IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
VENUS V. HARRY	)	**Supreme Court No. SC99011**
7515 Delmar Boulevard	)	
St. Louis, MO 63130	)	
	)	
Missouri Bar No. 50195	)	
	)	
Respondent.	)	

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

This action is one in which the Informant, Region X, Division 1, Disciplinary Committee, 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, R.S.Mo. 2016.

STATEMENT OF FACTS

PROCEDURAL HISTORY

December 31, 2019	Information
January 28, 2020	Respondent's Unopposed Motion for Additional Time to Answer Information
January 28, 2020	Order Granting Extension of Time
February 14, 2020	Respondent's Answer and Affirmative Defenses to Information
February 21, 2020	Appointment of Disciplinary Hearing Panel ("DHP")
May 22, 2020	Motion for Leave to File Informant's First Amended Information
June 8, 2020	Order Granting Leave to File Informant's First Amended Information
July 9, 2020	Respondent's Unopposed Motion for Additional Time to Answer Information
July 10, 2020	Order Granting Extension of Time
July 16, 2020	Respondent's Answer and Affirmative Defenses to the Amended Information
August 20, 2020	Disciplinary Hearing - Day 1
September 8, 2020	Motion for Leave to Amend Informant's Information by Interlineation

September 10, 2020	Order Granting Leave to Amend Informant's Amended Information by Interlineation
September 10, 2020	Disciplinary Hearing - Day 2
October 7, 2020	Disciplinary Hearing - Day 3
January 14, 2021	DHP Decision
January 21, 2021	Acceptance of DHP Decision by Informant
February 17, 2021	Rejection of DHP Decision by Respondent

BACKGROUND AND DISCIPLINARY HEARING

Respondent was licensed as an attorney on or about October 2, 1998 and is currently in good standing. **App. Vol. 1, A130.**[1] Respondent's bar number is 50195. **App. Vol. 1, A131.** Respondent has her own law firm in St. Louis, Missouri: Law Offices of Venus Harry, LLC. **App. Vol. 1, A373.** Respondent primarily concentrates her practice in the areas of family/domestic and criminal law. **App. Vol. 1, A373.** Respondent has been practicing family law since in or about 1998. **App. Vol. 1, A374**.

During the relevant time herein, Respondent maintained her law firm Trust Account and Operating Account at Carrolton Bank as follows: a client trust account, Account No. XXXX-7533, in the account name of Venus V. Harry Lawyers Trust Account ("Trust Account"); and, a law firm operating account, Account No. XXXX-

[1] Citations to the record are denoted by the appropriate Appendix Volume and page reference followed by the Exhibit number, if applicable, for example "**App. Vol. _, A. __** (Ex. __)."

7487, in the account name of The Law Offices of Venus Harry, LLC ("Operating Account"). **App. Vol. 1, A156-A57.** While Respondent's assistant, Ms. Jane, handled the majority of the firm's accounting matters, Respondent was primarily responsible for the law firm's maintenance and administration of the Trust Account and Operating Account. **App. Vol. 1, A373, A378-379, A399-A401.**

Respondent has a significant prior disciplinary history. Specifically, Informant issued Respondent the following Letters of Admonition pursuant to Rule 5.11: December 27, 2001 for violation of Rule 4-1.4 (Communication); June 28, 2007 for violation of Rules 4-1.4 (Communication) and 4-1.3 (Diligence); February 19, 2008 for violation of Rule 4-8.4(c) (Misconduct); July 8, 2018 for violation of Rule 4-1.3 (Diligence); and, July 8, 2018 for violation of Rules 4-1.4 (Communication) and 4-1.3 (Diligence). **App. Vol. 1, A130-A131; App. Vol 2, A755-A768 (Ex. 3).** The Letters of Admonition were accepted by Respondent. **App. Vol. 1, A130-A131.** On January 31, 2012, Respondent's license was suspended for one year but stayed pending successful completion of one year of probation. **App. Vol. 1, A130-A131; App. Vol 2, A767-A768 (Ex. 3).** On January 27, 2016, this Court found that Respondent had successfully completed probation and ordered that Respondent's probation be terminated. **App. Vol. 1, A390.** Although not discipline, Informant issue Respondent a guidance letter on September 5, 2014 (after completing probation) for Rules 4-1.3, 4-1.4, and 4-1.15. **App. Vol. 1, A393-A394; App. Vol 2, A766 (Ex. 3).**

The Informant filed a three count Information with the required Notice on December 31, 2019. **App. Vol. 1, A5-A21, A22-A25.** The Information was amended

with the addition of three counts on May 22, 2020. **App. Vol. 1, A95-A124.** In Counts I–V of the Amended Information, Respondent was charged with violating the following ethical rules: Rules: 4-1.1 (Competence); 4-1.3 (Diligence); 4-1.4 (Communication); 4-1.9 (Conflict of Interest); and, 4-1.16(d) (Declining or Terminating Representation). **Id.** Count VI charged Respondent with several Rule 4-1.15 trust account violations and a Rule 4-8.1(c) violation for her failure to respond to a lawful demand for information from the OCDC. **Id.** Respondent filed her Answer and Affirmative Defenses to the Amended Information on July 16, 2020. **App. Vol. 1, A130-A169.** Informant was granted leave to amend Informant's First Amended Information by interlineation on September 10, 2020 to plead that the factual allegations in Count Two alternatively supported a Rule 4-1.7 violation. **App. Vol. 1, A365-A367.**

The disciplinary hearing in this matter was held before a Disciplinary Hearing Panel over the course of three days including August 20, 2020, September 10, 2020, and October 7, 2020. **App. Vol. 1, A125-A126, A358-A359, A532-A533.** Informant called Kelly Dillon (Office of Chief Disciplinary Counsel Investigator), Respondent, and Respondent's former clients (Eric Whitfield, Thomas Weeden, and Sharon Holt) as witnesses. Respondent and Respondent's client, Angela Watkins, testified on behalf of Respondent. During the course of the disciplinary hearing, Informant's Exhibits 1-34 and Respondent's Exhibits 41-49 were admitted without objection.

The Disciplinary Hearing Panel issued its decision on January 14, 2021 and recommended that Respondent be suspended indefinitely with no leave to apply for reinstatement for two years. **App. Vol. 7, A1664-A1706.** Informant filed its letter of

acceptance with the Advisory Committee on January 21, 2021. **App. Vol. 7, A1708.** Respondent rejected the decision on February 17, 2021. **App. Vol. 7, A1709-A1710.**

RESPONDENT'S REPRESENTATION OF ERIC WHITFIELD

In or about March 2017, Respondent was retained to represent Eric Whitfield in a paternity suit. **App. Vol. 1, A131.** The Petition for Paternity was filed on March 29, 2017 in St. Louis County Circuit Court and named Mr. Whitfield as the respondent. **Id.** Respondent entered her appearance on behalf of Mr. Whitfield on April 6, 2017. **Id.** Respondent did not file any responsive pleadings to the Petition on Mr. Whitfield's behalf. **App. Vol. 1, A131.** Respondent drafted a counter-petition but failed to file the same. **Id.**

During her representation of Mr. Whitfield, Respondent failed to comply with several requirements of St. Louis County Local Rule 68. St. Louis County Local Rule 68.4 provides, in relevant part, that "[w]ithin 30 days of service of the original petition or motion on the other party, each party shall file their proposed parenting plan on a form approved by the court … including a proposed Form 14." **App. Vol. 6, A1482 (Ex. 34).** Respondent failed to file a proposed parenting plan or proposed Form 14 on behalf of Mr. Whitfield within the time prescribed by St. Louis County Local Rule 68.4. **App. Vol. 1, A132.**

St. Louis County Local Rule 68.2(B) provides, in relevant part, that "Respondent shall electronically file financial statements within 60 days of service or entry of appearance, whichever is earlier." **App. Vol. 6, A1481 (Ex. 34).** Respondent failed to file the requisite financial statements on behalf of Mr. Whitfield within the time

prescribed by St. Louis County Local Rule 68.2(B). **App. Vol. 1, A132.**

St. Louis County Local Rule 68.5(4) requires each party to deliver to the other party a complete and readable copy of each of the documents specified on the mandatory exchange documents form, within sixty (60) days of service of summons, unless otherwise agreed to by the parties. **App. Vol. 6, A1482 (Ex. 34).** Respondent failed to deliver to petitioner's counsel the mandatory exchange documents required pursuant to St. Louis County Local Rule 68.5(4). **App. Vol. 1, A133.**

Respondent also failed to comply with the court's Scheduling Order. **App. Vol. 1, A133-A134.** On October 13, 2017, the court set the paternity case for a one-day trial on December 15, 2017 and entered a Scheduling Order. **App. Vol. 1, A133.** Pursuant to the Scheduling Order, the parties were ordered to: (1) exchange updated income and property statements ten days before the trial setting; (2) exchange their proposed Form 14s at least five days prior to trial and file a copy with the court; and, (3) exchange and file five days prior to trial a list of their trial exhibits with copies delivered to opposing counsel at least three days prior to trial. **App. Vol. 1, A133-A134; App. Vol. 3, A1028-A1029 (Ex. 14A).** Respondent failed to timely file and provide opposing counsel with updated income and property statements, a Form 14, and a list of trial exhibits pursuant to the Scheduling Order. **App. Vol. 1, A133-A134.**

On or about December 14, 2017, petitioner's counsel electronically filed with the court Petitioner's Objections to Admission of Exhibits and a Motion for Sanctions ("Objections and Motion"). **App. Vol. 1, A134; App. Vol. 3, A1030-A1031 (Ex. 14A).** In her Objections and Motion, Petitioner alleged Mr. Whitfield's failure (through

Respondent, his counsel) to, *inter alia*, file a responsive pleading, attend the mandatory parent education course, comply with St. Louis County Local Rule 68.2, and comply with the court's Scheduling Order. **App. Vol. 3, A1030-A1031 (Ex. 14A).** Petitioner requested that Mr. Whitfield be prohibited from presenting at trial any proposed Form 14, any exhibits, or any requests for affirmative relief, and further requested that the court impose sanctions upon Mr. Whitfield for his failure to abide by the court's Order, local rules and Missouri Supreme Court Rules.[2] **Id.**

Petitioner's Motion was heard and argued prior to the commencement of trial on December 15, 2017. **App. Vol. 1, A135.** The Court sustained petitioner's Motion and Objections, in part, and held that Mr. Whitfield's financial statements filed with the court on December 15, 2017 would not be admitted into evidence. **Id.** The parties proceeded to trial on December 15, 2017 and the court entered its Findings of Fact, Conclusions of Law and Judgment of Paternity, Custody and Support on January 10, 2018. **App. Vol. 3, A924-A928 (Ex. 12); App. Vol. 1, A136.**

On December 27, 2017, Mr. Whitfield sent an email to Respondent inquiring about the case and whether there would be another court date. **App. Vol. 1, A136; App. Vol. 2, A838 (Ex. 9).** On January 12, 2018, Respondent replied stating, "[n]o new date

[2] The Scheduling Order provided that failure to provide income and property statements pursuant to the Scheduling Order may result in a party not being allowed to amend or modify said statements at trial. **App. Vol. 3, A1026 (Ex. 14A).**

as of yet, waiting for Judge."[3] **App. Vol. 1, A136; App. Vol. 2, A839 (Ex. 9).** On January 30, 2018, Mr. Whitfield again emailed Respondent. **Id.** Mr. Whitfield's email stated in relevant part:

> I was wondering if there was any word from the judge on the court date yet? I really hope I get to state my case. I was at every court date early and ready and prepared every time, for you and I to only not be prepared (for a trail [sic] at least I was, and from the sounds of the judge she was surprised also) the day that I was able to see her. I had no clue that I was going to go on a stand and we were going to have a trial… I wish we could have been on time prompt and better prepared, the communication just wasn't there. Hopefully we can get together and have it laid out just like they did at the next court date… But I had no clue what was happening that day.

App. Vol. 2, A840 (Ex. 9). Respondent did not respond to Mr. Whitfield's email. **App. Vol. 2, A842 (Ex. 9)**.

On February 23, 2018 and February 27, 2018, Mr. Whitfield sent emails to Respondent inquiring about the status of the case. **App. Vol. 1, A136; App. Vol. 2, A841-A843 (Ex. 9).** On February 28, 2018 at 9:00 am, Respondent's paralegal

[3] Respondent testified during the disciplinary hearing that she was unable to recall the matter for which she was waiting for a new court date, notwithstanding that the paternity matter was still under advisement with the court. **App. Vol. 1, A461.**

responded to Mr. Whitfield's emails by sending Mr. Whitfield a copy of the court's Findings of Fact, Conclusions of Law and Judgment of Paternity, Custody and Support entered on January 10, 2018. **App. Vol. 1, A136; App. Vol. 2, A842 (Ex. 9).** Accordingly, the deadline to file post-trial motions was on or about February 9, 2018 and had passed by the time Mr. Whitfield received the court's judgment. **App. Vol. 1, A136.**

Mr. Whitfield testified before the disciplinary hearing panel that he learned of the December 15, 2017 trial date while at the October 2017 status conference. **App. Vol. 1, A182.** Mr. Whitfield testified that, between the October 2017 status conference and the December 15, 2017 trial date, he and Respondent did not meet to prepare for trial. **App. Vol. 1, A183**. Mr. Whitfield testified that he "had no idea what was going to take place that day." **Id.** Mr. Whitfield testified that Respondent told him that they would have another trial. **App. Vol. 1, A184-A185**.

