Mo. banc. 1996), this Court found that Charron violated Rule 4-1.1 when he failed to file settlement vouchers when he made distributions from an estate and when he failed to seek court approval before paying himself attorney's fees that exceeded the statutory allowance.

Respondent violated Rule 4-1.1 by not competently representing Jeremy Rush, Jackie and Larry Jones, Vaughn and Rebecca Veach, Wendy and Jason Johnston, and Mark and Cindy Shanley in their bankruptcy proceedings in that he did not file required documentation with the bankruptcy court, he did not correct his failures when notified by the bankruptcy court, and his actions/failure to act resulted in their bankruptcy petition being dismissed without a discharge of their debts. Respondent admits these violations as to Mr. Rush, the Jones, the Veaches, and the Johnsons**. App. A154-A155, A157, A159, A160-A161** (Ans. ¶¶ 174, 207, 243, and 265). The evidence showed that he similarly was incompetent in his representation of the Shanleys in their bankruptcy in that in their case, too, Respondent did not file required documentation with the court and his actions/failure to act resulted in the Shanley's bankruptcy petition being dismissed without a discharge of their debts.

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.3 IN THAT RESPONDENT FAILED TO ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING HIS CLIENTS (McCLANAHAN, RUSH, JONES, VEACH, JOHNSTON, SHANLEY).

Missouri Rule of Professional Conduct 4-1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." In *In re Crews*, 159 S.W.3d 355, 359 (Mo. banc 2005), Crews was found to have violated Rule 4-1.3 by failing to adequately investigate the plaintiffs' claim, failing to diligently pursue the plaintiffs' claim, failing to respond to the summary judgment motion, and failing to prepare an acceptable appellate brief. Respondent Nichols violated Rule 4-1.3 by not interviewing the witnesses identified by Jamie McClanahan in her property dispute litigation, by not obtaining a survey, and by not preparing for trial. Respondent admits violating Rule 4-1.3 in his representation of Ms. McClanahan. **App. A145** (Ans. ¶ 48).

Respondent also violated Rule 4-1.3 by not acting with diligence while representing Jeremy Rush, Jackie and Larry Jones, Vaughn and Rebecca Veach, Wendy and Jason Johnston, and Mark and Cindy Shanley in their bankruptcy proceedings in that he did not file required documentation with the court and his actions/failure to act resulted in their bankruptcy petitions being dismissed without a discharge of their debts.

Respondent admits violating Rule 4-1.3 in his representation of Rush, the Jones, the Veaches, and the Johnstons. **App. A154-A155, A157, A159, A160-A161** (Ans. ¶¶ 174, 207, 243, 265). The evidence showed that he also failed to act with diligence while representing the Shanleys in that with regard to their bankruptcy petition, he did not file required documentation with the court and his actions/failure to act resulted in the Shanley's bankruptcy petition being dismissed without a discharge of their debts.

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.4(a) IN THAT RESPONDENT FAILED TO KEEP HIS CLIENTS (McCLANAHAN, ALLEN, RUSH, JONES, VEACH, JOHNSTON, SHANLEY) REASONABLY INFORMED AND TO RESPOND TO HIS CLIENTS' REQUESTS FOR INFORMATION.

Missouri Rule of Professional Conduct 4-1.4(a) requires a lawyer to (1) "keep the client reasonably informed about the status of the matter;" and (2) "promptly comply with reasonable requests for information." In *In re Ehler*, 319 S.W.3d 442, 449 (Mo. banc 2010), this Court found Ehler violated Rule 4-1.4 by repeatedly failing to respond to her clients' requests for information. Respondent violated Rule 4-1.4(a) by failing to respond to Jamie McClanahan's calls and emails and by failing to keep her informed of motions filed and court hearing and rulings. Respondent also did not tell Ms. McClanahan that she had a right to a jury trial and, instead, waived it without consulting her. Respondent admits this violation. **App. A145** (Ans. ¶ 48).

Respondent violated Rule 4-4.1(a) by not returning Mark Allen's calls or responding to his correspondence. Respondent admits this violation. **App. A152** (Ans. ¶ 139).

Respondent violated Rule 4-1.4(a) by failing to return Mr. Rush's, the Jones', the Veaches', the Johnstons, and the Shanley's calls, by failing to notify them of Court

actions, by failing to respond to their requests for information, and by failing to keep them apprised of the status of their bankruptcy proceedings. Respondent admits this violation as to Rush, the Jones, the Veaches, and the Johnstons. **App. A154-A155, A157, A159, A160-A161** (Ans. ¶¶ 174, 207, 243, 265). The evidence showed that Respondent similarly violated Rule 4-1.4(a) by failing to return the Shanleys' calls, by failing to notify them of Court actions, and by failing to keep them apprised of the status of their bankruptcy.

IV.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.6 IN THAT RESPONDENT FAILED TO KEEP INFORMATION HE OBTAINED FROM HIS CLIENT (WOODY) CONFIDENTIAL.

Missouri Rule of Professional Conduct 4-1.6 provides that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent. Respondent represented both Ms. Woody and the man accused of assaulting her, Roland Johnson, although in separate matters. Additionally, Ms. Woody advanced monies to pay for Mr. Johnson's defense to the assault charge. Respondent violated Rule 4-1.6 by disclosing to Roland Johnson information Ms. Woody had given Respondent regarding his representation of her in matters against Mr. Johnson's father and sister. Mr. Johnson asked Respondent to tell Ms. Woody to drop the case she had filed against his sister.

