

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

**JENNIFER ANN GEORGE
207 N. WASHINGTON
PRINCETON, MO 64673**

MO BAR NO. 53313

Respondent.

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Supreme Court #SC97337

INFORMANT'S BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS _____ 2

TABLE OF AUTHORITIES _____ 4

STATEMENT OF JURISDICTION _____ 7

STATEMENT OF FACTS _____ 8

 Procedural History _____ 8

 Facts Underlying Disciplinary Case _____ 9

 Respondent’s Representation of Angela Hague _____ 10

 Respondent’s Handling of Client Funds _____ 23

 Respondent’s Failure to Cooperate with and Misrepresentation to OCDC _____ 24

 The Disciplinary Hearing Panel’s Decision _____ 30

 Aggravating and Mitigating Factors _____ 31

 The Disciplinary Hearing Panel’s Recommendation _____ 33

POINT RELIED ON _____ 34

 I. _____ 34

 II. _____ 35

 III. _____ 36

 IV. _____ 37

 V. _____ 38

 VI. _____ 39

 VII. _____ 40

| | |
|--|----|
| VIII. | 41 |
| ARGUMENT | 42 |
| I. | 42 |
| II. | 46 |
| III. | 48 |
| IV. | 51 |
| V. | 54 |
| VI. | 56 |
| VII. | 63 |
| VIII. | 66 |
| CONCLUSION | 78 |
| CERTIFICATE OF SERVICE | 78 |
| CERTIFICATE OF COMPLIANCE: RULE 84.06(c) | 79 |

TABLE OF AUTHORITIES

CASES

| | |
|---|--------------------|
| <i>In re Carey</i> , 89 S.W. 3d 477, 498 (Mo. banc 2002)..... | 66, 67, 76 |
| <i>In re Crews</i> , 159 S.W.3d 355 (Mo. banc 2005) | 33, 39, 43, 64, 66 |
| <i>In re Disney</i> , 922 S.W.2d 12, 15 (Mo. banc 1996) | 70 |
| <i>In re Donaho</i> , 98 S.W.3d 871 (Mo. banc 2003)..... | 37, 53, 68 |
| <i>In re Ehler</i> , 319 S.W.3d 442 (Mo. banc 2010)..... | 34, 45, 65 |
| <i>In re Eisenstein</i> , 485 S.W.3d 759 (Mo. banc 2016) | 40, 66 |
| <i>In re Farris</i> , 472, S.W.3d 549 (Mo. banc 2015) | 38, 55 |
| <i>In re Forge</i> , 747 S.W.2d 141, 145-46 (Mo. banc 1988) | 68 |
| <i>In re Frank</i> , 885 S.W.2d 328, 334 (Mo. banc 1994)..... | 66 |
| <i>In re Kazanas</i> , 96 S.W.3d 803, 807 (Mo. banc 2003)..... | 65 |
| <i>In re Krigel</i> , 480 S.W.2d 294 (2016)..... | 40, 66, 67, 77 |
| <i>In re Oberhellmann</i> , 873 S.W.2d 851, 856 (Mo. banc 1994) | 67, 68 |
| <i>In re Tessler</i> , 783 S.W.2d 906 (Mo. banc 1990) | 40, 69, 76 |
| <i>In re Waldron</i> , 790 S.W.2d 456 (Mo. banc 1990)..... | 40, 68, 69, 76 |

OTHER AUTHORITIES

| | |
|---|------------------------------------|
| <u>ABA Standards for Imposing Lawyer Sanctions</u> (1986 ed., as amended 1992)..... | |
| | 40, 65, 70, 71, 72, 73, 74, 75, 76 |

RULES

Rule 4-1.3 33, 41, 44, 77

Rule 4-1.4 45, 46

Rule 4-1.4(a)..... 34, 45, 77

Rule 4-1.6 35, 47, 48, 49, 77

Rule 4-1.15 36, 50, 53, 69

Rule 4-1.15(a)..... 50, 51, 52, 77

Rule 4-1.15(c)..... 51, 52, 77

Rule 4-1.15(f) 52, 77

Rule 4-1.16(d)..... 37, 53, 54, 77

Rule 4-3.3(a)(1) 67

Rule 4-3.3(a)(3) 66

Rule 4-3.4(a)..... 66, 67

Rule 4-3.4(b)..... 67

Rule 4-3.4(d)..... 67

Rule 4-4.4(a)..... 66

Rule 4-8.1 55

Rule 4-8.1(a)..... 38, 55, 58, 59, 72, 77

Rule 4-8.1(c)..... 38, 55, 58, 61, 72, 77

Rule 4-8.4(a)..... 67, 77

Rule 4-8.4(c) 39, 62, 64, 66, 67, 68, 69, 70, 71

Rule 4-8.4(d)..... 66, 67
Rule 55.09..... 56

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

Procedural History

Informant filed an Information on December 29, 2017, charging Respondent with violating the following Rules: Rules 4-1.3, 4-1.4, 4-1.6, 4-1.15(a), 4-1.15(c), 4-1.15(f), 4-1.16(d), 4-8.1(a), 4-8.1(c), and 4-8.4(c). Rec. Vol. 1, p. 1.¹ Respondent filed an Answer on February 2, 2018. Rec. Vol. 1, p. 32.

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. __** (DHP Tr. __ (testimony of John Doe))." Citations to the sworn statement testimony admitted as an exhibit by the Disciplinary Hearing Panel are denoted by the appropriate Record Volume and page reference, followed by the specific exhibit number, the identity of the witness, and sworn statement transcript page reference in parentheses, for example, "**Rec. Vol. __, p. __** (DHP Ex. __, p. __, sworn stmt. testimony of John Doe)." Citations to the Information and Respondent's Response to Information are denoted by the appropriate Appendix page reference, followed by the specific paragraph number in parentheses, for example, "**App. A_** (Inf. ¶ __, Ans. ¶ __)."

Via a letter dated February 14, 2018, the Advisory Committee chair appointed a disciplinary hearing panel to hear the case. **Rec. Vol. 1, p. 33.** A hearing was held in this matter on April 23, 2018, in Kansas City, Missouri, before Jill A. Kanatzar, Presiding Officer, Charlie J. Harris, Jr., and Robert Michael Ford. In addition to Respondent, the Complainant, Angela Hague, and Brenda Swedberg testified at the hearing.

The panel issued its decision on May 31, 2018, and an amended decision on June 6, 2018. **Rec. Vol. 5, p. 660 - 73 and App. A18 – 31, respectively.** The panel concluded Respondent George violated Rules 4-1.3, 4-1.4, 4-1.6, 4-1.15(a), 4-1.15(c), 4-1.15(f), 4-1.16(d), 4-8.1(a), 4-8.1(c), and 4-8.4(c), and recommended that she be disbarred. **App. A31.** By letter dated June 8, 2018, disciplinary counsel advised the Advisory Committee that it would accept the hearing panel decision. **Rec. Vol. 5, p. 689.** By letter dated July 5, 2018, Respondent rejected the hearing panel’s decision. **Rec. Vol. 5, p. 690.** The record was filed with the Supreme Court of Missouri on August 6, 2018.

Facts Underlying Disciplinary Case

Respondent Jennifer A. George was licensed to practice law in Missouri on September 19, 2001. **App. A3, A17** (Inf. ¶ 3; Ans. ¶ 1)². Respondent is a solo practitioner

² Respondent admitted many of the allegations in the Information in Respondent’s Response to Information.

in Princeton, Missouri. **App. A3, A17** (Inf. ¶ 4, 5; Ans. ¶ 1). Her license to practice law is in good standing. **App. A3, A17** (Inf. ¶ 6; Ans. ¶ 1).

Respondent's Representation of Angela Hague

Angela Hague (formerly Angela Lusher) retained Respondent to represent her on or about July 20, 2016, in her dissolution of marriage and child custody matter. **App. A6, A17** (Inf. ¶ 19; Ans. ¶ 1); **Rec. Vol. 1, p. 70** (DHP Tr. 75 - 76 (testimony of Respondent)). Respondent did not have a written representation agreement with Ms. Hague. **App. A6, A17** (Inf. ¶ 20; Ans. ¶ 1). Ms. Hague paid Respondent a \$1,000 flat fee for her representation. **App. A6, A17** (Inf. ¶ 21; Ans. ¶ 1); **Rec. Vol. 1, p. 56** (DHP Tr. 17 – 18 (testimony of Angela Hague)); **Rec. Vol. 1, p. 70** (DHP Tr. 76 (testimony of Respondent)); **Rec. Vol. 5, p. 632** (Ex. 35 (copy of check)).

Ms. Hague and her then-husband, Paul Lusher, had one child together. **App. A6, A17** (Inf. ¶ 24; Ans. ¶ 1). In July 2016, the Lushers' son was five (5) years old. **App. A6, A17** (Inf. ¶ 25; Ans. ¶ 1). At the time Ms. Hague retained Respondent, Ms. Hague had physical custody of her son. **App. A6, A17** (Inf. ¶ 26; Ans. ¶ 1). Paul Lusher, however, was seeking overnight visitation with the child. **App. A6, A17** (Inf. ¶ 27; Ans. ¶ 1).

Between July 20 and 26, 2016, Ms. Hague called Respondent and sent Respondent a text message asking her to call her so they could discuss whether Ms. Hague should allow Paul Lusher to have an overnight visitation with their child. **App. A6, A17** (Inf. ¶ 28; Ans. ¶ 1). Respondent did not respond to Ms. Hague's July 20 – 26, 2016 calls or her text

messages. **Rec. Vol. 1, p. 58** (DHP Tr. 25 (testimony of Angela Hague)). On July 26, 2016, Ms. Hague allowed Paul Lusher to take their son for an overnight visit. **App. A7, A17** (Inf. ¶ 31; Ans. ¶ 1).

At some point, Ms. Hague started saving her text messages with Respondent so they wouldn't be automatically deleted with the passage of time. **Rec. Vol. 1, p. 57** (DHP Tr. 23 -24 (testimony of Angela Hague)). The oldest text message she had when she started saving them was July 26, 2016, and she saved all text messages going forward. **Rec. Vol. 1, p. 57** (DHP Tr. 24 (testimony of Angela Hague)). Ms. Hague only called or sent texts to Respondent from her cell phone, telephone number 660-748-8007. **Rec. Vol. 1, p. 56** (DHP Tr. 19 (testimony of Angela Hague)). Respondent testified that the only telephone number at which she called Ms. Hague was her cell phone. **Rec. Vol. 5, p. 594** (DHP Ex. 31, Tr. 71 - 72 (sworn statement of Respondent)). Respondent primarily uses her cell phone, telephone number 660-359-7073, for work. **Rec. Vol. 5, p. 578** (DHP Ex. 31, Tr. 6 (sworn statement of Respondent)). The only other telephone she uses for work is her office telephone, number 660-748-4131. **Rec. Vol. 5, p. 578** (DHP Ex. 31, Tr. 6 (sworn statement of Respondent)).