Mr. Whitfield also testified that he had attended the parent education class prior to the date of trial. **App. Vol. 1, A181**. The requisite certificate of attendance was never filed with the court. **App. Vol. 3, A1030-A1031 (Ex. 14A).** Respondent acknowledged during the disciplinary hearing that she failed to file a responsive pleading, failed to comply with the requirements of Local Rules 68.4 and 68.5, and failed to comply with the Court's Scheduling Order. **App. Vol. 2, A437-A456.** Respondent also failed to comply with Local Rule 68.2. **App. Vol. 3, A1030-1031 (Ex. 14A); App. Vol. 6, A1482 (Ex. 34).**

Respondent testified that Mr. Whitfield was particularly upset about the court's Judgment with respect to the payment of childcare provider expenses and child support.

App. Vol. 2, A572-A573. Mr. Whitfield wanted his parents to provide care at no charge. **Id.** Respondent admitted that while Mr. Whitfield was able to testify about his parents' ability to provide childcare for the parties' child on cross examination, "he couldn't present any independent evidence on it."[4] **App. Vol. 2, A573.** Respondent further admitted that she could have called Mr. Whitfield in his own case-in-chief and had him specifically testify about the childcare issue had he not been in default. **Id.**

Respondent testified at length that she did not believe that Mr. Whitfield was harmed or prejudiced by Respondent's lack of diligence. When asked how the trial went, Respondent testified:

> Well, I mean, because things hadn't been filed, it was lopsided, but it really wasn't. The things that came out from it were really what I anticipated the judge had kind of let us know was going to happen all along. And so there truly were things that I didn't file, I understand that. But when I look at the result compared to what we had been doing, there was nothing that was really shocking to me about it.

App. Vol. 2, A560.

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[4] The court stated in its Findings of Fact, Conclusions of Law and Judgment of Paternity, Custody, and Child Support that Mr. Whitfield was "in default as to the pleadings and having failed to comply with the Scheduling Order that Mr. Whitfield would be permitted to testify on the issue of legal custody, only." **App. Vol. 6, A1524 (Ex. 45).**

Respondent testified that it was protocol for her staff to forward judgments promptly to clients upon notification of entry. **App. Vol. 1, A464-A465.** Respondent was unable to provide an explanation for the approximate seven-week delay in providing Mr. Whitfield with a copy of the judgment in his case. **App. Vol. 1, A464.**

RESPONDENT'S REPRESENTATION OF ZACHARY SELF

AND LACEY HARTMANN

In or about March 2011, Zachary Self retained Respondent to represent him in a custody action filed by the maternal grandmother regarding his custodial rights of his son, I.H. **App. Vol. 1, A138.** Ms. Lacey Hartmann (I.H.'s mother) was represented in the same matter by separate counsel.[5] **Id.** According to Respondent, Ms. Hartmann and Mr. Self were on the same side during the litigation although they were not married at the time. **App. Vol. 1, A138-A139; App. Vol. 2, A584**. The custody matter was subsequently tried, and a judgment was entered in July 2012. **App. Vol. 1, A138.** Respondent believed that she also represented Mr. Self in a traffic matter sometime after the entry of the July 2012 judgment and that her representation concluded in 2013. **App. Vol. 2, A586.**

In late 2017, Ms. Hartmann retained Respondent to represent her in a dissolution action against Mr. Self. **App. Vol. 2, A587.** On or about January 8, 2018, Respondent

[5] Lacey Hartmann and Zachary Self are the biological parents of minor children, I.H and A.S. **App. Vol. 1, A138; App. Vol. 2, A588.** Ms. Hartmann's mother, however, was granted legal and physical custody of I.H in a previous court proceeding. **Id.**

filed a Petition for Dissolution against Mr. Self on behalf of Ms. Hartmann. **Id.** The parties were divorced on April 12, 2018. **Id.** Mr. Self was not represented by counsel and did not appear for trial. **App. Vol. 2, A588.**

Pursuant to the April 12, 2018 Judgment and Decree of Dissolution, Ms. Hartmann was awarded sole legal and sole physical custody of A.S. **App. Vol. 6, A1454-A1457 (Ex. 33)**. Mr. Self was ordered to pay Ms. Hartmann $120.00 per month as child support, per the "FSD order". **App. Vol. 1, A139; App. Vol. 6, A1454-A1457 (Ex. 33)**. Neither party was ordered to pay maintenance. **App. Vol. 6, A1454-A1457 (Ex. 33)**.

On or about August 6, 2018, a complaint was filed against Respondent alleging violations of conflict of interest in connection with Respondent's representation Ms. Hartmann and Mr. Self.[6] **App. Vol. 2, A739-A774 (Ex. 4)**. On or about September 25, 2018, Respondent responded to the complaint. **App. Vol. 2, A775-A782 (Ex. 5).** In her response, Respondent stated, "[w]hen I represented Lacey in the dissolution of marriage from Zachary, he was fully aware of the same. He wanted me to ensure that she was not asking for child support or maintenance since he was unemployed and/or incarcerated for the better part of the last three (3) years." **App. Vol. 2, A775 (Ex. 5).**

Respondent appeared before the Division 1 Regional Disciplinary Committee on March 12, 2019. **App. Vol. 2, A785-A831 (Ex. 8).** Respondent was questioned by one of the Committee members about her representation of Ms. Hartmann and the assurances made to Mr. Self. Respondent gave the following relevant testimony:

[6] Neither Lacey Hartmann nor Zachary Self filed the complaint with the OCDC.

Q: Again, I'm not a domestic lawyer but it seems to me that it's in Zack's best interest not to have a child support order entered against him, and it's not in Lacey's best interest for Zack not to have that order entered against him?

A: But that was -- I would agree with that, but those were the terms that I brought to Lacey saying, hey, if you want me to do this then, that's where I'm headed with this.

App. Vol. 2, A824 (Ex. 8).

Respondent testified further that she "absolutely" advised Ms. Hartmann to seek the advice of separate counsel given that Respondent was "pursuing a course of action that might not be in Lacey's best interest" and advised her that "she should talk to another lawyer" about whether this was a good deal for her. **App. Vol. 2, A824-A825 (Ex. 8).** Respondent said that Ms. Hartmann, however, elected not to do so. **App. Vol. 2, A824 (Ex. 8).**

Respondent did not have Ms. Hartmann or Mr. Self waive any potential conflict in writing prior to Respondent's representation of Ms. Hartmann in the parties' dissolution matter. **App. Vol. 2, A825-A826 (Ex. 8)**. Respondent provided to the Regional Disciplinary Committee an affidavit signed by Ms. Hartmann as evidence that she disclosed to Ms. Hartmann the potential conflict pertaining to the issue of child support. **App. Vol. 2, A826 (Ex. 8)**; **App. Vol. 2, A784 (Ex. 7)**. Respondent sent the affidavit to Ms. Hartmann via email on January 28, 2019. **App. Vol. 2, A826 (Ex. 8).** Ms. Hartmann signed the affidavit in Respondent's office on January 29, 2019. **Id.** There

was no indication in the affidavit that Respondent advised Ms. Hartmann to seek the advice of separate counsel about her right to seek child support. Further, child support was not mentioned anywhere within the affidavit.

Respondent testified during the disciplinary hearing that, just prior to Respondent's retention, Ms. Hartmann informed her that Mr. Self was incarcerated. **App. Vol. 1, A504**. Respondent testified that she informed Ms. Hartmann that she would agree to represent her provided she did not seek child support from Mr. Self for their child, A.S. **Id.** Respondent testified that she believed that it "would be unfair since [Ms. Hartmann] came to [her] with the understanding that he was incarcerated." **Id.** Respondent testified that, after being retained, she saw Mr. Self in the "confined box" in one of the criminal divisions in court and informed him that she was representing Ms. Hartmann. **Id.** Respondent testified:

> Q: And what discussion did you have with Zachary at that time?
>
> A: I mean, I told him, you know, that Lacey was wanting to get a divorce, and he was like yeah, I know, and that I was doing it. And he was like yeah, just make sure she doesn't mess me up with child support. And I said I already had that conversation with her. And it was like thanks, Venus, and that was it.
>
> Q: So, Zachary wanted to ensure that you were not asking for child support or maintenance?
>
> A: Correct.

App. Vol. 1, A505.

Respondent further testified that there was no order of support entered against Mr. Self in the Judgment of Dissolution. Respondent's relevant testimony was as follows:

Q: Did the court enter an order for support or there's no support entered?

A: There -- it-- it -- the order from the court was that no support at this time. Now, the document that I'm reading says that he was ordered to pay her $122 a month, that's not correct. That's what my form 14 said, but we asked support to make that unjust and inappropriate. So, there is no support ordered against Zack.

Q: Ms. Harry if you turn to your answer which is Exhibit 2, Page 44, Paragraph 49, this paragraph states Ms. Harry admits that the decree and judgment of dissolution ordered Mr. Selt (sic) to pay $120 in monthly child support.

A: That -- okay. I'm trying to explain this for the people that don't do domestic. You have an order that says that, but the part that's missing on there, but that amount was deemed to be unjust and inappropriate, no support ordered at this time. And I went back and looked at that to make sure I wasn't dreaming about that because that was very important.

Q: So, are you saying that the answer here is incorrect?

A: I'm saying that it's not complete.

Q: So, it's your testimony that the court did not order support to be paid?

A: Correct.

App. Vol. 1, A510.

Respondent further testified during the disciplinary hearing that she did not advise Ms. Hartmann to consult with another attorney about her right to child support. **App. Vol. 1, A508**. This is contrary to Respondent's March 12, 2019, testimony before the Division 1 Regional Disciplinary Committee where she testified that she "absolutely" advised Ms. Hartmann to consult with separate counsel. See, **App. Vol. 2, A824-A825.**

During the disciplinary hearing, Respondent acknowledged that she provided OCDC with only a partial copy of the Judgment and Decree of Dissolution with her response to the complaint. **App. Vol. 1, A511**. Specifically, Respondent admitted that she did not provide a copy of Part B of the Parenting Plan (also a part of the judgment) wherein it was ordered that "FSD support" in the monthly amount of $120.00 would continue. **Id.** Respondent mailed Mr. Self a copy of the Judgment and Decree of Dissolution. **App. Vol. 2, A783 (Ex.6).** Respondent's cover letter made no mention of the court's Order that the FSD child support would continue, notwithstanding Respondent's assurances to Mr. Self that she would not let Ms. Hartmann "mess [him] up with child support." **App. Vol. 2, A783 (Ex.6); App. Vol. 1, A505.**

RESPONDENT'S REPRESENTATION OF SHARON HOLT

On or about February 9, 2018, Sharon Holt retained Respondent to represent her in a custody action involving her grandchildren. **App. Vol. 1, A142**. Ms. Holt paid a retainer fee of $1,000.00. **App. Vol. 1, A275.** In June 2018, Ms. Holt informed Respondent that she had been appointed counsel and, therefore, Respondent's legal services were no longer needed. **App. Vol. 1, A276.** Respondent thereafter refunded $750.00 of Ms. Holt's retainer. **Id.**

In September 2018, Ms. Holt again retained Respondent after the court removed her grandchildren from her physical custody. **App. Vol. 1, A276.** Ms. Holt paid Respondent a retainer fee of $5,000.00 on or about September 12, 2018. **App. Vol. 1, A277.** Respondent informed Ms. Holt that she would keep her informed of her grandchildren's juvenile division cases and Respondent's progress on the custody matter. **App. Vol. 1, A144; App. Vol. 1, A276.** Ms. Holt said that Respondent also told her that her grandchildren would be returned to her custody within three months. **App. Vol. 1, A278**.