Respondent spoke to Ms. Woody about the assault and she told him Mr. Johnson had assaulted her. Respondent did not inform Ms. Woody that anything she told him might be used against her in court. Respondent used information Ms. Woody told him about the assault when Respondent cross-examined Ms. Woody during Mr. Johnson's preliminary hearing on the assault charge. While cross-examining her regarding her assault by Mr. Johnson, Respondent questioned Ms. Woody's truthfulness.

V.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.7 IN THAT RESPONDENT REPRESENTED BOTH THE ACCUSED AND THE VICTIM (WOODY).

Missouri Rule of Professional Conduct 4-1.7 provides that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest and that conflict is not consentable. If the concurrent conflict is consentable, the clients must give informed consent, confirmed in writing, to the representation. On February 6, 2012, Roland Johnson assaulted Nancy Woody. At the time of the assault, Ms. Johnson and Ms. Woody were in a relationship. Mr. Johnson was arrested and charged. Ms. Woody retained, and paid, Respondent Nichols to represent Mr. Johnson on or about February 8, 2012. Ms. Woody met with Respondent, told him that Mr. Johnson had, in fact, assaulted her, and described to Respondent her assault by Mr. Johnson.

Shortly thereafter, Ms. Woody asked Respondent to represent her in four adult abuse/stalking matters that she had filed on February 10, 2012 and that had been filed against her, and in her efforts to obtain the return of certain property. The adult abuse matters were filed by and filed against Mr. Johnson's father and sister. The property that Ms. Woody hired Respondent to recover was being held by Mr. Johnson's father and sister. Respondent agreed to represent Ms. Woody.

Respondent did not discuss any possible conflict of interest with Ms. Woody. Respondent did not ask Ms. Woody to consent to him representing both Ms. Woody and Mr. Johnson while Respondent was representing Mr. Johnson against charges for assaulting Ms. Woody. Respondent did not inform Ms. Woody that everything she told him would be passed on to Mr. Johnson. To the contrary, Respondent told Ms. Woody he would have no contact with Mr. Johnson until he was released from jail on his parole violation in October 2012.

Respondent talked to Mr. Johnson about the adult abuse matters on file between Ms. Woody and Mr. Johnson's sister and father. Mr. Johnson asked Respondent to tell Ms. Woody to drop the case she had filed against his sister. Eventually, all parties dismissed the adult abuse petitions on or about March 21, 2012.

Ms. Woody's relationship with Mr. Johnson ended and, in April 2012, she informed Respondent Nichols that she no longer wished to pay for Mr. Johnson's defense. She asked for a refund of the unearned fees she had advanced. Respondent refused to refund the money. He continued to represent Mr. Johnson.

In *State ex rel. Horn v. Ray*, 325 S.W.3d 500 (Mo.App. 2010), the Missouri Court of Appeals analyzed whether a conflict was consentable where the lawyer sought to represent both the defendant and the alleged victim in the State's prosecution of that defendant for second-degree domestic assault. In *Horn*, the alleged victim was the defendant's wife. The lawyer obtained affidavits executed by the clients purporting to waive "any conflict of interest" and asserting that neither client would testify at the trial.

The county prosecutor moved to disqualify the lawyer. When the trial court denied the motion to disqualify, the prosecutor petitioned the court of appeals for a writ of prohibition. *Id*. at 504.

The court of appeals in *Horn* found that a concurrent conflict of interest existed under either Rule 4-1.7(a)(1) or (2), *i.e*., that the clients' interests were directly adverse and that there was a significant risk that the representation of one client interest would materially compromise counsel's responsibilities to the other client. *Id*. at 506. The court found that the lawyer could not reasonably believe that he would be able to provide competent and diligent representation to both the defendant and alleged victim in the criminal prosecution.

> Counsel's duty of loyalty to the defendant … prevents counsel from fairly presenting to the victim all possible courses of action because some of those options – most notably testifying against the defendant – would be detrimental to the defendant. Counsel's duty of loyalty to the defendant thus plainly forecloses alternatives that otherwise might be recommended to the victim. … Likewise, counsel's duty of loyalty to the victim prevents counsel from fairly presenting to the defendant all possible courses of action because some of those options – such as testifying that the victim lied about events leading to the instant charges or claiming self-defense – would be detrimental to the victim. Thus, counsel's duty of loyalty

> to the victim forecloses alternatives that would otherwise be available to the defendant….

Id. at 508. "In our circumstances, counsel's duty of loyalty to one client naturally compromises his duty of loyalty to the other." *Id.*

The representation at issue in *Horn* is similar to Respondent's representation of Mr. Johnson and Ms. Woody – both involved the attorney representing both a defendant charged with a crime and the victim of that crime. Further, the accused and the victim were in a relationship. *Horn* differs from Respondent's representation, however, because the attorney's representation in *Horn* was within the same case, *i.e.*, the attorney was attempting to represent the victim and the accused within the single criminal case filed against the accused. Respondent's representation also was of a victim and an accused, but he was representing the accused, Mr. Johnson, in the assault action and the victim, Ms. Woody, in separate actions against Mr. Johnson's sister and father.

In *Okeani v. Superior Court of Maricopa County*, 871 P.2d 727 (Ariz. App. 1993), the accused and the victim were both represented by the public defenders' office, but in separate, unrelated matters. In *Okeani*, counsel sought to withdraw from the accused's representation based on the conflict. The court found that a concurrent conflict existed and that counsel for the accused should have been allowed to withdraw.

