IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
SYREETA L. McNEAL	)	**Supreme Court #SC98353**
	)	
Respondent.	)	

INFORMANT'S BRIEF

ALAN D. PRATZEL #29141
CHIEF DISCIPLINARY COUNSEL

NANCY L. RIPPERGER #40627
STAFF COUNSEL
3327 AMERICAN AVENUE
JEFFERSON CITY, MO 65109
(573) 635-7400
(573) 635-2240 (FAX)
Nancy.Ripperger@courts.mo.gov

ATTORNEYS FOR INFORMANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

RULES

TREATISES

STATEMENT OF JURISDICTION

This action is one in which Informant, 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 Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, RSMo 2016.

STATEMENT OF FACTS

I. Procedural History Of This Case

On July 1, 2019, Informant, the Chief Disciplinary Counsel, filed an Information against Respondent Syreeta L. McNeal. **R. 1.** The Information alleged that Respondent violated various Rules of Professional Conduct. **R. 1-26.** On August 20, 2019, the Chair of the Advisory Committee appointed a Disciplinary Hearing Panel ("DHP" or "Panel") to conduct a hearing on the matter. **R. 27-32.** On November 18, 2019, Respondent filed an Amended Answer to the Information. **R. 34.** The DHP set the matter for a hearing on December 16, 2019. **R. 33.**

On December 11, 2019, the parties submitted the Joint Stipulation Of Facts, Joint Proposed Conclusions Of Law, Joint Recommended Discipline, And Informant's Suggestions In Support Of The Recommended Discipline ("Joint Stipulation") to the Panel.[1] **App. 3.** In the Joint Stipulation, Respondent admitted to violating various Rules of Professional Conduct and the parties recommended that this Court impose an indefinite suspension with no leave to apply for reinstatement for one year, with the Court staying the suspension and placing Respondent on probation for three years. **App. 3-109.**

[1] Prior to submitting the Joint Stipulation to the DHP, the parties filed a motion to seal Exhibit 33 to the Joint Stipulation. Exhibit 33 is a medical report. Per Rule 5.285, the report is required to be filed under seal. The DHP granted the motion. **R. 50.**

The DHP convened an abbreviated hearing on the matter on December 16, 2019. **R. 159-227.** Present at the hearing were Thomas Dunlap, attorney and presiding officer, and Jay Seaver, lay member. **R. 163.** Panel member and attorney Brandon Greer participated by telephone.[2] **R. 163-65.** Respondent was present and was represented by attorney Brendhan Flynn. **R. 165.** Informant was represented by attorney Nancy Ripperger. **R. 164.**

On January 8, 2020, the Panel unanimously adopted the Joint Stipulation. **App. 2.** On January 23, 2020, Informant advised the Advisory Committee that he would accept the DHP's decision and on January 24, 2020, Respondent did the same. **R. 337-38.**

This matter was submitted to this Court pursuant to Rule 5.19(c) on February 10, 2020. This Court activated the briefing schedule on March 17, 2020.

II. Facts As Set Forth In The Joint Stipulation

A. General Information

Respondent was licensed on September 14, 2007. **App. 3 (para. 3)**. Respondent's Bar number is 60207. **App. 3 (para. 3)**. Respondent's license is in good standing. **App. 4, (para. 6)**. Besides being a licensed attorney, Respondent is also a Certified Public Accountant. **App. 3 (para. 5)**. She is licensed in Missouri and Arizona. **App. 3 (para. 5)**.

[2] Bad weather prevented Mr. Greer from attending in person. The parties consented to Mr. Greer participating by phone. **R. 164-66.**

Respondent worked as an accountant in Arizona for several years before attending law school at the University of Missouri-Columbia. **App. 4 (para. 8)**. After receiving her law license, Respondent worked as an associate in a small bankruptcy firm in Columbia, Missouri for approximately six years. **App. 4-5 (para. 9)**. While with this firm, Respondent handled bankruptcy matters, tax matters, and a few family law matters. **App. 4-6 (para. 9)**.

In 2012, Respondent opened her own practice in Columbia, Missouri. **App. 5 (para. 10)**. The majority of Respondent's practice is devoted to handling bankruptcy and tax matters. **App. 5 (para. 10)**. Respondent also handles some low-level criminal matters. **App. 5 (para. 10)**. On occasion, Respondent has handled some simple probate matters. **App. 5 (para. 10)**.

A large part of Respondent's practice comes from the Columbia, Missouri area. **App. 5 (para. 11)**. Occasionally Respondent handles matters for clients located in the St. Louis Metropolitan area. **App. 5 (para. 11)**. Most of Respondent's St. Louis clients are parishioners at her father's church. **App. 5 (para. 11)**.

Respondent has a prior disciplinary history. On September 26, 2017, Informant issued two admonitions to Respondent. **App 4 (para. 7)**. The first admonition was for violation of Rule 4-4.2 (communicating directly with a party represented by counsel). The admonition provides that while representing a woman in a dissolution, Respondent called the woman's husband, who was represented by counsel, and urged the husband to contact his attorney and to set up a settlement conference. **App. 4 (para. 7)**.

The second admonition was for violation of Rule 4-1.16(d) (protecting a client's rights after termination of representation). It provides that after a client obtained new counsel, Respondent failed to take steps to provide the client with the complete file within a reasonable time after it was requested. **App 4 (para. 7)**.

B. LaTonya Grotegeers' Complaint

On March 29, 2017, Alfred McNeal[3] ("Mr. McNeal") passed away. **App. 5 (para. 12)**. On April 11, 2017, Adrienne Tillman, one of Mr. McNeal's children, met with Respondent to discuss legal options available to her mother, Virginia McNeal ("Mrs. McNeal"). **App. 5 (para. 12)**. Ms. Tillman was concerned that one of her siblings had used undue influence to take money from her mother and her father before her father's death. **App. 5 (para. 13)**.

Respondent knew the McNeal/Tillman family because they attended the church where Respondent's father was the pastor. **App. 6 (para. 14)**.

On April 19, 2017, Respondent met again with Ms. Tillman. **App. 6 (para. 15)**. Ms. Tillman brought her mother to the meeting. Respondent entered into a written fee contract with Mrs. McNeal. **App. 6 (para. 15)**. The agreement provided that Respondent would: (a) provide representation for Mrs. McNeal in a potential injunction action for unjust enrichment against her daughter, Alfreda McNeal; (b) probate Mr. McNeal's will;

[3] Respondent is not related to the McNeal family referenced in Ms. Grotegeers' complaint even though they share the same sur name.

and (c) prepare a durable power of attorney for finances and health care for Mrs. McNeal. **App. 6 (para. 15)**.

The fee agreement provided Respondent would receive compensation for her work on all three matters from Mr. McNeal's Estate and the compensation would be the amount provided for pursuant to Section 473.153, RSMo. **App. 6 (para. 16)**. Section 473.153, RSMo, provides that an attorney performing services for an estate at the direction of a personal representative shall receive the following minimum compensation from the estate: (a) 5 percent of the first $5,000; (b) 4 percent for the next $20,000; (c) 3 percent for the next $75,000; (d) 2.75 percent for the next $300,000; (e) 2.5 percent for the next $600,000; and (f) 2 percent on all assets over $1,000,000. The statute further provides that the court shall allow such additional compensation as will make the compensation reasonable and adequate. **App. 6-7 (para. 17)**.

This was the first probate matter Respondent had handled. **App. 7 (para. 18)**. Respondent prepared the durable power of attorney for Mrs. McNeal, opened Mr. McNeal's estate, and brought an injunction suit on behalf of Mrs. McNeal against Alfreda McNeal. **App. 7 (paras. 19-20)**. In the lawsuit, Respondent alleged that Alfreda McNeal had used undue influence against her father to withdraw approximately $111,000 from the McNeals' bank accounts shortly before Mr. McNeal died. **App. 7 (para. 21)**.

Respondent was not successful in obtaining an injunction for Mrs. McNeal. **App. 7 (para. 22)**. The Court found that Alfreda McNeal was a joint owner on the bank accounts for which she had withdrawn funds and that Alfreda McNeal had deposited a substantial amount of the funds into the accounts. **App. 7 (para. 22).** The Court further opined that

Alfreda McNeal did not use undue influence when her father added her name to the account and there was no fraud of marital rights. **App. 7 (para. 22)**. After Respondent lost the injunction suit, Respondent requested that Mrs. McNeal find new counsel. **App. 7 (para. 23)**.

On or about June 21, 2018, Mrs. McNeal hired Maxwell Murtaugh to represent her in her capacity as personal representative of Mr. McNeal's estate. **App. 7 (para. 24)**. Mr. Murtaugh entered his appearance in the probate matter and Respondent withdrew. **App. 7 (para. 24)**. On July 17, 2018, Mrs. McNeal's counsel notified the Probate Court that Mr. McNeal's estate had no assets. **App. 8 (para. 25)**. Shortly thereafter, the Court closed the estate. **App. 8 (para. 25)**.

On July 9, 2018, Respondent filed a lawsuit against Ms. Tillman, Mrs. McNeal, and Mr. McNeal's Estate ("the Defendants") alleging fraudulent misrepresentation, breach of contract, breach of fiduciary duty, and unjust enrichment. **App. 8 (para. 26)**. Respondent was seeking attorney fees of $33,734.20 for her representation in the injunction suit and the probate estate. **App. 8 (para. 26)**. Mrs. McNeal and Ms. Tillman hired Gillespie, Hetlage & Coughlin, L.L.C. ("the Gillespie Law Firm") to represent them. **App. 8 (para. 27)**. Attorneys Laird Hetlage and LaTonya Grotegeers of the Gillespie Law Firm entered their appearances on behalf of the Defendants. **App. 8 (para. 27)**.

