

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:**

**ANISSA FAYE BLUEBAUM,**  
901 E. St. Louis Street, Suite 200-14  
Springfield, MO 65807

Missouri Bar No. 56779

Respondent.

**Supreme Court #SC97919**


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**INFORMANT'S BRIEF**

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**OFFICE OF CHIEF DISCIPLINARY  
COUNSEL**

ALAN D. PRATZEL  
Chief Disciplinary Counsel #29141



By:

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Patricia J. Shilling #36356  
Special Representative, Region XV, Div I  
302 E. Church St.  
Ozark, MO 65721  
417-581-3646  
[pjs@styronlaw.com](mailto:pjs@styronlaw.com)

**ATTORNEYS FOR INFORMANT**

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### **STATEMENT OF JURISDICTION**

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

## **STATEMENT OF FACTS**

### **A. PROCEDURAL HISTORY**

October 11, 2018	Information
November 9, 2018	Respondent's Answer to Information
November 21, 2018	Appointment of Disciplinary Hearing Panel
January 17, 2019	DHP Hearing (day 1 of 2)
February 25, 2019	DHP Hearing (day 2 of 2)
March 26, 2019	DHP Decision
April 3, 2019	Informant's acceptance of the DHP decision
May 1, 2019	Respondent's rejection of DHP decision
June 3, 2019	Record Submitted

### **B. RESPONDENT'S PRIOR DISCIPLINARY HISTORY**

On March 25, 2014, in case numbered SC93706, the Court entered an Order suspending Respondent's license indefinitely, staying the suspension and placing the Respondent on probation for two years for violating Rules 4-1.16(d), 4-8.4(a), 4-8.4(c), 4-8.4(d), 4-5.3(c), and 4-7.3(a). **App. 812-813.** Respondent completed the terms of probation. **App. 825-826**

### **C. CONDUCT UNDERLYING THE INFORMATION**

#### **COUNT I – Representation of Ms. Brewer**

On January 25, 2017 Mollie Brewer hired Respondent to represent her in a divorce proceeding pending in Camden County, Missouri. **App. 479.** Ms. Brewer paid



Respondent an advance fee of \$1,500.00. **App. 480.** Almost immediately Ms. Brewer had difficulty contacting Respondent by telephone and Respondent was unresponsive to requests for information made by Ms. Brewer. **App. 488.** On January 25, 2019 Ms. Brewer's niece sent an email to Respondent asking for an update. **App. 529.** On January 31, 2019 Ms. Brewer's niece sent an email asking if Respondent had received the papers from Ms. Brewer's husband's attorney. **App. 531.** Respondent did not respond to the emails. **App. 532.**

Respondent supplied Ms. Brewer with incorrect paperwork to fill out that included another person's name and information. **App. 530.** Despite repeated requests, Respondent failed to account to Ms. Brewer for the \$1,500.00 advance fee she paid to Respondent. **App. 538.** Respondent did nothing to represent Ms. Brewer other than engage in a couple of telephone calls with Ms. Brewer. **App. 481-482.** Even though Respondent was hired to represent Ms. Brewer in the divorce proceeding Respondent failed to file an entry of appearance on behalf of Ms. Brewer. Judgment by default was entered against Ms. Brewer on April 26, 2017. **App. 561.** Despite Respondent stating she would contact Ms. Brewer's husband's attorney, she presented no evidence that she in fact contacted him. Ms. Brewer's niece, on behalf of Ms. Brewer made numerous attempts to communicate with Respondent regarding Ms. Brewer's case, which were ignored. Ms. Brewer's niece had been involved in the representation, had been authorized by her aunt and had communicated with Respondent regarding the case from the outset since Ms. Brewer had suffered some trauma during the marriage and had some

neurological difficulties. **App. 488-490.** Respondent's email exchange with Ms. Brewer's niece escalated and became somewhat aggressive as time progressed. **App. 529-550.** Respondent repeatedly promised that she would refund the \$1,500.00 and send a copy of Ms. Brewer's file to her which she did not do. Respondent refunded Ms. Brewer's \$1,500.00 on April 16, 2018, almost one year and three months after she was hired. **App. 528; App. 255 (Tr. Vol. II, pg. 21).**

### **COUNT II – Representation of Kerry Smith**

In April, 2016 Kerry D. Smith hired Respondent to represent her in a contested divorce proceeding in Barry County, Missouri and paid an initial \$1,500.00 cash deposit and agreed to make monthly payments thereafter. **App. 102, 103, 104 (Tr. pgs. 15, 16, 17).** Respondent quickly became unresponsive to Ms. Smith. **App. 104 (Tr. pg. 17).** In the beginning of the representation Ms. Smith did have communication with Respondent's assistant and supplied her with requested information. The assistant soon left Respondent's employ. **App. 121 (Tr. pg. 34).** Ms Smith tried to contact Respondent on numerous occasions regarding her case and the status of her case. **App. 104 (Tr. pg. 18).** Respondent failed to respond to multiple voice messages and text messages left by Ms. Smith on a weekly and sometimes daily basis. At times there was an answering service but at some point there was no longer an answer. **App. 399-400.** In the fall of 2016 Respondent closed one of her offices without notifying Ms. Smith. **App. 105 (Tr. pg. 18).** Respondent failed to appear for Ms. Smith's scheduled trial date on May 30, 2017 even though it was Respondent who had requested a continuance of the January 10,