On July 26, 2016, Respondent dropped off at Ms. Hague's mother's workplace, Great Western Bank, a draft Petition for Dissolution of Marriage, draft Temporary Parenting Plan, and draft Parenting Plan. **App. A7, A17** (Inf. ¶ 31; Ans. ¶ 1); **Rec. Vol. 5, p. 558** (Ex. 27 draft petition); **Rec. Vol. 1, p. 56 – 57** (DHP Tr. 20-22 (testimony of Angela Hague)). On July 27, 2016, Ms. Hague called and spoke to Respondent about errors in the

documents. **App. A7, A17** (Inf. ¶ 32; Ans. ¶ 1). On July 27, 2016, Ms. Hague sent a text message to Respondent about the errors in the documents. **App. A7, A17** (Inf. ¶ 33; Ans. ¶ 1).

On July 27, 2016, Paul Lusher filed his Petition for Dissolution of Marriage. **App. A7, A17** (Inf. ¶ 34; Ans. ¶ 1). On the evening of July 27, 2016, Paul Lusher refused to return their son to Ms. Hague. **App. A7, A17** (Inf. ¶ 35; Ans. ¶ 1). Ms. Hague tried to call Respondent on July 27, 2016 about her husband's refusal to return their son. **App. A7, A17** (Inf. ¶ 36; Ans. ¶ 1). Respondent did not answer or call Ms. Hague back after she called on July 27, 2016. **App. A7, A17** (Inf. ¶ 37; Ans. ¶ 1).

Also on July 27, 2016, Ms. Hague sent Respondent a text message regarding Mr. Lusher's refusal to return their son. **App. A7, A17** (Inf. ¶ 38; Ans. ¶ 1); **Rec. Vol. 3, p. 218** (DHP Ex. 11, text messages). Respondent sent a reply text message on July 27, 2016: "That's why you weren't supposed to let him have [your son] until the temporary order was in effect." **App. A7, A17** (Inf. ¶ 39; Ans. ¶ 1); **Rec. Vol. 3, p. 218** (DHP Ex. 11, text messages). Prior to Respondent's July 27, 2016 text message response to Ms. Hague, Respondent had not told Ms. Hague not to let her son visit his father until after a temporary order was in effect. **App. A8, A17** (Inf. ¶ 40; Ans. ¶ 1); **Rec. Vol. 1, p. 58** (DHP Tr. p. 26 (testimony of Angela Hague)).

By text message that same day, July 27, 2016, Ms. Hague asked Respondent if they could rush the temporary visitation order when Respondent got back from vacation. **App. A8, A17** (Inf. ¶ 41; Ans. ¶ 1); **Rec. Vol. 1, p. 58** (DHP Tr. p. 27 (testimony of Angela

Hague)). Respondent did not respond to Ms. Hague's text message regarding rushing the temporary visitation order. **App. A8, A17** (Inf. ¶ 42; Ans. ¶ 1). By text message that same day, July 27, 2016, Ms. Hague reported to Respondent that her husband had told her that he had filed the divorce action that day and that his attorneys were Templeton & Swedberg. **App. A8, A17** (Inf. ¶ 43; Ans. ¶ 1); **Rec. Vol. 1, p. 58** (DHP Tr. 27 (testimony of Angela Hague)); **Rec. Vol. 3, p. 219** (DHP Ex. 11 (text messages)).

Respondent was on vacation from approximately July 30, 2016, until August 8, 2016. **App. A8, A17** (Inf. ¶ 44; Ans. ¶ 1). After Respondent returned from vacation, Ms. Hague contacted Respondent regarding efforts to regain custody of her son. **App. A8, A17** (Inf. ¶ 45; Ans. ¶ 1); **Rec. Vol. 1, p. 58** (DHP Tr. p. 28 (testimony of Angela Hague)); **Rec. Vol. 3, p. 220** (DHP Ex. 11, text messages). Respondent again told Ms. Hague that she shouldn't have let her husband take her son. **Rec. Vol. 3, p. 221** (DHP Ex. 11 (text messages)); **Rec. Vol. 1, p. 58** (DHP Tr. p. 28 (testimony of Angela Hague)).

Ms. Hague wanted to be served with the dissolution action filed by her husband so she could work toward getting her son back. **Rec. Vol. 1, p. 58** (DHP Tr. p. 28 (testimony of Angela Hague)); **Rec. Vol. 5, p. 587 – 88** (Ex. 31, Tr. 44 – 45 (sworn stmt. of Respondent)). On August 11, 2016, Respondent told Ms. Hague that she didn't think Paul Lusher had filed the divorce petition. **Rec. Vol. 3, p. 222** (DHP Ex. 11 (text messages)). Ms. Hague responded that she had seen the case on Case.Net. **Rec. Vol. 3, p. 222** (DHP Ex. 11 (text messages)).

Respondent contacted the Putnam County Clerk's office regarding whether Paul Lusher had filed a petition for divorce and discovered that the Putnam County Sheriff's Department had the service paperwork. **App. A8, A17** (Inf. ¶ 46; Ans. ¶ 1). Respondent advised Ms. Hague to pick up the divorce paperwork from the Putnam County Sheriff's Department. **Rec. Vol. 1, p. 59** (DHP Tr. 29 (testimony of Angela Hague)). On August 12, 2016, Ms. Hague went to the Sheriff's Department in Putnam County and picked up and was served with the divorce papers filed by Paul Lusher. **App. A9, A17** (Inf. ¶ 48; Ans. ¶ 1); **Rec. Vol. 1, p. 59** (DHP Tr. 29 (testimony of Angela Hague)). Ms. Hague emailed the divorce paperwork to Respondent on August 15, 2017. **App. A9, A17** (Inf. ¶ 49; Ans. ¶ 1); **Rec. Vol. 1, p. 59** (DHP Tr. 30 (testimony of Angela Hague)).

On August 16, 2016, Ms. Hague sent a text to Respondent saying that her estranged husband said she could have her son for the weekend if she signed a paper saying she would return him. **Rec. Vol. 3, p. 224** (DHP Ex. 11 (text messages)). Respondent replied: "Let me do some checking." **Rec. Vol. 3, p. 224** (DHP Ex. 11 (text messages)). As of August 18, Respondent hadn't responded substantively. **Rec. Vol. 3, pp. 224 - 226** (DHP Ex. 11 (text messages)).

Ms. Hague scheduled a meeting with Respondent on August 19, 2016, at 3:30 p.m., at Respondent's office. **Rec. Vol. 1, pp. 59 - 60** (DHP Tr. pp. 32 - 33 (testimony of Angela Hague)). Ms. Hague was late, and she sent Respondent a text that she was running late. **Rec. Vol. 1, p. 60** (DHP Tr. p. 33 (testimony of Angela Hague)); **Rec. Vol. 3, p. 227** (DHP Ex. 11 (text messages)). When Ms. Hague arrived at 3:40 p.m., the doors to Respondent's

office were locked, and Respondent wouldn't respond to Ms. Hague's text messages or her calls. **Rec. Vol. 1, p. 60** (DHP Tr. p. 33 (testimony of Angela Hague)); **Rec. Vol. 3, p. 227** (DHP Ex. 11 (text messages)). Ms. Hague's phone records reflect her calls to Respondent at 3:40 p.m., 3:45 p.m., 3:49 p.m., and 3:54 p.m. **Rec. Vol. 4, p. 298** (Ex. 15 (Ms. Hague's phone records)).

Ms. Hague's mother was with her, and she called Respondent from her phone. **Rec. Vol. 1, p. 60** (DHP Tr. p. 33 (testimony of Angela Hague)). Ms. Hague's mother's telephone number is 660-748-6318. **Rec. Vol. 1, p. 65** (DHP Tr. 53 (testimony of Angela Hague)). Respondent answered the call from Ms. Hague's mother at 4:04 p.m. **Rec. Vol. 1, p. 60** (DHP Tr. p. 33 - 34 (testimony of Angela Hague)). Respondent's phone records reflect her receipt of Ms. Hague's mother's call. **Rec. Vol. 4, p. 374** (DHP Ex. 16 (Respondent's phone records)). Ms. Hague then rescheduled the meeting to August 22, 2016. **Rec. Vol. 1, p. 60** (DHP Tr. p. 34 (testimony of Angela Hague)).

At the rescheduled meeting, Respondent and Ms. Hague went over Paul Lusher's petition. **Rec. Vol. 1, p. 60** (DHP Tr. p. 34 (testimony of Angela Hague)). Respondent was to then draft Ms. Hague's Answer and Counter-Petition. **Rec. Vol. 1, p. 60** (DHP Tr. p. 34 (testimony of Angela Hague)). Ms. Hague texted Respondent about her responsive pleadings on August 25, 26, and 29, and September 2, and 14, and October 5. **Rec. Vol. 1, p. 60, 63** (DHP Tr. p. 34 - 36, 45 (testimony of Angela Hague)); **Rec. Vol. 5, pp. 228 - 32, 239** (DHP Ex. 11, text messages). Respondent states that she emailed the documents

to Ms. Hague on August 29, 2016, but Ms. Hague did not receive them. **Rec. Vol. 3, p. 229 – 32** (DHP Ex. 11 (text messages)). Respondent did not text or call Ms. Hague looking for the pleadings between the date she says she emailed them to Ms. Hague and the September 12, 2016 due date. **Rec. Vol. 3, pp. 229 – 32** (DHP Ex. 11 (text messages)); **Rec. Vol. 4, pp. 299 – 302, 375 – 79** (DHP Exs. 15 and 16 (Angela Hague’s and Respondent’s phone records, respectively)).

Ms. Hague’s estranged husband was represented in their divorce by attorney Brenda Swedberg. **Rec. Vol. 1, p. 66** (DHP Tr. 58 (testimony of Brenda Swedberg)). The court clerk told Ms. Swedberg that she had been informed that Respondent was going to represent Ms. Hague in the Lusher divorce and custody case. **Rec. Vol. 1, p. 66** (DHP Tr. 59 (testimony of Brenda Swedberg)). Ms. Swedberg wrote Respondent on August 22, 2016, asking if she’d be interested in a temporary visitation agreement allowing Ms. Hague to see her son. **App. A9, A17** (Inf. ¶ 50; Ans. ¶ 1); **Rec. Vol. 1, p. 66** (DHP Tr. 59 - 61 (testimony of Brenda Swedberg); **Rec. Vol. 5, p. 423** (DHP Ex. 21). Respondent did not respond to Ms. Swedberg’s letter in August 2016. **Rec. Vol. 1, p. 67** (DHP Tr. 62 (testimony of Brenda Swedberg)); **Rec. Vol. 1, p. 77** (DHP Tr. 102 (testimony of Respondent)). Respondent did not respond to Ms. Swedberg before Ms. Hague’s responsive pleading was due. **Rec. Vol. 1, p. 67** (DHP Tr. 63 - 64 (testimony of Brenda Swedberg)). Ms. Swedberg never had a discussion with Respondent regarding a visitation schedule. **Rec. Vol. 1, p. 67** (DHP Tr. 63 (testimony of Brenda Swedberg)). On September 20, 2016, Ms. Swedberg filed her motion for hearing regarding Ms. Lusher’s default. **Rec.**

Vol. 1, p. 67 (DHP Tr. 64 (testimony of Brenda Swedberg)); **Rec. Vol. 5, p. 455** (DHP Ex. 23 (certified court file in *Lusher*). On September 28, 2016, the court scheduled the hearing for October 4, 2016. **Rec. Vol. 5, p. 457** (DHP Ex. 23 (certified court file in *Lusher*).

