

IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:

JONATHAN DAVID VALENTINO

200 South Hanley Road
Clayton, Missouri 63105

MO Bar #56166

Respondent.

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Supreme Court No. SC96700

INFORMANT'S BRIEF

OFFICE OF CHIEF DISCIPLINARY
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INFORMANT

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STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

PROCEDURAL HISTORY

March 3, 2017	Information
April 3, 2017	Respondent's Answer to Information
April 11, 2017	Appointment of Disciplinary Hearing Panel
June 19, 2017	Disciplinary Hearing Panel (DHP) Hearing
August 3, 2017	DHP Decision
August 22, 2017	Rejection of DHP decision by Informant
October 2, 2017	Record filed with the Court

BACKGROUND AND DISCIPLINARY HISTORY

Respondent Jonathan D. Valentino was licensed to practice law in the State of Missouri in April of 2004. From 2004 through approximately February 28, 2016, Respondent worked as an associate in the litigation department at the Armstrong Teasdale law firm in St. Louis, Missouri. **App. 54, 78.**¹ Beginning in March of 2016

¹ The facts contained herein are drawn from the testimony elicited and the exhibits admitted into evidence at the trial in this matter conducted on June 19, 2017. Citations to the trial testimony before the Disciplinary Hearing Panel are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example “**App. ____ (Tr. ____)**”. Citations to the Information,

through the present, Respondent has been employed at the Cofman Townsley law firm. **App. 124 (Tr. 32).**

Respondent's law license is in good standing and he has no disciplinary history.

MICHAEL GREENBLATT REPRESENTATION

The relevant factual allegations in this case were admitted by Respondent in his Answer to the Information and are not in dispute.

On or about December 3, 2009, Michael A. Greenblatt ("Greenblatt") retained Tyler Frank, an attorney at the Armstrong Teasdale law firm, to represent him on an hourly fee basis in connection with the encroachment and unpermitted use of property located in Greenblatt's backyard by a neighbor. Mr. Frank, prior to that time, had represented Greenblatt and his company with regard to corporate matters. **App. 55, 78.**

Greenblatt wanted a lawsuit to be filed in order to clarify that the subject property where the neighbor had built improvements actually belonged to Greenblatt. Greenblatt also wanted the neighbor's improvements removed from the subject property. **App. 55, 78.**

Immediately after the representation agreement was executed, Mr. Frank requested that Respondent handle the boundary dispute matter and litigation on behalf of Greenblatt

Respondent's Answer to the Information and the trial exhibits are denoted by the appropriate Appendix page reference.

and Respondent agreed to do so. After reviewing and discussing the matter with Greenblatt, Respondent recommended that a lawsuit be filed to quiet title and to seek ejectment of the encroaching improvements from Greenblatt's property. **App. 55, 78.**

Greenblatt agreed and authorized Respondent to proceed with the recommended litigation. By late December, 2009, Respondent informed Greenblatt that he was trying to finalize the petition in order to file the litigation. **App. 55, 78.**

On February 15, 2010, Respondent emailed Greenblatt and stated in part as follows: "I was never able to get opposing counsel to call me back, so I went ahead and filed the petition in January....When I last checked, service has not yet been obtained." These statements were false in that no lawsuit had been filed by Respondent on behalf of Greenblatt as of February 15, 2010. **App. 55-56, 78.**

On February 28, 2010, Respondent emailed Greenblatt and stated in part as follows: "I just wanted to follow-up again on the status of the lawsuit and discuss with you where things are headed." This statement was false in that no lawsuit had been filed by Respondent on behalf of Greenblatt as of February 28, 2010. **App. 56, 78.**

On March 26, 2010, Respondent emailed Greenblatt and stated in part as follows: "I wanted to update you regarding the lawsuit. The summons was issued, after which the sheriff's office had thirty days to serve the summons. The sheriff, after the thirty days, indicated that it was unable to effect service....Accordingly, I have retained the services of a private process server and am having an alias summons issued. The private process server will make a better effort to serve and I would expect service within the next two

weeks, at which point the control of the pacing of this action will be back in our hands and we can get this thing moving forward quickly.” All of these statements were false in that no lawsuit had been filed by Respondent on behalf of Greenblatt as of March 26, 2010. **App. 56, 78.**

On May 12, 2010, Respondent emailed Greenblatt and stated in part as follows: “With the Court’s schedule, it appears that we will have this heard two weeks from tomorrow. Opposing counsel also discussed the settlement offer with me, and I want to follow up and discuss with you.” All of these statements were false in that no lawsuit had been filed by Respondent on behalf of Greenblatt as of May 12, 2010. **App. 56, 78.**