Mr. Hetlage and Ms. Grotegeers filed Motions to Dismiss on behalf of the Defendants. **App. 8 (para. 28)**. Ms. Grotegeers contacted Respondent by email

regarding Respondent's available dates for a hearing on the Motions to Dismiss. **App. 8 (para. 29)**.

On August 29, 2018, Respondent responded to Ms. Grotegeers' email with an email which stated:

> Well, if you read my objections to your motion to dismiss, I believe your clients will lose their argument because I am legally entitled to reasonable compensation for the worked [sic] I performed in 2 legal cases. Also, I have information that can be revealed that will lead to potential criminal federal and state penalties against Defendant Adrienne Tillman for her breach of fiduciary duty for her mother as a power of attorney. To avoid this damning information being revealed, I am willing to reinstate my initial settlement offer where your clients will pay the total fees I incurred in 3 months with a minimum of $13,000 being paid within 7 to 10 days by cashier's check.
>
> Please contact the court and find out what dates are available in the later part of September and October and I will get back to you.

App. 8-9 (para. 30); 49-51.

Respondent followed up with another email to Ms. Grotegeers on August 30, 2018, which stated:

> Just a follow-up to my reinstatement of the settlement offer for this matter, are the Defendants not interested in settling this matter and want to risk further confidential information being revealed for potential civil and criminal penalties for Defendant Adrienne Tillman as power of attorney for her mother?

App. 9 (para. 31); 52-53.

On or about September 12, 2018, Respondent submitted a completed Form 3949-A to the Internal Revenue Service informing the IRS that Mrs. McNeal and her deceased husband had failed to file tax returns for tax years 2011 through 2017. **App. 9 (para. 32); 54-55**. At the time that Respondent made the IRS referral, Mrs. McNeal had filed

the needed tax returns. **App. 9 (para. 33)**. Respondent was unaware of this. **App. 9 (para. 33)**. Except for the McNeals' alleged failure to file tax returns, Respondent did not have any information which would subject the McNeals or Ms. Tillman to potential civil or criminal penalties. **App. 9 (para. 33)**.

On August 30, 2018, Ms. Grotegeers filed a complaint against Respondent with Informant. Respondent learned of the complaint on or around September 25, 2018. **App. 10 (para. 34)**.

On October 11, 2018, Respondent sent the following email to Mr. Hetlage:

> I received your October 8, 2018 correspondence letter indicating that your clients will not accept my October 5, 2018 settlement offer of 60% of the attorney fees and costs (or $20,646.89) to settle this matter. **As I told you during out [sic] settlement negotiation before the Court on October 5, 2018, I believe your client's counter offer of $7,000 is an <u>insult</u> and does not cover reasonably what I incurred.**
>
> Missouri Supreme Court Rule 4-1.6(b)(3) states that "a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to respond to allegations in any proceeding concerning the lawyer's representation of the client."
>
> **Furthermore, your associate and co-counsel, Attorney LaTonya Grotegeers, has filed a bar complaint against me that I believe you as her employer under the doctrine of *respondeat superior,* ordered to happen that I must still fight related to this case.** On October 5, 2018, the Judge indicated my offer was reasonable for the work I did for my former clients and still you and your clients think it is appropriate to avoid paying me reasonable compensation for my services.
>
> I continue to pursue this case to get judgment against your clients and work to get a secured judgment lien and force a sale on their real/personal property (and garnishment of employment wages) to pay for my services. This means that my former client's home at 4507 Clarence Avenue, St. Louis could be subject to a foreclosure sale if I am able to get a judgment in this case. Also, Mrs. Tillman's real/personal property can be subject to foreclosure sale as well as a garnishment of her wages if I am

successful in receiving a judgment in this action against her. I know your clients do not want that.

Furthermore, with the pending tax issues that Virginia McNeal, decedent Alfred McNeal and their daughter Alfreda McNeal have, I believe I will be subpoenaed by the IRS and DOJ and will reveal EVERYTHING that I know regarding their tax issues. That is one of the reasons why I believe my offer of settlement of $20,646.89 is reasonable and the Judge agreed with me at our October 5, 2018 hearing. Your clients are in some serious criminal (federal and state) trouble as it relates to taxes and other crimes and fraud that I uncovered in my representation of them for the past 2 years.

. . . .

Now, I suggest you share this email with your clients to have them *reconsider* my October 5, 2018 proposed settlement offer to settle this matter for $20,646.89. It is still open until *5 p.m. by Friday, October 12, 2018.* . . . .

I hope you expedite sharing this email with your clients and get back to me by 5 p.m. on October 12, 2018. Time is of the essence.

App. 10 (para. 35); 56-67.

On October 26, 2018, Respondent sent the following email to Mr. Hetlage:

I received your October 15, 2018, correspondence letter. As usual, you are vastly mistaken regarding the concept of a **principal and agent relationship (i.e. agency law)** that exists in the relationship of Power of Attorney (POA) Adrienne Tillman effective as of April 23, 2017 and the principal, Virginia McNeal.

Do you understand the concept of the **doctrine of *respondeat superior*?**

You are the boss or employer of Attorney Latonya E. Grotegeers. She is your co-counsel in this legal matter of *Syreeta L. McNeal, Esq. v. Virginia McNeal et al;* Case No. 18SL-CC02624. Your law firm, Gillespie, Hetlage & Coughlin, L.L.C., represents my former clients, Virginia McNeal, and Estate of Alfred Gilbert McNeal. Also, your law firm represent [sic] the Adrienne Tillman who has a POA effective as of April 23, 2017 for principal, Virginia McNeal.

Under a principal-agent relationship and under the doctrine of *respondeat superior,* it can be inferred (explicitly and implicitly) that you authorized Attorney Latonya Grotegeers to file a MO bar complaint against me relating to this pending legal matter as a bully tactic. Your pleadings filed in this case show that Attorney LaTonya Grotegeers is working for your law firm and you in this case. Also, it can be inferred that one of your clients, Adrienne Tillman, is authorizing you, your co-counsel and law firm to file a MO bar complaint against me because you are representing her and her former attorney has made threats in writing regarding it as well when it relates to a $5,000 counter-offer to settlement of attorney fees in this matter.

In my legal opinion, you and Ms. Grotegeers as well as your clients don't realize that you have opened pandora's box and I am legally permitted to reveal SECRETS, crimes and fraud that your clients have done in this pending legal matter as well as with the MO Bar, the Internal Revenue Service (IRS) and other state criminal entities under Missouri Supreme Court Rule 4-1.6(b)(3) in order to obtain reasonable compensation for the work I performed for Virginia McNeal and Estate of Alfred Gilbert McNeal in two legal cases. Also, I am legally permitted to file a legal action against Attorney Latonya Grotegeers and your law firm for libel, slander, and defamation of character regarding your unwarranted and falsely claimed MO bar complaint and I will do so.

. . . .

In my legal opinion and from the brief interaction I had with you at our conference in judge's chambers, I believe it is difficult for you think [sic] that a *black female attorney* like me should be able to receive 60% or $20,646.89 of the total compensation I incurred for Virginia McNeal and the Estate of Alfred Gilbert McNeal. I saw how you interacted with my opponent in *Virginia McNeal et al v. Alfreda McNeal,* Case No. 1722-CC01358 prior to our conference in judge's chambers. I believe you asked him to come and sit in and then when he could not after the bailiff told them that only parties' counsel will be in Judge's chambers, then you mysteriously sat down in the Courtroom. You are not slick and this behavior is highly unethical. **Further, it infers what I have believed all along that POA Adrienne Tillman is working with her sister, Alfreda McNeal to steal the entire inheritance of her mother, Virginia McNeal and late father, Alfred Gilbert McNeal.** This means your law firm has a CONFLICT OF INTEREST in representing Virginia McNeal, Estate Alfred McNeal and POA Adrienne Tillman under the Missouri Rules of Professional Conduct. This information will be sent to

> the MO Bar as well (and already has been in the response I have given) as well as filed with the Court in this pending matter.
>
> You really have no idea what information I know that will put 3 of your client [sic], Virginia McNeal's children, including Adrienne Tillman, under federal and state criminal prosecution. Maybe you can live with that and all you want to do is try to get as much money in attorney fees in this legal matter. If you do, that further shows how unethical you are and the MO Bar needs to take a deeper look at your practices. In my legal opinion, that is not helping your clients at all. It is selfish and you and your law firm can expose yourself to future MO Bar Complaint which I plan to ensure happens.

App. 11-13 (para. 36); 58-59.

.

On October 26, 2018, Respondent notified Ms. Grotegeers, by email, that she was sending Mrs. McNeal's files by mail to her. In the email, Respondent stated:

> As I informed your boss in writing, I have kept a copy of all relevant documents to be used against my former clients for potential federal and state criminal prosecution as well as defense of your MO Bar complaint and a legal action that I will file against you and your law firm regarding the MO Bar Complaint you filed against me.

App. 13 (para. 37); 60-61.

In the box of documents Respondent sent to Mrs. McNeal's counsel there was a letter dated October 26, 2018, to Mr. Hetlage. The letter stated:

> Please send the box of documents to my former client, Virginia McNeal. As I have informed your associate co-counsel, LaTonya Grotegeers, I have made copies of everything relevant in the file to be used in anticipation of being subpoenaed as a "witness" in a federal and/or state criminal action involving my former clients as well as use in the MO bar complaint that your associate co-counsel and this law firm has filed against me regarding this pending legal matter. Thank you.