Respondent first attempted to contact Ms. Swedberg when she called Ms. Swedberg's office on September 28, 2016, and left a message. **Rec. Vol. 1, p. 68** (DHP Tr. 65 - 66 (testimony of Brenda Swedberg)); **Rec. Vol. 5, p. 553** (DHP Ex. 25 (Swedberg business records)); **Rec. Vol. 5, p. 424** (DHP Ex. 22 (phone message)); **Rec. Vol. 1, p. 77** (DHP Tr. 102 (testimony of Respondent)). Because Ms. Hague was already in default by the time Respondent called Ms. Swedberg, she did not call her back and they never spoke about Ms. Hague's case while Respondent was representing Ms. Hague. **Rec. Vol. 1, p. 68** (DHP Tr. 67 – 68 (testimony of Brenda Swedberg)).³

Ms. Hague texted Respondent on September 5, 2016, asking again for help to see her son. She ended her text: "I'm not trying to pester you I just want to see Riley really bad. Please help me." **Rec. Vol. 5, p. 230** (DHP Ex. 11 (text messages)). The next day, September 6, 2016, Respondent texted a reply to Ms. Hague telling her she had received a letter from Paul Lusher's attorney agreeing to temporary custody that would allow Ms. Hague to have visits with her son. **Rec. Vol. 5, p. 230** (DHP Ex. 11 (text messages)). Ms. Hague texted Respondent asking for details and for Respondent to call her, but Respondent

³ The only call to Ms. Swedberg reflected in Respondent's records occurred on September 28, 2016. **Rec. Vol. 4, p. 380** (DHP Ex. 16 (Respondent's phone records)).

did not respond until September 14, 2016. **Rec. Vol. 5, p. 230 - 32** (DHP Ex. 11 (text messages)); **Rec. Vol. 1, pp. 60 – 61** (DHP Tr. 35 – 38 (testimony of Angela Lusher)).

On September 14, 2017, Respondent texted Ms. Hague that she had spoken to Paul Lusher’s attorney regarding temporary visitation. **Rec. Vol. 1, p. 61** (DHP Tr. 39 (testimony of Angela Hague)); **Rec. Vol. 3, p. 232** (DHP Ex.11 (text messages)). On September 22, 2017, Respondent told Ms. Hague she had been in contact with Paul Lusher’s attorney about scheduling temporary visitation. **Rec. Vol. 1, p. 62** (DHP Tr. 41 (testimony of Angela Hague)); **Rec. Vol. 3, p. 234** (DHP Ex. 11, text messages)). Respondent wrote that she had been discussing with Ms. Swedberg a “Friday thru Monday” or “Thursday thru Monday mornings” schedule. **Rec. Vol. 3, p. 233** (DHP Ex. 11 (text messages)). Respondent told Ms. Hague that she would have Ms. Swedberg draw up the paperwork. **Rec. Vol. 3, p. 235** (DHP Ex. 11 (text messages)). On September 23, 2016, Respondent told Ms. Hague that she was still waiting for Ms. Swedberg to email her the documents regarding the visitation agreement. **Rec. Vol. 1, p. 62** (DHP Tr. 42 (testimony of Angela Hague)); **Rec. Vol. 3, p. 236** (DHP Ex. 11, text messages)). On September 27, 2018, Respondent told Ms. Hague, again, that she was waiting on Ms. Swedberg. **Rec. Vol. 3, p. 237** (DHP Ex. 11 (text messages)). Ms. Swedberg, Paul Lusher’s attorney, testified that she never spoke to Respondent about a visitation schedule, and she never talked to Respondent about the *Lusher* case. **Rec. Vol. 1, pp. 67, 68** (DHP Tr. 64, 67 – 68 (testimony of Brenda Swedberg)).

Ms. Hague's pleading in response to her husband's Petition for Dissolution of Marriage was due by September 12, 2016. **App. A9, A17** (Inf. ¶ 52; Ans. ¶ 1). Respondent did not provide drafts of a responsive pleading to Ms. Hague, despite Ms. Hague's inquiry regarding their preparation and the deadline for filing. **Rec. Vol. 1, pp. 59, 61 - 62** (DHP Tr. 30, 39 - 41 (testimony of Angela Hague)). Ms. Hague repeatedly told Respondent that she had not received any responsive pleadings from her – she gave her two email addresses to use, and she said she would come to her office to get them. **Rec. Vol. 1, pp. 59, 61 - 62** (DHP Tr. 30, 39 - 41 (testimony of Angela Hague)); **Rec. Vol. 3, pp. 232 – 233** (DHP Ex. 11 (text messages)). Ms. Hague never got them. **Rec. Vol. 1, pp. 59, 61 - 62** (DHP Tr. 30, 39 - 41 (testimony of Angela Hague)).

Respondent testified that she did provide Ms. Hague with draft responsive pleadings by email, but admits that she did not follow up with her, ask her to bring them in, and tell her they were due. **Rec. Vol. 1, p. 72** (DHP Tr. 83 – 84 (testimony of Respondent)). There are no text messages from Respondent to Ms. Hague telling her that the pleadings were due and following up with her. **Rec. Vol. 1, p. 73** (DHP Tr. 86 (testimony of Respondent)); **Rec. Vol. 3, pp. 228 – 31** (DHP Ex. 11 (text messages)). Additionally, Respondent's phone records do not reflect any calls from her to Ms. Hague between August 29, 2016 and September 12, 2016. **Rec. Vol. 1, p. 73** (DHP Tr. 87 (testimony of Respondent)); **Rec. Vol. 4, p. 375 – 76, 379** (DHP Ex. 16 (Respondent's phone records)).

Respondent did not file a responsive pleading on behalf of Ms. Hague by September 12, 2016. **App. A9, A17** (Inf. ¶ 54; Ans. ¶ 1). Respondent did not file a motion seeking

to file Ms. Hague's responsive pleadings out-of-time. **App. A9, A17** (Inf. ¶ 55; Ans. ¶ 1). Respondent did not file any pleadings on behalf of Ms. Hague. **App. A9, A17** (Inf. ¶ 56; Ans. ¶ 1). Respondent did not even enter her appearance on behalf of Ms. Hague. **App. A9, A17** (Inf. ¶ 57; Ans. ¶ 1). A default judgment was entered against Ms. Hague on October 4, 2016, after she missed the responsive pleading deadline of September 12, 2016. **App. A9, A17** (Inf. ¶ 58; Ans. ¶ 1); **Rec. Vol. 5, p. 483 - 92** (DHP Ex. 23 (certified copy of *Lusher* court file)). Respondent testified that she didn't seek to have the default set aside because by the time she found out a default judgment had been entered, Ms. Hague had hired new counsel. **Rec. Vol. 1, p. 73 - 74** (DHP Tr. 88 – 89 (testimony of Respondent)).

After September 28, 2016, Respondent never responded to Ms. Hague's text messages or otherwise communicated with her again. **App. A10, A17** (Inf. ¶ 62; Ans. ¶ 1); **Rec. Vol. 3, pp. 238 –39** (DHP Ex. 11 (text messages)). Respondent did not notify Ms. Hague about and they both missed a court date on October 4, 2016. **App. A10, A17** (Inf. ¶ 63; Ans. ¶ 1). Ms. Hague retained new counsel after discovering she had missed the October 4, 2016 court date. **App. A10, A17** (Inf. ¶ 64; Ans. ¶ 1).

Respondent has not refunded any of the flat fee paid in advance by Ms. Hague for representation in her dissolution matter. **App. A10, A17** (Inf. ¶ 65; Ans. ¶ 1). Ms. Hague had to pay \$2,500 to retain new counsel to represent her in the divorce and custody matter. **Rec. Vol. 1, p. 52** (DHP Tr. 52 (testimony of Angela Hague)). Ms. Hague had to borrow the money from her parents to pay her new counsel. **Rec. Vol. 1, p. 52** (DHP Tr. 52 (testimony of Angela Hague)).

On October 17, 2016, Ms. Hague, *via* her new counsel, filed a Motion to Set Aside Default Judgment. **App. A10, A17** (Inf. ¶ 66; Ans. ¶ 1); **Rec. Vol. 4, 494 – 98** (DHP Ex. 23 (certified court file of *Lusher*). On November 8, 2016, opposing counsel Swedberg wrote Respondent informing her that Ms. Hague had filed a Motion to Set Aside Default Judgment and inquiring whether Ms. Hague “ever truly hired you to represent her....” **App. A10, A17** (Inf. ¶ 67; Ans. ¶ 1); **Rec. Vol. 4, p. 241** (DHP Ex. 13).

Respondent wrote opposing counsel Brenda Swedberg a letter dated January 19, 2016 [sic]⁴, disclosing information relating to Respondent’s representation of Ms. Hague. **App. A10, A17** (Inf. ¶ 68; Ans. ¶ 1) **Rec. Vol. 4, pp. 242 - 44** (DHP Ex. 14); **Rec. Vol. 1, pp. 75 – 77** (DHP Tr. 95 – 101 (testimony of Respondent)). In her letter to Ms. Swedberg, Respondent detailed conversations, advice, and timing details. **Rec. Vol. 4, p. 242 - 44** (DHP Ex. 14). She attached a purported letter from her to Ms. Hague. **Rec. Vol. 4, p. 242 - 44** (DHP Ex. 14); **Rec. Vol. 1, p. 77** (DHP Tr. 101 (testimony of Respondent)). The letter Respondent wrote to Brenda Swedberg details information relating to Respondent’s representation of Ms. Lusher. In that letter, Respondent disclosed, for example and in part:

“I met with Ms. Lusher on July 19, 2016.”

“I informed her at that meeting that I would be unable to complete the paperwork....”

⁴ Respondent acknowledge that she had misdated the letter. It was sent January 19, 2017, not 2016. **Rec. Vol. 1, p. 75** (DHP Tr. 95 (testimony of Respondent)).

“Additionally she said that she had a minor child that she had custody of her soon to be ex was wanting visitation. I told her not to allow that until we had some sort of temporary agreement.”

“I spoke with her on August ninth at which time I delivered....”

“Attached there was a hand written note to pay particular attention to spelling of names, dates, and to make sure that the property allocation and parenting plan was her understanding of what we had agreed on.”

“I requested to meet with her....”

“There were a few changes that needed to be made to the documents....”

“We rescheduled....”

Rec. Vol. 4, p. 242 - 44 (DHP Ex. 14); **Rec. Vol. 1, pp. 75 – 77** (DHP Tr. 95 – 101 (testimony of Respondent)). Ms. Hague did not authorize Respondent to make any disclosures to Ms. Swedberg. **Rec. Vol. 1, p. 65** (DHP Tr. 53 – 54 (testimony of Angela Hague)).

Ms. Hague didn't see her son again until October 2016, after she retained new counsel. **Rec. Vol. 1, pp. 64 - 65** (DHP Tr. 52 – 53 (testimony of Angela Hague)). She hadn't seen him since July 26, 2016. **Rec. Vol. 1, p. 65** (DHP Tr. 53 (testimony of Angela Hague)).

