IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	**)**	
	)	
PEGGY HARDGE-HARRIS,	**)**	**Supreme Court #SC86377**
	)	
Respondent.	**)**	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

SHARON K. WEEDIN #30526
STAFF COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

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STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

Disciplinary History

Respondent Peggy Hardge-Harris was licensed to practice law in 1973. **App. 48**. In 1986, Respondent was publicly reprimanded for violation of DR 6-101(A) (failure to act competently) and DR 7-101(A) (failure to represent client zealously). *In re Hardge*, 713 S.W.2d 503 (Mo. banc 1986), at **App. 55-59**. The Court publicly reprimanded Respondent in 1993 for violation of Rules 4-8.1 (failure to provide information to disciplinary authorities) and 4-8.4(d) (engage in conduct prejudicial to the administration of justice). *In re Hardge-Harris*, 845 S.W.2d 557 (Mo. banc 1993), at **App. 60-64**. The Court publicly reprimanded Respondent in 1995. **App. 65**.[1] Admonitions were issued to Respondent in 1994 for violation of Rule 4-1.4 (communication), **App. 66-67**; in 1996 for violation of Rules 4-1.3 (diligence) and 4-1.4 (communication), **App. 68-69**; in 1997 for violation of Rules 4-8.1(b) (failure to provide information to disciplinary authorities) and 4-3.4(c) (disobey an obligation under a tribunal's rules), **App. 70-71**; in 1998 for violation of Rule 4-4.2 (communication with a represented party), **App. 72-73**; in 1997 for violation of Rules 4-1.3 (diligence) and 4-1.16(d) (protect client's interests upon termination of representation), **App. 74-75**; in 1999 for violation of Rules 4-1.3

[1] The Court's order does not recite the Rule violations underlying the reprimand. Review of the special master's report in the case suggests that Rule 4-1.4 (communication) and 4-1.16 (terminating representation) were implicated.

(diligence) and 4-1.4 (communication), **App. 76-77**; and in 2002 for violation of Rules 4-1.1 (competence), 4-1.3 (diligence), and Rule 4-1.4 (communication). **App. 78-79**.

Procedural History of Disciplinary Case

In April of 2002, Shervon Dunn wrote a letter of complaint against Respondent, alleging that Respondent had failed to file in a timely manner the paperwork necessary to expunge a record for Ms. Dunn. **App. 85-86**. In May of 2002, the Dunn complaint file was assigned to a Region X Disciplinary Committee.

In August of 2002, Curtis Johnson wrote a letter of complaint against Respondent, alleging Respondent had been paid to take depositions in his case but had not done so and refused to refund the money. **App. 80-84**. In August of 2002, the Johnson complaint file was assigned to a Region X Disciplinary Committee.

The division committee assigned to investigate the Dunn and Johnson complaints took Respondent's sworn statement at a committee meeting on November 20, 2002. **App. 91-107**. The committee expressed the belief that Respondent would benefit from law practice management assistance, and Ms. Hardge-Harris assured the committee several times that she would cooperate with anyone the committee felt could help her. **App. 101-103**. On November 26, 2002, committee member Thomas Lewin contacted Respondent and referred her to a law practice management consultant named Werner. **App. 24-25 (T. 92-94)**. Mr. Lewin explained to Respondent that she could confer with the individual to whom he referred her, or someone she found on her own. **App. 25 (T.**

94), 28 (T. 105). Respondent was very agreeable about getting the help the committee urged. **App. 25 (T. 95), 27 (T. 104), 32 (T. 122-123)**.

On March 19, 2003, both complaint files were put in "held status" for 90 days, to afford Respondent time to work with a law office management consultant in an effort to resolve her recurring practice issues. **App. 108**.

Respondent contacted Ms. Werner and obtained an intake form and engagement letter from her. **App. 25 (T. 95)**. Respondent did not, however, ever retain or work with Ms. Werner because she had not realized it would cost her money. **App. 32 (T. 123), 33 (T. 127)**. Respondent did not contact anyone besides Ms. Werner because she assumed they all would cost a lot of money. **App. 34 (T. 129-130)**.

Mr. Lewin communicated with Ms. Hardge-Harris on March 13, 2003, and April 23, 2003, to check on her progress with the consultant. **App. 25-26 (T. 95-97)**. Respondent indicated to Mr. Lewin in late April that she had not retained Ms. Werner because money was an issue. **App. 88-89**. Respondent did not herself initiate any contact with Mr. Lewin, or the special representative assigned to her case, regarding any of her concerns about complying with the committee's November 2002 directives. **App. 46 (T. 178-179).**

On being told that Ms. Hardge-Harris had not retained or worked with a practice management consultant, the committee voted to file an information against Respondent. **App. 26 (T. 97)**. The complaint files were removed from held status on June 4, 2003. **App. 108**. An information based on the Dunn and Johnson complaints was served on Respondent on June 17, 2003.