On June 15, 2011, Respondent emailed Greenblatt and stated in part as follows: “The general message I wanted to pass along was that we are currently in the stage that you and I discussed previously where we are waiting on a ruling. There is no time-frame specified in the rules for when a ruling needs to be issued, but I would generally expect something in the next few weeks.” This statement was false in that no lawsuit had been filed as of June 15, 2011. **App. 56-57, 78.**

On September 26, 2011, Respondent emailed Greenblatt and stated in part as follows: “Per our previous conversation, we held the conference with the judge. The judge was able to give us a trial date in early November, and took the hint that he needs to get a summary judgment ruling out to the parties.” This statement was false in that no lawsuit had been filed as of September 26, 2011. **App. 57, 78.**

On July 23, 2014, in response to a request by Greenblatt for an update regarding the property litigation, Respondent emailed Greenblatt and stated in part as follows: “I was hoping to report to you that everything was finished. All the work on our end has been done, but we are still waiting on the final determination.” This statement was false in that no lawsuit had been filed as of July 23, 2014. **App. 57, 78.**

In addition to the forgoing email communications from Respondent to Greenblatt, Respondent also engaged in various telephone conversations and meetings with Greenblatt between 2010 and 2016 wherein he falsely stated, *inter alia*, the following:

- a. That Respondent had filed a lawsuit on behalf of Greenblatt regarding the property dispute with Greenblatt’s neighbor;
- b. That service on the defendant in the lawsuit had been obtained and that the lawsuit was progressing as expected;
- c. That Respondent had prepared and filed a motion for summary judgment against the defendant in the lawsuit;
- d. That Respondent was in the process of obtaining a date for the trial of the lawsuit;
- e. That the Court had granted Greenblatt’s motion for summary judgment in the lawsuit; and
- f. That the defendant in the lawsuit had appealed the trial court’s order granting Greenblatt a summary judgment in the lawsuit.

App. 57-58, 78.

In addition, there were significant periods of time during 2015 when Respondent failed to respond to numerous inquiries by Greenblatt regarding the status of the lawsuit that Greenblatt believed was pending. **App. 58, 78.**

In or about January 2016, Respondent finally notified Greenblatt that he had lied regarding the filing of the lawsuit and that he had followed up that lie with other untruths regarding the status and progress of the subject lawsuit. **App. 58, 78.**

On February 1, 2016, Respondent self-reported his misconduct to the Office of Chief Disciplinary Counsel. **App. 80-84.**

During the period that Respondent represented Greenblatt, he caused the law firm to bill Greenblatt the total amount of \$662.50 for work purportedly done by Respondent with regard to the subject representation, which sum was paid by Greenblatt to the law firm. Of this amount, \$122.50 was for services not performed by Respondent (i.e., checking on the status of the purported summons and service and drafting an email to Greenblatt regarding same; and telephoning Greenblatt regarding the purported summary judgment). **App. 58, 78.** The Armstrong Teasdale law firm ultimately reimbursed Greenblatt the amount of \$662.50. **App. 58, 78.**

Greenblatt believes that Respondent's misconduct in failing to adequately represent him with regard to the property dispute with Greenblatt's neighbor caused him damage because it increased the likelihood that he will lose the case. **App. 106 (Tr. 14).** Specifically, even though the lawsuit has now been filed by a different attorney at another

law firm and is currently pending, the litigation was not filed until after the ten-year period ran for the neighbor to claim adverse possession. **App. 105-106 (Tr. 13-14).**

RESPONDENT'S TESTIMONY AT THE DHP HEARING

In explaining his failure to initially file the lawsuit on behalf of his client Greenblatt, Respondent testified at the hearing before the Disciplinary Hearing Panel that "it was one of my smaller cases" and that he "just flat out forgot" to file it. **App. 126 (Tr. 34).**

When Greenblatt contacted Respondent months later to inquire about the status of the legal matter, Respondent "freaked out and told him it [the lawsuit] was on file." **App. 126 (Tr. 34).** He realized that he had made "a bad situation worse," but thereafter made it "worse and worse" by continuing to lie to Greenblatt regarding the non-existent lawsuit. **App. 126 (Tr. 34).** Respondent testified that he "kept thinking that at some point I would figure out something to do that would fix it. I didn't. And this went for, I think, five---a little over five years." **App. 126-127 (Tr. 34-35).**