Respondent's Handling of Client Funds

Ms. Hague paid Respondent a \$1,000 flat fee for her representation. **App. A6, A17** (Inf. ¶ 21; Ans. ¶ 1); **Rec. Vol. 1, p. 56** (DHP Tr. 17 – 18 (testimony of Angela Hague)); **Rec. Vol. 1, p. 70** (DHP Tr. 76 (testimony of Respondent)); **Rec. Vol. 5, p. 632** (Ex. 35 (copy of check)). The fee was to cover the entirety of Ms. Hague's dissolution and custody matter. **Rec. Vol. 1, p. 70** (DHP Tr. 76 (testimony of Respondent)). Respondent intended the fee to be nonrefundable. **Rec. Vol. 1, p. 71** (DHP Tr. 77 (testimony of Respondent)).

When she received the check from Ms. Hague, Respondent had not performed any work for Ms. Hague, and she hadn't incurred any expenses. **Rec. Vol. 1, p. 71** (DHP Tr. 77 (testimony of Respondent)). Respondent did not deposit the \$1,000 flat fee paid by Ms. Hague on July 20, 2016 into a client trust account. **App. A6, A17** (Inf. ¶ 22; Ans. ¶ 1); **Rec. Vol. 1, p. 71** (DHP Tr. 78 (testimony of Respondent)). Respondent has never had a trust account. **App. A6, A17** (Inf. ¶ 23; Ans. ¶ 1); **Rec. Vol. 1, p. 71** (DHP Tr. 79 (testimony of Respondent)).

Respondent deposited the check from Ms. Hague into her personal account on July 26, 2016. **Rec. Vol. 1, p. 71** (DHP Tr. 77 – 80 (testimony of Respondent)); **Rec. Vol. 5, p. 632** (DHP Ex. 35 (copy of deposited item)). Personal funds were deposited into that account, and personal expenses were paid from that account. **Rec. Vol. 1, p. 71** (DHP Tr. 80 (testimony of Respondent)). The daily balance in Respondent's account on August 22, 2016, was \$853.01. **Rec. Vol. 1, p. 71 - 72** (DHP Tr. 80 – 81 (testimony of Respondent)); **Rec. Vol. 5, p. 641** (DHP Ex. 36 (Respondent's bank records)). On September 12, 2016,

her bank balance was \$306.09. **Rec. Vol. 1, p. 72** (DHP Tr. 81 (testimony of Respondent)); **Rec. Vol. 5, p. 646** (DHP Ex. 36 (Respondent's bank records)). And, on October 28, 2016, Respondent's account was overdrawn by \$46.50. **Rec. Vol. 1, p. 71 - 72** (DHP Tr. 81 (testimony of Respondent)); **Rec. Vol. 5, p. 651** (DHP Ex. 36 (Respondent's bank records)).

Respondent did not keep a client ledger regarding the money advanced by Ms. Hague. **Rec. Vol. 5, p. 582** (DHP Ex. 31, Tr. 23 - 24 (sworn statement of Respondent)). Respondent did not refund any money to Ms. Hague based on her belief that the fee was nonrefundable. **Rec. Vol. 1, p. 72** (DHP Tr. 82 (testimony of Respondent)).

Respondent's Failure to Cooperate with and Misrepresentation to OCDC

Ms. Hague filed a complaint with Informant on or about November 14, 2016. **App. A11, A17** (Inf. ¶ 69; Ans. ¶ 1); **Rec. Vol. 1, p. 109 – 127** (DHP Ex. 1). Informant's counsel wrote Respondent on November 29, 2016, and asked her to respond to Ms. Hague's complaint by December 13, 2016. **App. A11, A17** (Inf. ¶ 70; Ans. ¶ 1); **Rec. Vol. 1, p. 128** (DHP Ex. 2). Respondent did not provide a response to Ms. Hague's complaint by December 13, 2016. **App. A11, A17** (Inf. ¶ 71; Ans. ¶ 1).

Informant's counsel wrote Respondent again on December 16, 2016, and asked her to respond to Ms. Hague's complaint by December 27, 2016. **App. A11, A17** (Inf. ¶ 72; Ans. ¶ 1); **Rec. Vol. 1, p. 129** (DHP Ex. 3). Respondent did not provide a response to Ms. Hague's complaint by December 27, 2016. **App. A11, A17** (Inf. ¶ 73; Ans. ¶ 1).

Informant caused a subpoena to be issued to Respondent demanding she appear at Informant's office on January 24, 2017, and bring her written response to Ms. Hague's

complaint, her case file regarding her representation of Ms. Hague, her fee agreement with Ms. Hague, and a billing statement showing both the money received by her from Ms. Hague and the time she billed Ms. Hague for working on her case. **App. A11, A17** (Inf. ¶ 74; Ans. ¶ 1). Informant agreed to delay Respondent's appearance to January 30, 2017. **App. A11, A17** (Inf. ¶ 75; Ans. ¶ 1). When Respondent appeared in Informant's office on January 30, 2017, she did not bring a response to Ms. Hague's complaint. **App. A11, A17** (Inf. ¶ 76; Ans. ¶ 1).

Respondent provided a written response to Ms. Hague's complaint by letter dated February 7, 2017. **App. A11, A17** (Inf. ¶ 77; Ans. ¶ 1); **Rec. Vol. 1, p. 135** (DHP Ex. 8). With her February 7, 2017 response, Respondent produced only a letter to Ms. Hague dated September 15, 2016, wherein she purported to memorialize that Ms. Hague had terminated her representation, and a timesheet for the Lusher matter. **App. A12, A17** (Inf. ¶ 78; Ans. ¶ 1); **Rec. Vol. 1, p. 135 - 38** (DHP Ex. 8); **Rec. Vol. 5, p. 571** (DHP Ex. 28).

The timesheet created by Respondent included an entry that Ms. Hague had been a "no call/no show" for a Saturday, August 13, 2016 meeting. **Rec. Vol. 1, p. 134, 137** (DHP Exs. 6 and 8). When Respondent responded to Ms. Hague's complaint, she emphasized that Ms. Hague had not shown up for meetings scheduled for her convenience, such as this Saturday meeting. **Rec. Vol. 1, p. 135** (DHP Ex. 8). As corroborated by the text messages and the phone records, the meeting actually was on Friday, August 19, 2016. **Rec. Vol. 1, pp. 59 - 60** (DHP Tr. pp. 32 - 33 (testimony of Angela Hague)); **Rec. Vol. 3,**

p. 227 (DHP Ex. 11 (text messages)); **Rec. Vol. 4, p. 298** (Ex. 15 (Ms. Hague's phone records)); **Rec. Vol. 4, p. 374** (DHP Ex. 16 (Respondent's phone records)).

Ms. Hague replied to Respondent's February 7, 2017 response. **Rec. Vol. 1, p. 139** (DHP Ex. 8a). Ms. Hague did not receive the September 15, 2016 letter. **App. A12, A17** (Inf. ¶ 79; Ans. ¶ 1); **Rec. Vol. 1, p. 63 - 64** (DHP Tr. 48 - 49 (testimony of Angela Lusher)); **Rec. Vol. 1, p. 139** (DHP Ex. 8a). To the contrary, after the supposed termination, Respondent had texted Ms. Hague once on September 15, six times on September 22, once on September 23, once on September 27, and once on September 28, 2016, purportedly still working on Ms. Hague's case and still trying to arrange visitation. **Rec. Vol. 5, p. 232 - 38** (DHP Ex. 11 (text messages)). Further, Respondent contacted Brenda Swedberg on September 28, 2016, about temporary agreement regarding custody. **Rec. Vol. 5, p. 424** (DHP Ex. 22 (phone message from Respondent)); **Rec. Vol. 1, p. 66, 68** (DHP Tr. 58, 65 - 66 (testimony of Brenda Swedberg)); **Rec. Vol. 4, p. 380** (DHP Ex. 16 (Respondent's phone records)). Ms. Hague continued to try to communicate with Respondent until October 8, 2016. **Rec. Vol. 3, p. 239** (DHP Ex. 11 (text messages)).

By letter dated September 22, 2017, Informant asked Respondent for additional information, including an electronic version of Respondent's September 15, 2016 letter to Informant, with the metadata intact, by October 6, 2017. **App. A12, A17** (Inf. ¶ 80; Ans. ¶ 1); **Rec. Vol. 5, p. 403** (DHP Ex. 17). Respondent did not respond to counsel for Informant's September 22, 2017 letter by October 6, 2017. **App. A12, A17** (Inf. ¶ 81; Ans. ¶ 1).

By letter dated October 12, 2017, counsel for Informant again asked for a response by October 22, 2017 to the September 22, 2017 letter and asked for a copy of the January 19, 2016 [sic] letter Respondent had written to opposing counsel Brenda Swedberg. **App. A12, A17** (Inf. ¶ 82; Ans. ¶ 1); **Rec. Vol. 5, p. 404** (DHP Ex. 18). Respondent provided a response dated October 23, 2017, but did not provide all the requested information. **App. A12, A17** (Inf. ¶ 83; Ans. ¶ 1); **Rec. Vol. 5, p. 406** (DHP Ex. 19). By letter dated October 26, 2017, counsel for Informant wrote Respondent requesting the outstanding information and seeking clarification regarding the response provided by November 2, 2017. **App. A12, A17** (Inf. ¶ 84; Ans. ¶ 1); **Rec. Vol. 5, p. 421** (DHP Ex. 20). Respondent never produced the requested electronic version of the September 15, 2016 letter. **App. A12, A17** (Inf. ¶ 85; Ans. ¶ 1). Respondent testified during her sworn statement that she lost the electronic version of the September 15, 2016 letter when, as she understands it, a transformer in her neighborhood was struck by lightning. **App. A12, A17** (Inf. ¶ 86; Ans. ¶ 1); **Rec. Vol. 5, pp. 578 - 79** (DHP Ex. 31, Tr. 8 - 12 (sworn stmt. of Respondent)).

Respondent did not respond to counsel for Informant's October 26, 2017 letter by November 2, 2017. **App. A13, A17** (Inf. ¶ 88; Ans. ¶ 1). Informant caused a subpoena to be issued to Respondent for her appearance at Informant's office for a sworn statement and to respond to a *duces tecum* request on December 8, 2017. **App. A13, A17** (Inf. ¶ 89; Ans. ¶ 1). Informant agreed to postpone Respondent's sworn statement to December 11, 2017. **App. A13, A17** (Inf. ¶ 90; Ans. ¶ 1).

During her sworn statement on December 11, 2017, Respondent testified that she had spoken to Paul Lusher's attorney, Brenda Swedberg, about a temporary visitation schedule. **Rec. Vol. 5, p. 600 - 01** (DHP Ex. 31, Tr. 96 - 100 (sworn stmt. of Respondent)). Brenda Swedberg testified that she never spoke to Respondent about the *Lusher* case while Respondent was representing Ms. Hague. **Rec. Vol. 1, p. 68** (DHP Tr. 67 - 68 (testimony of Brenda Swedberg)).