App. 13 (para. 38); 62.

On November 6, 2018, the Court dismissed all counts against Ms. Tillman. The court also dismissed all counts against Mrs. McNeal and the Estate of Alfred McNeal except for the unjust enrichment count. **App. 14 (para. 39)**.

On November 15, 2018, Mrs. McNeal and Mr. McNeal's Estate filed their Answers. In their Answers, they asserted negligence and unclean hands affirmative defenses. They asserted that once Respondent obtained documentation that the accounts in question were jointly held with Alfreda McNeal she should have stopped the litigation. **App. 14 (para. 40)**.

On November 16, 2018, at 2:49 p.m. Respondent sent an email to Mr. Hetlage and Ms. Grotegeers which stated, in part:

> I have already reported to the Internal Revenue Service in September 2018 the crimes and fraud of **federal tax evasion** that Virginia McNeal, decedent Alfred McNeal and also Alfreda McNeal did by not properly filing their tax returns for the 2012, 2013, 2014, 2015, 2016 and 2017 tax years. I am legally permitted to disclose this information to the IRS under the Missouri Rules of Professional Conduct and also under the crime and fraud exception to attorney-client privilege recognized in Missouri.
>
> You have already received the box of files for my former clients and there are many more crimes and fraud that I have uncovered that I am legally entitled to inform the federal and state authorities. . . . .
>
> I have been more than reasonable here with my former clients. However, for some personal reason of yours (i.e. racism, sexism, or desire to get as much in attorney fees as you can) you are prolonging the opportunity to resolve this case amicably for both parties. You should realize the attorney-client privilege that existed between me and Virginia McNeal (and the Estate of Alfred Gilbert McNeal) has been severed and I am permitted to reveal everything to be able to fight this litigation, your co-counsel's Missouri Bar Complaint, and also serve as a witness in a criminal matter (federal and/or state) affecting the children of my former clients.

App. 14 (para. 41); 63.

Mr. Hetlage responded to Respondent's email by advising Respondent that she was not entitled to release privileged information to governmental agencies, not entitled to threaten criminal prosecution in a civil case and that calling him racist and sexist was probably a violation of the ethical rules. **App. 15 (para. 42)**.

Respondent sent an email on November 16, 2018, at 5:23 p.m. back to Mr. Hetlage which stated:

> Oh yes I am. Federal and MO case law state it. I can reveal any crimes and fraud that my former clients and their family members have done under the crime and fraud exception and MO Rules of Professional Conduct. It is also a whistle blower protection statute that is federal. I am also permitted as a Certified Public Accountant to reveal it.
>
> Look up the law. Do some research. Your co-counsel was referenced it [sic] in my response to the MO Bar Compliant she made the applicable law.

App. 16 (para. 43); 66.

Respondent had done some research regarding Rule 4-1.6(b) but had not consulted with any other attorney or Missouri Legal Ethics Counsel about what the rule allowed. **App. 15 (para. 44)**.

Mrs. McNeal's attorneys filed discovery requests and sent Respondent a notice indicating they wished to take her deposition. Respondent objected to the discovery requests and deposition by asserting that the information sought was protected by attorney/client privilege and work product doctrine. Mrs. McNeal's interrogative questions included questions which asked Respondent to describe the work she did on the underlying injunction case, the date she learned that Alfreda McNeal was a co-owner of

the bank accounts in question and various other factual questions. **App. 15-16 (para. 45); 67-74**.

Respondent continued to make the same assertions after Ms. Grotegeers provided Respondent with a signed Waiver of Attorney Client Privilege form from Mrs. McNeal, Mr. McNeal's Estate and Ms. Tillman. **App. 16 (para. 46); 75-77**.

Respondent did not reveal any client confidences except when making the referral to the IRS. **App. 16 (para. 47)**. Respondent did not file a lawsuit against Ms. Grotegeers or the Gillespie Law Firm for libel, slander, or defamation as she had threatened. She also did not file a complaint with Informant regarding Ms. Grotegeers or the Gillespie Law Firm. **App. 16 (para. 48)**.

In June 2019, Respondent reached a settlement with Ms. Tillman and Mrs. McNeal whereby Ms. Tillman paid Respondent $6,000. Ms. Tillman agreed to pay the $6,000 to avoid incurring additional attorney fees to defend the action. **App. 16 (para. 49)**.

C. A.W. Smith's Complaint

Mr. Joseph Taylor was familiar with Respondent because she had prepared his tax returns for several years. **App. 17 (para. 52)**. On October 26, 2017, Mr. Taylor hired Respondent to represent him in a personal injury matter. In August 2017, Mr. Taylor had swallowed a toothpick and suffered injuries as a result. Mr. Taylor believed he had ingested the toothpick while eating at a local grocery store deli. **App. 16-17 (para. 50)**.

This was the third personal injury matter Respondent had handled. The first two had settled without Respondent having to file suit. **App. 17 (para. 51)**.

At the start of the representation, Mr. Taylor had advised Respondent that he had eaten lunch at the deli with several friends/acquaintances. He also informed Respondent that the friends/acquaintances could attest to the fact that he had eaten at the deli and that his sandwich was held together with toothpicks. **App. 17 (para. 53)**.

Respondent had a written, contingent fee agreement with Mr. Taylor. The agreement provided that Mr. Taylor would pay Respondent a set percentage of any settlement she obtained on Mr. Taylor's behalf. The payment percentage varied from 33.3 percent to 40 percent depending upon what stage of the litigation Respondent obtained the settlement. The fee agreement specifically stated that Respondent was collecting no retainer from Mr. Taylor. **App. 17 (para. 54); 78-80**.

Respondent did some preliminary work on the matter between October 11, 2017, and July 17, 2018. The work was limited to obtaining Mr. Taylor's medical records and sending a demand letter to the grocery store's insurer offering to settle the matter for $60,000. **App. 17 (para. 55)**.

On July 9, 2018, the grocery store's insurer advised Respondent that it was not willing to negotiate a settlement because its investigation showed that the grocery store did not use toothpicks when preparing sandwiches. **App. 18 (para. 56)**.

On July 13, 2018, Respondent directed Mr. Taylor to go to the grocery store and to take pictures of food preparation at the deli. She also directed him to provide her with a list of people who had eaten lunch with him on the day that he swallowed the toothpick. **App. 18 (para. 57)**. Mr. Taylor did not provide her with the list nor did he go to the deli and take photographs. **App. 18 (para. 57)**.

On July 18, 2018, Mr. Taylor informed Respondent by email that he no longer wanted her to represent him and that he had hired the A.W. Smith Law Firm to take over the representation. Mr. Taylor advised Respondent that Mr. Smith would be contacting her to obtain his file. **App. 18 (para. 59); 81**. Respondent became angry with Mr. Taylor and asserted he owed her $750 for the work she had done on the matter. **App. 18 (para. 60); 82**.

A.W. Smith, Mr. Taylor's new attorney, contacted Respondent by email on July 18, 2018. In the email, Mr. Smith stated, in pertinent part:

> Your email has been forwarded to me for response. I can personally assure you that no one is trying to take advantage of you for your time that you have in this case. I already discussed with Mr. Taylor the fact that I would reach out to you and honor an attorney's lien for the work you had done. We will also gladly reimburse you for any expenses that you may have incurred, as well.
>
> Our representation of Mr. Taylor is pursuant to a contingency fee arrangement. If and when we achieve a settlement for Mr. Taylor, I will contact you to discuss resolving your attorney's lien and the fees that are owed to you. I certainly hope and believe that it will be much more than $750.

App. 18-19 (para. 61); 83.

Respondent responded by advising Mr. Smith that if Mr. Taylor paid her $350 she would consider that a reasonable settlement for the work she had done. More specifically, on July 23, 2018, Respondent sent Mr. Smith the following email:

> **Have you heard back from your new client (& my former client), Joseph Taylor, regarding settlement in legal fees and costs for my representation of him in the personal injury action against Hy-Vee, Inc. for $350.00?**
>
> I would like to wrap this up and give you the originals so you can proceed. I believe $350.00 is fair compensation and settlement even-though I incurred more than the $750 initial retainer I usually receive for the work I

> performed in this matter. Also, I want to avoid filing an "unjust enrichment" legal action against your client in court that I am legally entitled to pursue. I need to know ASAP.
>
> If he agrees, he can pay the $350.00 by Cashier's Check or Money Order (Payable to "Syreeta L. McNeal") at my Mid Missouri office with the receptionist (and get a receipt) from 8 a.m. to 5 p.m. during the weekdays. Upon receipt, I will send you the original paperwork to close this case out and let you proceed with your representation.

App. 19 (para. 62); 84.

On July 24, 2018, at 2:59 p.m., Mr. Smith responded to Respondent via email. In his email, Mr. Smith explained to Respondent that because she had a contingency fee agreement with Mr. Taylor she did not have a right to demand payment from him at that time. Mr. Smith acknowledged that Respondent had the right to assert an attorney's lien on the case for her work and, if and when, Mr. Smith obtained recovery for Mr. Taylor he would contact her to discuss her fee. Mr. Smith also inquired whether Respondent was requiring payment before she would release Mr. Taylor's file to him. **App. 19-20 (para. 63); 85**.