In explaining why he failed to disclose the truth to his client for over five years, Respondent testified that "at the time, my thoughts were that the second I brought it up, I'd get canned, and that shouldn't have been my first concern." **App. 128 (Tr. 36).** When pressed for a further explanation, Respondent testified: "Cowardice. Probably cowardice, if I had to describe it in one word." **App. 133 (Tr. 41).**

In late 2015 or early 2016, Respondent concluded that he needed to tell Greenblatt the truth. On or about January 5 or 6, 2016, Greenblatt contacted Respondent requesting

details regarding the case. **App. 202.** On January 7, 2016, Respondent called and left a message for Greenblatt indicating that he would like to speak with him in person so that he could tell him what he had done face-to-face. **App. 202.** On January 8, 2016, Respondent again called Greenblatt and asked him whether he was available to meet in person. When Greenblatt responded that he was not available, Respondent admitted to him that he had never filed the lawsuit and that he had lied about the progress in the case. **App. 202.** Greenblatt informed Respondent that he was going to retain a new lawyer. **App. 202.** Respondent ultimately self-reported his misconduct to the Informant. **App. 140 (Tr. 48); 202.**

In his Answer to the Information, Respondent stated in mitigation that he “has received and is still receiving counseling for depression.” **App. 78.** In his testimony before the Disciplinary Hearing Panel, Respondent testified that he and his family have a history of depression. **App. 129-130 (Tr. 37-38).** In addition, Respondent testified that the Greenblatt representation was the only case where the depression manifested itself. **App. 148 (Tr. 56).** Respondent also testified, however, that his lies to client Greenblatt had nothing to do with his depression. **App. 148 (Tr. 56).** Respondent did not call any independent, licensed mental health professional to establish the existence of a mental health disorder or to establish a direct and substantial relationship between the alleged mental health disorder and Respondent’s professional misconduct. See Rule 5.285(c).

TESTIMONY OF TODD NISSENHOLTZ AT THE DHP HEARING

Todd Nissenholtz has known Respondent since 2002, when they were both summer associates at the Armstrong Teasdale law firm. During the ensuing years, they worked together on approximately ten cases. **App. 151 (Tr. 59).** Nissenholtz thinks very highly of Respondent and believes him to be a very good lawyer who he would look to when he had questions. **App. 152 (Tr. 60).**

Nissenholtz left Armstrong Teasdale and joined the Cofman Townsley law firm. **App. 150 (Tr. 58).** Ultimately, he hired Respondent to work at the Cofman Townsley law firm after Respondent had an “in depth conversation” with Nissenholtz about what had transpired with Greenblatt and after Respondent “took full responsibility” for his misconduct. **App 154 (Tr. 62).**

Nissenholtz believes that Respondent’s misconduct with regard to the Greenblatt representation was a mistake, an aberration, and not consistent with Respondent’s character. **App. 155 (Tr. 63).** The litigation attorneys at Cofman Townsley, including Respondent, meet each week to discuss and to strategize about pending cases. In that way, Nissenholtz is able to stay informed regarding the progress of Respondent’s cases. **App. 156 (Tr. 64).** Nissenholtz believes that Respondent has done a “fabulous job” since joining the Cofman Townsley law firm. **App. 156 (Tr. 64).**

THE DISCIPLINARY HEARING PANEL'S DECISION

Following a full evidentiary hearing on Informant's Information, the Disciplinary Hearing Panel filed its Findings of Fact, Conclusions of Law and Recommendation on July 31, 2017.

The Panel concluded that Respondent was guilty of professional misconduct over a five-year period as a result of violating the following Rules of Professional Conduct:

- Rule 4-1.1 in that Respondent failed to provide competent representation to Greenblatt in connection with the quiet title and ejectment lawsuit by failing to file the relevant lawsuit through January 2016;
- Rule 4-1.3 in that Respondent did not act with reasonable diligence and promptness in representing Greenblatt in connection with the quiet title and ejectment lawsuit by failing to file the relevant lawsuit through January 2016;
- Rule 4-1.4 in that Respondent failed to keep Greenblatt reasonably informed about the correct status of the quiet title and ejectment legal matters on which he was representing Greenblatt;
- Rule 4-8.4(c) in that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation with regard to his representation of Greenblatt in the quiet title and ejectment lawsuit; and

- Rule 4-8.4(d) in that Respondent engaged in conduct prejudicial to the administration of justice with regard to his representation of Greenblatt in connection with the quiet title and ejectment lawsuit.

App. 240-241.