During her sworn statement on December 11, 2017, Respondent testified that she had called Ms. Hague numerous times and that those calls explained why she did not respond to the text messages. **Rec. Vol. 5, p. 597** (DHP Ex. 31, Tr. 83 - 84 (sworn stmt. of Respondent)). See also **Rec. Vol. 1, pp. 78 – 79** (DHP Tr. 106 – 109 (testimony of Respondent)). Respondent testified that the only telephone number at which she called Ms. Hague was her cell phone number. **Rec. Vol. 5, p. 594** (DHP Ex. 31, Tr. 71 - 72 (sworn statement of Respondent)); **Rec. Vol. 1, p. 77 – 78** (DHP Tr. 104 – 06 (testimony of Respondent)). The phone records of Respondent and Ms. Hague, however, do not reflect the calls Respondent testified she made. (**Rec. Vol. 4, pp. 291 – 304, 367 - 81** (DHP Exs. 15 and 16 (phone records of Angela Hague and Respondent, respectively))).

Respondent testified that she had had “a minimum of two or three phone conversations, if not four phone conversations” in the August 8 and 9, 2016 timeframe. **Rec. Vol. 5, pp. 593 - 95** (DHP Ex. 31, Tr. 68 – 74 (sworn stmt. of Respondent)). The phone records do not reflect that Ms. Hague and Respondent spoke by phone on August 8 or 9, 2016. **Rec. Vol. 4, pp. 297, 373** (Exs. 15 and 16 (Angela Hague's and Respondent's

phone records⁵, respectively)). Respondent testified that she called Ms. Hague the night of August 12, 2016. **Rec. Vol. 5, p. 596** (DHP Ex. 31, Tr. 78 (sworn stmt. of Respondent)). The phone records do not reflect that Respondent called Ms. Hague on August 12, 2016. **Rec. Vol. 4, pp. 297, 373 - 74** (Exs. 15 and 16 (Angela Hague's and Respondent's phone records, respectively)). Respondent testified in her sworn statement that she believes she called Ms. Hague on September 6 and 9, 2016. **Rec. Vol. 5, p. 602** (DHP Ex. 31, Tr. 104 (sworn stmt. of Respondent)). The phone records do not reflect that Respondent called Ms. Hague on September 6 and 9, 2016. **Rec. Vol. 4, pp. 302, 379** (Exs. 15 and 16 (Angela Hague's and Respondent's phone records⁶, respectively)). Respondent testified that she spoke to Ms. Hague by telephone on September 14, 2016, and that Ms. Hague "fired" her during that conversation. **Rec. Vol. 5, p. 589** (DHP Ex. 31, Tr. 49 – 51 (sworn stmt. of Respondent)). The phone records do not reflect a call between the two on September 14 or 15, 2016. **Rec. Vol. 4, pp. 302, 379** (Exs. 15 and 16 (Angela Hague's and Respondent's phone records, respectively)). The records reflect that Respondent only called Ms. Hague

⁵ The phone records indicate that Ms. Hague called Respondent, but the records of Respondent's phone do not reflect that the call was answered. **Rec. Vol. 4, pp. 297, 373** (Exs. 15 and 16 (Ms. Hague's and Respondent's phone records)).

⁶ The phone records indicate that Ms. Hague called Respondent September 6, 2016, but the records of Respondent's phone do not reflect that the call was answered. **Rec. Vol. 4, pp. 302, 379** (Exs. 15 and 16 (Ms. Hague's and Respondent's phone records)).

on three occasions: July 19, 2016, July 27, 2016, and July 28, 2016. **Rec. Vol. 4, pp. 292 – 93, and 368 - 69** (Ex. 15 (Angela Hague’s phone records); and Ex. 16 (Respondent’s phone records), respectively).

The Disciplinary Hearing Panel’s Decision

The Disciplinary Hearing Panel found that Respondent violated the following Rules of Professional Responsibility:

1. “Rule 4-1.3 by not acting with diligence in representing Ms. Lusher;”
2. “Rule 4-1.4 by not adequately communicating with Ms. Lusher;”
3. “Rule 4-1.6 when she failed to keep information relating to Ms. Lusher’s representation confidential;”
4. “Rule 4-1.15(a) when she failed to hold the money Ms. Lusher advanced separate from her own property;”
5. “Rule 4-1.15(c) when she failed to deposit into a client trust account the legal fees and expenses paid in advance for Ms. Lusher’s representation and when she spent expenses and fees before they were earned;”
6. “Rule 4-1.15(f) by failing to complete client trust account records related to her representation of Ms. Lusher;”
7. “Rule 4-1.16(d) when she failed to refund the unearned fees advanced by Ms. Lusher;”
8. “Rule 4-8.1(a) when she knowingly produced a document to Information that was never sent to Ms. Lusher, testified that she had communicated when she had

not, testified that she had communicated with opposing counsel Swedberg when she had not;”

9. “Rule 4-8.1(c) when she knowingly failed to respond to Informant’s lawful demand for information; and”

10. “Rule 4-8.4(c) when she engaged in dishonesty, fraud, deceit, or misrepresentation when she spent unearned advance fees and advanced expenses, when she misappropriated monies advanced by Ms. Lusher, when she told Ms. Lusher she was in contact with opposing counsel regarding a temporary visitation schedule, and when she made false statements to Informant regarding her communication with Ms. Lusher and opposing counsel Swedberg.”

App. A27 - 29. The Disciplinary Hearing Panel further found that Respondent’s acts “were purposeful acts intended to deprive a client of her rights and adequate counsel.” **App.**

A29A2. The Disciplinary Hearing Panel found that Respondent “deceived her client as to her actions to avoid responsibility.” **App. A29.** The Panel found that Respondent’s “actions caused actual injury to a client.” **App. A30.**

Aggravating and Mitigating Factors

Informant presented evidence regarding Respondent’s prior disciplinary history. **Rec. Vol. 1, pp. 1, 32** (Inf. ¶ 7; Ans. ¶ 1). By letter dated September 21, 2006, Respondent was admonished by Informant for violating Rule 4-1.16(d) by failing to timely refund a filing fee after her representation was terminated. **Rec. Vol. 1, pp. 2, 32** (Inf. ¶ 7.a; Ans. ¶ 1), **Vol. 5, pp. 544 - 45** (Ex. 24). By letter dated February 8, 2008, Respondent was

admonished by Informant for violating Rule 4-1.3 by failing to prepare her client's petition in a timely manner. **Rec. Vol. 1, pp. 2, 32** (Inf. ¶ 7.b; Ans. ¶ 1), **Vol. 5, pp. 546 - 47** (Ex. 24). By letter dated March 28, 2016, Respondent was admonished by Informant for violating Rules 4-1.5 and 4-1.16(d) by failing to timely refund a fee incorrectly labeled nonrefundable. **Rec. Vol. 1, pp. 2, 32** (Inf. ¶ 7.c; Ans. ¶ 1), **Vol. 5, pp. 549 - 50** (Ex. 24).

The Disciplinary Hearing Panel found the following aggravating factors:

1. "Substantial experience in the practice of law. Respondent has practiced for over fifteen years and is aware of the Rules of Professional Misconduct and how it applied to her Firm and Clients."
2. "There was a pattern of conduct that occurred over the course of time."
3. "Following several acts in violation of the Rules of Professional [C]onduct, Respondent engaged in a pattern of conduct to avoid responsibility exhibiting a dishonest or selfish motive."
4. "Respondent committed numerous offenses during her representation of her client."
5. Respondent showed no sign of remorse or recognition that her conduct was dishonest."
6. Respondent was indifferent and made no effort to making restitution to her client."

App. A30 - 31. The Disciplinary Hearing Panel did not find any mitigating factors. **App. A31.**

The Disciplinary Hearing Panel's Recommendation

The Disciplinary Hearing Panel recommended that Respondent be disbarred. **App. A31.** Informant accepted the recommendation. **Rec. Vol. 5, p. 689.** Respondent rejected the DHP recommendation as to sanction. **Rec. Vol. 5, p. 690.**

POINT RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-1.3 IN THAT RESPONDENT FAILED TO ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING HER CLIENT.

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

Rule 4-1.3

POINT RELIED ON

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-1.4(a) IN THAT RESPONDENT FAILED TO KEEP HER CLIENT REASONABLY INFORMED AND SHE FAILED TO RESPOND TO HER CLIENT'S REQUESTS FOR INFORMATION.

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

Rule 4-1.4(a)

POINT RELIED ON

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-1.6 IN THAT RESPONDENT FAILED TO KEEP INFORMATION SHE OBTAINED FROM HER CLIENT AND COMMUNICATIONS SHE HAD WITH HER CLIENT CONFIDENTIAL.

Rule 4-1.6

POINT RELIED ON

IV.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-1.15 IN THAT SHE FAILED TO MAINTAIN A CLIENT TRUST ACCOUNT, SHE FAILED TO HOLD THE MONEY MS. HAGUE ADVANCED SEPARATE FROM HER OWN PROPERTY, SHE SPENT THE MONEY ADVANCED BEFORE IT WAS EARNED, AND SHE FAILED TO KEEP CLIENT TRUST ACCOUNT RECORDS RELATING TO HER REPRESENTATION OF MS. HAGUE

Rule 4-1.15

POINT RELIED ON

V.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S
LICENSE BECAUSE RESPONDENT FAILED TO TAKE
REASONABLE STEPS TO PROTECT HER CLIENT'S INTERESTS
IN VIOLATION OF RULE 4-1.16(d) IN THAT SHE DID NOT
REFUND UNEARNED FEES TO HER CLIENT.**

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

Rule 4-1.16(d)

POINT RELIED ON

VI.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE 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 AND SHE KNOWINGLY FAILED TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF THE DISCIPLINARY INVESTIGATION.

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

Rule 4-8.1

POINT RELIED ON

VII.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-8.4(c) IN THAT RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION DURING THE REPRESENTATION OF HER CLIENT AND IN HER SWORN TESTIMONY DURING THE DISCIPLINARY PROCESS.

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

Rule 4-8.4(c)

POINT RELIED ON

VIII.

THE SUPREME COURT SHOULD ENTER AN ORDER DISBARRING RESPONDENT BECAUSE SHE KNOWINGLY VIOLATED MULTIPLE RULES OF PROFESSIONAL CONDUCT MULTIPLE TIMES, INCLUDING OBLIGATIONS SHE OWED HER CLIENTS, AND CAUSED AN INJURY OR POTENTIAL INJURY.

In re Eisenstein, 485 S.W.3d 759 (Mo. banc 2016)

In re Krigel, 480 S.W.2d 294 (2016)

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

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

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

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-1.3 IN THAT SHE FAILED TO ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING HER CLIENT.

Respondent failed to act with reasonable diligence in representing Angela Hague. Ms. Hague retained Respondent to represent her in her marriage dissolution and custody action. She expected Respondent to file a petition on her behalf and to advise her regarding that divorce. Instead, Respondent provided Ms. Hague with a draft petition that left out certain information and which included the name of a third party not at all involved in the Lusher divorce. Additionally, Respondent refused to respond to Ms. Hague's call and text messages made when she was trying to decide whether to let her son go with his dad for the night. Ms. Hague did let him go, and her estranged husband then filed for divorce and refused to return her son to Ms. Hague. Thereafter, Ms. Hague called and sent numerous text messages to Respondent about trying to get her son back and about moving the case along so she could visit her son.