2017 trial date due to her health. **App. 106 (Tr. pg. 19)**. Notice of the new trial date had been sent to Respondent by way of a docket entry. **App. 789**. During the representation of Ms. Smith Respondent prepared incomplete and incorrect documents; failed to timely file documents and failed to complete discovery. Respondent never prepared Ms. Smith or her case for trial. **App. 108 (Tr. pg. 21)**. On August 4, 2017, Ms. Smith hired attorney Scott Gregory Taylor and he entered his appearance and filed certain discovery on Ms. Smith's behalf, along with a Motion for Continuance. **App. 790**. The docket entry noted "Court is aware of the lack of discovery activity by previous counsel and the failure of previous counsel to appear for a trial setting. Court is also aware that current counsel for Respondent is not responsible for the unnecessarily protracted nature of this case." **App. 790**. Respondent failed to complete the dissolution of marriage for Ms. Smith. Respondent never filed a motion to withdraw from Ms. Smith's representation. **App. 107 (Tr. pg. 20)**. Ms. Smith was forced to hire another attorney to complete her case and on January 19, 2018 a Consent Judgment was entered. **App. 790**.

Ms. Smith repeatedly asked Respondent for an itemized billing and for copies of her file. **App. 108 (Tr. pg. 21)**. Despite Ms. Smith's requests, Respondent failed to provide her with an itemized statement or a copy of her file. **App. 109 (Tr. pg. 22)**. Respondent did not send Ms. Smith a bill for over a year, as she fell behind in her billing but did prepare a bill when she learned of her termination. **App. 827-828**.

### **COUNT III – Trust Accounting**

On numerous occasions from January 5, 2016 to July 1, 2018 Respondent deposited items to her client trust account which were earned fees that were not promptly withdrawn. **App. 186 (Tr. pg. 99)**. Many of these earned fees that were deposited to trust were Vendor Pay from the state of Missouri for public defender work. On several occasions Respondent's client trust account fell below the amount she should have had in the account to cover her clients' deposits. **App. 188-189 (Tr. pgs. 101-102); App. 798-810**. Respondent routinely withdrew more from the client trust account, on behalf of a client, than had been credited to a client. **App. 192 (Tr. pg 105)**. Respondent accepted WePay which would charge a fee for each payment made, thereby reducing the amount actually paid on behalf of the client. **App. 192 (Tr. pg. 105)**. However, Respondent withdrew the total amount charged to the client thereby creating a deficiency in the client trust account. **App. 192 (Tr. pg. 105)**. Respondent deposited some of her own money in the client trust account to cover the WePay expense but she neither kept records regarding the expense nor reconciled the WePay expense. **App. 203-204 (Tr. pgs. 116-117)**. Respondent comingled her personal funds with her clients' monies. **App. 219 (Tr. pg. 132)**. Respondent's trust account balance fell below what she should have had in the account to cover trust monies of Ms. Brewer and Ms. Smith. **App. 188-189 (Tr. pgs. 101-102)**. Respondent routinely withdrew even dollar amounts from her trust account even though her deposits, on behalf of clients were in odd dollar amounts. **App. 191-192; App. 798-810**.

#### **D. FAILURE TO RESPOND TO OCDC**

Respondent failed to respond to the complaint Ms. Brewer filed with the OCDC. **App. 24, 25 (Tr. pgs. 15, 16).** Ms. Brewer's Complaint was sent to Respondent by the Office of Chief Disciplinary Counsel on October 4, 2017 giving her until October 24, 2017 to respond. **App. 512.** A second letter was sent to Respondent by the Office of Chief Disciplinary County on November 1, 2017 giving her until November 8, 2017 to respond. **App. 514.** Respondent failed to respond to the letters from the Office of Chief Disciplinary Counsel regarding Ms. Brewer's complaint. **App. 24, 25 (Tr. pgs. 15, 16).**

Respondent failed to respond to Ms. Smith's complaint filed with the OCDC. **App. 24, 25 (Tr. pgs. 15, 16).** On October 13, 2017 and November 1, 2017 the Office of the Chief Disciplinary Counsel sent copies of Ms. Smith's Complaint to Respondent giving her an opportunity to respond by October 27, 2017 and November 8, 2017, respectively. **App. 515-516.** Respondent failed to respond to both letters and the complaint of Ms. Smith. **App. 24, 25 (Tr. pgs. 15, 16).**

On June 28, 2018, Respondent was asked to provide certain information to OCDC regarding her trust and general checking accounts. **App. 797.** Respondent failed to respond to the requests. **App. 184 (Tr. Vol. I pg. 97, lines 1-2).**

Eventually, a special representative of Regional Disciplinary Committee was able to contact Respondent served subpoena requiring her to appear for a sworn statement on September 27, 2018. **App. 517-518.**