> The Public Defender's representation of defendant would have been "directly adverse" to its representation of the alleged victim. [The lawyer] was bound to zealously represent his client, [citation

> omitted], including impeachment of a victim witness. Yet because the victim was also a client of the Public Defender's Office, fulfilling the duty to defendant would have adversely affected another client of the same office. Conversely, protecting the victim from impeachment would have injured the defendant. This is clearly a conflict of interest from which the trial court was required to relieve counsel by permitting withdrawal.

Id. at 728.[2]

In this case, a concurrent conflict existed pursuant to Rule 4-1.7(a). Respondent testified that he saw "the potential for" a conflict of interest, but he did not discuss any potential conflict with Ms. Woody. As in *Okeani*, Respondent was bound to zealously represent his clients and that representation would necessarily pit one client against the

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[2] The Court of Appeals distinguished *Okeani* and *Horn* in *Frazier v. State*, 431 S.W.3d 486 (Mo.App. 2014), but did so based on the posture of the case. In *Frazier*, the movant was seeking post-conviction relief based on his representation by the Public Defender's office while that office also represented his alleged victim in an unrelated case. "Because Movant advised the trial court of the alleged conflict of interest following his trial and conviction, we presume prejudice 'only if the movant proves that counsel actively represented conflicting interests and that an actual conflict adversely affected counsel's performance.'" *Id*. at 491, quoting *Hickey v. State*, 328 S.W.3d 225, 228 (Mo.App. 2010).

other. In fact, Respondent did cross-examine Ms. Woody while representing Mr. Johnson against the criminal charge. Additionally, Respondent told Ms. Woody that Mr. Johnson wanted her to dismiss one of the adult abuse cases in which Respondent was representing her. Respondent's representation of Mr. Johnson was directly adverse to Ms. Woody per Rule 4-1.7(a). Additionally, or alternatively, there was a significant risk that Respondent's representation of Ms. Woody would be materially limited by his representation of Mr. Johnson, and *vice versa*.

Since Respondent did not even discuss any potential conflict of interest with Ms. Woody, we don't reach the analysis under Rule 4-1.7(b) as to whether Respondent's clients could have validly consented to the conflict.[3]

The situation was replete with red flags: Ms. Woody, the victim, advanced money to Respondent to pay for Mr. Johnson's defense; Respondent represented Ms. Woody in

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[3] Rule 4-1.7(b)(1) specifies an objective test as to whether the lawyer "reasonably believes" he can provide competent and diligent representation to both clients. Rule 4-1.0(h) provides: "'Reasonable' or 'reasonably' when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer." One commentator succinctly explained: "Unless each client has the same opportunity to achieve a good result with the 'conflicted' lawyer as she would with an independent lawyer, the lawyer cannot represent both clients." W. Bradley Wendel, Professional Responsibility: Examples & Explanations 296 (2d ed. 2007).

unrelated cases, but they were against Mr. Johnson's immediate family members; Mr. Johnson asked Respondent to tell Ms. Woody to dismiss her case against his sister; Respondent refused to refund Ms. Woody unearned fees she had advanced; Respondent cross-examined Ms. Woody with regard to her assault by Roland Johnson after having represented her, after Respondent had refused to refund the money she paid him, and after she had filed a complaint against Respondent with Informant. Respondent violated Rule 4-1.7 by representing Ms. Woody, the victim, and Roland Johnson, the defendant/person accused of assaulting Ms. Woody at the same time.

VI.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT FAILED TO TAKE REASONABLE STEPS TO PROTECT HIS CLIENT'S INTERESTS IN VIOLATION OF RULE 4-1.16(d) IN THAT HE DID NOT RETURN CLIENT FILES (McCLANAHAN, ALLEN), HE DID NOT TIMELY REFUND UNEARNED FEES (BOLDT, WOODY), HE DID NOT PROVIDE HIS CLIENT WITH A COPY OF THE TRIAL COURT JUDGMENT (McCLANAHAN), AND HE DID NOT PRESERVE HIS CLIENT'S RIGHT TO APPEAL (McCLANAHAN).

Missouri Rule of Professional Conduct 4-1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including surrendering papers and property and refunding any advance payment of fee or expense that has not been earned or incurred. Respondent violated Rule 4-1.16(d) when he failed to send Jamie McClanahan's file to another attorney she was consulting regarding an appeal. Both Ms. McClanahan and her new counsel attempted to retrieve the file. Respondent admits this violation. **App. A145 (Ans. ¶ 48).**

After trial but before the judgment was entered, Respondent prepared a letter to Ms. McClanahan wherein he purported to terminate his representation of her. The letter, however, was misaddressed and Ms. McClanahan never received it. While Respondent

believed he had terminated the representation, he did not fulfill his obligations under Rule 4-1.16(d). Respondent did not make any efforts to protect her interests and violated Rule 4-1.16(d) when he failed to send Ms. McClanahan the written judgment entered by the court and failed to file a notice of appeal after the judgment when she had clearly told him she wished to appeal. Instead, he failed to return her calls, and didn't send her file to the subsequent attorney who had agreed to review it for a possible appeal. Respondent admits this violation. **App. A145** (Ans. ¶ 48). In *In re Coleman*, 295 S.W.3d 857, 866-67 (Mo. banc 2009), this Court found that Coleman had violated Rule 4-1.16 when he "fail[ed] to take all reasonable steps to mitigate the consequence of his withdrawal…, and to protect her interests by providing her with the information she requested." Respondent similarly failed to protect Ms. McClanahan in violation of Rule 4-1.16(d).