Respondent responded to Mr. Smith with the following email on July 24, 2018, at 3:34 p.m.:

> I did not demand payment from him. **I am asking you would your client be willing to pay reasonable services that I incurred as part of a SETTLEMENT to avoid me filing an "unjust enrichment" action (& potentially other causes of action) against him.** It is a simple yes or no.
>
> There are things that are confidential that were revealed to me during the course of my representation of my former client that can be damaging to your client if I include it in a legal action to be able to get the reasonable attorney fees I incurred on his behalf from July 2017 to July 2018. **Your client, Joseph Taylor, my former client made some FALSE STATEMENTS to me that if I included it in a legal action which I am**

legally permitted to do under the MO Rules of Professional Conduct could be damaging to him in your pursuit of his current legal action against Hy-Vee, Inc.

TO AVOID THAT POTENTIAL IMPACT TO HIM, I was offering a reasonable $350.00 settlement [$250 non-refundable fee I generally required [sic] from my clients in any legal action, plus $100 fee for additional costs and expenses incurred by me to represent [sic] from July 2017 to July 2018] that will allow me to keep CONFIDENTIAL what I know about your client and this case.

I think the $350 settlement is reasonable to buy my silence and help your client get what he wants from Hy-Vee, Inc. if he can get it.

I will give you and your client time to think about it. The deadline is this **Friday, July 27, 2018.**

App. 20 (para. 64); 86.

Because Mr. Taylor never provided Respondent with a list of people who had accompanied him to the deli, Respondent assumed Mr. Taylor had lied to her about having witnesses. Respondent did not have any actual evidence that Mr. Taylor had lied to her or engaged in fraud. **App. 21 (para. 65)**.

At 5:05 p.m. on July 24, 2018, Mr. Smith advised Respondent that his client was rejecting her demand. In his email, Mr. Smith pointed out to Respondent that she did not have a claim for quantum meritus or unjust enrichment unless Mr. Smith obtained a recovery for Mr. Taylor. He also stated that in 16 years of practice he had never seen or heard of an attorney making demands such as Respondent, that Respondent's conduct was offensive to all sense of professional conduct and it appeared Respondent was attempting to extort money from his client. **App. 21 (para. 66); 87**.

At 5:33 p.m. on July 24, 2018, Respondent sent the following email to Mr. Smith:

> $350 is reasonable. I don't need you to tell me the law. I am a licensed MO lawyer. If I file a legal action alleging fraudulent misrepresentation to enter into our contract based on the false statements made to me by my former client regarding this personal injury action, your client will potentially have his wages garnished by me and I will ask for more than the $350.
>
> Mr. Joseph Taylor knows exactly what I am referring too [sic] regarding my representation of him. Now as his counsel, since you interjected yourself into this settlement negotiation, it would behoove you to review this proposal with your new client and take it seriously. You have until this Friday.

App. 21 (para. 67); 88.

At 6:14 p.m. on July 24, 2018, Mr. Smith advised Respondent that their communications were unproductive and that she should not contact him again. **App. 22 (para. 68); 89**.

At 6:48 p.m. on July 24, 2018, Respondent sent Mr. Smith an email which stated:

> You don't tell me what I can do. You interjected yourself in a conversation that was only with Joseph Taylor directly. On behalf of your new client, and my former client, I gave you a reasonable settlement amount for my compensation for the personal injury action with Hy-Vee, Inc. I don't appreciate you thinking that you have the legal right to tell me what I can say to my client who I not only helped in a personal injury case as well as prepared his tax returns for a significant number of years and that will cease after today.
>
> I DON'T LIKE LIARS AND PEOPLE WHO MAKE FALSE MISREPRESENTATIONS TO ME REGARDING IMPORTANT MATTERS IN LEGAL CASES. Mr. Taylor has done that to me and my representation of him in anything in the future will end with this matter TODAY.
>
> As I told you before, you don't know what representations your client has made to me and also what the EVIDENCE has shown regarding the validity of his personal action case against Hy-Vee, Inc. In order to amicably resolve this, I gave you an amount so that you can inform your client in order

> to minimize the risk potential legal action I will file will have against him personally and his legal action against Hy-Vee, Inc.
>
> Any good lawyer would do that to help their client. YOU ARE NOT GOD AND ARE NOT THE AUTHORITY IN THIS MATTER.
>
> There are things you don't know that your client has not made you aware of that will impact the personal injury case.
>
> As I told you before, I think you and Mr. Joseph Taylor need to take time to reconsider my offer. I will give you until Friday to accept the $350 compensation amount so that any emotional concerns can be eased.

App. 22 (para. 69); 90.

At 7:49 p.m. on July 24, 2018, Mr. Smith advised Respondent, via email, that he had a duty to report Respondent's conduct to Informant as Respondent was attempting to extort money from Mr. Taylor. Mr. Smith asked Respondent to reconsider her actions and indicated that if she realigned herself with the Rules of Professional Conduct he would consider it unnecessary to file a report with Informant. **App. 23 (para. 70); 91**.

At 8:17 p.m. on July 24, 2018, Respondent responded via email. The email stated:

> $350 from a former client who works for Mercedes Benz when it is customary for a retainer of $750.00 or greater to be given for fees in this type of attorney fee contingency action?
>
> Give me a break. How long have you been practicing law?
>
> Your initial email was offering reasonable compensation for my services. If Mr. Joseph Taylor is hard up in paying $350.00 to me for any legal services incurred when I have done his financial tax returns AND KNOW HIS ANNUAL INCOME, is laughable.
>
> Like I told you before, I represent Mr. Joseph Taylor in preparing his tax returns as well as helping him in his Hy-Vee, Inc. personal injury action. The email was for HIM ALONE, not you. You don't know what your client has informed me regarding the facts of the case for the past year.

I am going to reveal something to you under MO S. Ct. Rule 4-1.6(b)(3) that I am permitted to do to try and resolve this issue with legal fees amicably with my former client.

Before you were hired, I specifically asked your client by email to give me the following evidence to support his claim: (1) list of eye witnesses who accompanied him when he ate lunch on August 16, 2017, at the Hy-Vee, Inc. location at issue; (2) pictures of the food prepared at Hy-Vee, Inc. recently during the week to see if they include toothpicks to match his assertion of the events that led to his injury. For some strange reason your client could not provide reasonable evidence to confirm his alleged chain of events. Now, if what my former client is stating is TRUE, it should be easy for him to get the information I asked him to get via email. He refused to provide it even though I asked him to do it.

Also, I asked him to keep a COPY of the complaint form he gave to Hy-Vee, Inc. to document the incident. He did not keep a copy and give it to me like I asked him to do. In my legal opinion, Hy-Vee, Inc. who has surveillance tapes to review what happened on August 16, 2017 might be right that Joseph Taylor's allegations are UNTRUE. Hence, he won't receive a monetary settlement.

Now, maybe as an Attorney you are able to get Joseph Taylor to tell the truth to you and get evidence that he refused to give me for the past year to corroborate his allegations.

Now, the above factual information has emails to corroborate as well as my personal notes and I do have a photographic memory of what we discussed.

Like I am warning you before, I have a legal right to get reasonable compensation for my services in this matter that occurred from July 2017 to July 2018. I also have a legal right to have my clients be ETHICAL and TRUTHFUL in everything they do or say to me in my legal representation of him.

I know you think Mr. Joseph Taylor is telling you everything that happened truthfully. But, I am telling you as [sic] OFFICER OF THE COURT, you need to be cautious believing what Mr. Joseph Taylor, my former client is telling you.

> Do your due diligence before you assume what really is going on in my representation and request of reasonable compensation in this personal injury matter.

App. 23-24 (para. 71); 92-93.

At 8:43 p.m. on July 24, 2018, Mr. Smith advised Respondent by email that she "should stop this nonsense" and again warned Respondent that her actions could result in disciplinary action. **App. 25 (para. 72); 94**.

At 8:49 p.m. on July 24, 2018, Respondent sent Mr. Smith an email which stated:

> As I told you before, you are not the final arbiter here. If you care about your current client, you will discuss the pros and cons of what legal action I will file against him directly and will use it against any complaint against my bar license that you are in appropriately [sic] threatening.

App. 25 (para. 73); 95.

On July 30, 2018, Respondent sent a letter to Mr. Taylor. The letter stated, in pertinent part:

> I received your July 18, 2018, email correspondence where you indicated you retained [sic] AW Smith law firm to represent you in the personal injury action that occurred on August 16, 2017 . . . Please find enclosed your original documents of this matter and other correspondence that I believe you will need to continue in this engagement with your new counsel.
>
> My law firm incurred $1,688.04 in legal services [$1,680.00 in attorney fees and $8.04 in costs] . . . Also I tried to contact Mr. Smith by email to negotiate an amicable settlement of compensation of my attorney fees for $350 that needed to be accepted by you by Friday July 27, 2018. I have not received email correspondence from you or your counsel. Unfortunately, my email communication I had with your current counsel, Mr. Smith, to resolve this matter has resulted in me terminating any tax return preparation services I perform for you for the 2018 tax year and beyond.
>
> On August 17, 2018, I will file a legal action against you for fraudulent misrepresentation and unjust enrichment so I can retrieve the $1,688.04 in

> attorney fees and costs I incurred from October 27, 2017 to July 18, 2018, for my representation of you in this personal injury action . . . **Because I have prepared your annual tax returns for a significant number of years, I am giving you a final option to remit $350 (Cashier's Check or Money Order) to my office as [sic] by *Thursday, August 16, 2018* to avoid this legal action against you and settle this action once and for all. . . .** Thank you.

App. 25-26 (para. 74); 96-98.

On August 15, 2018, Mr. Taylor paid Respondent $350 by cashier's check. **App. 26 (para. 75)**. Respondent did not file suit against Mr. Taylor. **App. 26 (para. 76)**.