## **E. RESPONDENT'S PERSONAL SITUATION**

Respondent has had type 1 diabetes since she was ten years old. **App. 25**. She suffers from major depression and anxiety. **App. 870; App 250 (Tr. Vol. II pg. 16)**. In the fall of 2016 she was hospitalized for suicide attempts and anxiety. **App. 285 (Tr. Vol. II pg. 51)**. In the fall of 2016 Respondent fell behind in her work and was unable to deal with her daily mail. She asked a friend to help her with the mail. **App. 243 (Tr. Vol. II pg. 9)**. In December 2016 she called several clients and informed them of her situation and gave them the option of continuing as their attorney or withdrawing and receiving a refund. **App. 247 (Tr. Vol. II pg. 13)**. At some point in the fall of 2016 Respondent did find the bar complaints in a stack of mail and she tried to prepare responses but could not do so. **App. 248 (Tr. Vol. II pg. 14)**. Respondent did not file responses to the bar complaints. **App. 24, 25 (Tr. pgs. 15, 16)**. Respondent described her life in 2017 as being upside down in turmoil. Her offices were closing and she was in bankruptcy. Things were falling behind. **App. 257 (Tr. Vol. II pg. 23)**. Respondent said that she could not, physically or mentally, respond to the bar complaints.

## **F. THE DISCIPLINARY HEARING PANEL'S DECISION**

### **COUNT I – Representation of Ms. Brewer**

The Disciplinary Hearing Panel found Respondent guilty of professional misconduct under Rule 4-8.4(a) as a result of violating:

A. Rule 4-1.3 – for failing to act with reasonable diligence and promptness in representing Ms. Brewer by failing to enter her appearance in the

dissolution of marriage action, by sending Ms. Brewer inaccurate paperwork that included another person's name and information and by failing to represent Ms. Brewer in the dissolution of marriage matter.

B. Rule 4-1.4 – for failing to keep Ms. Brewer reasonably informed about the status of her case and by failing to promptly comply with Ms. Brewer's request for information and for failing to account for the advance fee of \$1,500.00 paid by Ms. Brewer.

C. Rule 4-8.1 - for failing to respond to lawful demands for information from the disciplinary authority in that she has failed to respond to the complaint of Ms. Brewer.

D. Rule 4-8.4(c) – by accepting advanced fee payments and failing to provide the agreed upon services.

E. Rule 4-8.4(d) – engaging in conduct that is prejudicial to the administration of justice.

### **COUNT II – Representation of Ms. Smith**

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct under Rule 4-8.4(a) as a result of violating:

A. Rule 4-1.3 – for failing to act with reasonable diligence and promptness in representing Ms. Smith, by failing to complete accurate paperwork, failing to appear at a scheduled court appearance and failing to conclude Ms. Smith's matter.

B. Rule 4-1.4 – for failing to keep Ms. Smith reasonably informed about the status of her case and by failing to promptly comply with Ms. Smith’s request for information and for failing to account for the advance fees paid by Ms. Smith.

C. Rule 4-8.1 - for failing to respond to lawful demands for information from the disciplinary authority in that she has failed to respond to the complaint of Ms. Smith.

D. Rule 4-8.4(c) – by accepting advanced fee payments and failing to provide the agreed upon services.

E. Rule 4-8.4(d) – engaging in conduct that is prejudicial to the administration of justice.

### **COUNT III – Trust Accounting**

The Disciplinary Hearing Panel found the Respondent not guilty of professional misconduct under Rule 4-8.4(a) as a result of violating:

A. Rule 4-1.15 for failing to hold property of her clients separate from her own property;

B. Rule 4-1.15 for withdrawing funds as fees that had not been earned;

### **G. THE HEARING PANEL’S RECOMMENDATION:**

The Hearing Panel recommended Respondent’s license be suspended for an indefinite period of time and that no leave be granted for the Respondent to apply for reinstatement for a period of two years. The suspension was not stayed and there was no



recommendation of probation. Informant accepted the recommendation and Respondent rejected the recommendation.

**POINTS RELIED ON**

**I**

**RESPONDENT VIOLATED RULE 4-1.3 (DILIGENCE) BY:**

**A. FAILING TO ENTER HER APPEARANCE IN MS. BREWER'S DISSOLUTION OF MARRIAGE ACTION; SENDING MS. BREWER INACCURATE PAPERWORK THAT INCLUDED ANOTHER PERSON'S NAME AND INFORMATION; AND FAILING TO DILIGENTLY REPRESENT MS. BREWER IN THE DISSOLUTION OF MARRIAGE MATTER.**

**B. FAILING TO ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING MS. SMITH; FAILING TO COMPLETE ACCURATE PAPERWORK; FAILING TO APPEAR AT A SCHEDULED COURT APPEARANCE; AND FAILING TO CONCLUDE MS. SMITH'S MATTER.**

*In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005)

*In re McMillin*, 521 S.W.3d 604 (Mo. banc 2017)

*Tiller v. Semonis*, 635 N.E.2d 572, 574 (Ill. App. 1994)