Respondent also violated Rule 4-1.16(d) when he failed to timely refund the unearned fees Mr. Boldt and Ms. Woody had advanced. Respondent admits these violations. **App. A145-A146, A148-A149** (Ans. ¶¶ 73, 107). In *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003), this Court found that Donaho violated Rule 4-1.16(d) when he failed to refund the advance fee upon termination of the representation.

Respondent violated Rule 4-1.16(d) when he failed to forward Mr. Allen's file to Mr. Allen's new attorney and when he failed to release Mr. Allen's file to Brian Allen while he had Mark Allen's power of attorney and to Karla Allen Meredith when she had Mark Allen's power of attorney. Respondent also violated Rule 4-1.16(d) by requiring

Mr. Allen to provide a written, notarized authorization to Respondent to release his file when he had adequate verbal authorization from Mr. Allen.

VII.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-1.22 IN THAT HE DID NOT SECURELY STORE HIS CLIENT'S FILE (ALLEN) FOR TEN YEARS AFTER TERMINATION OF THE REPRESENTATION.

Missouri Rule of Professional Conduct 4-1.22 provides that a lawyer "shall securely store a client's file for 10 years after completion or termination of the representation." Respondent violated Rule 4-1.22 because he failed to securely store Mr. Allen's file in that he admits that he placed certain of the file documents on a hard drive and he has been unable to retrieve them.

Respondent argues that he did not violate this rule because he provided a copy of Mr. Allen's file to Karla Meredith. Ms. Meredith testified at trial that, despite requesting the file numerous times, Respondent never provided it to her. Rather, he gave her the run around – he told her he needed an authorization despite having a copy of the power of attorney, then he told her he had sent it to Mr. Allen's new attorney, Dan Ross (and he told Dan Ross's assistant that he had mailed it to Dan Ross's office). Respondent never produced the entire file to anyone on behalf of Mr. Allen. To date, upon information and belief, Mr. Allen has not been provided his file by Respondent, and Respondent claims to be unable to retrieve it from his hard drive where he testified he put it because of threats from Anonymous.

VIII.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-4.1 IN THAT HE MADE FALSE STATEMENTS OF MATERIAL FACT TO THIRD PERSONS (ALLEN).

Missouri Rule of Professional Conduct 4-4.1 provides that a lawyer, in the course of representing a client shall not knowingly make a false statement of material fact to a third person. In *In re Krigel*, 480 S.W.3d 294, 300 (Mo. banc 2016), this Court found that Krigel violated Rule 4-4.1 when he told the attorney for the birth father that the child would not be adopted without the consent of the father and then did not give the birth father notice of the child's birth or of the termination of parental rights hearing. Respondent violated Rule 4-4.1 when he falsely told Heather Dillman that he would send Mark Allen's file to Dan Ross the next week, and when he told Karla Meredith that he had sent Mr. Allen's file to Dan Ross. Respondent does not dispute the testimony of Heather Dillman. **App. A152** (Ans. ¶ 139).

IX.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-8.1(a) AND 4-8.1(c) IN THAT, IN CONNECTION WITH A DISCIPLINARY MATTER, RESPONDENT KNOWINGLY MADE FALSE STATEMENTS OF MATERIAL FACT (McCLANAHAN, BOLDT, WOODY, ALLEN, RUSH) AND KNOWINGLY FAILED TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF DISCIPLINARY INVESTIGATIONS (McCLANAHAN, BOLDT, WOODY, ALLEN, RUSH, JONES, VEACH, JOHNSTON, SHANLEY).

In *In re Farris*, 472, S.W.3d 549, 558-59 (Mo. banc 2015), this Court found that Farris violated Rule 4-8.1 by providing tardy and incomplete responses and by lying to the OCDC. Missouri Rule of Professional Conduct 4-8.1(a) provides that a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact. Respondent violated Rule 4-8.1(a) when he stated he would deliver responses to Informant's inquiries on dates certain and then didn't, and when he testified that he had mailed a response to Ms. McClanahan's June 6, 2013 correspondence to Informant on June 17, 2013. Respondent admits this violation. **App. A145** (Ans. ¶ 48).

Respondent violated Rule 4-8.1(a) when he stated he would deliver responses to Informant's inquiries re Terry Boldt's and Nancy Woody's complaint on dates certain and then didn't. Respondent admits these violations. **App. A145-A146, A148-A149** (Ans. ¶¶ 73, 107).

Respondent violated Rule 4-8.1(a) when he testified that he had given Mark Allen's file to Karla Allen Meredith, and when he stated he would deliver responses to OCDC's inquiries/requests for information by a date certain and then didn't. Respondent admits the violation as to his failure to respond to OCDC. **App. A152** (Ans. ¶ 139).

Respondent violated Rule 4-8.1(a) when he stated he would deliver a response to OCDC's lawful demand for information regarding his representation of Jeremy Rush and then didn't. Respondent admits this violation. **App. A154-A155** (Ans. ¶ 174).