On September 29, 2003, the Advisory Committee chair appointed three individuals to serve on the panel to hear the case against Respondent. **App. 109-110**. The chair appointed a replacement presiding officer to the panel in late January of 2004, after the presiding officer initially appointed asked to be excused. **App. 111**. In late March of 2004, the newly appointed presiding officer set the matter for hearing on June 28, 2004, which is the date when the case was heard. One of the panel members failed to appear at the time of the hearing, so by agreement of the parties the case was tried to two panel members. **App. 4 (T. 10)**. A First Amended Information was filed on June 28, 2004, adding the allegation in Count II that Respondent violated Rules 4-8.1(b) and 4-8.4(d) by not cooperating with the disciplinary committee's efforts to remediate her law office management practices. **App. 48-54.**

On August 25, 2004, the panel issued its findings of fact, conclusions of law, and recommendation for discipline. **App. 112-118**. The panel found facts that supported its conclusions that Respondent violated Rules 4-8.4(c) and 4-1.16(d) in her representation of Curtis Johnson, and Rules 4-1.3, 4-1.4, 4-3, 4-8.4(c), 4-8.1(b), and 4-8.4(d) in her representation of Shervon Dunn. **App. 112-116**. The panel recommended that Respondent's license be suspended for a period of six months. **App. 117**.

There was no concurrence in the recommended discipline, so the record was filed with the Court pursuant to Rule 5.19(d).

Facts Underlying Rule Violations

Dunn Complaint

Shervon Dunn retained Respondent on March 11, 2002, to seek an expungement of her arrest record. Ms. Dunn specifically requested that the expungement papers be filed very quickly, because Ms. Dunn planned to begin the process of applying for a job with the police department in May. **App. 6 (T. 20), 7 (T. 23), 9 (T. 31)**. Ms. Dunn emphasized to Respondent that it was very important to her that the expungement be done as soon as possible. **App. 11 (T. 39-40)**.

On March 11, Ms. Dunn gave Respondent $77.00 for the filing fee and $300.00 for the fee to do the work. **App. 8 (T. 25), 87**. On March 13, Ms. Dunn returned to Respondent's office to sign the necessary form. **App. 7 (T. 24), 39 (T. 149-150), 121**. Ms. Hardge-Harris assured Ms. Dunn that she would walk the form to the courthouse that day and file it by two o'clock that afternoon. **App. 8 (T. 25), 12 (T. 41-42), 39 (T. 152)**. Respondent did not file the form at the courthouse that afternoon. **App. 39 (T. 152)**.

Ms. Dunn thereafter called Respondent's office several times to check the status of her matter. She left several messages for Respondent, which were not returned. Ms. Dunn did eventually speak to Respondent, who told her to call back on certain days. Eventually Ms. Dunn checked with the courthouse and was told the form had never been filed. **App. 7 (T. 21-23)**. The expungement form was not filed with the court between March 11 and April 24, 2002. **App. 39 (T. 151)**. On April 24, 2002, Ms. Dunn told Respondent that she wanted her money back. **App. 8 (T. 25-26)**. Respondent told Ms.

Dunn that she had mailed the form and offered to "refile" it, but Ms. Dunn declined to give Respondent more time. **App. 10 (T. 33-35)**. Respondent gave Ms. Dunn all of her money back. **App. 8 (T. 25-26)**. Respondent was ill in April of 2002 and rarely in her office. **App. 20 (T. 76), 40 (T. 154-155)**.

Johnson Complaint

Ms. Hardge-Harris defended Curtis Johnson in a criminal matter. **App. 12 (T. 43-44)**. Mr. Johnson has a receipt from Respondent that reflects Respondent was paid $200.00 in March of 1994 for a deposition fee. **App. 81**. Mr. Johnson testified that he gave Respondent the money when she met with him at the Clayton jail. **App. 14 (T. 49), 17 (T. 61)**. He asked her to scratch out "legal fee" on the receipt and watched her write "deposition fee" on the receipt. He had been warned by a clerk at the jail to always have a lawyer write down on a receipt what money is being paid for. **App. 17-18 (T. 64-65)**.