Ms. Holt and Respondent appeared in juvenile court on September 17, 2017. **App. Vol. 1, A278**. The juvenile case was continued to October 4, 2017. **Id.** In early October 2017, Ms. Holt contacted Respondent to confirm the October 4, 2017 court date. Respondent informed Ms. Holt, however, that, at that time, her grandchildren's case was not on the October 4, 2017 docket. **App. Vol. 1, A280, A291.** Sometime later, Ms. Holt called Respondent and inquired about a new court date. During that call, Respondent informed Ms. Holt that she was trying to locate someone in Poplar Bluff to perform a

home study but was having difficulty. **App. Vol. 1, A280-A281.** Respondent suggested that Ms. Holt try to locate someone, as well. **Id.**

Before Thanksgiving, Ms. Holt testified that she went to the office of the Division of Family Services (the "Division") to inquire about getting a home study. **App. Vol. 1, A280.** Ms. Holt said she was told that she needed to have a caseworker. **Id.** Ms. Holt testified that she returned home, contacted Respondent, and informed Respondent of the Division's response. **Id.** Respondent told Ms. Holt that she would contact the caseworker. **Id.** Ms. Holt testified that she would call Respondent "almost every day" to find out information about her grandchildren's cases. **App. Vol. 1, A279.** Ms. Holt stated that she often spoke with a "secretary" who informed her that she was the person working on her case. **Id.** Ms. Holt testified that she never received a call back from Respondent regarding the status of her grandchildren's case, the home study, or the next court date. **App. Vol. 1, A279-A280, A283.**

Sometime thereafter, Ms. Holt called Respondent's office and terminated Respondent's services. **App. Vol. 1, A283.** Ms. Holt was informed during that call that Respondent would contact her back about her refund. **Id.** On or about December 27, 2018, Ms. Holt retained Christopher Kalen in connection with her grandchildren's juvenile court matters. **App. Vol. 3, A1047-A1048 (Ex. 15).** Mr. Kalen and Respondent executed a Substitution of Counsel in December 2018. **App. Vol. 3, A1057 (Ex. 16).** Ms. Holt testified that in or about January 2019, Mr. Kalen's office informed her that Respondent was going to issue a refund to Ms. Holt's debit card. **App. Vol. 1, A285.** Realizing that she changed debit cards, Ms. Holt said that she contacted Respondent's

office and provided her updated debit card information. **App. Vol. 1, A284.** In January or February 2019, Ms. Holt asked her daughter (who lived in St. Louis) to contact Respondent about her refund. **App. Vol. 1, A283-A284.** Ms. Holt's daughter informed her that Respondent said that she would place a refund check in the mail. **App. Vol. 1, A286-A287.** Ms. Holt then contacted Respondent's office to ensure that Respondent had her correct address. **Id.**

As of August 20, 2020, the first date of the disciplinary hearing, Ms. Holt had not received a refund from Respondent or an invoice for legal services rendered between September 2018 and December 2018. **App. Vol. 1, A287-A288.**

During the disciplinary panel hearing, Respondent testified that she had a telephone conversation with Ms. Holt and informed Ms. Holt that she would refund $2,500.00 of Ms. Holt's retainer. **App. Vol. 2, A610-A611.** Respondent said that Ms. Holt stated that she would only accept a full refund. **Id.** Respondent further testified that Ms. Holt rejected Respondent's offer to participate in the Fee Dispute Resolution Program. **App. Vol. 2, A611-A612.** Respondent testified that she unsuccessfully tried to issue a refund on Ms. Holt's debit card, but the card was no longer valid. **App. Vol. 2, A611-A612.** Respondent also testified that she did not feel comfortable releasing Ms. Holt's funds to the Kalen law firm or to Ms. Holt's daughter without proper authorization. **App. Vol. 2, A610-A613.** Respondent testified that she did not have a good address for Ms. Holt from January 2019 to August 20, 2020 (the first date of the disciplinary hearing). **App. Vol. 2, A611-A612.** Respondent acknowledged that she received a copy of Ms. Holt's complaint (filed with the OCDC on June 4, 2019,

approximately six months after Respondent's termination) which contained an address for Ms. Holt. **App. Vol. 1, A392**. Respondent admitted that she never attempted to mail a refund check to Ms. Holt's address on the complaint. **Id.**

During the disciplinary hearing, Respondent's attorney asked Ms. Holt if she was willing to accept a refund of $2,500.00. **App. Vol. 1, A304**. Ms. Holt responded in the affirmative without hesitation. **Id.** Ms. Holt stated that she would not have filed a complaint had she received "anything" from Respondent and denied ever having a conversation with Respondent about participating in the Fee Dispute Resolution Program or any offer to refund a portion of her retainer. **App. Vol. 1, A304; App. Vol. 1, A285-A287**.

Respondent's attorney asked for Ms. Holt's current address on the record and then asked that she repeat it to ensure that it was taken down correctly. **App. Vol. 1, A304-A305.** Respondent, however, still mailed Ms. Holt's check to Ms. Holt's former address. **App. Vol. 2, A614-A616.** During the second day of the hearing (on September 10, 2020, approximately three weeks later), Respondent testified that she mailed Ms. Holt's check to an incorrect address and that another check was sent overnight to her correct address. **App. Vol. 2, A615.** When asked why the first check was not mailed to Ms. Holt's correct address that was put on the record, Respondent said that she did not write the address down (despite Ms. Holt having repeated it at Respondent's attorney's request). **App. Vol. 2, A621.**

RESPONDENT'S REPRESENTATION OF THOMAS WEEDEN

In or about March 2017, Thomas Weeden retained Respondent to represent him in a child support modification matter and paid Respondent a retainer fee. **App. Vol. 1, A147.** On March 23, 2017, Respondent filed a Motion to Modify on behalf of Mr. Weeden. **Id.** In early June 2017, Mr. Weeden received a Notice of Administrative Withholding Order from the Department of Social Services Family Support Division informing him that his wages would be garnished in the monthly amount of $1,875.00 representing $1,250.00 for current support and $625.00 for arrears ("Withholding Order"). **Id.** Mr. Weeden provided a copy of the Withholding Order to Respondent. **Id.**

A Modification Judgment modifying Mr. Weeden's current child support from $1,250.00 to $455.00 was entered on December 20, 2017 by consent.[7] **App. Vol. 1, A147-A148.** That same day, Respondent provided a copy of the modification judgment to the child support clerk in the courthouse. **App. Vol. 2, A631-A632.** Later that afternoon, at 3:08 pm, Mr. Weeden emailed Respondent and asked Respondent how to "change" the garnishment "to the new amounts" pursuant to the new modified child support amount. **App. Vol. 4, A1183 (Ex. 22).**

Mr. Weeden emailed Respondent on January 9, 2018 and January 16, 2018, inquiring, *inter alia*, how to modify the Withholding Order to reflect the current support amount. **App. Vol. 1, A148.** On May 31, 2019, Mr. Weeden emailed Respondent and

[7] Mr. Weedon's child support arrears at the time of the modification judgment totaled approximately $41,044.61. **App. Vol. 4, A1258 (Ex. 23).**

asked if the garnishment could be "changed to collect the correct amount." **App. Vol. 4, A1186 (Ex. 22).** On June 19, 2019, Mr. Weeden emailed Respondent informing Respondent that his wages were still being garnished in the amount of $1,250.00 for current support and asked that Respondent contact him regarding this matter. **App. Vol. 4, A1187 (Ex. 22).** Respondent did not respond to Mr. Weeden's emails between December 20, 2017 and July 29, 2019. **App. Vol. 1, A475-A476.**

On July 30, 2019, Mr. Weeden emailed Respondent and stated that he would like to meet "to discuss the excess child support garnishment…." **App. Vol. 4, A1188 (Ex. 22).** Respondent replied to Mr. Weeden's email stating that she could meet with him on July 31, 2019 in the evening and advised Mr. Weeden that he had an outstanding balance. **Id.** Mr. Weeden responded inquiring about Respondent's latest availability on July 31, 2019 and the amount that he owed Respondent for his outstanding balance. **Id.** Respondent did not respond to Mr. Weeden's email inquiry about the amount of his balance and Respondent's availability for July 31, 2019. **App. Vol. 1, A474-A476.** On August 12, 2019, Mr. Weeden emailed Respondent stating that he was "urgently trying to resolve the outdated Garnishment issue" and asked for Respondent's availability during evenings and weekends. Respondent did not respond to Mr. Weeden's August 12, 2019 email. **App. Vol. 1, A474-A476; App. Vol. 4, A1189 (Ex. 22).**

On September 3, 2019, Mr. Weeden emailed Respondent again requesting the amount of his outstanding balance and asking to meet with Respondent to resolve the garnishment matter. **App. Vol. 1, A150; App. Vol. 4, A1190 (Ex. 22).** On Thursday, September 5, 2019, Respondent replied to Mr. Weeden's email stating "Sunday

morning." **App. Vol. 1, A150; App. Vol. 4, A1191 (Ex. 22).** Mr. Weeden emailed Respondent back and asked what time on Sunday morning. **Id.** Sometime thereafter, Respondent contacted Mr. Weeden and scheduled a meeting for September 8, 2019. **App. Vol. 1, A150.** During that meeting, Respondent told Mr. Weeden that his outstanding balance was $250.00. **App. Vol. 1, A150.** Mr. Weeden informed Respondent that he needed to make payment arrangements to pay his balance. **Id.**

On September 12, 2019, Mr. Weeden sent an email to Respondent informing Respondent that he would be contacting her office to make a payment on his balance and that he would make payment arrangements to pay his balance in full. **App. Vol. 4, A1193 (Ex. 22).** On September 26, 2019 and October 24, 2019, Mr. Weeden remitted payments to Respondent in the amounts of $50.00 and $24.00, respectively. **App. Vol. 1, A150-A151.**

On October 18, 2019, Mr. Weeden received a copy of the Notice of Wage Withholding and the Withholding Order that was sent to his current employer indicating that his wages would be garnished in the monthly amount of $1,875.00 representing $1,250.00 for current support and $625.00 for arrears. **App. Vol. 1, A151; App. Vol. 4, A1198 (Ex. 22).** Mr. Weeden emailed Respondent on the following dates inquiring about how to modify his Wage Withholding Order to reflect the modified current support: November 1, 2019; November 7, 2019 (Respondent was also copied on Mr. Weeden's emails to his employer about the original Wage Withholding Order still being in effect); November 8, 2019; November 11, 2019 (Respondent was copied on Mr. Weeden's emails to his employer about the original Wage Withholding Order still being in effect);

November 13, 2019; and, November 15, 2019. **App. Vol. 4, A1198-A1206 (Ex. 22).** Respondent never responded to Mr. Weeden's emails. **App. Vol. 1, A475-A476.**

On December 4, 2019, Mr. Weeden remitted the final $175.00 balance to Respondent. **App. Vol. 1, A152.** On December 19, 2019, Mr. Weeden filed an Amended Wage Withholding Order with the St. Louis County Circuit without the assistance of counsel. **App. Vol. 4, A1180, A1223-A1226, (Ex. 22).** Pursuant to the Amended Wage Withholding Order, Mr. Weeden's then employer was directed to withhold monthly support totaling $682.50 ($455.00 for current support and $227.50 for child support arrears). **App. Vol. 4, A1223-A1226, (Ex. 22).**

After the entry of the modification judgment and prior to the entry of the Amended Wage Withholding Order, the St. Louis County Circuit Court Payment Detail History Report (for child support) reflects child support receipts in excess of $682.50 in each the following months:

a. April 2018 – $690.00;

b. May 2018 – $716.98;

c. June 2018 – $750.00;

d. May 2019 – $847.68;

e. June 2019 – $850.62;

f. September 2019 – $994.49;

g. November 2019 – $937.50, and,

h. December 2019 – $1,595.45.

App. Vol. 4, A1257-A1258, (Ex. 23).

During the disciplinary hearing, Mr. Weedon testified that Respondent never advised him of the amount of his outstanding balance until September 2019 and that he was unaware that a balance even existed until July 30, 2019. **App. Vol. 1, A229.** Mr. Weeden testified further that during the pendency of the action, Respondent never provided him with an invoice or statement for legal services rendered in connection with his child support modification matter. **App. Vol. 1, A229, A242, A247**. Mr. Weeden testified further that Respondent never advised him whether her representation included the filing of an amended wage withholding order or whether her representation was concluded after the entry of the modification judgment. **App. Vol. 1, A220.**

Respondent testified during the disciplinary hearing that she "felt" that her representation was concluded after the entry of the modification judgment but that she continued to have "verbal" conversations with Mr. Weeden wherein she advised Mr. Weeden that an amended wage withholding order could not be filed unless Mr. Weeden was employed.[8] **App. Vol. 2, A633-A634.** Respondent admitted, however, that she did not respond to any of Mr. Weeden's numerous emails requesting guidance on how to amend the wage withholding order. **App. Vol. 1, A475-A476.** Respondent testified that, instead, she "picked up the phone and called him and talked to him." **App. Vol. 1, A476.**

[8] During the disciplinary hearing, Mr. Weeden acknowledged that he worked for four employers during 2018 and that his employment was sporadic. **App. Vol. 1, A248-A249.** Mr. Weeden testified that he began full-time employment with his current employer in the summer of 2019. **Id.**

Respondent testified further that she asked Mr. Weeden to come to the office for additional explanation. **Id.** Respondent testified that she sent Mr. Weeden a bill in January 2018 but did not have a copy in her file. **App. Vol. 1, A474.** Respondent testified that Mr. Weeden acknowledged during their post January 2018 telephone conversations that he owed her money, and, therefore, Respondent did not see the need to advise Mr. Weeden in writing of the amount of his outstanding balance. **App. Vol. 2, A633-A634.**

RESPONDENT'S REPRESENTATION ANGELA WATKINS

On or about September 10, 2019, Angela Watkins retained Respondent to represent her in an action for third-party custody of her grandson. Ms. Watkins and Respondent entered into a Contractual Agreement for Legal Services ("Contract"). Pursuant to the Contract, Ms. Watkins paid a retainer fee of $750.00. **App. Vol. 1, A154.** Ms. Watkins executed the requisite pleadings before a Notary on October 4, 2019 and subsequently returned them to Respondent's office. **Id.**

Additional information was requested from Ms. Watkins over the next several weeks before the Petition for Third-Party Custody was filed with the court on November 15, 2019. **Id.** On or about November 20, 2019, Respondent's paralegal informed Ms. Watkins that the special process server had been unable to serve her grandson's mother at the address Ms. Watkins had provided. **Id.** On November 26, 2019, Ms. Watkins provided Respondent with another address for her grandson's mother via a text message. **App. Vol. 4, A1174 (Ex. 20).** Ms. Watkins also asked that Respondent call her before sending the process server to the newly provided address. **Id.** Respondent replied to Ms.