Rule 4-1.3

**II.**

**RESPONDENT VIOLATED RULE 4-1.4 (COMMUNICATION)**

**BY:**

**A. FAILING TO KEEP MS. BREWER REASONABLY INFORMED ABOUT THE STATUS OF HER CASE; FAILING TO PROMPTLY COMPLY WITH MS. BREWER'S REQUESTS FOR INFORMATION; AND FAILING TO PROMPTLY ACCOUNT FOR THE ADVANCE FEE PAID BY MS. BREWER.**

**B. FAILING TO KEEP MS. SMITH REASONABLY INFORMED ABOUT THE STATUS OF HER CASE; FAILING TO PROMPTLY COMPLY WITH MS. SMITH'S REQUEST FOR INFORMATION; AND FAILING TO ACCOUNT FOR THE ADVANCE FEES PAID BY MS. SMITH.**

*In re McMillin*, 521 S.W.3d 604 (Mo. banc 2017)

RULE 4-1.4

**III.**

**RESPONDENT VIOLATED RULE 4-8.1(c) BY:**

**A. FAILING TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE DISCIPLINARY AUTHORITY IN THAT SHE FAILED TO RESPOND TO THE COMPLAINT OF MS. BREWER.**

**B. FAILING TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE DISCIPLINARY AUTHORITY IN THAT SHE FAILED TO RESPOND TO THE COMPLAINT OF MS. SMITH.**

**C. FAILING TO RESPOND TO THE LAWFUL DEMANDS FOR INFORMATION FROM THE DISCIPLINARY AUTHORITY IN THAT SHE FAILED TO RESPOND TO OCDC REQUESTS FOR TRUST ACCOUNT INFORMATION.**

*In re Staab*, 785 S.W.2d 551 (Mo. banc 1990)

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

RULE 4-8.1

**IV.**

**RESPONDENT VIOLATED RULES 4-8.4(c) AND 4-8.4(d) BY  
ACCEPTING ADVANCED FEE PAYMENTS AND FAILING TO  
PROVIDE THE AGREED UPON SERVICES.**

RULE 4-8.4(c)

RULE 4-8.4(d)

V.

**RESPONDENT VIOLATED RULE 4-1.15 BY FAILING TO HOLD  
PROPERTY OF HER CLIENTS SEPARATE FROM HER OWN  
PROPERTY AND BY WITHDRAWING FUNDS AS FEES THAT  
HAD NOT BEEN EARNED.**

RULE 4-1.15

**VI.**

**SUSPENSION OF RESPONDENT'S LICENSE IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT BECAUSE:**

**A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST SUSPENSION AS THE APPROPRIATE SANCTION;**

**B. RESPONDENT ENGAGED IN A PATTERN OF NEGLECT OF HER CLIENTS BY FAILING TO COMMUNICATE AND FAILING TO DILIGENTLY REPRESENT HER CLIENTS;**

**C. RESPONDENT FAILED TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE DISCIPLINARY AUTHORITY;**

**D. RESPONDENT ACCEPTED ADVANCED FEE PAYMENTS AND FAILED TO PROVIDE THE AGREED UPON SERVICES;**

**E. RESPONDENT FAILED TO HOLD  
PROPERTY OF HER CLIENTS SEPARATE FROM  
HER OWN PROPERTY; AND**

**F. RESPONDENT CAUSED AN ADVERSE OR  
POTENTIALLY ADVERSE EFFECT TO HER  
CLIENTS.**

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

*In re Donaho*, 98 S.W.3d 87 (Mo. banc 2003)

*In re Kazanas*, 96 S.W.3d 803 (Mo. banc 2003)

Rule 5.225(a)(2)

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

ABA Standards for Imposing Lawyer Sanctions, Ch.II, "Theoretical Framework" (1986 ed., as amended 1992)

ABA Standards for Imposing Lawyer Sanctions Standard 4.42 (1986 ed., as amended 1992)

ABA Standards for Imposing Lawyer Sanctions Standard 7 (1986 ed., as amended 1992)

ABA Standards for Imposing Lawyer Sanctions Standards 9.2 and 9.3 (1986 ed., as amended 1992)



## LEGAL ARGUMENT

### I.

#### RESPONDENT VIOLATED RULE 4-1.3 (DILIGENCE) BY:

**A. FAILING TO ENTER HER APPEARANCE IN MS. BREWER’S DISSOLUTION OF MARRIAGE ACTION; SENDING MS. BREWER INACCURATE PAPERWORK THAT INCLUDED ANOTHER PERSON’S NAME AND INFORMATION; AND FAILING TO DILIGENTLY REPRESENT MS. BREWER IN THE DISSOLUTION OF MARRIAGE MATTER.**

**B. FAILING TO ACT WITH REASONABLE DILIGENCE AND PROMPTNESS IN REPRESENTING MS. SMITH; FAILING TO COMPLETE ACCURATE PAPERWORK; FAILING TO APPEAR AT A SCHEDULED COURT APPEARANCE; AND FAILING TO CONCLUDE MS. SMITH’S MATTER.**

Rule 4–1.3 provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” The duty to act with reasonable diligence includes the tracking of dates of hearings and required filings. *Tiller v. Semonis*, 635 N.E.2d 572, 574 (Ill. App. 1994). In the instant case Respondent failed to enter an appearance on

behalf of Ms. Brewer and failed to prepare paperwork and basically failed to represent her in the dissolution of marriage. A default judgment was entered against Ms. Brewer. Respondent would not respond to Ms. Brewer.