Ms. Hardge-Harris took no depositions in Mr. Johnson's case. **App. 14 (T. 50, 52), 17 (T. 64), 36 (T. 140)**. Mr. Johnson wrote Respondent several letters asking for a refund of the $200.00. She never responded to his letters. **App. 14 (T. 51)**. Mr. Johnson filed a claim for $200.00 with the Bar Association of Metropolitan St. Louis' fee dispute program. **App. 14 (T. 49-50)**. A telephone hearing was conducted on the matter on January 24, 2002. Respondent did not participate in the fee dispute hearing. **App. 38 (T. 148), 83-84**. Respondent testified that she did not get proper notice of the hearing. **App. 35 (T. 136)**. The hearing officer concluded that Respondent should refund $200.00 to

Mr. Johnson. **App. 83-84**. Ms. Hardge-Harris has never refunded any of the $200.00 to Mr. Johnson. **App. 14 (T. 51)**.

Respondent testified that the receipt in question did come from her office, but that she did not write "deposition fee" on the receipt, that one of her office staff could have done so, and that the $200.00 went to reimburse Respondent for costs incurred in Mr. Johnson's case. **App. 16 (T. 59), 35 (T. 134-135), 36 (T. 139)**.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE SHE VIOLATED RULES 4-1.3, 4-1.4, 4-3.2, 4-8.1(b), AND 4-8.4(c) IN THAT SHE TOLD MS. DUNN SHE WOULD HAND FILE THE EXPUNGEMENT FORM ON MARCH 13, BUT DID NOT, AND THEN FAILED THEREAFTER FOR SIX WEEKS TO INSURE IT WAS FILED OR TO COMMUNICATE WITH MS. DUNN ABOUT HER FAILURE TO GET IT FILED, AND PUT FORTH ONLY THE MOST MINIMAL EFFORT TO COMPLY WITH THE DISCIPLINARY COMMITTEE'S EFFORTS TO REMEDIATE HER PRACTICE MANAGEMENT SKILLS.

In re Hardge-Harris, 845 S.W.2d 557 (Mo. banc 1993)

Rule 4-1.3

Rule 4-1.4

Rule 4-3.2

Rule 4-8.1(b)

Rule 4-8.4(c)

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE SHE VIOLATED RULES 4-8.4(c) AND 4-1.16(d) IN THAT SHE PROVIDED MR. JOHNSON WITH A RECEIPT FOR $200.00 "FOR DEPOSITIONS," THEN, WHEN NO DEPOSITIONS WERE TAKEN, FAILED TO RESPOND TO MR. JOHNSON'S REQUESTS FOR REIMBURSEMENT OF THE MONEY.

Rule 4-1.16(d)

Rule 4-8.4(c)

POINTS RELIED ON

III.

THE SUPREME COURT SHOULD IMPOSE NO LESS THAN A TWELVE MONTH SUSPENSION BECAUSE A SIGNIFICANT INTERRUPTION IN RESPONDENT'S PRIVILEGE TO PRACTICE LAW IS NECESSARY IN THAT LESSER SANCTIONS HAVE NOT SERVED TO PROTECT THE PUBLIC OR PRESERVE THE INTEGRITY OF THE PROFESSION.

In re Hardge-Harris, 845 S.W.2d 557 (Mo. banc 1993)

In re Frank, 885 S.W.2d 328 (Mo. banc 1994)

In re Stricker, 808 S.W.2d 356 (Mo. banc 1991)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE SHE VIOLATED RULES 4-1.3, 4-1.4, 4-3.2, 4-8.1(b), AND 4-8.4(c) IN THAT SHE TOLD MS. DUNN SHE WOULD HAND FILE THE EXPUNGEMENT FORM ON MARCH 13, BUT DID NOT, AND THEN FAILED THEREAFTER FOR SIX WEEKS TO INSURE IT WAS FILED OR TO COMMUNICATE WITH MS. DUNN ABOUT HER FAILURE TO GET IT FILED, AND PUT FORTH ONLY THE MOST MINIMAL EFFORT TO COMPLY WITH THE DISCIPLINARY COMMITTEE'S EFFORTS TO REMEDIATE HER PRACTICE MANAGEMENT SKILLS.

It was a straightforward, uncomplicated matter. It necessitated the typing of some information on a one page form, a notarized signature, and filing in circuit court. The first couple of steps were accomplished in three days, but then Respondent dropped the ball.

The client, Ms. Dunn, retained Respondent on March 11, 2002, to file the paperwork necessary to expunge Ms. Dunn's 1999 arrest record. Ms. Dunn explained to Respondent that she planned to start the process of applying for a job with the police department in May, and needed the expungement to go through before then. Ms. Dunn

very specifically explained to Respondent that it was very important, indeed urgent, to Ms. Dunn that the legal work be accomplished quickly.