D. Willie And Teresa Smith's Complaint

Respondent represented Willie and Teresa Smith in a Chapter 13 bankruptcy. **App. 26 (para. 77)**. On April 29, 2013, Mr. and Ms. Smith signed a fee agreement with Respondent which provided they would pay $750 up front and an additional $2,250 via the Chapter 13 monthly payments. The fee agreement also provided that Mr. and Ms. Smith would owe additional fees for such things as Respondent's representation at contested hearings, the filing of additional motions, etc., which occurred after the confirmation of their initial Chapter 13 plan. **App. 26 (para. 78)**.

Mr. and Ms. Smith did not understand that any additional fees they might have to pay could be outside the Chapter 13 Plan payments. **App. 26 (para. 79)**. In November 2014, and February 18, 2018, Respondent filed Motions for Post Confirmation Fees which were granted. These fees totaled $157.96 and $895.59 respectively and were paid through the Chapter 13 Plan. **App. 27 (para. 80)**.

In July 2018, the Chapter 13 Trustee filed a Notice of Completion of the Smiths' Chapter 13 Plan and entered a cancellation of Mr. Smith's wage order. **App. 27 (para.**

81). On July 13, 2018, Respondent filed her third Motion for Post Confirmation fees for $729.53. This motion requested that the fees be paid directly to her. **App. 27 (para. 82)**.

Respondent sent Mr. and Ms. Smith a letter stating that they could object to the motion within 21 days or they could pay now or shortly after the Court entered its Order on the Motion. **App. 27 (para. 83); 99**.

On August 6, 2018, the Court entered its Order granting Respondent's Third Motion for Post Confirmation Fees. **App. 27 (para. 84)**. On August 8, 2018, Respondent called the Smiths at 10:30 p.m. demanding payment. Respondent was verbally abusive to the Smiths. **App. 27 (para. 85)**.

On August 9, 2018, Mr. Smith paid Respondent $300 of the $729.53 owed to her. **App. 27 (para. 86)**.

E. Respondent's Personal Issues During The Summer And Fall Of 2018

During the summer and fall of 2018, Respondent was experiencing an elevated level of stress. She was having cash flow issues with her law practice. Her parents were ill and she was assisting in their care. In addition, Respondent had to move out of her apartment due to renovations being made on her apartment building. The move took up a considerable amount of Respondent's time and was costly for her. **App. 27-28 (para. 87)**.

F. Respondent's Current Understanding Of The Rules Of Professional Conduct

After Informant started his investigations, Respondent obtained instruction from her counsel about the requirements of Rules 4-1.5, 4-1.6(a), and Rule 4-8.4(g). Respondent now realizes she should not: (a) charge her clients fees in excess of what her written fee

agreement allows, (b) threaten her clients with disclosure of client confidences, (c) disclose client confidences, or (d) harass her clients for payments. **App. 28 (para. 88)**.

III. Rule Violations As Set Forth In The Joint Stipulation

A. LaTonya Grotegeers' Complaint

The parties agreed in the Joint Stipulation that Respondent violated:

a. Rules 4-1.5(a) and 4-8.4(a) when she tried to collect a $33,734.20 fee from Ms. Tillman and Mrs. McNeal. **App. 28-29 (para. 91)**;

b. Rule 4-3.4(d) when she objected to the taking of her deposition and when she objected to interrogatory questions and requests for production of documents on the grounds of attorney client privilege and work product doctrine. **App. 29 (para. 93)**;

c. Rules 4-1.6(a), 4-1.9(c), 4-1.16(d), and 4-8.4(a) when she threatened to make a report to the IRS regarding the McNeals' alleged failure to file tax returns. **App. 29 (para. 93)**;

d. Rules 4-1.6(a), 4-1.9(c), and 4-1.16(d) when she actually made the report to the IRS. **App. 30 (para. 97)**;

e. Rule 4-8.4(c) when she:

    i. errantly represented to Ms. Grotegeers and/or Mr. Hetlage that she could reveal client confidences to obtain compensation for the services she provided the McNeal family; and

ii. errantly represented to Ms. Grotegeers and/or Mr. Hetlage that she was legally permitted to report to the IRS that the McNeals had not filed tax returns in years 2011 through 2017. **App. 30 (para. 99)**;

f. Rule 4-8.4(d) when she:

i. threatened to reveal client confidences unless the clients paid her $33,734.20;

ii. threatened criminal prosecution in her lawsuit against Mrs. McNeal and Ms. Tillman;

iii. reported Mrs. McNeal to the IRS for failing to file her tax returns; and

iv. threatened to file a lawsuit for libel and slander against Mr. Hetlage and Ms. Grotegeers. **App. 31 (para. 101)**.

B. A.W. Smith's Complaint

The parties agreed in the Joint Stipulation that Respondent violated:

a. Rule 4-1.5(a) when she sought and collected $350 from Mr. Taylor. **App. 31 (para. 102)**;

b. Rules 4-1.6(a), 4-1.9(c), and 4-8.4(a) when, after Mr. Taylor terminated the representation, Respondent threatened to reveal confidential client information unless Mr. Taylor paid her $350. **App. 32 (para. 108)**;

c. Rule 4-8.4(c) when she errantly represented to Mr. Smith that she was legally permitted under the Rules of Professional Conduct to disclose client confidences unless Mr. Taylor paid her $350. **App. 32 (para. 110)**; and

d. Rule 4-8.4(d) when she threatened to reveal client confidences unless Mr. Taylor paid her $350, **R. 82, para. 112.**

C. Willie and Teresa Smith's Complaint

The parties agreed in the Joint Stipulation that Respondent violated Rule 4-8.4(d) when she called the Smiths late at night and was verbally abusive to them to get them to pay their attorney fees. **App. 33 (para. 114)**.

IV. Mitigating And Aggravating Factors As Set Forth In The Joint Stipulation

The parties stipulated in the Joint Stipulation to the following aggravating and mitigating factors:

A. Rule 5.285 Mitigation

In her Amended Answer, Respondent claimed that she suffered from mental disorders and that these mental disorders are mitigating factors which should lessen the level of discipline imposed by the Court. **App. 34-47**. Informant did not dispute this allegation.

Dr. Elizabeth Pribor, a licensed psychiatrist, performed an independent psychiatric examination of Respondent. Dr. Pribor specializes in forensic psychiatry and is board certified in such. She is also an Associate Professor of Clinical Psychiatry at Washington University School of Medicine. **App. 34 (para. 119)**. Dr. Pribor diagnosed Respondent with three mental disorders found in the Diagnostic and Statistical Manual 5. In Dr. Pribor's opinion, these disorders caused Respondent to have a lack of trust in others so that she believes others are "out to get her" and she construes innocuous events as signifying conspiratorial intent on the part of others. The disorders also cause

Respondent to be overly assertive and to blame others for her problems. **App. 34-35 (para. 120)**.

Dr. Pribor believes that the mental disorders substantially contributed to Respondent's misconduct. **App. 35 (para. 121)**. Dr. Pribor also believes Respondent's disorders are treatable through long-term, sustained therapy and medication. **App. 35 (para. 121)**. Dr. Pribor has opined that if Respondent receives treatment and education about what she did wrong, Respondent will improve and it will be less likely that Respondent will respond in the same way that she did in the McNeal/Tillman, Taylor and Smith matters. Dr. Pribor notes that Respondent appears very motivated to change so she can keep her law and accounting licenses. **App. 35 (para. 122)**. Finally, Dr. Pribor opines that it is reasonable to assume that if Respondent obtains the needed treatment, her condition can be sufficiently managed such that a recurrence of the behaviors set forth in the Joint Stipulation are unlikely to reoccur. **App. 35 (para. 123)**.

B. Other Mitigating Factors

The parties agreed in the Joint Stipulation that Respondent has been cooperative with Informant and made a full and free disclosure to Informant when Informant took her sworn statement. **App. 36 (para. 128)**. During the sworn statement, Respondent admitted that she should not have revealed or threatened to reveal client confidences. She also acknowledged that she should not have attempted to collect fees from clients when her contingency fee agreement did not entitle her to a fee. **App. 36 (para. 128)**.

The parties also acknowledge that Respondent had little to no experience in probate and personal injury matters before taking on the McNeal and Taylor cases and

that Respondent was very remorseful for her actions. The parties also agree that Respondent admitted she did not handle her client relations in an appropriate manner. **App. 36 (paras. 129-30)**.

C. Aggravating Factors

The parties agreed in the Joint Stipulation that there were three aggravating factors: (a) Respondents prior two admonitions; (b) Respondent engaging in a pattern of threatening to release clients' confidential information; and (c) Respondent violated multiple rules. **App. 35 (paras. 125-27)**.

V. Recommended Discipline As Set Forth In The Joint Stipulation

In the Joint Stipulation, the parties recommended that this Court indefinitely suspend Respondent's license with no leave to apply for reinstatement for one year, the Court stay the suspension, and then place Respondent on probation for three years. **App. 36 (para. 131)**. The parties also recommended that this Court assess the $1,500 fee for probation prescribed in Rule 5.19(h) and costs. **App. 36 (para. 131)**.

In the Joint Stipulation the parties suggested the terms of Respondent's probation should include Respondent:

a. making quarterly reports to Informant;

b. complying with the Rules of Professional Conduct;

c. attending Informant's "Ethics School";

d. maintaining malpractice insurance;

e. taking and passing the Multistate Professional Responsibility Examination;

f. certifying that she is abiding by the trust accounting rules;

g. submitting to random trust accounting audits by Informant;

h. continuing mental health treatment with Respondent's treating mental health provider; and

i. having her mental health provider supply Informant with quarterly reports which discuss whether Respondent is abiding with the recommended treatment plan and whether Respondent's mental health condition substantially impairs her ability to function as a lawyer.