In aggravation, the Panel found that the misconduct involved multiple offenses and rule violations over a period of five years. **App. 241.** In mitigation, the Panel found that Respondent self-reported the misconduct, that he has no prior disciplinary history, that he has been cooperative with the Informant's investigation and that he is remorseful.

App. 242.

A majority of the Panel recommended that Respondent be suspended indefinitely with no leave to apply for reinstatement for one year, that the suspension be stayed, and that Respondent be placed on probation for a period of one year. **App. 242.** Informant rejected the Panel's recommendation. **App. 247.**

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LAW LICENSE BECAUSE IT IS UNDISPUTED THAT HE ENGAGED IN PROFESSIONAL MISCONDUCT IN REPRESENTING HIS CLIENT MICHAEL GREENBLATT BY VIOLATING THE COMPETENCE [RULE 4-1.1], DILIGENCE [RULE 4-1.3], COMMUNICATION [RULE 4-1.4] AND HONESTY [RULE 4-8.4(c)] RULES AND BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d).

Rule 4-1.1, Rules of Professional Conduct

Rule 4-1.3, Rules of Professional Conduct

Rule 4-1.4, Rules of Professional Conduct

Rule 4-8.4(c), Rules of Professional Conduct

POINTS RELIED ON

II.

PREVIOUS MISSOURI SUPREME COURT DECISIONS, THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, AND RELEVANT CASE LAW FROM OTHER JURISDICTIONS SUGGEST THAT AN INDEFINITE SUSPENSION WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR ONE YEAR IS THE APPROPRIATE SANCTION IN THIS CASE.

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

In re Disciplinary Action Against Summers, 821 N.W.2d 758 (N.D. 2012)

People v. Eaton, 240 P.3d 1282 (Colo. O.P.D.J. 2010)

In re Bishop, 179 P.3d 1096 (KS 2008)

ABA Annotated Standards for Imposing Lawyer Sanctions (2015 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LAW LICENSE BECAUSE IT IS UNDISPUTED THAT HE ENGAGED IN PROFESSIONAL MISCONDUCT IN REPRESENTING HIS CLIENT MICHAEL GREENBLATT BY VIOLATING THE COMPETENCE [RULE 4-1.1], DILIGENCE [RULE 4-1.3], COMMUNICATION [RULE 4-1.4] AND HONESTY [RULE 4-8.4(c)] RULES AND BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d).

The Disciplinary Hearing Panel's findings of fact, conclusions of law and recommendation to this Court are advisory. The 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).

Respondent admits, and the Panel properly found, that over a five-year period, Respondent failed to protect the legal interests of his client Greenblatt by neglecting to file the lawsuit for which he had been retained. He then exacerbated the neglect by

actively and repeatedly lying to Greenblatt in order to cause his client to believe that a lawsuit had, in fact, been filed and that the lawsuit was progressing through the judicial system.

Respondent admits, and the Panel properly found, that the foregoing conduct violated the following Rules of Professional Conduct:

- Rule 4-1.1 in that Respondent failed to provide competent representation to Greenblatt in connection with the quiet title and ejectment lawsuit by failing to file the relevant lawsuit through January 2016;
- Rule 4-1.3 in that Respondent did not act with reasonable diligence and promptness in representing Greenblatt in connection with the quiet title and ejectment lawsuit by failing to file the relevant lawsuit through January 2016;
- Rule 4-1.4 in that Respondent failed to keep Greenblatt reasonably informed about the correct status of the quiet title and ejectment legal matters on which he was representing Greenblatt;
- Rule 4-8.4(c) in that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation with regard to his representation of Greenblatt in the quiet title and ejectment lawsuit; and
- Rule 4-8.4(d) in that Respondent engaged in conduct prejudicial to the administration of justice with regard to his representation of Greenblatt in connection with the quiet title and ejectment lawsuit.

ARGUMENT

II.

PREVIOUS MISSOURI SUPREME COURT DECISIONS, THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, AND RELEVANT CASE LAW FROM OTHER JURISDICTIONS SUGGEST THAT AN INDEFINITE SUSPENSION WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR ONE YEAR IS THE APPROPRIATE SANCTION IN THIS CASE.

The purpose of discipline is not to punish the attorney, but to protect the public while maintaining the integrity of the legal profession. *In re Kazanas*, 96 S.W.3d 803, 807-08 (Mo. banc 2003). Those twin purposes may be achieved both directly, by removing a person from the practice of law; and indirectly, by imposing a sanction which serves to deter other members of the bar from engaging in similar conduct. *Id.* (citing *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986)).