Missouri Rule of Professional Conduct 4-8.1(c) provides that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from [a] disciplinary authority. Respondent violated Rule 4-8.1(c) when he repeatedly failed to respond to OCDC's requests for information regarding Ms. McClanahan's, Mr. Boldt's, Ms. Woody's, Mr. Allen's, and Mr. Rush's complaint. In fact, Respondent never responded in writing to Mr. Allen's or Mr. Rush's complaints. Respondent admits these violations. **App. A145, A145-A146, A148-A149, A152** (Ans. ¶ 48, 73, 107, 139).

Respondent violated Rule 4-8.1(c) when he failed to timely respond to OCDC's requests for information regarding his representation of the Jones, the Veaches, the Johnstons, and the Shanleys. He eventually did provide written responses.

X.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE HE VIOLATED RULE 4-8.4(c) IN THAT RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION DURING THE REPRESENTATION OF HIS CLIENTS (WOODY, ALLEN).

Missouri Rule of Professional Conduct 4-8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit and/or misrepresentation. Nancy Woody filed a fee dispute with the Missouri Fee Dispute Program and Respondent agreed to participate and to be bound by the decision of the arbitrator. Respondent violated Rule 4-8.4(c) when he failed to comply with the decision of the arbitrator in the Missouri Fee Dispute Program after he agreed to be bound by the arbitrator's decision. Respondent admits this violation. **App. A148-A149** (Ans. ¶ 107).

Respondent also violated Rule 8.4(c) by engaging in conduct involving dishonesty, deceit, or misrepresentation with regard to Mark Allen's attempts to recover his file. Respondent falsely claimed that he didn't receive an authorization to release Mark Allen's file. He falsely claimed to have given Mark Allen's file to Karla Meredith. He falsely told Karla Allen Meredith that he had sent Mark Allen's file to Dan Ross. He falsely stated to Heather Dillman that he would send the file to Dan Ross. In *In re Crews*, 159 S.W.3d at 358-60, this Court found Crews violated Rule 4-8.4(c) where he gave

"multiple and differing explanations" to the disciplinary hearing panel, his client, the court, and the OCDC as to why he didn't defend against a summary judgment motion. Similarly, Respondent in this case gave multiple and false explanations to different people as to why he wouldn't provide Mr. Allen's files in response to proper requests.

XI.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE TO PRACTICE LAW WITH NO LEAVE TO REAPPLY FOR TWO YEARS BECAUSE RESPONDENT KNOWINGLY VIOLATED MULTIPLE RULES OF PROFESSIONAL CONDUCT MULTIPLE TIMES, INCLUDING OBLIGATIONS HE OWED HIS CLIENTS, AND CAUSED AN INJURY OR POTENTIAL INJURY.

In determining the appropriate sanction for attorney misconduct, this Court historically has relied on several sources. First and foremost, the Court applies its own standards to maintain consistency and fairness and, ultimately, to accomplish the overriding goal of protecting the public and maintaining the integrity of the legal profession. *In re Kazanas*, 96 S.W.3d 803, 807 (Mo. banc 2003). When determining an appropriate sanction, the Court's opinions in attorney discipline cases are always the first source for analysis.

The Court also looks to the ABA Standards for Imposing Lawyer Sanctions (1986 Ed., as amended 1992) (hereinafter "ABA Standards") for guidance when imposing discipline, but considers the Standards advisory. See *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010). The Court also considers aggravating and mitigation circumstances. *Kazanas*, 96 S.W.3d 808.

The Court also considers as advisory the Disciplinary Hearing Panel's findings of fact, conclusions of law, and recommendation of sanction. *Ehler*, 319 S.W.3d 448. In

this instance, the Panel recommended an indefinite suspension with no leave to reapply for six months. **App. A77.** Pursuant to Missouri case law and the ABA Standards, a suspension of Respondent's license is warranted.

The prior opinions of this Court in attorney discipline cases support suspension in this case. In *In re Crews*, 159 S.W.3d 355, 359 (Mo. banc 2005), the Respondent was found to have violated his duties of competence, diligence, and communication. He also failed to memorialize a contingency fee agreement in writing and he engaged in dishonest, fraudulent or deceitful conduct. *Id*. at 359-60. "Respondent's actions demonstrate a pattern of neglect with prosecuting Plaintiffs' cases that resulted in a potential injury to his clients and the legal profession." *Id.* at 361. This Court suspended Crews' license to practice law indefinitely with leave to apply for reinstatement in one (1) year. *Id*.

With respect to Respondent's repeated failure to cooperate with disciplinary counsel, this Court has stated that "[w]e depend on our bar committees to investigate allegations of unethical conduct. .[.] and [w]e expect members of the bar to cooperate promptly and candidly with bar committees." *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003), quoting *In re Forge,* 747 S.W.2d 141, 145-46 (Mo. banc 1988). "Respondent's lack of veracity with respect to any part of the proceeding necessarily taints his credibility with respect to the entire proceeding. *In re Waldron*, 790 S.W.2d 456, 461 (Mo. banc 1990). In *Waldron,* the Court found that the respondent had made false statements of material fact or law to the Master appointed to hear the disciplinary

proceeding. "[H]e has caused a potentially adverse effect on the disciplinary proceeding. In this regard respondent violates the most fundamental duty of an officer of the court." *Id*. Waldron was suspended for six (6) months. *Id*. at 461-62.