As to her representation of Ms. Smith, Respondent missed a trial date. Respondent also failed to respond to discovery on Ms. Smith's behalf. She failed to prepare Ms. Smith or her case for trial. Respondent failed to respond to Ms. Smith. Ms. Smith was unable to contact Respondent. Respondent closed an office without informing Ms. Smith. Respondent did not diligently represent Ms. Smith.

Diligent representation of a client is particularly important because "[a] client's interests often can be adversely affected by the passage of time or the change of conditions[.]" Rule 4-1.3, Comment [3]. In some instances, "the client's legal position may be destroyed." *Id.* "Perhaps no professional shortcoming is more widely resented than procrastination." Rule 4-1.3, Comment [3]. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005), this Court found that Respondent's repeated neglect of his client's case was a violation of Rule 4-1.3 and warranted a suspension. "Unless the relationship is terminated as provided in Rule 4-1.16, a lawyer should carry through to conclusion all matters undertaken for the client." Rule 4-1.3, Comment [4].

The facts in this case are not dissimilar from the facts in *In re McMillin*, 521 S.W.3d 604 (Mo. banc 2017), in which this Court found that Mr. McMillin virtually abandoned his clients. "His lack of diligence and communication undoubtedly caused his clients unnecessary delays, stress, and expense. He failed to advance his clients' matters while

also routinely ignoring their efforts to communicate with him and shirking his duty to keep them apprised.” “And when McMillin did communicate, he was inappropriate with one client and verbally abusive with another. One client described McMillin's behavior as "very dishonest" and stated she "felt very violated ... nobody else should have to endure that." McMillin's disturbing pattern of client neglect could, alone, perhaps suffice to demonstrate he is unfit to continue the practice of law.” *In re McMillin*, 521 S.W.3d 604 (Mo. banc 2017).

## II.

### RESPONDENT VIOLATED RULE 4-1.4 (COMMUNICATION)

**BY:**

**A. FAILING TO KEEP MS. BREWER REASONABLY INFORMED ABOUT THE STATUS OF HER CASE; FAILING TO PROMPTLY COMPLY WITH MS. BREWER'S REQUESTS FOR INFORMATION; AND FAILING TO PROMPTLY ACCOUNT FOR THE ADVANCE FEE PAID BY MS. BREWER.**

**B. FAILING TO KEEP MS. SMITH REASONABLY INFORMED ABOUT THE STATUS OF HER CASE; FAILING TO PROMPTLY COMPLY WITH MS. SMITH'S REQUEST FOR INFORMATION; AND FAILING TO ACCOUNT FOR THE ADVANCE FEES PAID BY MS. SMITH.**

Communication with a client is essential to maintain a productive attorney-client relationship. Rule 4–1.4 requires a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information.

Keeping a client informed includes informing the client of court dates, motions and pleadings filed on their behalf, dismissal and changes in contact information as well

as providing copies of documents and responding to client telephone calls and letters. “Reasonable communication between the client and the lawyer is necessary for the client effectively to participate in the representation.” Rule 4-1.4, Comment [1]

In this case Respondent failed to communicate with both Ms. Brewer and Ms. Smith. Respondent became unresponsive to all requests for information. Neither Ms. Smith nor Ms. Brewer was able to make contact with Respondent. Both wanted information regarding their case but Respondent failed to respond. Both clients requested itemized accountings but none was ever produced. Both clients asked for copies of their file but neither received a copy. Both clients felt abandoned by Respondent. See *In re McMillin, Id.*

**III.**

**RESPONDENT VIOLATED RULE 4-8.1(c) BY:**

**A. FAILING TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE DISCIPLINARY AUTHORITY IN THAT SHE FAILED TO RESPOND TO THE COMPLAINT OF MS. BREWER.**

**B. FAILING TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE DISCIPLINARY AUTHORITY IN THAT SHE FAILED TO RESPOND TO THE COMPLAINT OF MS. SMITH.**

**C. FAILING TO RESPOND TO THE LAWFUL DEMANDS FOR INFORMATION FROM THE DISCIPLINARY AUTHORITY IN THAT SHE FAILED TO RESPOND TO OCDC REQUESTS FOR TRUST ACCOUNT INFORMATION.**

Rule 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.

The Office of Chief Disciplinary Counsel sent two letters to Respondent regarding each Complaint. Respondent did not respond to the Complaints of Ms. Smith and Ms. Brewer. The Office of Chief Disciplinary Counsel sent a letter to Respondent requesting bank account information. Respondent did not respond to the request. Respondent finally appeared for a sworn statement pursuant to subpoena. Respondent testified that she could not open her mail. She testified that she could not physically or emotionally respond to the Complaints.