Rather than responding with reasonable diligence to a situation where Ms. Hague was separated from her five-year old son, Respondent ignored Ms. Hague and failed to take any steps to arrange visitation through a temporary agreement or otherwise. Ms. Hague informed Respondent that her husband had filed for divorce on July 27, 2016, and she told

Respondent that he was represented by Templeton and Swedberg on that same date. Respondent did not look the case up and ascertain who at Templeton and Swedberg was representing Paul Lusher, and she did not otherwise ascertain that information. After Respondent told her on August 11, 2016, that she didn't think a petition had been filed, Ms. Hague told Respondent that she had seen it on Case.Net.

Ms. Hague picked up her service papers at the Sheriff's Department on August 12, 2016, and emailed them to Respondent on August 15. The return of service reflects the August 12 service date, and Ms. Hague's responsive pleading was due September 12, 2016. Ms. Hague contacted Respondent repeatedly about the responsive pleadings, but Respondent never got them to her. Ms. Hague texted Respondent about them August 25, 26, and 29, 2016. Respondent says she emailed them August 29, but Ms. Hague didn't receive them, and she asked Respondent about them again on September 2 and 14, 2016. Respondent admits that she did not follow up with Ms. Hague, ask her to bring the pleadings in, and tell her they were due. Respondent did not file a responsive pleading on behalf of Ms. Hague by September 12, 2016. A default judgment was entered against Ms. Hague on October 4, 2016, after she missed the responsive pleading deadline of September 12, 2016.

Respondent did not file a motion seeking to file Ms. Hague's responsive pleadings out-of-time or to set aside the default. Respondent did not file any pleadings on behalf of Ms. Hague or even enter her appearance on behalf of Ms. Hague. Respondent testified that

she didn't seek to have the default set aside because by the time she found out a default judgment had been entered, Ms. Hague had hired new counsel.

Respondent also failed to respond to overtures from Paul Lusher and his attorney to enter into a temporary agreement and allow Ms. Hague to see her son. Ms. Hague had not seen her son since July 26, 2016. On August 16, 2016, Ms. Hague texted Respondent that her estranged husband said she could have her son for the weekend if she signed a paper saying she would return him. Respondent replied: "Let me do some checking." Respondent never replied substantively.

Ms. Hague's estranged husband was represented in their divorce by attorney Brenda Swedberg. Ms. Swedberg wrote Respondent on August 22, 2016, asking if she'd be interested in a temporary visitation agreement allowing Ms. Hague to see her son. Respondent did not respond to Ms. Swedberg's letter in August, 2016. Respondent first told Ms. Hague about the letter from Ms. Swedberg on September 6, 2016.

Respondent did not respond to Ms. Swedberg before Ms. Hague's responsive pleading was due. Ms. Swedberg never had a discussion with Respondent regarding a visitation schedule. On September 20, 2016, Ms. Swedberg filed her motion for hearing regarding Ms. Hague's default. On September 28, 2016, the court scheduled the hearing for October 4, 2016.

Respondent first attempted to contact Ms. Swedberg when she called Ms. Swedberg's office on September 28, 2016, and left a message. This is a delay from on or about August 22, 2016, when Ms. Swedberg first wrote Respondent – adding another six

weeks to the time Ms. Hague didn't see her son. Because Ms. Hague was already in default by the time Respondent called Ms. Swedberg, she did not call her back, and they never spoke about Ms. Hague's case while Respondent was representing Ms. Hague.

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), Mr. 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 George violated Rule 4-1.3 by not promptly preparing the divorce petition, by not entering her appearance, by not preparing the answer to Ms. Hague's estranged husband's petition, by allowing a default judgment to be entered against Ms. Hague, by not responding to communications from opposing counsel wherein she was offered the opportunity to arrange visitation by Ms. Hague with her son, and by not otherwise seeking an agreement to allow Ms. Hague to have visitation with her son. The Disciplinary Hearing Panel found that Respondent violated Rule 4-1.3. **App. A27.**

ARGUMENT

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-1.4(a) IN THAT RESPONDENT FAILED TO KEEP HER CLIENT REASONABLY INFORMED AND SHE FAILED TO RESPOND TO HER CLIENT'S REQUESTS FOR INFORMATION.

Missouri Rule of Professional Conduct 4-1.4(a)⁷ 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 Ms. 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 Angela Hague’s calls and texts. Ms. Hague repeatedly asked Respondent for help getting her son back and for information regarding her husband’s petition for divorce and custody. Respondent repeatedly failed to respond at all to Ms. Hague’s requests for information, or she failed to respond substantively.

⁷ As amended March 1, 2007, eff. July 1, 2007. Cites to the Rules of Professional Conduct are to the most recent versions unless otherwise indicated.

Respondent also did not tell Ms. Hague that she had received an August 22, 2016 letter from Ms. Hague's estranged husband's attorney offering to set up visitation with her son until September 6, 2016, over two weeks after the offer was made. Even then, Respondent did not contact Ms. Swedberg until September 28, 2016.

Respondent did not adequately communicate with Ms. Hague regarding her responsive pleadings -- emailing them without confirming receipt and then ignoring subsequent messages from Ms. Hague that clearly indicated that she had not received the draft pleadings. Respondent did not contact Ms. Hague when the responsive pleadings due date was imminent. Respondent did not tell Ms. Hague that she had missed the responsive pleading date or that a hearing had been scheduled regarding her estranged husband's case, wherein a default judgment was entered.

Respondent failed to adequately communicate with Ms. Hague in violation of Rule 4-1.4. The Disciplinary Hearing Panel found that Respondent violated Rule 4-1.4 **App. A28.**

ARGUMENT

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-1.6 IN THAT RESPONDENT FAILED TO KEEP INFORMATION SHE OBTAINED FROM HER CLIENT AND COMMUNICATIONS SHE HAD WITH HER CLIENT CONFIDENTIAL.

Missouri Rule of Professional Conduct 4-1.6⁸ provides that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent. Respondent sent a letter to Ms. Hague's estranged husband's attorney, Brenda Swedberg, wherein she disclosed confidential information.

Ms. Hague, *via* her new counsel, attempted to get the default judgment against her set aside. As grounds to set aside the default judgment, Ms. Hague's new counsel pointed to Respondent's failure to adequately communicate with and otherwise represent Ms. Hague. Because Respondent never had entered her appearance on Ms. Hague's behalf, Ms. Swedberg wrote Respondent and asked her whether she had been hired to represent Ms. Hague. In response to that limited inquiry, Respondent improperly detailed conversations, advice, and timing details.

⁸ As amended March 1, 2007, eff. July 1, 2007.

Virtually every sentence of the letter Respondent sent Ms. Swedberg details an unauthorized disclosure of confidential information relating to Respondent's representation of Ms. Hague. In that letter, Respondent disclosed, for example and in part:

"I met with Ms. Lusher on July 19, 2016."

"I informed her at that meeting that I would be unable to complete the paperwork...."

"Additionally she said that she had a minor child that she had custody of her soon to be ex was wanting visitation. I told her not to allow that until we had some sort of temporary agreement."

"I spoke with her on August ninth at which time I delivered...."

"Attached there was a hand written note to pay particular attention to spelling of names, dates, and to make sure that the property allocation and parenting plan was her understanding of what we had agreed on."

"I requested to meet with her...."

"There were a few changes that needed to be made to the documents...."

"We rescheduled...."

In addition, Respondent sent Ms. Swedberg the September 15, 2016 letter Respondent claims to have sent to Ms. Hague. Ms. Hague did not authorize Respondent to make any disclosures to Ms. Swedberg. Respondent violated Rule 4-1.6 by disclosing

confidential information to the attorney representing her estranged husband. The Disciplinary Hearing Panel found that Respondent had violated Rule 4-1.6. **App. A28.**

ARGUMENT

IV.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-1.15 IN THAT SHE FAILED TO MAINTAIN A CLIENT TRUST ACCOUNT, SHE FAILED TO HOLD THE MONEY MS. HAGUE ADVANCED SEPARATE FROM HER OWN PROPERTY, SHE SPENT THE MONEY ADVANCED BEFORE IT WAS EARNED, AND SHE FAILED TO KEEP CLIENT TRUST ACCOUNT RECORDS RELATING TO HER REPRESENTATION OF MS. HAGUE.

Missouri Rule of Professional Conduct 4-1.15(a)⁹ provides that “[a] lawyer shall hold property of clients ... that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Client ... funds shall be kept in a separate account designated as a “Client Trust Account....” Ms. Hague paid Respondent a \$1,000 flat fee for her representation. The fee was to cover the entirety of Ms. Hague’s dissolution and custody matter. Respondent intended the fee to be nonrefundable.

Respondent did not have a client trust account. She testified that she had never had a trust account, and that she did not know she was supposed to have a client trust account,

⁹ As amended March 7, 2016, eff. July 1, 2016.

because she did work on a flat fee basis or she was paid after she completed the work for which she was retained.

When she received the check from Ms. Hague, Respondent had not performed any work for Ms. Hague, and she had not incurred any expenses. Respondent did not deposit the \$1,000 flat fee paid by Ms. Hague on July 20, 2016, into a client trust account. Instead, Respondent deposited the check from Ms. Hague into her personal account on July 26, 2016. Personal funds were deposited into that account, and personal expenses were paid from that account. Respondent violated Rule 4-1.15(a).

Rule 4-1.15(c)¹⁰ provides that “[a] lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.” Respondent violated Rule 4-1.15(c) because she spent unearned fees. The flat fee paid by Ms. Hague was to cover the entirety of Ms. Hague’s divorce and custody matter. Respondent did not file a single document on Ms. Hague’s behalf, nor did she perform other work necessary to adequately represent Ms. Hague. Most, if not all, of the fees advanced by Ms. Hague were unearned by Respondent. Respondent, however, spent those fees. The daily balance in Respondent’s account on August 22, 2016, was \$853.01. On September 12, 2016, her bank balance was \$306.09. And, on October 28, 2016, Respondent’s account was overdrawn by \$46.50. Respondent spent the unearned fees and violated Rule 4-1.15(c).

¹⁰ As amended March 7, 2016, eff. July 1, 2016.

Rule 4-1.15(f)¹¹ provides that “[c]omplete records of client trust accounts shall be maintained....” Respondent had no client trust account of which to keep records. She also did not keep a client ledger regarding the money advanced by Ms. Hague. Respondent violated Rule 4-1.15(f). The Disciplinary Hearing Panel found that Respondent violated Rule 4-1.15(a), (c), and (f). **App. A28.**

¹¹ As amended March 7, 2016, eff. July 1, 2016.

ARGUMENT

V.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT FAILED TO TAKE REASONABLE STEPS TO PROTECT HER CLIENT'S INTERESTS IN VIOLATION OF RULE 4-1.16(d) IN THAT SHE DID NOT REFUND UNEARNED FEES TO HER CLIENT.