Sanction analysis commonly derives from several sources, including the *ABA Annotated Standards for Imposing Lawyer Sanctions* (2015 ed.) (the “*ABA Standards*”), this Court’s prior decisions, and the hearing panel’s recommendation. The *ABA Standards* examine the duty violated, the lawyer’s mental state, and the extent of the injury or potential injury and the presence of any aggravating or mitigating circumstances. *ABA Standards*, Theoretical Framework at xvii.

The *ABA Standards* state: “In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. These include: ...(d) the duty of candor [Rule 8.4(c)/DR 1-102(A)(4) & DR 7-101(A)(3)].” *ABA Standards*, Theoretical Framework at xviii. Respondent’s violations in this case constitute an abrogation of his duty of candor owed to his client.

ABA Standard 4.61 indicates that disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client.

ABA Standard 4.62 indicates that suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

ABA Standard 4.63 indicates that reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

ABA Standard 4.61 (suspension) is applicable to the facts of this case. “Knowledge” is present when a lawyer acts with conscious awareness of the nature or attendant circumstances of his misconduct. *ABA Standards* at 122.

Respondent realized that by initially lying to Greenblatt about the representation, he had made “a bad situation worse.” Thereafter, however, he made it “worse and worse” by continuing to lie to Greenblatt regarding the non-existent lawsuit. **App. 126 (Tr. 34)**. Respondent testified that he “kept thinking that at some point I would figure

out something to do that would fix it. I didn't. And this went for, I think, five---a little over five years." **App. 126-127 (Tr. 34-35)**. Respondent's deceitful conduct towards his client was clearly knowing and persisted for over five years.

Injury or potential injury resulted from Respondent's misconduct. Even though the statute of limitations had not run on Greenblatt's lawsuit to quiet title, the five-year delay in filing the lawsuit and litigating the matter to a conclusion arguably caused injury to Greenblatt's interests. Greenblatt testified that he believes that Respondent's misconduct in failing to adequately represent him with regard to the property dispute with Greenblatt's neighbor caused him damage because it increased the likelihood that he will lose the quiet title case. **App. 106 (Tr. 14)**. Specifically, even though the lawsuit has now been filed by a different attorney at another law firm and is currently pending, the litigation was not filed until after the ten-year period ran for the neighbor to claim adverse possession. **App. 105-106 (Tr. 13-14)**.

The *ABA Standards 9.0* provide that once misconduct has been established, as in this case, aggravating and mitigating circumstances may be considered in deciding the appropriate sanction to impose. In this case, both aggravating and mitigating circumstances exist. Under *ABA Standard 9.22*, the applicable aggravating factors include: (c) a pattern of misconduct; (d) multiple offenses; and (i) substantial experience in the practice of law. Under *ABA Standard 9.32*, the applicable mitigating factors include: (a) an absence of a prior disciplinary record; (b) absence of a dishonest or selfish

motive; (e) cooperative attitude toward the disciplinary proceedings; (g) good character and reputation; and (l) remorse. In addition, Respondent self-reported the misconduct.

Respondent also claims that he was suffering from depression during the relevant time period and that the Court should consider his alleged depression in mitigation of the professional misconduct. Thus, in his answer to the Information,

Respondent states that he “has received and is still receiving counseling for depression.” **App. 78.** In his testimony before the Disciplinary Hearing Panel, Respondent testified that he and his family have a history of depression. **App. 129-130 (Tr. 37-38).** In addition, Respondent testified that the Greenblatt representation was the only case where the depression manifested itself. **App. 148 (Tr. 56).**

Respondent’s attempt to mitigate the misconduct based on alleged depression should be summarily rejected. Respondent testified that his lies to client Greenblatt had nothing to do with his depression. **App. 148 (Tr. 56).** In addition, Respondent failed to comply with the requirements of Rule 5.285 in order for an alleged mental disability to be considered in mitigation in this case. Thus, he did not call an independent, licensed mental health professional to testify at the DHP hearing in order to establish the existence of a mental health disorder or to establish a direct and substantial relationship between the alleged mental health disorder and Respondent’s professional misconduct as required by Rule 5.285(c). In addition, the record in this case is bereft of any medical records supporting such a claim. The requirements for treating Respondent’s alleged depression as a mitigator in this case have not been met.