App. 101-109.

VI. Respondent's Testimony At The Hearing

At the hearing, the Panel questioned Respondent extensively about whether she understood the terms of the Joint Stipulation and whether, if this Court imposed the recommended discipline, she would comply with its terms. **R. 178-212.** Respondent advised the Panel that she understood the terms of the Joint Stipulation, that she was admitting to the facts and rule violations set forth in the Joint Stipulation, and that she was willing to comply with the terms of probation if such was imposed by this Court. **R. 178-212.** Respondent also indicated that it was her intention to continue with long term mental health treatment, including the taking of any medication recommended by her mental health provider, past the three years set out in the Joint Stipulation. **R. 193-94.**

The Panel asked Respondent about what she had done wrong concerning her representation of the McNeal/Tillman, Taylor and Smith clients. Respondent stated that with Mrs. McNeal and Ms. Tillman she had become too emotional and lost objectivity when trying to obtain payment. **R. 199-200.** Respondent indicated that with Mr. Taylor,

she did not have the experience to handle a personal injury matter and she should have found outside counsel to represent Mr. Taylor as soon as he asked her to represent him. **R. 203-04.** With the Smiths, Respondent indicated that she should have never called them at night to demand payment and should have contacted them during regular business hours. **R. 204-05.**

Respondent also indicated that she should have realized she could not disclose confidential client information and she would never threaten or disclose client confidences again. **R. 206-09.**

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE THE PARTIES AGREE THAT RESPONDENT VIOLATED:

A. RULES 4-1.5(a) AND 4-8.4(a) REGARDING HER DEMAND FOR FEES WHEN SHE HAD NOT MET THE CONTINGENCY ENTITLING HER TO ANY FEES;

B. RULE 4-3.4(d) REGARDING HER FAILURE TO COMPLY WITH DISCOVERY REQUESTS;

C. RULES 4-1.6(a), 4-1.9(c), 4-1.16(d) AND 4-8.4(a) REGARDING HER THREATS TO RELEASE CONFIDENTIAL INFORMATION AND HER ACTUAL RELEASE OF CONFIDENTIAL INFORMATION;

D. RULE 4 8.4(c) REGARDING HER MISREPRESENTATIONS TO HER FORMER CLIENTS' NEW COUNSEL; AND

E. RULE 4-8.4(d) REGARDING HER THREATS TO FORMER CLIENTS AND THEIR NEW COUNSEL AND HER REPORT TO THE IRS.

In re Boelter¸ 985 P.2d 328, 334 (Wash. 1999)

In re Wilson¸634 N.W.2d 467 (Neb. 2001)

In re Stowers, 823 N.W.2d 1, 15 (Iowa 2012)

In re Moody, 394 P.3d 223 (Okla. 2017)

II.

THE SUPREME COURT SHOULD INDEFINITELY SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR ONE YEAR, STAY THE SUSPENSION, AND PLACE RESPONDENT ON PROBATION FOR THREE YEARS BECAUSE RESPONDENT'S MENTAL HEALTH ISSUES MITIGATE THE LEVEL OF DISCIPLINE THIS COURT SHOULD IMPOSE AND WITH PROPER MENTAL HEALTH TREATMENT RESPONDENT IS UNLIKELY TO HARM THE PUBLIC OR CAUSE THE COURTS OR PROFESSION TO FALL INTO DISREPUTE.

In re Boelter¸ 985 P.2d 328, 334 (Wash. 1999)

In re Wilson¸ 634 N.W.2d 467 (Neb. 2001)

In re Piatt, 951 P.2d 889, 892 (Ariz. 1998)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE THE PARTIES AGREE THAT RESPONDENT VIOLATED:

A. RULES 4-1.5(a) AND 4-8.4(a) REGARDING HER DEMAND FOR FEES WHEN SHE HAD NOT MET THE CONTINGENCY ENTITLING HER TO ANY FEES;

B. RULE 4-3.4(d) REGARDING HER FAILURE TO COMPLY WITH DISCOVERY REQUESTS;

C. RULES 4-1.6(a), 4-1.9(c), 4-1.16(d) AND 4-8.4(a) REGARDING HER THREATS TO RELEASE CONFIDENTIAL INFORMATION AND HER ACTUAL RELEASE OF CONFIDENTIAL INFORMATION;

D. RULE 4 8.4(c) REGARDING HER MISREPRESENTATIONS TO HER FORMER CLIENTS' NEW COUNSEL; AND

E. RULE 4-8.4(d) REGARDING HER THREATS TO FORMER CLIENTS AND THEIR NEW COUNSEL AND HER REPORT TO THE IRS.

A. RULES 4-1.5(a) AND 4-8.4(a) REGARDING HER DEMAND FOR FEES WHEN SHE HAD NOT MET THE CONTINGENCY ENTITLING HER TO ANY FEES

In matters of attorney discipline, the Panel's decision is only advisory. *In re Shelhorse,* 147 S.W.3d 79, 80 (Mo. banc 2004). This Court reviews the evidence de novo and reaches its own conclusions of law. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). Professional misconduct is established by a preponderance of the evidence. *Id.* An attorney must comply with the Rules of Professional Conduct as set forth in Supreme Court Rule 4 as a condition of retaining his or her license. *In re Shelhorse*, 147 S.W.3d at 80. Violation of the Rules of Professional Conduct by an attorney is grounds for discipline. *Id.*

Rule 4-1.5(a) provides that a lawyer shall not make an agreement for, charge, or collect an unreasonable fee. Rule 4-8.4(a) provides that it is professional misconduct for a lawyer to attempt to violate the Rules of Professional Conduct. Thus, if an attorney attempts to collect or charge an unreasonable fee she violates both Rules 4-1.5(a) and 4-8.4(a).

Under a contingent fee agreement, the attorney is entitled to compensation when a stipulated contingency occurs. Usually the stipulated contingency is the recovery of a monetary award by the client. If the attorney is unsuccessful and the client obtains no recovery, the attorney is entitled to no compensation for her work. Robert L. Rossi, *Attorneys' Fees,* Section 3:3 Contingent Fee Retainer (3d ed. 2019 update).

Courts have held that an attorney violates Rule 4-1.5(a) if an attorney has a contingency fee agreement, the contingency is not met, and the attorney collects or

attempts to collect fees from a client. For example, in *In re Olszewski*, 107 A.3d 1159, 1171 (Md. 2015), the Maryland Supreme Court found that an attorney violated Rule 4-1.5(a) when in a collection matter the attorney's fee agreement provided he was entitled to 33.3 percent of the amount collected and the attorney charged a 15 percent fee on uncollected funds.

In the McNeal/Tillman matter, Respondent's fee agreement was a contingency fee agreement based upon the assets in Mr. McNeal's estate. When Respondent entered into the contingency fee agreement, the estate had no assets. Respondent brought a recovery of assets action against one of the McNeal children but was unsuccessful. Thus, per the contingency fee agreement, Respondent was entitled to no compensation. However, Respondent attempted to collect $33,734.20 from Mrs. McNeal and Ms. Tillman for the work she did. Ultimately, Ms. Tillman paid Respondent $6,000 to dismiss the lawsuit she brought against Mrs. McNeal for the payment of fees. Respondent attempted to collect, and then actually collected an unreasonable fee from Mrs. McNeal and Ms. Tillman in violation of Rule 4-1.5(a).

In Mr. Taylor's case, Mr. Taylor discharged Respondent before she had obtained a settlement or judgment for him. Mr. Taylor, like the McNeals, had a contingency fee agreement with Respondent. Per this Court's holding in *Plaza Shoe Store, Inc. v. Hermel, Inc.,* 636 S.W.2d 53 (Mo. banc 1982), Respondent did not have a right to compensation unless Mr. Taylor's new attorney obtained a settlement or judgment for Mr. Taylor. When Respondent demanded the $350 Mr. Taylor's new attorney had just taken over the case and

had not obtained a recovery for Mr. Taylor. Thus, it was unreasonable for Respondent to request $350 from Mr. Taylor and for her to ultimately collect the $350 from him.

B. RULE 4-3.4(d) REGARDING HER FAILURE TO COMPLY WITH DISCOVERY REQUESTS

Rule 4-3.4(d) provides that a lawyer shall not fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party. This prohibition is intended to secure fair competition in the adversary process and was adopted in response to concern about the use and abuse of discovery tactics to wear down the opposing party. ABA/BNA Lawyers' Manual on Professional Conduct: Practice Guides, Trial Conduct, Fairness to Opposing Party and Counsel 61:701.

Respondent violated Rule 4-3.4(d) in her collection lawsuit brought against Mrs. McNeal and Ms. Tillman when she objected to the taking of her deposition, objected to interrogatory questions and objected to requests for production of documents. For each of these discovery requests, Respondent asserted the attorney client privilege and work product doctrine. Respondent's assertions were invalid. Mrs. McNeal and Ms. Tillman were merely seeking discovery regarding Respondent's actions when she represented them in their discovery of assets/undue influence lawsuit. The attorney client privilege protects third parties from learning of communications between an attorney and the attorney's clients. The work-product doctrine protects materials prepared in anticipation of litigation from discovery by opposing counsel. Neither allow an attorney to hide information from her clients or former clients. In addition, Mrs. McNeal and Ms. Tillman provided

Respondent with documentation that they were waiving the attorney client privilege and work product doctrine and Respondent still failed to provide the requested discovery.