In *In re Tessler*, 783 S.W.2d 906, 910 (Mo. banc 1990), the Court noted that it was "particularly persuaded … by the pattern of respondent's failure to cooperate with the work of the investigating committee." Tessler allowed his client's statute of limitations to run, failed to pay out client funds, neglected legal matters entrusted to him, and failed to cooperate with the bar committee investigating the four complaints against him. *Id*. at 908-10. Considering Tessler's emotional and mental state as mitigating factors, the Court suspended Tessler's license indefinitely with leave to apply for reinstatement at the end of six (6) months. *Id*. "[F]or although respondent is not manifestly unfit to practice law, the gravity and number of the complaints proven against him suggest he should be removed from the bar for a limited time." *Id*.

Respondent's conduct clearly shows there is a great concern about his fitness to practice. In violation of Rules 4-4.1, 4–8.4(c), Respondent was dishonest with Karla Meredith and with Heather Dillman with regard to their efforts to get Respondent's former client Mark Allen's file. Mr. Allen's new attorney, Dan Ross, is pursuing a Rule 24.035 motion on Mr. Allen's behalf. Ms. Meredith and Ms. Dillman were acting on Mark Allen's behalf in his efforts to get his file Mr. Ross.

"Questions of honesty go to the heart of fitness to practice law." *In re Disney*, 922 S.W.2d 12, 15 (Mo. banc 1996). "Misconduct involving subterfuge, failing to keep

promises, and untrustworthiness undermine public confidence in not only the individual but in the bar." *Id.* In *Disney*, the respondent was "suspended with leave to reapply in six months" for violating Rule 4-8.4(c) after it was found that he had used a trust to shield assets from his ex-wife and he "proved untrustworthy" with regard to promises made in connection with a loan he took from a former client. *Id.*

The ABA Standards also support an indefinite suspension in this case. The ABA Standards provide a standard for the violation of a particular rule. Section II of the ABA Standards states in part:

> The Standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it may well be and generally should be greater than the sanction for the most serious violation.

In this case, the evidence shows that the Respondent has violated multiple Rules multiple times. ABA Standard 3.0 provides:

> In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:
>
> (A) the duty violated;
>
> (b) the lawyer's mental state; and

(c) the actual or potential injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating factors.

The duty violated. Under Section II, The Theoretical Framework, the ABA Standards provide that the most important ethical duties are those obligations that an attorney owes the client. Respondent violated multiple ethical duties to his clients: competence, diligence, communication, confidentiality, right to a conflict-of-interest-free representation, returning client files, and refunding client money. Respondent also engaged in dishonesty with respect to Mark Allen's attempts to get his file from Respondent.

ABA Standard 4.42 regarding "Lack of Diligence" provides:

Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

As detailed above, Respondent failed to diligently act for his clients despite their repeated calls and other communications to him and despite repeated warnings from the bankruptcy court regarding his failings.

Respondent's violation of Rules 4-4.1 and 4–8.4(c) also warrants suspension of his license. ABA Standard 4.62 regarding "Lack of Candor" provides: "Suspension is

generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client." ABA Standard 5.11 entitled "Failure to maintain personal integrity" provides:

> Disbarment is generally appropriate when:
>
> a) A lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
>
> b) A lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

ABA Standard 5.12 states:

> Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects in the lawyer's fitness to practice.

The ABA Sanctions draw a distinction between a lawyer's dishonesty toward his client (ABA Standard 4.6) and dishonesty toward others (ABA Standard 5.1). The application of either Standard finds suspension the appropriate sanction of Respondent's license.

Respondent's license also should be suspended because of his failure to cooperate with disciplinary counsel and his false statements made to disciplinary counsel and during disciplinary proceedings in violation of Rules 4-8.1(a) and (c). Section 7.0 of the ABA Standards addresses "Violations of Other Duties Owed as a Professional." ABA Standard 7.2 provides: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

Respondent's mental state. The ABA Standards define the mental states used in the Standards as follows:

> The most culpable mental state is of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct but without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

ABA Standards, Sec. II. Respondent repeatedly failed to communicate and to diligently represent his clients. Respondent repeatedly failed to respond to disciplinary counsel. Respondent repeatedly failed to do what he told disciplinary counsel he would do. He failed to return client money after the clients requested the refund. He failed to comply with a binding arbitration order. He refused to return client files to clients who requested them and who needed those files for subsequent legal proceedings. Respondent's misconduct was knowing. The Disciplinary Hearing Panel found that Respondent's conduct in violation of the Rules was knowing. **App. A71 (DHP Decision p. 69).**

Injury or potential injury caused by Respondent's misconduct. Respondent's clients were injured by his violations. The bankruptcy clients had their bankruptcy petitions dismissed without a discharge of their debts. The Veaches, Shanleys, Johnstons, and Jeremy Rush started receiving calls from creditors thereafter. Respondent has not refunded the Veaches' money and they had to pay another attorney to represent them. The Jones didn't find out their case had been dismissed without a discharge of their debts until they were contacted by disciplinary counsel and they paid exorbitant interest on a loan they took out to pay Respondent's fee. Mr. Boldt and Ms. Woody were denied the use of their money when Respondent refused to refund the unearned fees he had been paid. Ms. McClanahan, at the least, lost her right to a jury trial and appeal, and at the most lost her case and the value/use of her property because Respondent didn't adequately prepare for trial. Mr. Allen still doesn't have his full file for his use in his

Rule 24.035 post-conviction relief proceeding and Respondent testified that part of Mr. Allen's file is lost because he can't retrieve it from his hard drive.