Watkins' text message with "ok". **App. Vol. 1, A155; App. Vol. 4, A1175 (Ex. 20).** Ms. Watkins then responded, "[t]hank you I have a couple questions that I didn't ask you." **App. Vol. 4, A1175 (Ex. 20).** Respondent did not reply to Ms. Watkins' text message and did not contact Ms. Watkins regarding her additional questions. **Id.**

On December 12, 2019, at 8:07 a.m., Ms. Watkins texted Respondent stating that Respondent had not called her as she had requested. **App. Vol. 4, A1176 (Ex. 20).** Ms. Watkins asked if Respondent would please call or text her. **Id.** Respondent did not call or text Ms. Watkins. **Id.** On December 17, 2019, Ms. Watkins texted Respondent at 3:41 p.m. and asked that Respondent call her. **Id.** Respondent replied to the text message and stated, "[y]es ma'am." **Id.** Respondent did not call Ms. Watkins. **Id.** On December 18, 2019, Ms. Watkins texted Respondent and asked that Respondent call her. **Id.** Respondent did not call or text Ms. Watkins. On December 18, 2019, Ms. Watkins filed a complaint with OCDC against Respondent. **App. Vol. 4, A1132-A1145 (Ex. 18).** On January 20, 2020, Respondent filed her answer to the complaint with OCDC. **App. Vol. 4, A1146-A1167 (Ex. 19).**

As of January 9, 2020, Respondent had not called Ms. Watkins. **App. Vol. 4, A1154 (Ex. 19).** On February 19, 2020, Ms. Watkins notified OCDC that she wished to withdraw her complaint. **App. Vol. 6, A1488 (Ex. 48).** During the disciplinary hearing, Ms. Watkins testified that her communication with Ms. Harry improved after she filed her complaint with the OCDC and that Respondent was still representing her at the time of the disciplinary hearing. **App. Vol. 1, A530.**

AUDIT OF RESPONDENT'S TRUST ACCOUNT AND OPERATING ACCOUNT

OCDC investigator, Kelly Dillon (sometimes referred to herein as, "Dillon"), audited Respondent's Trust Account and Operating Account and prepared an examination spreadsheet reflecting checks, withdrawals, and deposits from January 4, 2018 to July 31, 2019 (the "Audit"). **App. Vol. 1, A157; App. Vol. 5, A1314-A1316 (Ex. 25); App. Vol. 5, A1314-A1610 (Ex. 26); App. Vol. 6. A1414-A1429 (Ex. 26).** Between January 2018 and July 31, 2019, Respondent maintained and used the following accounts with Carrolton Bank: a client trust account, Account No. XXXX-7533, in the account name of Venus V. Harry Lawyers Trust Account ("Trust Account"); and, a law firm operating account, Account No. XXXX-7487, in the account name of The Law Offices of Venus Harry, LLC ("Operating Account"). **App. Vol. 1, A156-A157.**

On or about October 25, 2019, during the course of her investigation, Ms. Dillon emailed Respondent requesting additional information or clarification regarding the transfer of personal funds into the client Trust Account and additional information related to Respondent's client Trust Account and Operating Account transactions for several of Respondent's clients or third parties. **App. Vol. 1, A157.** Ms. Dillon requested that Respondent provide the information requested in her email by November 1, 2019. **App. Vol. 6, A1452 (Ex. 32).** Respondent, however, never provided Ms. Dillon with the additional information and/or clarification requested in Ms. Dillon's October 25, 2019 email. **App. Vol. 1, A157.**

During the disciplinary hearing, Ms. Dillon provided detailed testimony of the Audit findings. **App. Vol. 1, A145-A166.** Respondent did not dispute the Audit

findings. **App. Vol. 1, A401-A402.** The Audit revealed that Respondent made the following transfers from her Operating Account to her Trust Account:

a. On September 5, 2018, Respondent transferred $1,326.00 of personal funds from her Operating Account to her client Trust Account.

b. On January 3, 2019, Respondent transferred $1,232.13 of personal funds from her Operating Account to her client Trust Account.

App. Vol. 1, A158; App. Vol. 6, A1430-A1431 (Ex. 27).

The Audit revealed that Respondent made the following cash withdrawals from her client Trust Account:

a. On December 20, 2018, Respondent made a cash withdrawal from the client Trust Account in the amount of $1,100.00.

b. On April 12, 2019, Respondent made a cash withdrawal from the client Trust Account in the amount of $500.00.

Vol. 1, A158-A159; App. Vol. 6, A1432-A1433 (Ex. 28).

The Audit revealed that Respondent made the following deposits of clients' or third-party funds or advanced fees directly into her Operating Account:

a. On July 1, 2019, Respondent deposited a $60,000.00 check to the Operating Account from the Circuit Court of St. Louis County which represented a bond refund for client Melvin Rogers which included funds owed to Jerome Rogers (a third party) and Respondent's earned fees.

b. On July 22, 2019, Respondent deposited a $7,500.00 check to the Operating Account from Sheleasa Blackwell, mother of client Cameron Dowd, which represented an advanced fee.

c. On September 10, 2019, Respondent deposited a $3,500.00 check to the Operating Account from Ava Miller representing an advanced fee.

Vol. 1, A159; App. Vol. 6, A1434-A1436 (Ex. 29).

The Audit revealed that Respondent made the following payments from her Operating Account to pay clients or third parties whose funds had been deposited to the Operating Account or whose funds had been deposited to the client Trust Account and transferred to the Operating Account for disbursement:

a. March 23, 2018 payment to Glenda White in the amount of $5,000 representing funds paid for a bond refund.

b. October 29, 2018 payment to Laura Launie in the amount of $10,000.00 representing funds paid for restitution.

c. November 1, 2018 payment to Attorney Nicorette Klapp in the amount of $1,500.00 representing funds paid to a GAL.

d. November 8, 2018 payment to Vincent Wandix in the amount of $15,000.00 representing a refund to the client for unearned fees.

e. January 10, 2019 payment to the Family Support Payment Center in the amount of $1,000.00 representing funds paid for past due support on behalf of a client.

g. April 2, 2019 payment to Laura Launie in the amount of $311.23 representing funds paid for restitution.

h. April 3, 2019 payment to Laura Launie in the amount of $6,885.77 representing funds paid for restitution.

i. July 2, 2019 payment to Jerome Rogers on behalf of client Melvin Rogers in the amount of $46,500.00 representing a portion of the client's bond refund.

j. July 18, 2019 payment to St. Louis Community Credit Union on behalf of client Shirley Doll, as guardian of client Miquan Mitchell, in the amount of $3,603.00 representing the client's portion of settlement funds.

k. August 21, 2019 payment to Jennifer Andrews on behalf of client Melvin Rogers in the amount of $2,000.00 representing third party monies owed and drawing against the client's bond refund.

Vol. 1, A417-A430; App. Vol. 6, A1437-A1447 (Ex. 30).

The Audit further revealed that Respondent maintained approximately $15,000.00 of her personal funds in the client Trust Account. **Vol. 1, A158.**

Respondent testified during the disciplinary hearing that she transferred client funds from her Trust Account to her Operating Account to pay clients or third parties because she did not have Trust Account checks between October 2017 and August 2019. **Vol. 1, A431-A432.** When Respondent was asked why she did not have Trust Account checks for almost two years, Respondent answered, "ignorance." **Vol. 1, A431.**

Respondent admitted that, during the Audit period, she did not reconcile her Trust Account and that she sometimes maintained a client receipt and disbursement journal, individual client ledgers, and accountings to clients or third persons showing the disbursement of funds to them or on their behalf. **App. Vol. 1, A401-A402.**

Respondent also testified during the disciplinary hearing that the transfer of personal funds from the Operating Account to the Trust Account on September 5, 2018 and January 3, 2019 were made for the purposes of paying payroll taxes because she "didn't know any better." **App. Vol. 1, A409.** Respondent also admitted that she allowed earned fees and other funds to remain in Respondent's Trust Account and did not promptly sweep all earned fees. **App. Vol. 1, A158, A413.**

DISCIPLINARY HEARING PANEL'S DECISION

On January 14, 2021, the hearing Panel issued its decision and concluded that:

- Respondent violated Rules 4-1.1 and 4-1.3 during Respondent's representation of Mr. Whitfield, in that,
    a. Respondent failed to file any responsive pleadings on behalf of Mr. Whitfield and was deemed in default as to the pleadings;
    b. Respondent failed to comply with St. Louis County Local Rule 68 and the court's Scheduling Order; and, failed to file Mr. Whitfield's certificate of attendance for the mandatory parent education course prior to trial; and,
    c. Respondent failed to properly prepare to represent Mr. Whitfield at trial.

App. Vol. 7, A1696.

- Respondent violated Rule 4-1.4 during her representation of Mr. Whitfield and Mr. Weeden, in that:

    a. Respondent failed to promptly notify Mr. Whitfield of the court's entry of its Findings of Fact, Conclusions of Law and Judgment of Paternity, Custody and Support entered on January 10, 2018, and failed to promptly provide him with a copy of the same, causing Mr. Whitfield to also miss the filing date for any post-trial motions.

    b. Respondent failed to respond to Mr. Weeden's numerous emails sent to Respondent between December 20, 2017 and November 15, 2019, wherein Mr. Weeden requested information about how to amend his withholding order to reflect the current support pursuant to the court's December 2017 Modification Order.

App. Vol. 7, A1696.

- Respondent violated Rule 4-1.16(d) in that Respondent failed to refund to Ms. Holt the unearned portion of Ms. Holt's $5,000.00 retainer fee after Respondent's representation was terminated on December 21, 2018.

App. Vol. 7, A1697.

- Respondent violated Rule 4-1.9 when Respondent failed to obtain informed consent in writing from Mr. Self and Ms. Hartmann which consent would have advised Mr. Self and Ms. Hartmann of the relevant circumstances involving child

support and of the material and reasonably foreseeable ways that the conflict could have adverse effects on each of their interests.

App. Vol. 7, A1698-A1699.

- Respondent violated Rule 4-1.15(a) when she deposited advanced fees, client funds and third party-funds into her Operating Account.
- Respondent violated Rule 4-1.15(a)(5) when she made cash withdrawals from the Trust Account.
- Respondent violated Rule 4-1.15(b) when she deposited her personal funds into her Trust Account in excess of amounts necessary to pay financial institution service charges.
- Respondent violated Rule 4-1.15(a)(7) when she failed to reconcile her Trust Account.
- Respondent violated Rule 4-1.15(f) when she:
    a. Failed to keep a receipt and disbursement journal,
    b. Failed to keep individual client ledgers,
    c. Failed to keep accountings to clients or third persons showing the disbursement of funds to them or on their behalf.

App. Vol. 7, A1699-A1700.

- Respondent violated Rule 4-8.1(c) when she knowingly failed to provide to the OCDC investigator the additional information and/or clarification requested in the investigator's October 25, 2019 email to Respondent.

App. Vol. 7, A1702.