C. RULES 4-1.6(a), 4-1.9(c), 4-1.16(d) AND 4-8.4(a) REGARDING HER THREATS TO RELEASE CONFIDENTIAL INFORMATION AND HER ACTUAL RELEASE OF CONFIDENTIAL INFORMATION

Client confidentiality promotes free and unrestrained communications between a client and his or her attorney. It also alleviates any fear the client may have of betrayal by his or her attorney. *In re Marzen*, 779 N.W.2d 757, 766 (Iowa 2010). As such, it is a fundamental principle in the lawyer-client relationship and a cornerstone of the Rules of Professional Conduct.

Client confidentiality is addressed by several different, but interrelated, Rules. The Rules protect the confidentiality of information for both current and former clients. Mrs. McNeal, Ms. Tillman and Mr. Taylor were former clients of Respondent. As such, Rule 4-1.9(c) addresses Respondent's ability to disclose confidential information obtained from their representations. Subsection (c)(1) of the Rule provides that a lawyer who has formerly represented a client in a matter shall not use or reveal information relating to the representation to the disadvantage of the former client except as the Rules of Professional Conduct permit or when the information has become generally known. Subsection (c)(2) of the Rule prohibits a lawyer who has formerly represented a client from revealing information relating to the representation except as the Rules would permit.

Because both subsections of Rule 4-1.9(c) refer to what is permitted elsewhere in the Rules, it is necessary to look at Rule 4-1.6(a), the rule addressing confidentiality for current

clients. Rule 4-1.6(a) provides that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation or the disclosure is permitted by Rule 4-1.6(b). Rule 4-1.6 operates automatically, in all cases, without any action or request from the client. *In re McGraw,* 461 S.E.2d 850, 860 (W.Va. 1995)(The duty of confidentiality binds the lawyer at all times).

Rule 4-1.6(b)(3) does allow an attorney to disclose confidential information to establish a claim or defense on behalf of the lawyer in a controversy between a lawyer and a client. However, "a lawyer can reveal confidential client information only in the *appropriate forum* and only to the *extent* necessary to offer protection." *In re Marzen,* 779 N.W.2d at 766–67. Under this exception, a lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of avoidable disclosure. RPC 1.6 Confidentiality of Information, 2 Wash. Prac., Rules Practice RPC 1.6 (8th ed.).

Furthermore, the exception does not allow a lawyer to threaten a former client with disclosure of client confidences to resolve a fee dispute. *In re Boelter*¸ 985 P.2d 328, 334 (Wash. 1999); *In re Wilson*¸634 N.W.2d 467 (Neb. 2001). An attorney is expected to use legal means to enforce his rights, not legal threats. *In re Wilson,* 634 N.W. 2d at 474. As the Iowa Supreme Court noted in *In re Miller*, 568 N.W.2d 665, 667 (Iowa 1997), it is widely understood that an attorney may not make use of knowledge or information acquired through a professional relationship to the attorney's own advantage or profit.

Rule 4-1.16(d) is also relevant to client confidences when an attorney and client end their relationship. It provides that upon termination of representation a lawyer shall take steps, to the extent reasonably practicable, to protect a client's interests. Protecting a client's interest includes protecting a client's confidences. ABA/BNA Lawyer's Manual on Professional Conduct, Practice Guides, Lawyer-Client Relationship, Duties Upon Withdrawal, Section 31:120.

Respondent sent multiple emails to Mrs. McNeal and Ms. Tillman's attorney indicating if they did not pay her the money she was demanding she would report Mrs. McNeal to the IRS for failing to file tax returns. Respondent then reported Mrs. McNeal's failure to file tax returns to the IRS. Similarly, Respondent sent several emails to Mr. Taylor's new attorney threatening to disclose confidential information about Mr. Taylor in an action to collect fees from Mr. Taylor. Because an attorney is not allowed to threaten a former client with the release of confidential information in order to collect a fee, Respondent violated Rules 4-1.6(a), 4-1.9(c), 4-1.16(d), and 4-8.4(a)[4] when dealing with Mrs. McNeal, Ms. Tillman and Mr. Taylor.

[4] As discussed in Subsection A of this Argument, Rule 4-8.4(a) provides that it is professional misconduct for a lawyer to attempt to violate the Rules of Professional Conduct. Because Respondent attempted to disclose confidential client communications and disclosing confidential client communications is prevented by Rules 4-1.6(a), 4-1.9(c) and Rule 4-1.16(d), Respondent also violated Rule 4-8.4(a).

D. RULE 4 8.4(c) REGARDING HER MISREPRESENTATIONS TO HER FORMER CLIENTS' NEW COUNSEL

Rule 4-8.4(c) provides it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. This Court has not stated what type of scienter is required for a finding of misrepresentation under Rule 4-8.4(c). However, other jurisdictions have found that recklessness is sufficient. *In re Fisher*, 202 P.3d 1186, 1203 (Colo. 2009); *In re Romansky*, 825 A.2d 311, 316-18 (D.C. 2003). Recklessness is shown when "it is established that the attorney deliberately closed his eyes to facts he had a duty to see ... or recklessly stated as facts things of which he was ignorant." *In re Fisher*, 202 P.3d at 1203. Stated in a slightly different manner, "reckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts that would disclose this danger to any reasonable person." *In re Romansky,* 825 A.2d at 316.

Respondent advised Ms. Grotegeers, Mr. Hetlage and Mr. A.W. Smith that the Rules of Professional Conduct allowed her to reveal client confidences to obtain compensation for the services. Respondent's statement was false because, as discussed above, Rule 4-1.6 (b)(3) does not allow a lawyer to threaten a former client with disclosure of client confidences to resolve a fee dispute. Respondent made these statements in a reckless manner. She did minimal research into the issue, did not seek an informal opinion from the Legal Ethics Counsel or consult with other attorneys about their understanding of the issue. More importantly, Respondent continued to make her threats to her former clients' counsel after counsel advised her such was unethical. A reasonable attorney would have thoroughly

researched the issue of client confidentiality before threatening to breach such, especially after being warned that she was misstating the law. Accordingly, Respondent recklessly misrepresented the law to Ms. Grotegeers, Mr. Hetlage and Mr. A.W. Smith in violation of Rule 4-8.4(c).

E. RULE 4-8.4(d) REGARDING HER THREATS TO FORMER CLIENTS AND THEIR NEW COUNSEL AND HER REPORT TO THE IRS

Rule 4-8.4(d) provides that it is professional misconduct for an attorney to engage in conduct that is prejudicial to the administration of justice. This Rule covers several types of conduct, including conduct committed by Respondent. In *In re Stowers*, 823 N.W.2d 1, 15 (Iowa 2012), the Iowa Supreme Court found that threatening to disclose confidential information, to obtain a private benefit, is an abuse prejudicial to the administration of justice. Likewise, this Court acknowledged in *In re Eisenstein*, 485 S.W. 3d 759, 763 (Mo. banc 2016), that threatening opposing counsel during litigation constitutes conduct prejudicial to the administration of justice.

In *In re Vincenti*, 554 A.2d 470 (N.J. 1989), the New Jersey Supreme Court discussed the conduct of an attorney who challenged opposing counsel and a witness to fight, and used loud, abusive, and profane language against an adversary and an opposing witness. The Court noted:

> The undue and extraneous oppression and harassment of participants involved in litigation can impair their effectiveness, not only as advocates for their clients, but also as officers of the court. An attorney who consciously and intentionally engages in such conduct perverts advocacy. Such conduct redounds only to the detriment of the proper administration of justice, which depends vitally on the reasonable balance between adversaries and on opposing counsels' respect, trust, and knowledge of the

> adversary system. There cannot be genuine respect of the adversary system without respect for the adversary, and disrespect for the adversary system bespeaks disrespect for the court and the proper administration of justice.

Id. at 473-74. Thus, the New Jersey Supreme Court made clear harassing opposing counsel or an adversary in litigation is conduct prejudicial to the administration of justice.

In *In re Moody*, 394 P.3d 223 (Okla. 2017), the Oklahoma Supreme Court addressed whether an attorney who left threatening voice mails for a client who had failed to pay his bill had engaged in conduct prejudicial to the administration of justice. The Court stated:

> The recorded tirade reveals that the respondent no longer intended to represent his client, he only wanted his fees to be paid. He is entitled to his fees, and as an attorney, he should know bullying and threats are not acceptable behavior for a professional who has sworn to uphold the rule of law. The courts are open to protect breaches of contract. Of all people, a lawyer should know that.
>
> . . .The respondent surely realizes such behavior for a lawyer would be considered by the public to be "contrary to prescribed standards of conduct".
>
> . . .Justice cannot be administered by taking the position of a foe, by belittling one's own client, nor by informing the client that his lawyer wants to physically beat him and then see him go to prison. In other words, the respondent's conduct is prejudicial to the administration of justice. Such action also brings discredit upon the legal profession.

Id. at 226-27.

Respondent has engaged in the same or similar conduct as the conduct addressed in the cases discussed above. More specifically she:

a. threatened to reveal client confidences unless the clients paid her the fees she was requesting;

b. threatened criminal prosecution in her lawsuit against Mrs. McNeal and Ms. Tillman;

c. reported Mrs. McNeal to the IRS for failing to file her tax returns; and

d. threatened to file a lawsuit for libel and slander against Mr. Hetlage and Ms. Grotegeers; and

e. called the Smiths late at night and was verbally abusive to them to get them to pay her.

Respondent's conduct was prejudicial to the administration of justice and violated Rule 4-8.4(d).

II.