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 she failed to refund the money paid to her by Angela Hague. That flat fee was to represent Ms. Hague through completion of the dissolution and custody matter. Respondent did not enter her appearance or file any pleadings in Ms. Hague's case. To the contrary, on Respondent's watch, a default judgment was entered against Ms. Hague. 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 testified that she did not refund any money to Ms. Hague based on her belief that the fee was nonrefundable. Per Formal Opinion No. 128 and Rule 4-1.15, there is no such thing in Missouri as a nonrefundable fee. Fees are either earned or they are not

earned. The advance fees paid by Ms. Hague were not earned. Respondent violated Rule 4-1.16(d) when she failed to timely refund the unearned fees Ms. Hague advanced. The Disciplinary Hearing Panel found that Respondent violated Rule 4-1.16(d). **App. A28.**

ARGUMENT

VI.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT’S LICENSE BECAUSE SHE 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 AND SHE KNOWINGLY FAILED TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF THE DISCIPLINARY INVESTIGATION.

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 she submitted to OCDC a letter dated September 15, 2016, that she purportedly sent to Ms. Hague. Ms. Hague never received that letter.¹² Further, in that letter, Respondent purported to memorialize that Ms.

¹² In the Information, Informant made the following allegation: Respondent did not send Ms. Hague the September 15, 2016 letter that Respondent produced to Informant. **App. A13, A17** (Inf. ¶ 87; Ans. ¶¶ 1 - 3); **Rec. Vol. 1, p. 63 - 64** (DHP Tr. 48 - 49 (testimony of

Hague had terminated her representation on September 14, 2016, but she continued to send text messages to Ms. Hague regarding efforts to arrange visitation with Ms. Hague's son. After September 14, 2016, she sent a text message to Ms. Hague on September 15, six (6) texts on September 22, one (1) on September 23, one (1) on September 27, and one on September 28. Further, she called opposing counsel, Brenda Swedberg, on September 28, 2016, inquiring about a temporary agreement. The texts and call belie her claim that Ms. Hague terminated her representation on September 14, and that the September 15, 2016 letter is genuine.

Informant requested that Respondent produce an electronic copy of the September 15, 2016 letter with all of the metadata intact. Respondent did not produce the requested document, stating that a transformer in her neighborhood had been struck by lightning. The first time this letter surfaced was when Respondent sent it to Ms. Swedberg with her letter dated January 19, 2016 [sic]. Ms. Hague filed her complaint with OCDC on November 14, 2016, and OCDC mailed it to Respondent on November 29, 2016. The credible evidence shows that the letter was never sent and that Respondent created that letter after receiving notice that Ms. Hague had filed a complaint against her with the OCDC.

Angela Hague)). Respondent did not answer or respond to paragraph 87 of the Information. Pursuant to Rule 55.09, it is therefore admitted.

Respondent also made false statements of material facts to OCDC when she testified in her sworn statement that she had called Ms. Hague in response to her text messages. During her sworn statement, counsel for Informant went through the text messages between Respondent and Ms. Hague. There were numerous text messages from Ms. Hague to Respondent that were not replied to by text message by Respondent. Ms. Hague testified that Respondent failed to respond to her.

Respondent testified that she had called Ms. Hague numerous times and that those calls explained why she did not respond to the text messages. Respondent testified that the only telephone number at which she called Ms. Hague was her cell phone number. The phone records of Respondent and Ms. Hague, however, do not reflect the calls Respondent testified she made.

- Respondent testified that she had “a minimum of two or three phone conversations, if not four phone conversations” in the August 8 and 9, 2016 timeframe. The phone records do not reflect that Ms. Hague and Respondent spoke by phone on August 8 or 9, 2016.
- Respondent testified that she called Ms. Hague the night of August 12, 2016. The phone records do not reflect that Respondent called Ms. Hague on August 12, 2016.
- Respondent testified in her sworn statement that she believes she called Ms. Hague on September 6 and 9, 2016. The phone records do not reflect that Respondent called Ms. Hague on September 6 and 9, 2016.

- Respondent also testified that she spoke to Ms. Hague by telephone on September 14, 2016, and that Ms. Hague “fired” her during that conversation. The phone records do not reflect a call between the two on September 14 or 15, 2016. Further, the phone records do reveal that Respondent continued to represent Ms. Hague as of September 28, 2016, when Respondent called Brenda Swedberg about reaching a temporary custody agreement.

Contrary to Respondent’s testimony, the records reflect that Respondent only called Ms. Hague on three occasions: July 19, 2016, July 27, 2016, and July 28, 2016. The evidence shows Respondent violated Rule 4-8.1(a). The Disciplinary Hearing Panel found that Respondent had violated Rule 4-8.1(a). **App. A28.**

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 she repeatedly failed to respond to OCDC’s requests for information regarding Ms. Hague’s complaint.

Ms. Hague filed a complaint with Informant on or about November 14, 2016. Informant’s counsel wrote Respondent on November 29, 2016, and asked her to respond to Ms. Hague’s complaint by December 13, 2016. Respondent did not provide a response to Ms. Hague’s complaint by December 13, 2016.

Informant's counsel wrote Respondent again on December 16, 2016, and asked her to respond to Ms. Hague's complaint by December 27, 2016. Respondent did not provide a response to Ms. Hague's complaint by December 27, 2016.

Informant caused a subpoena to be issued to Respondent demanding she appear at Informant's office on January 24, 2017, and bring her written response to Ms. Hague's complaint, her case file regarding her representation of Ms. Hague, her fee agreement with Ms. Hague, and a billing statement showing both the money received by her from Ms. Hague and the time she billed Ms. Hague for working on her case. Informant agreed to delay Respondent's appearance to January 30, 2017. When Respondent appeared in Informant's office on January 30, 2017, she did not bring a response to Ms. Hague's complaint.

Respondent provided a written response to Ms. Hague's complaint by letter dated February 7, 2017. With her February 7, 2017 response, Respondent produced a letter to Ms. Hague dated September 15, 2016, wherein she purported to memorialize that Ms. Hague had terminated her representation, and a timesheet for her representation.

Ms. Hague replied to Respondent's February 7, 2017 response stating, in part, that she did not receive the September 15, 2016 letter. Additionally, after the supposed termination, Ms. Hague texted Respondent consistently asking for help, and Respondent had texted Ms. Hague on September 15, 22, 23, 27, and 28, 2016, purportedly still working on Ms. Hague's case and still trying to arrange visitation. Further, Respondent attempted to contact, but did not reach, Brenda Swedberg on September 28, 2016, leaving a message

about entering into a temporary agreement regarding custody. Ms. Hague continued to try to communicate with Respondent until October 8, 2016. Neither Ms. Hague's nor Respondent's conduct was consistent with the termination of Respondent's representation of Ms. Hague.

By letter dated September 22, 2017, Informant asked Respondent for additional information, including an electronic version of Respondent's September 15, 2016 letter to Ms. Hague, with the metadata intact, by October 6, 2017. Respondent did not respond to counsel for Informant's September 22, 2017 letter by October 6, 2017. By letter dated October 12, 2017, counsel for Informant again asked for a response by October 22, 2017, to the September 22, 2017 letter and asked for a copy of the January 19, 2016 [sic] letter Respondent had written to opposing counsel Brenda Swedberg. Respondent provided a response dated October 23, 2017, but did not provide all the requested information.

By letter dated October 26, 2017, counsel for Informant wrote Respondent requesting the outstanding information and seeking clarification regarding the response provided by November 2, 2017. Respondent did not respond and never produced the requested electronic version of the September 15, 2016 letter. Respondent testified during her sworn statement that she lost the electronic version of the September 15, 2016 letter when, as she understands it, a transformer was struck by lightning.

Respondent did not respond to counsel for Informant's October 26, 2017 letter by November 2, 2017. Informant caused a subpoena to be issued to Respondent for her appearance at Informant's office for a sworn statement and to respond to a *duces tecum*

request on December 8, 2017. Informant agreed to postpone Respondent's sworn statement to December 11, 2017.

The evidence demonstrates that Respondent violated Rule 4-8.1(c) when she repeatedly failed to respond to OCDC's requests for information regarding Ms. Hague's complaint. The Disciplinary Hearing Panel found that Respondent violated Rule 4-8.1(c).

App. A28.

ARGUMENT

VII.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-8.4(c) IN THAT RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION DURING THE REPRESENTATION OF HER CLIENT AND IN HER SWORN TESTIMONY DURING THE DISCIPLINARY PROCESS.

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. Respondent violated Rule 4-8.4(c) by engaging in conduct involving dishonesty, deceit, or misrepresentation with regard to her attempt to cover up her abandonment of Ms. Hague. Respondent engaged in dishonesty, fraud, deceit and/or misrepresentation when she created the September 15, 2016 letter professing that she was no longer representing Ms. Hague after Ms. Hague filed her complaint and after Ms. Hague's new attorney filed a motion to set aside the default judgment against Ms. Hague relying on Respondent's abandonment of Ms. Hague. *See supra* Argument VI, at pp. 51 – 52.

Respondent falsely testified in her sworn statement that she had made numerous calls to Ms. Hague before she realized OCDC had obtained the phone records showing the

contrary. See supra Argument VI, at pp. 53 – 54. Respondent falsely claimed to have given Ms. Hague a draft answer to her estranged husband’s petition.

Respondent told Ms. Hague several times that she had called or communicated with Ms. Swedberg about reaching an agreement whereby Ms. Hague could see her son.

- On September 14, 2016, she told Ms. Hague that she had talked to Ms. Swedberg.
- On September 22, 2016, Respondent told Ms. Hague that she had discussed a specific custody schedule with Ms. Swedberg, and that she would have Ms. Swedberg draw up the temporary agreement when, in fact, she hadn’t even spoken to Ms. Swedberg.
- On September 23, 2016, she said she was waiting for Ms. Swedberg to email her the agreement.
- On September 27, 2016, she again said she was waiting on Ms. Swedberg to send her the documents. Brenda Swedberg testified that she never spoke to Respondent about the *Lusher* case.

All of the communications Respondent describes were before she ever even tried to contact Ms. Swedberg on September 28, 2016.

Respondent engaged in deceit when, on August 19, 2016, she refused to respond to Ms. Hague’s calls and text messages after Ms. Hague was ten minutes late for a meeting. Respondent ignored Ms. Hague’s repeated calls and text messages, but, when Ms. Hague’s mother called from her cell phone, a number unfamiliar to Respondent, she answered the

phone. Respondent engaged in deceit when she produced a document showing that Ms. Hague had been a “no call/no show” for a Saturday, August 13 meeting, when the actual meeting was on a Friday, August 19, as corroborated by the text messages and phone records, and Ms. Hague had shown up and called.

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 did not defend against a summary judgment motion. Similarly, Respondent in this case engaged in conduct involving dishonesty, fraud, deceit and/or misrepresentation while representing Ms. Hague and when trying to cover-up her abandonment of Ms. Hague. The Disciplinary Hearing Panel found that Respondent had violated Rule 4-8.4(c). **App. A28 – 29.**

ARGUMENT

VIII.

THE SUPREME COURT SHOULD ENTER AN ORDER DISBARRING RESPONDENT BECAUSE SHE KNOWINGLY VIOLATED MULTIPLE RULES OF PROFESSIONAL CONDUCT MULTIPLE TIMES, INCLUDING OBLIGATIONS SHE OWED HER 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 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 that Respondent be disbarred. Pursuant to Missouri case law and the ABA Standards, disbarment is warranted in this case.