Aggravating and mitigating factors. Certain aggravating and mitigating factor are applicable in this case. "Aggravation or aggravating circumstances are any considerations, or factors that may justify an increase in the degree of discipline to be imposed." ABA Standard 9.21. In the case at bar, aggravating factors in Respondent's case include a pattern of misconduct (ABA Standard 9.22(c)); multiple offenses (ABA Standard 9.22(d)); bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (ABA Standard 9.22(e)); submission of false evidence, false statements, or other deceptive practices during the disciplinary process (ABA Standard 9.22(f)); and the vulnerability of the victims (ABA Standard 9.22(h)).

"Mitigation or mitigating circumstances are any consideration or factors that may justify a reduction in the degree of discipline to be imposed." ABA Standard 9.31. Mitigating factors include Respondent's absence of a prior disciplinary record (ABA Standard 9.32(a)), and personal or emotional problems (ABA Standard 9.32(c)). Respondent expressed remorse during the disciplinary hearing (ABA Standard 9.32(l)).

Respondent also has pled and adduced evidence, pursuant to Rule 5.285, that he has a mental disorder and that such mental disorder should be considered as a mitigating factor in determining the appropriate discipline. Informant does not believe

Respondent's mitigation claim is cognizable under the requirements of Rule 5.285. The rule provides, in part:

> (f) The following two factors must be established by any person raising a mitigation claim … before the Court will give consideration to the claim:
>
> 1) The ability to manage the mental disorder for a meaningful and sustained period of successful functioning; and
>
> 2) Recurrence of the misconduct is unlikely.

Rule 5.285(f).

Respondent's IME. Respondent was examined by Debra Doxsee, PhD on March 19, 2016. In her report following Respondent's independent mental health examination, Dr. Doxsee acknowledged that Respondent "is still impacted by symptoms." The record reflects that Respondent has yet to demonstrate that he can manage his mental disorder at all, much less for a meaningful and sustained period of successful functioning. He has not demonstrated that he can even make himself obtain the care he needs. To the contrary, in this case, he delayed submitting to an independent mental health examination, and, despite being advised by Anne Chambers as early as December 2015 to see a psychiatrist (and being advised again by Dr. Doxsee on March 19, 2015), he still had not seen one as of the second day of the hearing in this matter, May 17, 2016.

Dr. Doxsee opined that:

> The respondent has the ability to manage the mental disorder for a meaningful and sustained period of successful functioning. However, he has yet to have the opportunity to obtain appropriate treatment for his particular mental health concern. Treatment will not cure this disorder. The disorder does have a tendency to wax and wane over its course in an individual's life. However, with proper pharmacological treatment and periodic returns for psychological treatment, the degree of impairment evidenced to date suggests that the disorder will be responsive to treatment and ongoing management. The question will be whether the respondent can accept the diagnosis of this disorder and whether or not he will then choose to properly manage it.

She further opined: "If the respondent exercises his ability to manage the mental disorder then the misconduct is unlikely to recur."

With respect to Respondent's prognosis, she wrote:

> The respondent has only had complete identification of his mental health concerns over the last few months. And, as yet, he has not had psychopharmacologic treatment of his mental health concerns and only recently embarked on treatment through non-pharmacologic methods – cognitive behavioral therapy. In general terms, this is considered a treatable condition though

> also considered a chronic mental health concern. This is not a condition for which there is a cure, per se. Rather, an individual can learn ways to manage the disorder and safe guard against, and more clearly identify, exacerbation of symptoms."

Because Respondent hadn't seen a psychiatrist, he also had not obtained pharmacological assistance he had been told he would need and, indeed, which he acknowledged needing and the prospect of which he relied in his mitigation claim.

Further, although he testified that he would take all medication as prescribed, as of this time, it is hard to have confidence in Respondent in that regard. As of the date of the hearing, he was taking prescribed medication when he thought he needed it, as opposed to following the doctor's order. Respondent testified that he had stopped taking medication as prescribed in the past because he didn't like being dependent on it.

Respondent's delay in seeking care has delayed his ability to "establish" that he has recovered and can practice law without injuring the public. Dr. Doxsee opines that Respondent has the ability to do so, but she also notes that he has yet to do so. In *In re Belz*, 258 S.W.3d 38, 44 (Mo. banc 2008), quoting ABA Sanctions Standard 9.32(l)(3), which pre-dates Rule 5.285, the Court referenced the respondent's "recovery" when considering the mental disorder mitigating factor. Informant submits that Respondent simply has not yet "established" that he has the ability to manage his disorder and that recurrence of the misconduct is unlikely. The Disciplinary Hearing Panel found that

Respondent failed "to establish the two factors mandated by 5.285(f)." **App. A75-A76** (DHP Decision pp. 73 – 74).