THE SUPREME COURT SHOULD INDEFINITELY SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR ONE YEAR, STAY THE SUSPENSION, AND PLACE RESPONDENT ON PROBATION FOR THREE YEARS BECAUSE RESPONDENT'S MENTAL HEALTH ISSUES MITIGATE THE LEVEL OF DISCIPLINE THIS COURT SHOULD IMPOSE AND WITH PROPER MENTAL HEALTH TREATMENT RESPONDENT IS UNLIKELY TO HARM THE PUBLIC OR CAUSE THE COURTS OR PROFESSION TO FALL INTO DISREPUTE.

When determining an appropriate penalty for violation of the Rules of Professional Conduct, this Court assesses the gravity of the misconduct, as well as mitigating or aggravating factors that tend to shed light on Respondent's moral and intellectual fitness as an attorney. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). In doing this, this Court looks at the individual facts, the ethical duty violated, the attorney's mental state, the extent of the actual or potential injury caused by the attorney's misconduct and any mitigating or aggravating factors. *In re Gardner*, 565 S.W.3d 670, 677 (Mo. banc 2019).

This Court looks for guidance from the ABA Standards for Imposing Lawyer Sanctions (1992) ("ABA Standards") and case law when deciding what discipline to impose. *Id.* The appropriate discipline to impose differs based upon the attorney's state

of mind. The baseline discipline generally requires disbarment for intentional misconduct and suspension for knowing conduct. *Id.* at 678. "Intention" is defined as "the conscious objective or purpose to accomplish a particular result." "Knowledge" is defined as "a conscious awareness of the nature of attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a result." *Id.*

If there are multiple violations, the ABA Standards provide that the sanction imposed should be, at a minimum, consistent with the sanction for the most serious instance of misconduct and generally should be greater than that sanction. See Theoretical Framework of ABA Standards.

In this case, the most serious rule violation involves Respondent's failure to preserve client confidences. ABA Standard 4.21 provides that disbarment is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. Section 4.22 provides, in turn, suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

At first glance it appears disbarment is the appropriate discipline for Respondent per ABA Standards. Respondent's actions were intentional in that she knowingly revealed or knowingly threatened to reveal confidential information. Respondent also acted with the intent to benefit herself, i.e. she was making the threat to coerce her former clients to a pay her.

However, one must next consider any mitigating[5] or aggravating factors.[6] While mitigating factors do not constitute a defense to a finding of misconduct, they can justify a downward departure from the presumptively proper discipline. *In re Farris*, 472 S.W.3d 549, 563 (Mo. banc 2015). There are several mitigating factors which suggest

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[5] ABA Standard 9.32 sets forth the following mitigating factors: (a) absence of prior disciplinary records; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify the consequences of misconduct; (e) full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical disability; (i) mental disability or chemical dependency when certain conditions are met; (j) delay in disciplinary proceedings; (k) interim rehabilitation; (l) imposition of other penalties or sanctions; (m) remorse; and (n) remoteness of prior offenses.

[6] ABA Standard 9.22 sets forth the following aggravating factors: (a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of the victim; (i) substantial experience in the practice of the law; and (j) indifference to making restitution.

this Court should impose a lesser sanction than disbarment. The most compelling is Respondent's mental health. See *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008)(even when an attorney has intentionally misappropriated client funds, mental illness is a mitigating factor which, in certain circumstances, can warrant a lesser discipline than the presumptive disbarment.) For example, this Court noted in *In re McMillin*, 521 S.W.3d 604, 612 (Mo. 2017), that "in a rare but appropriate case a sanction other than disbarment may be appropriate for intentional misrepresentation where mental illness is shown to have played a role in the misconduct and other substantial mitigating factors are also present."

Rule 5.285 provides the framework for what is needed for a mental disorder to be considered a mitigating factor. It requires the attorney to submit to an independent mental health examination by a licensed professional and for the professional to opine that the mental disorder caused or had a direct and substantial relationship to the professional misconduct. Rule 5.285 also requires the attorney to show that he or she can manage the disorder for a meaningful period of successful functioning and recurrence of the misconduct is unlikely.

As discussed in Section IV of this Brief, Respondent submitted to an independent mental health examination. The doctor who examined Respondent opined that: (a) Respondent suffers from three separate mental disorders, (b) these mental disorders substantially contributed to Respondent's misconduct, (c) Respondent's disorders are treatable through long-term sustained therapy and medication, and (d) if Respondent receives treatment and education about what she did wrong, it will be unlikely that

Respondent will engage in similar problem conduct. Thus, Respondent has met the requirements of Rule 5.285.

Respondent has also shown remorse for her actions which she expressed to the Panel at the hearing. ABA Standard 9.32(m). Respondent was cooperative in the disciplinary process and at the DHP hearing, was willing to admit wrongdoing. ABA Standard 9.32(e). She expressed her desire to comply with any recommendations made by her mental health providers. At the hearing, she also advised the Panel that she realizes her mental health conditions will require long term treatment and that she is committed to continue with treatment past the recommended three-year probation period.

There are a few aggravating factors in this case. Respondent has received two prior admonitions but the underlying misconduct which formed the basis for the admonitions was unrelated to the present conduct and the misconduct was of a low level.[7] ABA Standard 9.22(a). Respondent did engage in a pattern and practice of threatening to release client confidential information and Respondent had multiple rule violations. ABA Standard 9.22(c) and (d). However, both aggravating factors resulted, at least in part, from Respondent's untreated mental illnesses. As a result, Informant suggests that this Court should give little weight to the aggravating factors in this case. Because there are compelling mitigating factors, ABA Standards suggest suspension is the appropriate discipline.

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[7] Respondent received one admonition for communicating directly with a party represented by counsel and another for failing to return a client file in a timely manner.

As discussed above, this Court also looks to case law in addition to the ABA Standards when deciding what discipline to impose. Case law from other jurisdictions suggests that suspension should be the baseline discipline before considering Respondent's mental health mitigating factor. See *In re Boelter*¸*985 P.2d 328* (Wash. 1999)(an attorney received a six month suspension for threatening to disclose client confidences in a fee dispute and collecting an unreasonable fee); *In re Wilson*, 634 N.W.2d 467 (Neb. 2001)(an attorney received a two year suspension after threatening to disclose confidential client information if money was not paid). Thus, both ABA Standards and case law suggest suspension is an appropriate discipline.

However, the analysis does not end here. Next, this Court should consider whether it is appropriate to stay the suspension and place Respondent on probation. Rule 5.225(a)(2) provides an attorney is eligible for probation when the lawyer is unlikely to harm the public during the period of probation, the lawyer can be adequately supervised, the attorney is able to practice law without causing the courts or profession to fall into disrepute, and the conduct does not warrant disbarment. Rule 5.225. As the Arizona Supreme Court noted in *In re Piatt*, 951 P.2d 889, 892 (Ariz. 1998), supervised probation with counseling is more likely than unsupervised suspension to ensure that the attorney's misconduct does not reoccur. The prospect that noncompliance with the probation terms will lead to the revocation of probation, and ultimately suspension, serves as a powerful incentive to change. *Id.* Stated in a slightly different manner, staying a suspension with probation in mental disability cases allows for the monitoring of an attorney's treatment and provides the attorney with an incentive to complete rehabilitation or to continue with

treatment. Benjamin L. Boroughf, *Attorney Discipline: Suspensions Stayed by Probation*, July 23, 2018, Illinois Supreme Court E-Newsletter.

The independent mental health examiner in this case has opined that Respondent's conditions can be treated and she is unlikely to harm the public if she receives treatment. Respondent also appears committed to obtaining treatment. For these reasons, Informant suggests that the Court should stay the suspension and placed Respondent on probation for three years.

Informant has drafted comprehensive probation terms. These terms include Respondent:

a. making quarterly reports to Informant;

b. complying with the Rules of Professional Conduct;

c. attending Informant's "Ethics School";

d. maintaining malpractice insurance;

e. taking and passing the Multistate Professional Responsibility Examination;

f. certifying that she is abiding by the trust accounting rules;

g. submitting to random trust accounting audits by Informant;

h. continuing mental health treatment with Respondent's treating mental health provider; and

i. having her mental health provider supply Informant with quarterly reports which discuss whether Respondent is abiding with the recommended treatment plan and whether Respondent's mental health condition substantially impairs her ability to function as a lawyer.

With these safeguards in place, Informant suggests that Respondent can practice law without any negative impact on the reputation of the courts or the profession. Thus, this Court should impose an indefinite suspension with no leave to apply for reinstatement for one year, stay the suspension and place Respondent on probation for three years.

CONCLUSION

For the reasons set forth above, this Court should find that Respondent violated Rules 4-1.5(a), 4-1.6(a), 4-1.9(c), 4-1.16(d), 4-3.4(d), and 4-8.4(a), (c), (d), suspend Respondent's license with no leave to apply for reinstatement for one year, stay the suspension, place Respondent on probation for three years, and impose the $1,500 fee and costs provided for by Rule 5.19(h) against Respondent.

Respectfully submitted,

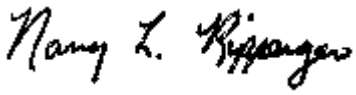
ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By: _____
Nancy L. Ripperger #40627
Staff Counsel
3327 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 fax
Nancy.Ripperger@courts.mo.gov

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May 2020, a copy of Informant's Brief is being served upon Respondent's counsel through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

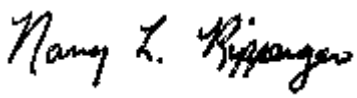


Nancy L. Ripperger

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b) and;
3. Contains 14,341 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Nancy L. Ripperger