Mitigating and Aggravating Factors

1. Mitigating Factors

The Panel found as mitigating factors that the Respondent was generally cooperative with the OCDC. The OCDC investigator testified that the "majority" of information Respondent provided to the OCDC investigator was truthful. **App. Vol. 7, A1703.** The Panel noted, however, that Respondent's cooperativeness was tempered by Respondent's failure to respond to the OCDC investigator's email request for additional information. **Id.**

Respondent also offered evidence of her actions taken to rectify the misconduct. Respondent testified that she attended continuing legal education seminars on trust accounting practice and implemented new trust accounting procedures and practice management software. **Id.** Respondent also offered evidence of her character and reputation through several character letters and her testimony of her pro bono and charitable work and community involvement. **Id.**

2. Aggravating Factors

As aggravating factors in this case, the Panel found that Respondent has a significant prior disciplinary history. **App. Vol. 7, A1703.** Respondent received three admonitions for violations of Rule 4-1.3, three admonitions for violations Rule 4-1.4, and one admonition for violation of Rule 8.4. **Id.** In addition, Respondent's license was suspended for one year for the following Rule violations: 4-1.1; 4-1.3; 4-1.4; and 4-1.15(m). **Id.** Respondent's suspension was stayed pending successful completion of one

year of probation. **Id.** Although not discipline, Respondent also received a guidance letter from the Regional Disciplinary Committee recommending that Respondent maintain time records and keep track of client trust account balances and outstanding invoices, as well time spent on matters along with a description of legal services for each entry in order to avoid potential violations of Rules 4-1.3, 4-1.4 and 4-1.15. **Id.**

The Panel found that Respondent also engaged in a pattern of misconduct. **Id.** Respondent committed numerous trust account, diligence and communication violations. **Id.** Further, Respondent violated multiple rules of professional misconduct. **Id.** Respondent violated Rules 4-1.1, 4-1.3, 4-1.4, 4-1.7, 4-1.16(d), 4-1.15, and 4-8.1(c). **Id.** Respondent also has substantial experience in the law. **Id.** Respondent testified that she has been practicing in the area of family law for more than twenty years. **Id.**

The Panel also found that Respondent failed to cooperate with the OCDC investigator by failing to provide the requested information to the OCDC investigator, in part, because "it was an arduous task." **App. Vol. 7, A1704-A1705.** The Panel noted that it would not have been an arduous task had Respondent maintained the required records. **Id.** Respondent also exhibited selfish motives. **Id.** The OCDC investigator testified that Respondent's careless treatment of her trust account was selfish. **Id.** As noted by the Panel, "Respondent could not be bothered to put forth the proper effort to protect her client's property." **App. Vol. 7, A1704-A1705.** Although not charged in the Amended Information, the Panel also found Respondent failed to properly supervise her employee who was charged with the firm's accounting duties. **Id.**

The Disciplinary Hearing Panel's Recommendation

The Disciplinary Hearing Panel recommended that Respondent be suspended indefinitely with no leave to apply for reinstatement for two years. **App. Vol. 7, A1664-A1706.** On January 21, 2021, Informant accepted the decision. **App. Vol. 7, A1708.** On February 17, 2021, Respondent rejected the decision. **App. Vol. 7, A1709-A1710.**

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE DURING RESPONDENT'S REPRESENTATION OF CLIENTS ERIC WHITFIELD, THOMAS WEEDEN, ANGELA WATKINS AND SHARON HOLT, RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT, IN THAT:

A. RESPONDENT VIOLATED RULE 4-1.1 BY FAILING TO PROVIDE THOMAS WEEDEN AND ERIC WHITFIELD WITH COMPETENT REPRESENTATION;

B. RESPONDENT VIOLATED RULE 4-1.3 BY FAILING TO DILIGENTLY REPRESENT ERIC WHITFIELD;

C. RESPONDENT VIOLATED RULE 4-1.4 IN FAILING TO REASONABLY RESPOND TO MR. WHITFIELD'S, MR. WEEDEN'S, MS. HOLT'S AND MS. WATKINS' REQUEST FOR INFORMATION ABOUT THEIR CASES; AND,

D. RESPONDENT VIOLATED RULE 4-1.16(d) IN THAT RESPONDENT FAILED TO PROMPTLY RETURN TO MS. HOLT THE UNEARNED PORTION OF MS. HOLT'S RETAINER FEE.

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

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

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

In re Snyder, 35 S.W.3d 380 (Mo. banc 2000)

Rule 4-1.1, Rules of Professional Conduct

Rule 4-1.3, Rules of Professional Conduct

Rule 4-1.4, Rules of Professional Conduct

Rule 4-1.16(d), Rules of Professional Conduct

Rule 5.17, Rules of Professional Conduct

ABA/BNA *Lawyers Manual on Professional Conduct*, *Lawyer Client Relationship* § 31:501 (2005).

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT DURING THE DISCIPLINARY PROCESS WHEN RESPONDENT FAILED TO OBTAIN THE REQUISITE INFORMED CONSENT REQUIRED BY RULE 4-1.7 FROM LACEY HARTMANN AND ZACHARY SELF.

Rule 4-1.7, Rules of Professional Conduct

POINTS RELIED ON

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-8.1(c) IN THAT RESPONDENT KNOWINGLY FAILED TO RESPOND TO A LAWFUL DEMAND FOR INFORMATION FROM THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF THE DISCIPLINARY INVESTIGATION.

Rule 4-8.1(c), Rules of Professional Conduct

POINTS RELIED ON

IV.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULE 4-1.15, IN THAT:

A. RESPONDENT DEPOSITED ADVANCED FEES, CLIENT FUNDS, AND THIRD-PARTY FUNDS INTO HER OPERATING ACCOUNT IN VIOLATION OF RULE 4-1.15(a);

B. RESPONDENT MADE CASH WITHDRAWALS FROM HER TRUST ACCOUNT IN VIOLATION OF RULE 4-1.15(a)(5);

C. RESPONDENT FAILED TO RECONCILE HER TRUST ACCOUNT REASONABLY PROMPTLY EACH TIME AN OFFICIAL STATEMENT FROM THE BANK WAS PROVIDED OR MADE AVAILABLE IN VIOLATION OF RULE 4-1.15(a)(7);

D. RESPONDENT DEPOSITED HER PERSONAL FUNDS INTO HER TRUST ACCOUNT IN EXCESS OF AMOUNTS NECESSARY TO PAY FINANCIAL INSTITUTION SERVICE CHARGES IN VIOLATION OF RULE 4-1.15(b); AND,

E. RESPONDENT FAILED TO MAINTAIN THE FOLLOWING REQUIRED TRUST ACCOUNTING RECORDS IN

VIOLATION OF RULE 4-1.15(f): A RECEIPT AND DISBURSEMENT JOURNAL; INDIVIDUAL CLIENT LEDGERS; AND, ACCOUNTINGS TO CLIENTS OR THIRD PERSONS SHOWING THE DISBURSEMENT OF FUNDS TO THEM OR ON THEIR BEHALF.

Rule 4-1.15(a), Rules of Professional Conduct

Rule 4-1.15(a)(5) Rules of Professional Conduct

Rule 4-1.15(a)(7), Rules of Professional Conduct

Rule 4-1.15(b), Rules of Professional Conduct

Rule 4-1.15(f), Rules of Professional Conduct

POINTS RELIED ON

V.

THE ABA *STANDARDS FOR IMPOSING LAWYER SANCTIONS*, CASE LAW, AND THE AGGRAVATING FACTORS SUPPORT THAT AN INDEFINITE SUSPENSION WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR TWO YEARS IS THE APPROPRIATE SANCTION IN THIS CASE.

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

In re Coleman, 295 S.W. 3d 857, 863 (Mo. banc 2009)

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

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

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

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE DURING RESPONDENT'S REPRESENTATION OF CLIENTS ERIC WHITFIELD, THOMAS WEEDEN, ANGELA WATKINS AND SHARON HOLT, RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT, IN THAT:

A. RESPONDENT VIOLATED RULE 4-1.1 BY FAILING TO PROVIDE THOMAS WEEDEN AND ERIC WHITFIELD WITH COMPETENT REPRESENTATION;

B. RESPONDENT VIOLATED RULE 4-1.3 BY FAILING TO DILIGENTLY REPRESENT ERIC WHITFIELD;

C. RESPONDENT VIOLATED RULE 4-1.4 IN FAILING TO REASONABLY RESPOND TO MR. WHITFIELD'S, MR. WEEDEN'S, MS. HOLT'S AND MS. WATKINS' REQUEST FOR INFORMATION ABOUT THEIR CASES; AND,

D. RESPONDENT VIOLATED RULE 4-1.16 IN THAT RESPONDENT FAILED TO PROMPTLY RETURN TO MS. HOLT THE UNEARNED PORTION OF MS. HOLT'S RETAINER FEE.

Standard of Review

Professional misconduct is established by a preponderance of the evidence. *In re Crews*, 159 S.W. 3d 355, 358 (Mo. banc 2005), citing, *In re Snyder*, 35 S.W.3d 380 (Mo. banc 2000). This Court reviews the evidence *de novo*, independently determining all issues pertaining to the credibility of witnesses and the weight of the evidence and reaches its own conclusion of law. *Id.* In matters of attorney discipline, the disciplinary panel's decision is advisory. *In re Farris*, 472 S.W.3d 549, 557 (Mo. banc 2015).

An attorney must comply with the Rules of Professional Conduct as set forth in Supreme Court Rule 4 as a condition of retaining his license. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004). Violation of the Rules of Professional Conduct by an attorney is grounds for discipline. *Id.*

A. Violation of Rule 4-1.1

(Clients Whitfield and Weeden)

Rule 4-1.1 requires competent representation evidenced by the legal knowledge, skill, thoroughness and preparation reasonably necessary to complete the representation. *Crews*, 159 S.W.3d at 359. The practice of family law was not a novel area for Respondent. Respondent testified during the disciplinary hearing that she had been practicing in the area of family law for twenty years. **App. Vol. 1, A374.** Notwithstanding her twenty years of experience, Respondent failed to exercise the minimal level of competency when she failed to file any responsive pleadings on behalf of Mr. Whitfield, failed to comply with St. Louis County Local Rule 68 and the court's Scheduling Order, and failed to file Mr. Whitfield's certificate of attendance for the

mandatory parent education course prior to trial. **App. Vol. 1, A132-A134.** The Panel found that Respondent failed to properly prepare to represent Mr. Whitfield at trial. **App. Vol. 7, A1696.**

Respondent's failure to comply with the court's local rules and Scheduling Order resulted in the court limiting the amount of evidence Mr. Whitfield was able to present during trial. The court stated in its Findings of Fact, Conclusions of Law and Judgment of Paternity, Custody, and Child Support (sometimes referred to herein as, "Paternity Judgment") that Mr. Whitfield was found to be "in default as to the pleadings and having failed to comply with the court's Scheduling Order…". **App. Vol. 6, A1524 (Ex. 45).** The Paternity Judgment provided further that that Mr. Whitfield was able to cross-examine petitioner's witnesses but Mr. Whitfield's testimony was limited to the issue of legal custody, only. **Id.** See, *In re Ehler*, 319 S.W.3d 442, 448-449 (Mo. banc 2010) (lawyer demonstrated a lack of competence where she failed to provide her clients with interrogatories to complete and such failure resulted in the court entering a default judgment against her client). The Disciplinary Hearing Panel correctly found that Respondent failed to competently represent Mr. Whitfield in violation of Rule 4-1.1.

Respondent also failed to provide Thomas Weeden with competent representation. The Panel disagreed, however, stating that it found much of Mr. Weeden's testimony "blaming Respondent for his child support arrearage problems" not credible. **App. Vol. 7, A1687.** Since the Panel's finding is advisory, it is up to this Court to weigh the evidence and make a finding as to whether Respondent violated Rule 4-1.1 during her representation of Mr. Weeden.

Respondent was retained by Mr. Weeden in or about March 2017 to modify his child support. **App. Vol. 1, A147.** On March 23, 2017, Respondent filed a Motion to Modify on behalf of Mr. Weeden. **Id.** In June 2017, Mr. Weeden provided Respondent with a copy of the Wage Withholding Order from the Department of Social Services Family Support Division for monthly wage withholdings in the amount of $1,875.00 ($1,250.00 for current support plus $625.00 for arrearage). **Id.** Respondent successfully obtained a judgment in December 2017 modifying Mr. Weeden's current monthly child support obligation from $1,250.00 to $455.00. **App. Vol. 1, A147.** Respondent testified that she provided a copy of the modified order to the child support department in the courthouse. **App. Vol. 2, A631A632.** Within hours after the entry of the modification judgment, Mr. Weeden emailed Respondent about amending his then existing the Wage Withholding Order because he remained at risk for continued monthly wage withholdings at $1,875.00 until an amended withholding was filed. **App. Vol. 4, A1183 (Ex 22);** See, **App. Vol. 4, A1257-A1258, (Ex. 23).** Respondent did not respond to Mr. Weeden's email. **App. Vol. 1, A225.**

Between the date of the modified judgment and the entry of the Amended Wage Withholding Order ultimately filed by Mr. Weeden on December 19, 2019, Mr. Weeden sent Respondent eleven (11) emails requesting Respondent's services and/or instructions regarding modifying the Wage Withholding Order. **App. Vol. 4, A1180-A1206 (Ex. 22).** Mr. Weeden even copied Respondent on emails that he sent to his employer disputing the original Wage Withholding Order. **Id.** Not once did Respondent respond to Mr. Weeden's numerous emails with any guidance or instruction. **App. Vol. 1, A475-A476.**

Instead, on one occasion, on July 31, 2019, Respondent replied to an email and advised Mr. Weeden that he had a past due balance but did not include the amount Mr. Weeden owed. **App. Vol. 4, A1180-A1206 (Ex. 22).** Mr. Weeden replied to the email asking Respondent for the amount owed. **Id.** Respondent did not respond. **App. Vol. 1, A229.**

After finally meeting with Respondent on September 8, 2019, Mr. Weeden learned that he owed Respondent an additional $250.00. After Mr. Weeden made his final payment on December 4, 2019, Respondent still offered no guidance, instruction or assistance to Mr. Weeden in response to his emails regarding modifying the Wage Withholding Order. **App. Vol. 1, A242-A243.** On December 19, 2019, Mr. Weeden filed an Amended Wage Withholding Order without the assistance of Respondent. Pursuant to the Amended Wage Withholding Order, Mr. Weeden's then employer was directed to withhold monthly support totaling $682.50 ($455.00 for current support and $227.50 for child support arrears). **App. Vol. 4, A1223-A1224 (Ex. 22).**

Mr. Weeden testified that his employment was sporadic during 2018, working for four different employers, but by the summer of 2019 he had found permanent full-time employment. **App. Vol. 1, A248-A249.** The filing of an amended wage withholding for any one of Mr. Weeden's employers after the entry of the modification judgment would have thereafter capped Mr. Weeden's monthly child support withholdings at $652.50 (until further order of a court), notwithstanding the significant amount of child support arrears owed by Mr. Weeden.