In *In re Staab*, 785 S.W.2d 551 (Mo. banc. 1990), Mr. Staab failed to respond to the Bar Committee stating that he suffered severe panic attacks whenever he saw mail from the Bar Committee and this Court. This Court disbarred Mr. Staab citing *In re Reza*, 743 S.W.2d 411 (Mo. banc 1988) in which this Court found that the neglect of an attorney's own interests by failing to respond to the correspondence from the Bar Committee casts doubt on the attorney's ability to represent others.

#### IV.

#### **RESPONDENT VIOLATED RULES 4-8.4(c) AND 4-8.4(d) BY ACCEPTING ADVANCED FEE PAYMENTS AND FAILING TO PROVIDE THE AGREED UPON SERVICES.**

Rule 4-8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 4-8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

Ms. Brewer paid Respondent a \$1,500.00 advance fee to represent her in a dissolution of marriage action in Camden County, Missouri. Respondent did not enter an appearance on Ms. Brewer's behalf and a default judgment was entered against Ms. Brewer. Ms. Brewer asked for an accounting of her monies and Respondent refused. Respondent finally refunded Ms. Brewer's money after more than one year had passed.

Kerry Smith paid an initial retainer to Respondent and then made monthly payments to Respondent. She paid approximately \$3,000.00 to Respondent for representation in a divorce. Respondent did not complete the divorce. Respondent did not prepare the case or Ms. Smith for trial. Respondent did not respond to discovery. Respondent missed a trial date.

Respondent accepted her clients' monies and then failed to provide the service. Respondent's conduct was at best dishonest. By taking her clients' monies and failing to



represent them Respondent has tarnished the integrity of the legal profession and the administration of justice.

**V.**

**RESPONDENT VIOLATED RULE 4-1.15 BY FAILING TO HOLD  
PROPERTY OF HER CLIENTS SEPARATE FROM HER OWN  
PROPERTY AND BY WITHDRAWING FUNDS AS FEES THAT  
HAD NOT BEEN EARNED.**

Rule 4-1.15(a) provides that a lawyer shall hold property of clients separate from the lawyer's own property. 4-1.15(c) provides that fees are to be withdrawn by the lawyer only as fees are earned.

Respondent deposited earned fees to her client trust account and failed to withdraw them timely thereby violating Rule 4-1.15(a). Many of the payments respondent received were Vendor Pay from the State of Missouri that would have been earned funds that should have been withdrawn promptly. Respondent received payments from WePay on behalf of clients. Respondent would withdraw more from the client trust account than she had been credited on behalf of a client from WePay. Respondent kept some of her own money in the trust account to cover WePay charges but she never kept track of or reconciled the WePay charges. Rule 4-1.15(b) states that a lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying financial institution service charges on that account, but only in an amount necessary for that purpose.

On several occasions Respondent's client Trust account fell below the balances she should have maintained in representing Ms. Smith and Ms. Brewer. At all times from

January 30, 2017, when Mollie Brewer paid Respondent \$1,500.00 until May 2, 2018, when Ms. Brewer's refund of \$1,500.00 cleared, Respondent should have had Ms. Brewer's money in trust. In addition, according the trust account records for Kerry Smith, Respondent should have had in her client trust account as of June 15, 2017, on account of Ms. Smith the sum of \$1,265.00 for a total minimum balance of \$2,765.00. Respondent's client trust account balance fell below \$2765.00 on several occasions including June 29, 2017, July 5, 2017, July 14, 2017, July 18, 2017, July 20, 2017, and August 28, 2017. On August 28, 2017, after a year of no billing, Respondent billed Kerry Smith and presumably transferred Ms. Smith's remaining trust funds to Respondent's general account. As is evident from the audit of Respondent's trust account she routinely transferred even dollar amounts from her trust to her general account even though most, or at least many, of the payments she receives are in odd amounts, including change. This indicates that she is not reconciling her transfers but rather just transferring an even dollar amounts to her general account.

**VI.**

**SUSPENSION OF RESPONDENT'S LICENSE IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT BECAUSE:**

**A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST SUSPENSION AS THE APPROPRIATE SANCTION;**

**B. RESPONDENT ENGAGED IN A PATTERN OF NEGLECT OF HER CLIENTS BY FAILING TO COMMUNICATE AND FAILING TO DILIGENTLY REPRESENT HER CLIENTS;**

**C. RESPONDENT FAILED TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE DISCIPLINARY AUTHORITY;**

**D. RESPONDENT ACCEPTED ADVANCED FEE PAYMENTS AND FAILED TO PROVIDE THE AGREED UPON SERVICES;**

**E. RESPONDENT FAILED TO HOLD  
PROPERTY OF HER CLIENTS SEPARATE FROM  
HER OWN PROPERTY; AND**

**F. RESPONDENT CAUSED AN ADVERSE OR  
POTENTIALLY ADVERSE EFFECT TO HER  
CLIENTS.**

The Disciplinary Hearing Panel’s findings of fact, conclusions of law, and recommendations are advisory, and the Court may reject any or all of the panel’s recommendations. *In re Coleman*, 295 S.W.3d 857, 863 (Mo. Banc 2009). The Court reviews the evidence *de novo*, independently determines all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. *In re Belz*, 258 S.W.3d 38, 41 (Mo. Banc 2008). “Professional misconduct must be proven by a preponderance of the evidence before discipline will be imposed.” *In re Crews*, 159 S.W.3d 355, 358 (Mo. Banc 2005).