This Court's decisional law is instructive. *In re Reza*, 743 S.W.2d 411 (Mo. banc 1988) involved an attorney who represented a contractor regarding the collection of a debt from a property owner arising from a contract for rehabilitation. The attorney failed to file suit to perfect the client's mechanic's lien within the statutorily required period. The Court found that Reza neglected the legal matter and deliberately misled the client into thinking that the mechanic's lien suit had already been filed. The Court suspended Reza indefinitely with no leave to apply for reinstatement for six months.²

In re Staab, 719 S.W.2d 780 (Mo. banc 1986) involved an attorney who neglected a worker's compensation case by allowing the case to be dismissed for lack of prosecution. He thereafter neglected a Social Security benefits case pending in federal court by failing to respond to a show cause order that resulted in the case being dismissed. The attorney falsely represented to his client that the worker's compensation case was still pending and remained viable. In addition, the attorney falsely represented to his client that the Social Security case was pending and that benefits were to be reinstated. The Court ordered that the attorney be reprimanded.

More recent cases from other jurisdictions are also informative. In *In re Disciplinary Action Against Summers*, 821 N.W.2d 758 (N.D. 2012), the Court

² Reza also failed to cooperate with the disciplinary authority's investigation, failed to pay his annual enrollment fee for several years and continued to practice law while under administrative suspension.

suspended an attorney for six months for the attorney's dishonesty in advising his client that he was waiting for the court to schedule a hearing on a motion to enforce child visitation rights after the court had already dismissed the client's motion.

People v. Eaton, 240 P.3d 1282 (Colo. O.P.D.J. 2010) involved an attorney who represented a client in litigation involving an automobile accident. The court ultimately dismissed the lawsuit after the attorney failed to comply with a court order to file a return of service in the case. The applicable statute of limitations precluded the attorney from re-filing the lawsuit on behalf of his client. Notwithstanding the dismissal, the attorney continued to represent to her client for months that she was still pursuing the claim and that the trial date would soon be set. The Court found that the attorney violated the diligence (Rule 1.3), communication (Rule 1.4) and honesty [8.4(c)] rules. For these and other ethical misconduct, the Court suspended the attorney for two years.

In re Bishop, 179 P.3d 1096 (KS 2008), involved an attorney retained by a client to represent him in an auto accident case. The attorney filed a lawsuit on behalf of the client, however, the lawsuit was subsequently dismissed by the court due to the attorney's failure to obtain service on the defendant. For years following the dismissal, the attorney provided the client with false information regarding the status of the case, including statements that the trial date had been continued, that the courthouse was being remodeled, that the judge had retired and the case was on hold until a new judge was appointed, that a criminal case scheduled for trial took priority, and discovery issues had arisen in the case when, in fact, no discovery was ever exchanged or conducted. In a

second case, the attorney lied to a client regarding the status of a qualified domestic relations order that he was retained to prepare and file. The Court found, *inter alia*, that the attorney neglected both client representations, engaged in dishonesty and indefinitely suspended the attorney.


In the case at bar, Respondent owed the highest duty of fidelity and honesty to his client. Instead of either filing the lawsuit on behalf of Greenblatt in a timely manner or explaining in a forthright manner why the filing was delayed, Respondent consciously chose to mislead the client for over five years into believing that a lawsuit had been filed and was progressing toward a disposition. He did so without a plausible explanation, other than his own “cowardice” and a fear of termination of his employment. Under these circumstances, protection of the public and the profession requires an indefinite suspension.

CONCLUSION

Respondent committed multiple violations of the Rules of Professional Conduct, including deceit, dishonesty and misrepresentation, in his failed representation of his client Michael Greenblatt from 2010 through early 2016. The violations were knowing and potentially harmful to his client. Based upon an analysis of this Court's decisions, the *ABA Standards*, the record evidence, and relevant case law from other jurisdictions, Informant submits that an order of indefinite suspension with no leave to apply for reinstatement for a period of one year is appropriate.

Respectfully submitted,

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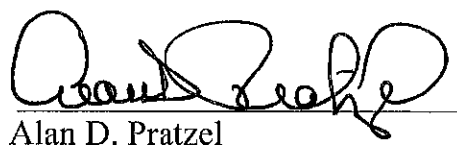
INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2017, a copy of Informant's Brief is being served upon Respondent and Respondent's counsel through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

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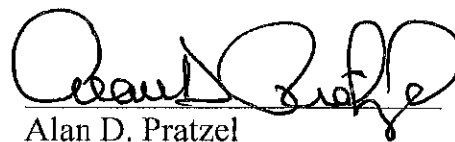


Alan D. Pratzel

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 5,143 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Alan D. Pratzel