After the entry of the modification judgment and prior to the entry of the Amended Wage Withholding Order, the St. Louis County Circuit Court Payment Detail History

Report (for child support) reflects child support receipts in excess of $682.50 in each the following months:

a. April 2018 – $690.00;

b. May 2018 – $716.98;

c. June 2018 – $750.00;

d. May 2019 – $847.68;

e. June 2019 – $850.62;

f. September 2019 – $994.49;

g. November 2019 – $937.50, and,

h. December 2019 – $1,595.45.

App. Vol. 4, A1257-A1258 (Ex. 23).

Respondent testified that she "felt" that her representation was concluded after obtaining the modification but offered no objective evidence that she advised Mr. Weeden of the same or that her representation did not include the filing of an Amended Wage Withholding Order. **App. Vol. 2, A633-A634.** As set forth above, Rule 4-1.1 requires, "thoroughness and preparation reasonably necessary to complete the representation." *Crews*, 159 S.W.3d at 359. Amending the Wage Withholding Order was a critical component of Mr. Weeden's child support modification. At a minimum, Respondent should have replied to Mr. Weeden's first email in December 2017 with basic instructions on filing an amended Wage Withholding Order. Respondent's failure to respond to Mr. Weeden's numerous emails was a violation of Rule 4-1.1.

B. Violation of Rule 4-1.3

(Client Whitfield)

Rule 4-1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." Rule 4-1.3, see also, *In re Crews,* 159 S.W.3d at 359. The 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], see also, *In re Ehler*, 319 S.W.3d at 449. In some instances, "the client's legal position may be destroyed." *Id.*

In this case, Respondent's failure to file any responsive or counter-pleadings and Respondent's failure to comply with the court's local rules and Scheduling Order resulted in Mr. Whitfield being denied the opportunity to present certain evidence during trial. As noted in the Paternity Judgment, Mr. Whitfield was permitted to testify on the issue of legal custody, only, due to being in default of the pleadings. **App. Vol. 6, A1524 (Ex. 45).** Respondent's failure to file responsive pleadings, failure to comply with the court's local rules, and failure to comply with the court's Scheduling Order violated Rule 4-1.3. See, *In re Ehler*, 319 S.W.3d at 449 (lawyer's conduct constituted a violation of Rule 4-1.3 when the lawyer failed to provide her client with the interrogatories to answer resulting in the court entering a default judgment against her client and the client being denied an opportunity to put forth a defense).

C. Violation of Rule 4-1.4

(Clients Whitfield and Weeden)

Missouri Supreme Court Rule 4-1.4(a) requires that a lawyer keep the client reasonably informed about the status of the matter. Keeping a client informed entails responding to client telephone calls and letters. ABA/BNA *Lawyers Manual on Professional Conduct*, *Lawyer Client Relationship* § 31:501 (2005). "Communication with a client is essential to maintain a productive attorney-client relationship." *In re Ehler*, 319 S.W.3d at 449. The Panel found that Respondent violated Rule 4-1.4 during her representation of clients Whitfield and Weeden by failing to respond to Whitfield's and Weeden's requests for information concerning their cases.

After Mr. Whitfield's one day paternity trial on December 15, 2017, Mr. Whitfield emailed Respondent on December 27, 2017, January 30, 2018, February 23, 2018, and February 27, 2018 inquiring about the status of the case. **App. Vol. 2, A838-A843 (Ex. 9).** It was not until February 28, 2018, that Mr. Whitfield was provided with a copy of the Court's Findings of Fact, Conclusions of Law and Judgment of Paternity, Custody and Support entered on January 10, 2018. **Vol. 2, A842 (Ex. 9).** The deadline, however, to file post-trial motions was February 9, 2018. Respondent's failure to promptly notify Mr. Whitfield of the entry of the judgment was a violation of Rule 4-1.4 and deprived Mr. Whitfield of the option to file post-trial motions.

Respondent successfully obtained a modification of Mr. Weeden's child support in December 2017. **App. Vol. 1, A147-A148.** Mr. Weeden began emailing Respondent on the same day that the judgment was entered inquiring about how to amend his Wage

Withholding Order to reflect the current, significantly lower amount. **App. Vol. 2, A631-A632.** Between December 2017 and November 2019, Mr. Weeden emailed Respondent eleven times requesting guidance on amending his Wage Withholding Order. **App. Vol. 1, A475-A476.** Not once did Respondent respond to Mr. Weeden's emails with the requested information. Instead, Respondent reminded him that he had an outstanding balance with her firm. **App. Vol. 4, A1188 (Ex. 22).**

During the disciplinary hearing, Respondent admitted that she failed to respond to Mr. Weeden's numerous emails requesting guidance and/or assistance in modifying his Wage Withholding Order. **App. Vol. 1, A475-A476.** Respondent's testimony that she "picked up the phone and called him and asked him to come to the office" is not credible given the number of times that Mr. Weeden emailed Respondent for help. **App. Vol. 1, A476.** Respondent violated Rule 4-1.4(a) by failing to reasonably respond to Mr. Weeden's email requests for instruction and guidance on amending the Wage Withholding Order.

(Clients Watkins and Holt)

The Disciplinary Hearing Panel did not find that Respondent violated Rule 4-1.4 during her representation of clients Ms. Watkins and Ms. Holt. The Panel noted that Ms. Watkins withdrew her complaint and, for Ms. Holt, it found "much of [her] testimony regarding the custody case and fee dispute to be not credible". **App. Vol. 7, A1682.** Ms. Watkins' request to withdraw her complaint does not absolve Respondent of neglect under Rule 5.17. Rule 5.17 provides in relevant part, "[t]he unwillingness or neglect of the complainant to prosecute the charges … shall not justify the failure to undertake or

complete proceedings commenced pursuant to this Rule 5". Further, the Panel's finding with respect to Respondent's representation of Ms. Holt is only advisory. The evidence demonstrates, that like Mr. Whitfield and Mr. Weeden, Respondent also failed to reasonably respond to Ms. Watkins' and Ms. Holt's requests for information about their cases.

The undisputed evidence shows that Respondent failed to respond to Ms. Watkins text messages for information concerning her case. Ms. Watkins sent Respondent text messages on November 26, 2019, December 12, 2019, December 17, 2019, and December 18, 2019 requesting that Respondent contact her regarding questions that she had pertaining to her case. **App. Vol. 4, A117-A1176 (Ex. 20).** After not receiving a call from Respondent, Ms. Watkins filed a complaint with the OCDC. **App. Vol. 4, A1132-A1145 (Ex. 18).** It was only after receiving Ms. Watkins' complaint that Respondent contacted Ms. Watkins. **App. Vol. 1, A530.** Ms. Watkins testified during the disciplinary hearing that communication improved with Respondent after the filing of the complaint and that Respondent was still representing her at the time of the disciplinary hearing. **Id.** Notwithstanding Respondent's continued representation, it is unfortunate that it took Ms. Watkins filing a complaint to prompt a response by Respondent.

Respondent also failed to respond to Ms. Holt's telephone calls requesting information about the status of her grandchildren's juvenile division cases, the third-party custody matter, and the status of the home study. Ms. Holt was forced to retain other counsel after not hearing from Respondent for several weeks. Ms. Holt testified that, during the month of December 2018, she called Respondent "almost every day"

requesting information about her grandchildren's cases. **App. Vol. 1, A279.** Ms. Holt testified that she often spoke to a secretary who told her that she was the one working on her case. Respondent, however, never called Ms. Holt and provided her with the requested information about her grandchildren's cases.

Rule 4-1.4, Comment [4] provides,

> A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, Rule 4-1.4(a)(2) requires prompt compliance with the request or, if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer shall promptly respond to or acknowledge client communications to the lawyer.

Rule 4-1.4, Comment [4].

Not only did Respondent not respond to Ms. Watkins' and Ms. Holt's requests for information but neither Respondent's office staff nor Respondent advised Ms. Watkins and Ms. Holt when Respondent might contact them to answer their questions. Respondent's failure to respond to Ms. Watkins' and Ms. Holt's requests for information resulted in Ms. Watkins filing a complaint against Respondent and Ms. Holt retaining other counsel. "Communication with a client is essential to maintain a productive attorney-client relationship." *In re Ehler*, 319 S.W.3d at 449. Respondent violated Rule 4-1.4 during her representation of Ms. Watkins and Ms. Holt.

D. Rule 4-1.16(d)

(Client Holt)

Missouri Rule of Professional Conduct 4-1.16(d) provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including surrendering papers and property and refunding any advance payment of fees or expenses that has not been earned or incurred. Rule 4-1.16(d). Respondent violated Rule 4-1.16(d) when she failed to promptly return Ms. Holt's unearned retainer fee.

The facts are undisputed. Ms. Holt terminated Respondent in December 2018. Respondent admitted that a refund of Ms. Holt's retainer in the amount of $2,500.00 fees was owed to Ms. Holt. Notwithstanding Ms. Holt's alleged refusal to participate in the Fee Dispute Resolution Program or accept anything less than a full refund,[9] it was not until September 11, 2020, that Respondent returned Ms. Holt's unearned retainer. **App. Vol. 7, A1599 (Ex. 49).**

During the disciplinary hearing, Respondent testified that she did not have a current address for Ms. Holt prior to Ms. Holt's testimony before the Disciplinary Hearing Panel on August 20, 2020. **App. Vol. 2, A611-A612.** Respondent admitted, however, that after receiving the complaint she made no attempt to send a refund to Ms.

[9] Ms. Holt denied that any such conservation took place with Respondent and testified that she would not have filed the complaint had Respondent offered to refund "any amount of money." **App. Vol. 1, A304; App. Vol. 1, A285-287.**

Holt's address listed on the cover sheet of the complaint. **App. Vol. 1, A392**. The Disciplinary Hearing Panel properly found that Respondent violated Rule 4-1.16(d) when Respondent failed to timely return Ms. Holt's unearned retainer after Respondent's termination. See, *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003) (respondent violated Rule 4-1.16(d) when he failed to refund the advanced fee upon termination of the representation).

ARGUMENT

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT ENGAGED IN PROFESSIONAL MISCONDUCT DURING THE DISCIPLINARY PROCESS WHEN RESPONDENT FAILED TO OBTAIN THE REQUISITE INFORMED CONSENT REQUIRED BY RULE 4-1.7 FROM LACEY HARTMANN AND ZACHARY SELF.

Respondent violated Rule 4-1.7 when Respondent failed to obtain the requisite informed consent from Zachary Self and Lacey Hartmann waiving Respondent's conflict.

Rule 4-1.7 provides, in relevant part, that:

(a) "Except as provided in Rule 4-1.7(b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under Rule 4-1.7(a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing."

Rule 4-1.7.

The facts of this matter are undisputed. In or about March 2011, Zachary Self retained Respondent to represent him in a custody action filed by the maternal grandmother regarding his custodial rights of his son, I.H. **App. Vol. 1, A138.** Ms. Lacey Hartmann (I.H.'s mother) was represented in the same matter by separate counsel.[10] **Id.** According to Respondent, Ms. Hartmann and Mr. Self were on the same side during the litigation although they were not married at the time. **App. Vol. 1, A138-**

[10] Lacey Hartmann and Zachary Self are the biological parents of minor children, I.H and A.S. **App. Vol. 1, A138; App. Vol. 2, A588.** I.H., however, was in the legal and physical custody of Ms. Hartmann's mother. **Id.**

139; App. Vol. 2, A584. The custody matter was subsequently tried and a judgment was entered in July 2012. **App. Vol. 1, A138.** Respondent believed that she also represented Mr. Self in a traffic matter sometime after the entry of the July 2012 judgment and that her representation concluded in 2013. **App. Vol. 2, A586.**

In early January 2018, Ms. Hartmann retained Respondent to represent her in a divorce case against Mr. Self. Ms. Hartmann informed Respondent that Mr. Self was incarcerated at that time. **App. Vol. 1, A505.** Given Mr. Self's incarceration, Respondent advised Ms. Hartmann that Respondent would agree to represent her provided Ms. Hartmann did not seek child support from Mr. Self. **Id.** Respondent testified that she saw Mr. Self in criminal court (while he was confined) and advised Mr. Self of her representation. Respondent testified that she assured Mr. Self that Ms. Hartmann was not going to seek child support.