In determining the appropriate sanction the Court relies on several sources. First, the Court applies its own standards to maintain consistency, fairness and ultimately, to accomplish the overriding goal of protecting the public and maintaining the integrity of the legal profession. Those standards are written into law when the Court issues opinions in attorney discipline cases. *In re Kazanas*, 96 S.W.3d 803, 806 (Mo. banc 2003). The Court also relies on the ABA Standards for Imposing Lawyer Sanctions (1986 ed., as amended 1992). Those guidelines recommend baseline discipline for specific acts of

misconduct, taking into consideration the duty violated, the lawyer's mental state (level of intent), and the extent of injury or potential injury. *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). Once the baseline discipline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. ABA Standards for Imposing Lawyer Sanctions Standards 9.2 and 9.3 (1986 ed., as amended 1992).

The purpose of attorney disciplinary proceedings is to protect the public and maintain the integrity of the legal profession. In imposing discipline, the Court considers the ethical duty violated, the attorney's mental state, the extent of actual or potential injury caused by the attorney's misconduct, and any aggravating or mitigating factors. *In re Coleman*, 295 S.W.3d 857, 863 (Mo. Banc 2009).

The most important ethical duties are those obligations which a lawyer owes to clients. Ch. II, "Theoretical Framework," ABA Standards (1986 ed., as amended 1992). In addition to the duties to his client, a lawyer owes a duty to the legal system. "Lawyers are officers of the court, and must abide by the rules of substance and procedure which share the administration of justice." *Id.* The Theoretical Framework of the ABA Standards provides that when an attorney violates multiple Rules of Professional Responsibility the ultimate sanction should be at least consistent with the sanction for the most serious instance of misconduct and often should be greater than the sanction for the most serious misconduct. *Id.*

Respondent knowingly violated the Rules of Professional Conduct, and her ethical violations caused harm and hardship to her clients and others. "Misconduct

involving subterfuge, failing to keep promises and untrustworthiness undermines public confidence in not only the individual but in the bar.” *In re Donaho*, 98 S.W.3d 871, 874 (Mo. Banc 2003).

In imposing sanction in this case we must start with Standard 4.42, the Recommended Sanction for Lack of Diligence.

Standard 4.42 provides that suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

In this case Respondent knowingly neglected her clients, Ms. Brewer and Ms. Smith in several instances. Respondent failed to enter her appearance on behalf of Ms. Brewer and failed to calendar Ms. Smith’s trial date. Respondent failed to return phone calls and basically became totally unresponsive to Ms. Smith. Respondent’s clients could not reach her by telephone, by e-mail, mail or in person. Respondent failed to prepare Ms. Smith’s case for trial. Respondent failed to represent Ms. Brewer in her dissolution of marriage. Respondent refused to respond to Ms. Brewer’s and Ms. Smith’s requests for information including itemized billings and copies of their files.

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of his duty to his client as a professional and causes injury to the client.

ABA Standards for Imposing Lawyer Sanctions, Standard 7 (1986 ed., as amended 1992).

Once the presumptive, or baseline, discipline is determined we must then consider applicable aggravating and mitigating circumstances as set forth below:

**Standard 9.2 Aggravation.**

The aggravating circumstances present in the instant case include:

**1. Prior disciplinary offenses, Standard 9.22(a)**

On March 25, 2014, in case numbered SC93706, the Court entered an Order suspending Respondent's license indefinitely, staying the suspension and placing the Respondent on probation for two years for violating Rules 4-1.16(d), 4-8.4(a), 4-8.4(c), 4-8.4(d), 4-5.3(c), and 4-7.3(a). Respondent successfully completed the probation.

**2. Pattern of misconduct, Standard 9.22(c)**

Respondent's handling of Ms. Smith's and Ms. Brewer's were eerily similar. She took their money and almost immediately became unresponsive. She did not complete the work which she was hired to do. She did not appear for court dates. Respondent testified that she was not able to adequately represent her clients when she was ill. Respondent testified that she was not sure if she would be able to practice law again fully. Respondent testified that she has down sized her practice and was not taking on difficult cases.



### **3. Multiple offenses, Standard 9.22(d)**

Respondent committed multiple offenses of misconduct in the time she represented Ms. Smith and Ms. Brewer. She failed to diligently represent her clients. She failed to communicate with her clients. She failed to respond to their requests for information.

### **4. Substantial experience in the practice of law, Standard 9.22(i)**

The Respondent has practiced law approximately sixteen years. She has been actively engaged in the practice of law since admission to the Missouri Bar in 2004.