“Honesty and integrity are chief among the virtues the public has a right to expect of lawyers. Any breach of that trust is misconduct of the highest order and warrants severe discipline.” *In re Carey*, 89 S.W. 3d 477, 498 (Mo. banc 2002). “Disbarment is typically reserved for clear cases of gross misconduct, those in which the attorney is demonstrably unfit to continue the practice of law.” *In re Frank*, 885 S.W.2d 328, 334 (Mo. banc 1994).

The prior opinions of this Court in attorney discipline cases support disbarment in this case. In *In re Eisenstein*, 485 S.W.3d 759, 762 - 63 (Mo. banc 2016), this Court found that Eisenstein had violated Rules 4-4.4(a), 4-8.4(c), 4-3.4(a), and 4-8.4(d) when, during a divorce case, he used improperly obtained evidence, when he did not disclose to opposing counsel that he possessed such evidence, when he concealed his possession of such evidence, and when he threatened opposing counsel during the course of litigation or to avoid an ethics complaint. This Court found Eisenstein’s conduct to have been with “knowledge.” *Id.* at 763 – 64. It also found that his prior disciplinary history was an aggravating factor and that there were no mitigating factors. *Id.* at 764. This Court suspended Eisenstein with no leave to apply for reinstatement for six (6) months. *Id.*

Although not a Rule 4-8.4(c) violation, the Court addressed a significant lack of candor to the court in *In re Krigel*, 480 S.W.2d 294 (2016). In *Krigel*, this Court found that Krigel violated Rule 4-3.3(a)(3) when he elicited false and misleading testimony, and did not correct the false impression made, before the trial court. *Id.* at 299. Noting

Krigel's thirty (30) years of practice without discipline and the Court's practice of imposing progressive discipline, the Court suspended Krigel, but stayed the suspension subject to Krigel's completion of two (2) years of probation. *Id.* at 302.

In *In re Carey*, 89 S.W.3d 477, Carey and Denis, *inter alia*, intentionally withheld documents and information from opposing counsel in an attempt to cover up a fee-sharing arrangement and made misstatements to the court. The Court found they had violated Rules 4-3.3(a)(1), 4-3.4(a), 4-3.4(d), 4-8.4(c), and 4-8.4(d). Multiple mitigating factors applied, however. *Id.* at 503. "While disbarment would ordinarily be expected in a case such as this, the mitigating factors warrant some degree of leniency and offer hope that respondents can return to the responsible practice of law having learned a very hard lesson." *Id.* The Court suspended Carey and Danis indefinitely, with leave to apply for reinstatement after one year. *Id.* at 503 – 04.

In *In re Oberhellmann*, 873 S.W.2d 851, 856 (Mo. banc 1994), this Court found that Oberhellmann had engaged in multiple deceitful acts while representing two separate clients. In one case, Oberhellman filed a complaint with the court alleging that his client resided at an address he knew to be false, and he advised his client to give false testimony. *Id.* at 853 – 55. In the second, he forged his former law partner's name and then filed that false document with the court. *Id.* at 855 – 56. The Court found that Oberhellman violated Rules 4-3.3(a)(1) and (4), 4-3.4(b), and 4-8.4(a), (c), and (d) and ordered him disbarred. "Disbarment is appropriate when a lawyer, with the intent to deceive a court, makes a false statement or submits a false document to a court. *Id.* at 856. Although the focus of

Oberhellman was his lack of candor to the court, and there were two client matters at issue instead of one as in the case at bar, Oberhellman's conduct also constituted a Rule 4-8.4(c) violation and the multiplicity of acts is relevant to the appropriate sanction for Respondent George.

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* proffered certain mitigating circumstances such as "psychological difficulties that negatively affect his professional conduct,"¹³ and he represented that he was seeking assistance in that regard. *Id.* "Absent mitigating circumstances, discipline might well be

¹³ *Waldron* was decided prior to this Court's adoption of Rule 5.285.

disbarment.” *Id.* Waldron was suspended for six (6) months and ordered to participate in weekly therapy sessions for, at minimum, 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 raises great concern about her fitness to practice. In violation of Rule 4–8.4(c), Respondent was dishonest with Angela Hague with regard to her efforts to work with opposing counsel and get Ms. Hague visitation with her son. In violation of Rule 4-8.4(c) and 4-8.1(a), Respondent was dishonest with disciplinary counsel when she produced a letter intended to cover-up her abandonment of her client, when she testified repeatedly that she had telephoned her client when she hadn’t, and when she testified that she had been in contact with opposing counsel to reach a temporary custody agreement when she hadn’t. In violation of Rule 4-1.15, Respondent failed to deposit client funds

into a trust account, commingled client funds with personal funds, spent unearned fees, and failed to keep records of client funds.

“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.* Finding that Disney’s conduct did not rise to a level indicating he was clearly unfit to practice law, the Court found that a “brief suspension should be sufficient to protect the public.” *Id.*

The ABA Standards support disbarment 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 her client: diligence, communication, confidentiality, safeguarding client funds, refunding client money, and candor. Most significantly, however, Respondent engaged in dishonesty when she lied to Ms. Hague about the steps she was taking on her behalf to get Ms. Hague visitation with her son.

Respondent's violation of Rule 4–8.4(c) warrants disbarment. ABA Standard 4.61 regarding "Lack of Candor" provides: "Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury to a client." Because it is difficult to understand Respondent's actions in this matter, it is difficult to identify precisely how her deceitful conduct benefitted her. Informant believes the benefit was merely the covering up of her failure to diligently represent Ms. Hague – she deceived Ms. Hague regarding her efforts to reach a temporary

custody agreement so she could see her son. Alternatively, ABA Standard 4.62 provides: “Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.”

Respondent also should be disbarred because of her failure to cooperate with disciplinary counsel and her 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 7.1 provides: “Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another and causes serious or potentially serious injury to a client, the public, or the legal system.” Respondent engaged in multiple acts of deceit toward disciplinary counsel: she created the September 15, 2016 letter, she created the Lusher invoice, and she lied repeatedly about her communications with Ms. Hague and Ms. Swedberg.

Additionally, Respondent put Ms. Hague’s money in her personal account, commingling it with personal funds, and she spent, and failed to refund, unearned fees.

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 her client. Respondent repeatedly failed to respond to disciplinary counsel. Respondent repeatedly lied to her client in an attempt to cover up her inaction. Respondent repeatedly lied to disciplinary counsel. Respondent failed to refund unearned fees. Informant believes Respondent's conduct was committed with the intent to cover up her misconduct.

The Disciplinary Hearing Panel found that Respondent conduct was purposeful and intended to deprive her client of her rights and adequate counsel. **App. A29.** The Disciplinary Hearing Panel found that Respondent deceived her client as to her actions to avoid responsibility. **App. A29.** The Disciplinary Hearing Panel found that Respondent's conduct in violation of the Rules was with intent. **App. A30.**

Injury or potential injury caused by Respondent's misconduct. Respondent's client, Angela Hague, was injured by Respondent's misconduct. Respondent lied to Ms. Hague. Respondent's misrepresentations to Ms. Hague wherein she described progress she was making in getting Ms. Hague visitation with her son were enough to string her

along and dissuade Ms. Hague from obtaining new counsel. Ms. Hague was injured when she allowed her son to go with her estranged husband when Respondent didn't answer her call or text, and then her estranged husband filed for divorce while he had custody of her son and refused to return him. Thereafter, Ms. Hague was injured when Respondent lied to her about her efforts to get Ms. Hague visitation with her son. Ms. Hague did not see her son from July 26, 2016, until after Ms. Hague retained new counsel in October, 2016.

Also, a default judgment was entered against Ms. Hague awarding her ex-husband child support and custody. Additionally, Ms. Hague had to hire a new attorney to represent her and paid \$2,500 to that new attorney. She already had paid Respondent \$1,000 to represent her for the entirety of her dissolution and custody matter. Respondent did not refund the unearned fees.

The Disciplinary Hearing Panel found that Ms. Hague "suffered significant harm in that she was prevented from contact with her son for an unreasonable length of time," and that she "suffered monetary loss due to Respondent's failures." **App. A27.**

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 prior disciplinary offenses (ABA Standard 9.22(a)); a dishonest or selfish motive (ABA Standard 9.22(b)); 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)); substantial experience in the practice of law (ABA Standard 9.22(i)); indifference to making restitution (ABA Standard 9.22(j)); and the vulnerability of the victim (ABA Standard 9.22(h)).

The Disciplinary Hearing Panel found the following aggravating factors:

- a. Substantial experience in the practice of law; Respondent has practiced for over 15 (15) years and is aware of the Rules of Professional [C]onduct and how it applied to her Firm and Clients.
- b. There was a pattern of conduct that occurred over the course of time.
- c. Following several acts in violation of the Rules of Professional [C]onduct, Respondent engaged in a pattern of conduct to avoid responsibility exhibiting a dishonest or selfish motive.
- d. Respondent committed numerous offenses during her representation of her client.
- e. Respondent showed no sign of remorse or recognition that her conduct was dishonest.
- f. Respondent was dishonest in her testimony to the OCDC and to this Panel.

- g. Respondent was indifferent and made no effort to making restitution to her client.

App. A30 – 31.

“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. Respondent offered no mitigating factors. The Disciplinary Hearing Panel did not find any mitigating factors. **App. A31.**

If this Court finds the baseline discipline is suspension as outlined in Standard 4.62, the numerous aggravating factors justify an increase in the degree of discipline imposed to disbarment. Additionally, if this court finds that the baseline discipline is disbarment as outlined in Standard 4.61, no mitigating factors apply, distinguishing *Carey*, *Krigel*, *Tessler*, and *Waldron*, above, wherein the Court imposed suspensions.

Respondent engaged in conduct involving dishonesty, fraud, deceit and/or misrepresentation. Multiple aggravating factors are applicable and no mitigating factors are applicable. During the proceeding before the Disciplinary Hearing Panel, given the multiple misrepresentations made by Respondent to her client and during the disciplinary process and the disciplinary hearing, Informant requested that Respondent be disbarred. The Disciplinary Hearing Panel recommended that Respondent be disbarred. Informant accepted that recommendation and continues to believe that, given the totality of the record, disbarment is the appropriate sanction.

CONCLUSION

WHEREFORE, the Chief Disciplinary Counsel requests this Court to enter an order finding that Respondent violated Rules 4-1.3, 4-1.4(a), 4-1.6, 4-1.15(a), 4-1.15(c), 4-1.15(f), 4-1.16(d), 4-8.1(a), 4-8.1(c), and 4-8.4(c), and disbaring Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September, 2018, the Informant's Brief was sent via the Court's electronic e-filing system and by First Class mail, postage prepaid, to:

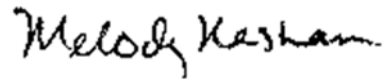
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Melody Nashan, Staff Counsel

CERTIFICATE OF COMPLIANCE: 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. Was served on Respondent via the Missouri electronic filing system pursuant to Rule 103:08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 15,310 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Melody Nashan, Staff Counsel