> Q: And what discussion did you have with Zachary at that time?
>
> A: I mean, I told him, you know, that Lacey was wanting to get a divorce, and he was like yeah, I know, and that I was doing it. And he was like yeah, just make sure she doesn't mess me up with child support. And I said I already had that conversation with her. And it was like thanks, Venus, and that was it.
>
> Q: So, Zachary wanted to ensure that you were not asking for child support or maintenance?
>
> A: Correct.

App. Vol. 1, A504.

Respondent appeared to recognize the conflict during her testimony before the Regional Disciplinary Committee when questioned by one of its members on March 12, 2019. Respondent gave the following relevant testimony:

> Q: Again, I'm not a domestic lawyer but it seems to me that it's in Zack's best interest not to have a child support order entered against him, and it's not in Lacey's best interest for Zack not to have that order entered against him?
>
> A: But that was -- I would agree with that, but those were the terms that I brought to Lacey saying, hey, if you want me to do this then, that's where I'm headed with this.

App. Vol. 2, A824 (Ex. 8).

Respondent testified further that she "absolutely" advised Ms. Hartmann to seek the advice of separate counsel given that Respondent was "pursuing a course of action that might not be in Lacey's best interest" and advised her that "she should talk to another lawyer" about whether this was a good deal for her. **App. Vol. 2, A824-A825 (Ex. 8).** Respondent said that Ms. Hartmann, however, elected not to do so. **App. Vol. 2, A824 (Ex. 8).** During the disciplinary hearing, however, Respondent admitted that she never advised Ms. Hartmann to consult with other counsel. **App. Vol. 2, A824-A825.**

Under Rule 4-1.7, a concurrent conflict of interest existed because there was a significant risk that the representation of Ms. Hartmann would be materially limited by Respondent's assurances given to Mr. Self, her former client, that Respondent would not allow Ms. Hartmann to "mess him up with child support." Respondent testified that Mr.

Self wanted Respondent to ensure that Ms. Hartmann was not seeking child support (or maintenance). **App. Vol. 2, A824-A825.**

Neither Ms. Hartmann nor Mr. Self executed waivers of conflict prior to Respondent's representation. The Panel found that Respondent failed to obtain informed consent in writing from Mr. Self and Ms. Hartmann which consent would have advised Mr. Self and Ms. Hartmann of the relevant circumstances involving child support and of the material and reasonably foreseeable ways that the conflict could have adverse effects on each of their interests.[11] **App. Vol. 7, A1698-A1699.** Respondent's failure to obtain the requisite consent was a violation of Rule 4-1.7.

[11] The Amended Information, as amended by interlineation, charged Respondent with violating Rules 4-1.9 and/or 4-1.7. The Panel cited Rule 4-1.9 as the conflict rule violated by Respondent. Rule 4-1.9 provides that "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." Rule 4-1.9 does not apply to this case because the former custody matter neither involved the current child nor the parties' adverse interests in the court's award of child support or maintenance.

ARGUMENT

III.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE SHE VIOLATED RULE 4-8.1(c) IN THAT RESPONDENT KNOWINGLY FAILED TO RESPOND TO LAWFUL DEMANDS FOR INFORMATION FROM THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF THE DISCIPLINARY INVESTIGATION.

Missouri Rule of Professional Conduct 4-8.1(c) provides that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from [a] disciplinary authority. Respondent violated Rule 4-8.1(c) when she knowingly failed to provide to the OCDC investigator the additional information and/or clarification requested in the investigator's October 25, 2019 email to Respondent.

The facts are not in dispute. OCDC investigator, Kelly Dillon, conducted an audit of Respondent's Trust Account and Operating Account at the request of Informant. On October 25, 2019, during the course of her investigation, Ms. Dillon emailed Respondent requesting additional information or clarification regarding the transfer of personal funds into the client Trust Account and additional information related to Respondent's client Trust Account and Operating Account transactions for several of Respondent's clients or third parties. Ms. Dillon's email requested that Respondent provide the requested information by November 1, 2019.

During the hearing, Respondent testified that she docketed her private calendar with Ms. Dillon's requested response date. **App. Vol. 1, A406**. When asked why she failed to provide the requested documentation, Respondent testified that "it was an arduous task." **Id.** Respondent stated further, "…I didn't want to neglect my duties with clients that I had in that period of time and end up with more complaints. So, it was just, it was a lot." **Id.** The Disciplinary Hearing Panel noted in its decision that had Respondent maintained the appropriate documentation, that it would not have been such an arduous task. **App. Vol. 7, A1705.** The Disciplinary Hearing Panel found that Respondent violated Rule 4-8.1(c) when she knowingly failed to respond to OCDC's requests for information in connection with Ms. Dillon's audit of Respondent's Trust Account. **App. Vol. 7, A1701-A1702.**

ARGUMENT

IV.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT'S LICENSE BECAUSE RESPONDENT VIOLATED RULE 4-1.15, IN THAT:

A. RESPONDENT DEPOSITED ADVANCED FEES, CLIENT FUNDS, AND THIRD-PARTY FUNDS INTO HER OPERATING ACCOUNT IN VIOLATION OF RULE 4-1.15(a);

B. RESPONDENT MADE CASH WITHDRAWALS FROM HER TRUST ACCOUNT IN VIOLATION OF RULE 4-1.15(a)(5);

C. RESPONDENT FAILED TO RECONCILE HER TRUST ACCOUNT REASONABLY PROMPTLY EACH TIME AN OFFICIAL STATEMENT FROM THE BANK WAS PROVIDED OR MADE AVAILABLE IN VIOLATION OF RULE 4-1.15(a)(7);

D. RESPONDENT DEPOSITED HER PERSONAL FUNDS INTO HER TRUST ACCOUNT IN EXCESS OF AMOUNTS NECESSARY TO PAY FINANCIAL INSTITUTION SERVICE CHARGES IN VIOLATION OF RULE 4-1.15(b); AND,

E. RESPONDENT FAILED TO MAINTAIN THE FOLLOWING REQUIRED TRUST ACCOUNTING RECORDS IN

VIOLATION OF RULE 4-1.15(f): A RECEIPT AND DISBURSEMENT JOURNAL; INDIVIDUAL CLIENT LEDGERS; AND, ACCOUNTINGS TO CLIENTS OR THIRD PERSONS SHOWING THE DISBURSEMENT OF FUNDS TO THEM OR ON THEIR BEHALF.

As set forth below, the facts of Respondent's numerous trust account violations are not in dispute.

A. Violation of subsection (a) of Rule 4-1.15

Rule 4-1.15(a) provides, in relevant part, that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Respondent admitted in her Answer to the Information and during the disciplinary hearing that she deposited advanced fees, client funds, and third-party funds into her Operating Account during the Audit period in violation of Rule 4-1.15(a).

B. Violation of subsection (a)(5) of Rule 4-1.15

Rule 4-1.15(a)(5) provides that withdrawals from a trust account shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer. The Audit revealed that Respondent made two cash transfers withdrawals from her Trust Account during the audit period. Respondent also failed to document the reasons for the transfers or to which clients the transfers related in violation of Rule 4-1.15(a)(5).

C. Violation of subsection (a)(7) of Rule 4-1.15

Rule 4-1.15(a)(7) provides that a reconciliation of a trust account shall be performed reasonably promptly each time an official statement from the financial institution is provided or available. Respondent admitted in her Answer to the Information and during the disciplinary hearing that she failed to reconcile her Trust Account during the Audit period in violation of Rule 4-1.15(a)(7).

D. Violation of subsection (b) of Rule 4-1.15

Rule 4-1.15(b) provides that a lawyer may deposit the lawyer's own funds in his trust account for the purpose of paying financial institution service charges on that account, but only in an amount necessary for that purpose. Respondent admitted in her Answer to the Information and during the disciplinary hearing that she violated Rule 4-1.15(b) when she deposited her personal funds into her Trust Account in excess of amounts necessary to pay financial institution service charges and failed to timely sweep earned fees from her Trust Account.

E. Violation of subsection (f) of Rule 4-1.15

Rule 4-1.15(f) provides that an attorney shall keep complete trust account records. It further provides that complete records shall include, among other things, a receipt and disbursement journal, individual client ledgers, accountings to clients or third persons showing the disbursement of funds to them or on their behalf. Respondent admitted that she sometimes failed to keep a receipt and disbursement journal, individual client ledgers, and accounting to clients or third persons showing the disbursement of funds to them or on their behalf. Respondent's admitted failure to maintain the required trust accounting

records set forth above is a violation of Rule 4-1.15(f).

The Panel found that Respondent violated Rule 4-1.15 as set forth above.[12]

[12] The Panel also found that Respondent failed to properly supervise her employee who was charged with the accounting duties for the firm although this was not charged by Informant. **App. Vol. A1705.**

ARGUMENT

V.

THE ABA *STANDARDS FOR IMPOSING LAWYER SANCTIONS*, CASE LAW, AND THE AGGRAVATING FACTORS SUPPORT THAT AN INDEFINITE SUSPENSION WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR TWO YEARS IS THE APPROPRIATE SANCTION IN THIS CASE.

The fundamental purpose of discipline is to protect the public and maintain the integrity of the legal profession. *In re Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010); *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003); *In re Coleman*, 295 S.W.3d 857, 869 (Mo. banc 2009). In determining an appropriate sanction for misconduct, the Court considers "the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer's conduct, and the existence of aggravating or mitigating factors." *In re Wiles,* 107 S.W. 3d at 229 (the Court considers the gravity of the attorney's misconduct, as well as any mitigating or aggravating factors that tend to shed light on the attorney's moral and intellectual fitness as an attorney). When an attorney violates multiple Rules of Professional Responsibility, as is charged in the case of Respondent, the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct. *In re Coleman*, 295 S.W.3d at 870; *In re Ehler*, 319 S.W. 3d at 451. Under the ABA *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*"), suspension is the baseline sanction in this case for Respondent's numerous ethical violations, as discussed below.

A. Application of the ABA *Standards* to Determine Baseline Sanction

1. Respondent's violations of Rules 4-1.3, 4-1.4, 4-1.16(d)

The most important ethical duties are those obligations which a lawyer owes to client. *In re Ehler*, 319 S.W. 3d at 442. Those duties include Rules 4-1.3, 4-1.4, 4-1.1, 4-1.15 and Rule 4-8.4(c). Id. As previously discussed, Respondent committed numerous violations during her representation of several clients; however, only the most serious instances of misconduct and the appropriate baseline sanctions under the ABA *Standards* will be discussed below.

In 1994, this Court began relying upon the ABA *Standards* in determining appropriate discipline. *In re Coleman*, 295 S.W.3d at 869; *In re Farris*, 472 S.W. 3d at 562-563. The ABA *Standards* provide a theoretical framework to guide courts in imposing disciplinary sanctions. Section II, Theoretical Framework, ABA *Standards*.

In the case of Mr. Whitfield, Respondent violated Rule 4-1.3 when she failed to file any responsive or counter-pleadings and failed to comply with the court's local rules and Scheduling Order resulting in Mr. Whitfield being denied the opportunity to present certain evidence during trial. As noted in the Paternity Judgment, Mr. Whitfield was permitted to testify on the issue of legal custody, only, due to being in default of the pleadings. Further, it was not until nearly seven weeks after the entry of the court's judgment that Mr. Whitfield was provided with a copy, which was well after the deadline for filing post-trial motions.

In the case of Mr. Weeden, Respondent successfully obtained a modified child support judgment on behalf of Mr. Weeden. Immediately after court, Mr. Weeden began

emailing Respondent about how to modify the Wage Withholding Order to reflect the significantly reduced new current child support amount. Between the date of the modified judgment and the entry of the Amended Wage Withholding Order ultimately filed by Mr. Weeden on December 19, 2019, Mr. Weeden sent Respondent eleven emails requesting Respondent's services and/or instructions regarding modifying the Wage Withholding Order. Respondent admitted during the disciplinary hearing that she did not respond to Mr. Weeden's emails. Clearly, amending the Wage Withholding Order to reflect the new current support amount was a critical component of Mr. Weeden's child support modification. After the support was modified, there were several months in which Mr. Weeden's withholdings exceeded the monthly withholdings as set forth in subsequently filed Amended Wage Withholding Order.

Respondent further failed to respond to Ms. Watkins' text messages and Ms. Holt's telephone calls about their cases. In addition, Respondent failed to return the unearned portion of Ms. Holt's retainer until after Ms. Holt appeared and testified before the Disciplinary Hearing Panel, almost two years after Respondent was terminated.