Respondent's request to re-open the evidence. On November 18, 2016, six months (6) after the hearing and one (1) month after the Disciplinary Hearing Panel's decision, Respondent filed with the Advisory Committee Respondent's Motion for Reconsideration of Findings of Fact, Conclusions of Law, and Recommendation of Sanctions and To Reopen Hearing for Submission of Post-Hearing Evidence of Psychiatric and Psychological Management and Prognosis, and in the Alternative, Respondent's Rejection of the Panel's Findings of Fact, Conclusions of Law and Recommendation of Sanctions Pursuant to Rule 5.19(a). **Rec. Vol. 3, p. 505** (hereinafter "Motion for Reconsideration"). In Respondent's Motion for Reconsideration, he sought to have the Disciplinary Hearing Panel reopen the evidence to receive additional and new evidence regarding Respondent's mental health. Respondent attached to his motion letters from Christine A. Trueblood, M.D., and Stanley R. Bier PhD, and proposed Conditions of Probation. **Rec. Vol. 3, pp. 510, 513, 515.** On November 22, 2016, Informant filed a memorandum in opposition to Respondent's Motion for Reconsideration. **Rec. Vol. 3, p. 523.**

The Hearing regarding this matter was held on March 21, 2016, and May 17, 2016. At the conclusion of the hearing on May 17, 2016, counsel for Respondent requested that the evidence be held open for the submission of a report by and for the live

testimony of Dr. Trueblood. The Disciplinary Hearing Panel denied Respondent's request. **Rec. Vol. 13, pp. 1036-39** (Tr. 476 – 478).

After the hearing concluded, Respondent did not communicate with Informant or, to counsel for Informant's knowledge, with the Disciplinary Hearing Panel regarding his treatment efforts. Respondent proffered no grounds excusing the untimeliness of his request or justifying this Panel's reconsideration of its decision or the reopening of the hearing evidence. He merely submitted that he finally had sought psychiatric treatment and that he now, allegedly, can manage his mental health condition. Respondent did not provide Informant with Dr. Trueblood's records or with additional records from Dr. Bier. The additional treatment Respondent received from Dr. Bier and Dr. Trueblood was not considered by Dr. Doxsee during her independent examination of Respondent or her report regarding Respondent's health. Respondent's additional evidence and efforts were too late in relation to this proceeding. Informant respectfully suggests that evidence regarding Respondent's recent efforts could be submitted in conjunction with a reinstatement application.

The Disciplinary Hearing Panel did not rule on Respondent's Motion for Reconsideration and Informant proceeded with the briefing schedule that follows a party's rejection of the panel recommendation.

Respondent is not eligible for probation. It is Informant's belief that Respondent is not eligible for probation. Rule 5.225(a)(2) provides:

> A lawyer is eligible for probation if he or she is:

(a) unlikely to harm the public during the period of probation and can be adequately supervised,

(b) is able to perform legal services and able to practice law without causing the courts or profession to fall into disrepute; and

(c) has not committed acts warranting disbarment.

Based on its experience with Respondent, Informant does not believe that, at this time, Respondent can be adequately supervised such that harm or potential harm to the public can be early detected and prevented or cured. Respondent repeatedly refused to respond to lawful requests by disciplinary counsel for information. He failed to timely respond to discovery requests. Even after the Presiding Officer ordered him to respond to Informant's discovery requests, he didn't do so until Informant's counsel again wrote him. He delayed seeking psychological treatment and psychiatric treatment. The record does not reflect that Respondent has obtained the care he admits he needs to ensure that he can better address the stressors which have prevented him from diligently representing his clients, effectively managing his law office practice, and timely complying with court orders and deadlines. Informant is not confident that Respondent would respond to requests made by a probation monitor and/or a mentor. The Disciplinary Hearing Panel also found that Respondent is not eligible for probation. **App. A76-A77** (DHP Decision pp. 74-75).

Informant believes that given the nature of Respondent's misconduct, his level of intent attendant to that misconduct, and his failure to seek and obtain care for his mental health issues, Respondent does not meet the requirements of Rule 5.225, and does not believe that probation is appropriate at this time.

During the proceeding before the Disciplinary Hearing Panel, Informant requested that Respondent be indefinitely suspended with no leave to apply for reinstatement for two (2) years. **Rec. Vol. 2, p. 421** (Informant's Proposed Findings of Fact, Conclusions of Law, and Recommendation of Sanction). The Disciplinary Hearing Panel recommended that Respondent be suspended indefinitely with no leave to apply for reinstatement for six (6) months. **App. 75** (DHP Decision). Informant accepted that recommendation because it included the indefinite suspension Informant requested and the Respondent would be subject to a rigorous reinstatement process upon his application for reinstatement. Informant believed that the six (6) month period during which Respondent could not apply for reinstatement was within an acceptable range. Informant continues to believe, however, that given the totality of the record, an indefinite suspension with no leave to apply for reinstatement for two (2) years is the appropriate sanction.

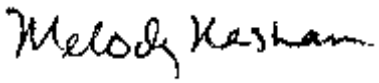
CONCLUSION

WHEREFORE, the Chief Disciplinary Counsel requests this Court to enter an order finding that Respondent violated Rules 4-1.1, 4-1.3, 4-1.4(a), 4-1.6, 4-1.7, 4-1.16(d), 4-1.22, 4-4.1, 4-8.1(a), 4-8.1(c), and 4-8.4(c), and suspending Respondent's

license to practice law indefinitely with no leave to apply for reinstatement for two (2) years.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2017, the Informant's Brief was sent via the Court's electronic e-filing system and by email at dhjlaw123@gmail.com and dhjlaw@live.com to:

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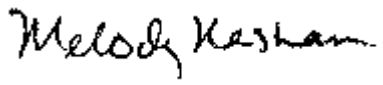
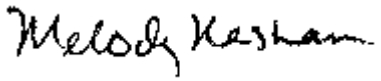

Melody Nashan, Staff Counsel

RULE 84.06(c) CERTIFCATION

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 25,326 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Melody Nashan, Staff Counsel