### **Standard 9.3. Mitigation.**

The mitigating factor presented by Respondent was personal or emotional problems, Standard 9.32(c)

Probation is not appropriate in this case. Rule 5.225(a)(2) provides that a lawyer is eligible for probation if the lawyer (A) Is unlikely to harm the public during the period of probation and can be adequately supervised; (B) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and (C) Has not committed acts warranting disbarment. Suspension is necessary to protect the public. If Respondent is not suspended, it is just a matter of time before another client's legal matter will be neglected by Respondent. Respondent has previously been on probation. She was required to attend continuing education classes, including a class on trust accounting and she was monitored. Her previous probation failed to prevent Respondent from neglecting future clients and failed to prevent Respondent from

handling her trust account in a sloppy and incorrect manner. *In re Ehler*, 319 S.W.3d 442, 452-453 (Mo. banc 2010).

Previous Supreme Court opinions in attorney discipline cases involving neglect and abandonment of a client and his cause support suspension in this case. The Court, in the following cases, suspended lawyers after having found that the lawyers neglected the cases entrusted to him:

1. *In re Frank*, 885 S.W.2d 328 (Mo. banc 1994). Frank was indefinitely suspended by the Court, with leave to apply after two years, upon being found to have severely neglected eleven clients' cases. Frank had been admonished twice for similar misconduct and had failed to cooperate with disciplinary authorities. The Court noted that the question to suspend or disbar was a close call.

2. *In the matter of Dorsey*, 731 S.W.2d 252 (Mo. banc 1987). Dorsey was suspended for a period of 90 days following a court finding that he had neglected four clients' cases. In Count I, he was charged with neglecting a client and the client's case and failing to promptly return the client's legal papers and documents upon a request. In Counts II and III, he was charged with neglecting legal matters in divorce cases. In Count IV, he was charged with neglecting a client's case and failing to make a prompt refund of a portion of the fee paid by the client after agreeing to do so.

3. *In the matter of Striebel*, 744 S.W.2d 778 (Mo. banc 1988). Striebel was suspended for 60 days following a finding that he had neglected his client's legal matters

and allowed default judgments and garnishments to be taken against his client. The Striebel case involved a single client and an isolated instance of neglect.

4. *In re Lavin*, 788 S.W.2d 282 (Mo. banc 1990). Lavin was suspended indefinitely with leave to apply after four months. The Court further ordered that he show proof that he made restitution and that he cooperate with the Rule 16 Intervention Committee. Lavin neglected a client's child support matter. The Court noted "Suspension is an appropriate intermediate sanction for attorney discipline where a reprimand is insufficient to protect the public and to maintain the integrity of the legal profession and where the court does not believe that the acts of the attorney are such that he should be disbarred." *Lavin* at 284-285; (also citing *In re Littleton*, 719 S.W.2d 772 (Mo. banc 1986)).

5. *In re Vails*, 768 S.W.2d 78 (Mo. banc 1989). Vails was suspended for six months as a result of Respondent's neglect of a legal matter entrusted to him, his intentional failure to seek the lawful objectives of his client through reasonably available means, and his intentional failure to carry out a contract of employment. The Court ruled "though the evidence does not demonstrate that Respondent is manifestly unfit to be at the Bar, he has clearly neglected his professional duties. Considering the circumstances of this case and noting that nothing in the record demonstrates prior professional misconduct we order that respondent be suspended from the practice of law for six months." *Id* at 81.

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

7. *In re Genuik*, SC95726 (Mo. S. Ct., June 28, 2016). The Court found that Respondent Genuik had violated Rules 4-1.3 and 4-1.4(a). The case involved four (4) complaints (a probate case, two traffic cases, and a child support case). Respondent Genuik had three (3) previous admonitions, two (2) of which were for communication violations, but the Court suspended Genuik indefinitely with no leave to apply for reinstatement for one (1) year.

## **CONCLUSION**

In this case, involving two clients, Respondent engaged in professional misconduct involving lack of diligence, lack of communication, failing to respond to the demands for information from OCDC and accepting advanced fee payments yet failing to provide the agreed upon services. The presence of aggravating factors, including (i) prior disciplinary history, (ii) pattern of misconduct, and (iii) substantial experience in the practice of law, warrants the indefinite suspension of Respondent's license with no reinstatement for a period of at least two years, as an appropriate and warranted sanction.

**Respectfully submitted,**

**OFFICE OF CHIEF DISCIPLINARY  
COUNSEL**

ALAN D. PRATZEL

Chief Disciplinary Counsel #29141



By: \_\_\_\_\_

Patricia J. Shilling #36356

Special Representative, Region XV, Div I

302 E. Church St.

Ozark, MO 65721

417-581-3646

[pjs@styronlaw.com](mailto:pjs@styronlaw.com)

**ATTORNEYS FOR INFORMANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of July, 2019, the Informant's Brief was sent via the Missouri Supreme Court e-filing system to:

Anissa Faye Bluebaum  
901 E. St. Louis Street, Suite 200-14  
Springfield, MO 65807

**Respondent**



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Patricia J. Shilling

**CERTIFICATION: RULE 84.06(c)**

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

1. Includes the information required by Rule 55.03;
2. Was served on Respondent through the Missouri electronic filing system pursuant to Rule 103.08;
3. Complies with the limitations contained in Rule 84.06(b);
4. Contains 7,143 words, according to Microsoft Word, which is the word processing system used to prepare the brief.



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Patricia J. Shilling