ABA *Standard* 4.42 is the applicable standard for Respondent's failure to file any responsive pleadings on behalf of Mr. Whitfield and comply with the court's rules and orders, Respondent's failure to provide Mr. Weeden with basic instructions to amend his wage withholding order, Respondent's failure to keep her clients reasonably informed about the status of their matters and promptly respond to their requests for information, and for Respondent's failure to return Ms. Holt's unearned retainer for almost two years. See, ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015) at pg. 183

("Suspension should be imposed when a lawyer knows that he or she is not performing the services he or she was retained to complete or when a lawyer engages in a pattern of neglect resulting in injury or potential injury to a client. Frequently, the lawyer's neglect also involves the lawyer's failure to communicate with the client, to respond to the client's request for information or to return files and unearned fees or costs.").

2. Respondent's violation of Rule 4-1.7

Respondent was retained in early January 2018 to represent Lacey Hartmann in her divorce action against Zachary Self, Respondent's former client. Ms. Hartmann informed Respondent that Mr. Self was incarcerated at that time. Respondent advised Ms. Hartmann that Respondent would agree to represent her provided Ms. Hartmann did not seek child support from Mr. Self. After being retained, Respondent testified that she saw Mr. Self in criminal court (while he was confined) and advised Mr. Self of her representation. Respondent testified that she assured Mr. Self that she would not let Ms. Hartmann "mess him up with child support." Nevertheless, Mr. Self was ordered to continue paying support per the FSD administrative order.

Respondent was aware of the competing interests of both parties, yet Respondent failed to obtain informed consent in writing from Mr. Self and Ms. Hartmann which consent would have advised Mr. Self and Ms. Hartmann of the relevant circumstances involving child support and of the material and reasonably foreseeable ways that the conflict could have adverse effects on each of their interests.

ABA *Standard* 4.32 is the applicable standard for Respondent's Rule 4-1.7 violation. ABA *Standard* 4.32 provides that, absent aggravating or mitigating

circumstances, a suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

3. Respondent's violation of Rule 4-1.15

Respondent committed the following rule violations: Rule 4-1.15(a); Rule 4-1.15(a)(5); Rule 4-1.15(a)(7); Rule 4-1.15(b); and, Rule 4-1.15(f). Respondent (i) failed to have trust accounts checks for more than two years (ii) failed to reconcile her client trust account, (iii) comingled client funds with her own, (iv) failed to maintain appropriate trust account records; and, (iii) failed to establish proper accounting procedures for the client trust account maintained by her office.

ABA *Standard* 4.12 provides that, absent aggravating or mitigating circumstances, suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. ABA *Standards,* Section 4.12. As noted in the Commentary to Section 4.12, ABA *Standards, "*Suspension should be reserved for lawyers who engage in misconduct that does not amount to misappropriation or conversion. The most common cases involve lawyers who comingle client funds with their own or fail to remit client funds promptly." See also, Commentary, Rule 4.13, "…lawyers who are grossly negligent in failing to establish proper accounting procedures should be suspended." ABA *Standards* 4.12 is the appropriate sanction for Respondent's numerous violations of Rule 4-1.15.

4. Respondent's violation of Rule 4-8.1(c)

On October 25, 2019, the OCDC investigator emailed Respondent requesting additional information and documents by November 1, 2019 in connection with the audit of Respondent's Trust Account and Operating Account. Respondent docketed the response date on her private calendar but yet failed to provide the requested documentation. Respondent's excuse for non-compliance was that "it was an arduous task" and she "…didn't want to neglect [her] duties with clients that [she] had in that period of time and end up with more complaints."

ABA *Standard* 6.22 provides that, absent aggravating or mitigating circumstances, a suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal procedure. ABA *Standard* 6.22 is the appropriate sanction for Respondent's violation of Rule 4-8.1(c).

B. Aggravating and Mitigating Circumstances

Once misconduct is established, aggravating and mitigating circumstances must be evaluated prior to determining to depart from the presumptive sanction of suspension. See, *In re Belz*, 258 S.W.3d 38, 42 (Mo. banc 2008). Mitigating factors do not constitute a defense to a finding of misconduct but might justify a downward departure from the presumptively appropriate discipline. *In re Farris*, 475 S.W. 3d at 563; see also, ABA *Standard* 9.31 (mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed). Aggravating factors, on the other hand, may justify a greater level of discipline than the presumed

discipline or confirm the presumed discipline is the appropriate discipline in a particular case. *In re Farris*, 475 S.W. 3d at 563; see also, ABA *Standard* 9.21 (aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed).

Respondent offered testimony of several mitigating factors during the disciplinary proceeding. Respondent elicited testimony from the OCDC investigator that the "majority" of information Respondent provided to the OCDC investigator was truthful. ABA *Standard* 9.32(e). Respondent's alleged cooperativeness, however, is tempered by Respondent's failure to respond to the OCDC investigator's email request for additional information and the false statements made during the disciplinary investigative process.

Respondent testified about efforts to rectify her misconduct. Respondent testified that she attended continuing legal education seminars on trust accounting practice and implemented trust accounting procedures. See, ABA *Standard*, 9.32(d). Respondent offered evidence of her character and reputation through several character letters and her testimony of her pro bono and charitable work and community involvement. See, ABA *Standard*, 9.32(g).

None of the mitigating factors are sufficiently compelling to justify a downward departure from the applicable sanction of suspension for Respondent's numerous ethical violations. There are several aggravating circumstances in this case that reinforce suspension as the appropriate discipline. Respondent has a significant prior disciplinary history. See, ABA *Standard*, 9.22(a). Respondent has received three admonitions for violations of Rule 4-1.3, three admonitions for violations Rule 4-1.4, and one admonition

for violation of Rule 8.4. In addition, Respondent's license was suspended for one year for the following Rule violations: 4-1.1; 4-1.3; 4-1.4; and 4-1.15(m). Respondent's suspension was stayed pending successful completion of one year of probation. Although not discipline, Respondent received a guidance letter from the Regional Disciplinary Committee on September 5, 2016 recommending that Respondent maintain time records and keep track of client trust account balances and outstanding invoices in order to avoid potential future violations of Rules 4-1.3, 4-1.4 and 4-1.15.

Respondent also engaged in a pattern of misconduct. See, ABA *Standard*, 9.22(c). Respondent committed numerous trust account, diligence and communication violations. Further, Respondent violated multiple rules of professional misconduct. See, ABA *Standard*, 9.22(d). Respondent violated Rules 4-1.1, 4-1.3, 4-1.4, 4-1.7, 4-1.16(d), 4-1.15, and 4-8.1(c). Respondent also has substantial experience in the law. See, ABA *Standard*, 9.22(i). Respondent testified that she has been practicing in the area of family law for more than twenty years.

As set forth above, Respondent also failed to cooperate with the OCDC investigator by failing to provide the requested information, in part, because "it was an arduous task." See, ABA *Standard*, 9.22(e). Respondent also exhibited selfish motives. See, ABA *Standard*, 9.22(b). The OCDC investigator testified that Respondent's careless treatment of her trust account was selfish. Respondent failed to have Trust Account checks for two years. The Panel noted that Respondent could not be bothered to put forth the proper effort to protect her client's property. **App. Vol. 7, A1705.**

Respondent also made false statements during the investigative process and

engaged in deceptive practices. See, ABA *Standard*, 9.22(f). Mr. Self's and Ms. Hartmann's dissolution judgment, in Part B, of the Parenting Plan, clearly ordered Mr. Self to continue paying the FSD child support in the amount of $120.00 per month. As noted above, Respondent did not provide a copy of the Parenting Plan, Part B, with her answer to the complaint. In addition, Respondent was adamant in her testimony before the Panel that there was no order of support entered in Ms. Hartmann's and Mr. Self's divorce decree. Respondent testified:

> Q: Did the court enter an order for support or there's no support entered?
>
> A: There -- it-- it -- the order from the court was that no support at this time. Now, the document that I'm reading says that he was ordered to pay her $122 a month, that's not correct. That's what my form 14 said, but we asked support to make that unjust and inappropriate. So, there is no support ordered against Zack.
>
> Q: Ms. Harry if you turn to your answer which is Exhibit 2, Page 44, Paragraph 49, this paragraph states Ms. Harry admits that the decree and judgment of dissolution ordered Mr. Selt (sic) to pay $120 in monthly child support.
>
> A: That -- okay. I'm trying to explain this for the people that don't do domestic. You have an order that says that, but the part that's missing on there, but that amount was deemed to be

unjust and inappropriate, no support ordered at this time. And I went back and looked at that to make sure I wasn't dreaming about that because that was very important.

Q: So, are you saying that the answer here is incorrect?

A: I'm saying that it's not complete.

Q: So, it's your testimony that the court did not order support to be paid?

A: Correct.

App. Vol. 1, A510.

Respondent also made false representations in her Answer to the Amended Information. In paragraph 10 of her Answer, Respondent admits that she did not file any responsive pleadings on behalf of Mr. Whitfield. **Vol. 1, A34.** Respondent states further in paragraph 10 that at the time that she accepted representation of Mr. Whitfield, Responded had "just gone undergone knee replacement surgery, and as a result was taking prescription pain medication." **Id.** During the disciplinary hearing, however, Respondent testified that she did not have knee surgery until August 2017, five months after she was retained by Mr. Whitfield. **App. Vol. 1, A445-A450.**

C. An Actual Suspension is Supported by this Court's Progressive Discipline System

The purpose of imposing discipline is not to punish the attorney but to protect the public and maintain the integrity of the legal profession. *In re Stewart*, 342 S.W. 3d 307, 308 (Mo. banc 2011). "Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to

deter other members of the bar from engaging in similar conduct." *In re Kazanas*, 96 S.W. 3d 803, 807-808 (Mo. banc 2003). In the present case, both purposes of attorney discipline will be served if Respondent is suspended from the practice of law. Anything less than an actual suspension in this case would provide little deterrence to attorneys practicing in this state.

"This Court adheres to a practice of applying progressive discipline when imposing sanctions on attorneys who commit misconduct." *In re Forck*, 418 S.W.3d 437, 444 (Mo. banc 2014). An actual suspension in the present case is also consistent with the adoption of a system of progressive discipline.

Respondent's license was previously suspended by this Court in 2011 for the following Rule violations: 4-1.1; 4-1.3; 4-1.4; and 4-1.15(m). Respondent suspension was stayed, however, and she was placed on probation for a period one year. In addition, Respondent has received and accepted three admonitions for violations of Rule 4-1.3, three admonitions for violations Rule 4-1.4, and one admonition for violation of Rule 8.4. Three of the seven accepted admonitions were received after Respondent completed probation. Although not discipline, Respondent also received a guidance letter from the Informant on September 5, 2016 recommending that Respondent implement certain changes to her practice in order to avoid potential future violations of Rules 4-1.3, 4-1.4 and 4-1.15. Respondent admitted during the disciplinary hearing, however, that she followed only some of Informant's recommendations. **App. Vol. 1, 394**.

The purpose of probation is to educate, rehabilitate and supervise the attorney in order to enable the attorney to modify his or her professional behavior. See, *Coleman*,

295 S.W.3d at 871. Consistent with that general purpose, Respondent's probation was intended to teach her how to effectively manage her practice. Respondent testified that during her probation she had the opportunity to have the advice and support of a mentor. Respondent also testified that she implemented new office management practices to address the reasons for which she was placed on probation. Instead of learning from these opportunities, Respondent repeated the same acts of misconduct that warranted her stayed suspension and placement on probation.

It is clear that Respondent still does not understand the basics of competent and diligent representation. Under a progressive disciplinary scheme, Respondent's inability to improve her legal practice and her habitual and continued acts of professional misconduct, warrant an indefinite suspension with no leave to apply for reinstatement for two years as recommended by the Panel.

CONCLUSION

For the reasons set forth above, the Informant and Chief Disciplinary Counsel respectfully requests this Court:

(a) to find that Respondent is guilty of professional misconduct and to find that Respondent has violated Missouri Supreme Court Rules 4-1.1; 4-1.3, and 4-1.4, 4-1.7, 4-1.15, and 4-8.1(c).

(b) to suspend Respondent's law license for an indefinite period of time with no leave to apply for reinstatement until after the expiration of two (2) years; and,

(c) to tax all costs in this matter to Respondent, including the $1,000.00 fee pursuant to Rule 5.19(h).

Respectfully submitted,

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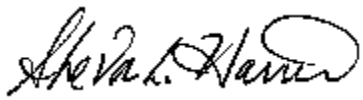
By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2021, a copy of Informant's Brief is being served upon Respondent and Respondent's counsel through the Missouri Supreme Court electronic filing system pursuant to Rule 103.08.

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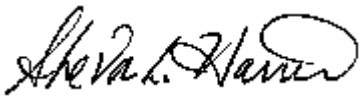

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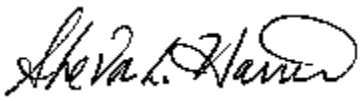
CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;
2. The brief 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 18,406 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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