On March 11, Ms. Dunn gave Respondent the $77.00 filing fee and paid her a $300.00 legal fee to perform the task. Respondent completed the form, then had Ms. Dunn return to her office two days later, on the 13th. Ms. Dunn signed, and Respondent notarized, the signature on the form. Respondent then sent Ms. Dunn on her way, assuring her that Respondent would walk it to the courthouse and file it that very afternoon.

Ms. Hardge-Harris did not file the form that afternoon. In point of fact, the form did not get filed at all until after Ms. Dunn discharged Respondent on April 24 and hired a different lawyer, who got it done in short order.

Ms. Hardge-Harris attempted to explain away her failure to get the form filed by offering testimony that she was sick in April of 2002. No one disputed that Respondent may have been out of her office a lot that April. But, her illness in April in no way explains why Ms. Hardge-Harris did not personally file the form on March 13, which is precisely what she assured Ms. Dunn she would do. Respondent even admitted to Ms. Dunn at the disciplinary hearing that "in hindsight, I wish I had done that." **App. 10 (T. 35)**. Further, if Ms. Hardge-Harris did attempt to file the form by mail, as she testified, then she was obliged to insure its safe arrival given her assurances to her client that it would be hand-filed on the 13th.

The regional disciplinary committee assigned to review Ms. Dunn's complaint called Ms. Hardge-Harris before the committee in November of 2002. After expressing

to her its collective dismay at the sheer volume of complaints and discipline Respondent has incurred, the committee strongly urged Respondent to get some law office management help. Ms. Hardge-Harris was very agreeable to the suggestion. The name of a consultant was provided to Respondent a few days later, but she was also told she could use anyone that she wanted. At some point, Respondent made a call to the consultant and went so far as to obtain the paperwork necessary to start the process, but, again, dropped the ball when she realized that she would have to pay the consultant.

It must be emphasized that the financial difficulties Respondent offered as an excuse for her failure to retain Ms. Werner do not exonerate her from the obligations she agreed to assume at the November disciplinary committee meeting. The committee, through its special representative, conveyed plainly to Respondent its dismay over her disciplinary history, and its expectation that she get assistance from a law office management consultant. As if that were not enough, this Court educated all members of the bar, and Ms. Hardge-Harris specifically, in *In re Hardge-Harris*, 845 S.W.2d 557 (Mo. banc 1993), as to the Court's expectations of lawyers involved in the disciplinary process. "The individual attorney's responsibility to the profession in this respect is no less important than the attorney's ethical responsibility to a client and to the court." 845 S.W.2d at 560.

Those words should have been ringing in Respondent's ears as she decided, once she realized that Ms. Werner's services were not free, not to contact Mr. Lewin, not to call the special representative, and not to make any efforts of her own to comply with the

committee's demands. By her inaction, Respondent negates any hope that the lower levels of sanctions had any impact on her conduct.

Ms. Hardge-Harris' misrepresentation to her client that she would walk the form to the courthouse herself and file it was a violation of Rule 4-8.4(c). Her failure to follow through and see to it that the form was filed, by whatever means, was a violation of the diligence rule, 4-1.3, and the rule requiring lawyers to expedite litigation, 4-3.2. Her failure to return Ms. Dunn's calls or to let her know the form had not been filed is a violation of the communication rule, 4-1.4. And, finally, Ms. Hardge-Harris' failure to work in any meaningful way with the committee that was giving her the benefit of the doubt constitutes violation of Rules 4-8.1(b) and 4-8.4(d).

ARGUMENT

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE SHE VIOLATED RULES 4-8.4(c) AND 4-1.16(d) IN THAT SHE PROVIDED MR. JOHNSON WITH A RECEIPT FOR $200.00 "FOR DEPOSITIONS," THEN, WHEN NO DEPOSITIONS WERE TAKEN, FAILED TO RESPOND TO MR. JOHNSON'S REQUESTS FOR REIMBURSEMENT OF THE MONEY.

Mr. Johnson's complaint, like Ms. Dunn's, rests on simple facts. He produced a 1994 receipt for $200.00, which undisputedly was from Respondent's office, on which the words "Deposition Fee" had been handwritten. Mr. Johnson testified that Ms. Hardge-Harris herself gave him the receipt and scratched out "Legal Fee" at his request and wrote "Deposition Fee" on the receipt. No one disputes that there were no depositions taken by Ms. Hardge-Harris in Mr. Johnson's case.

Mr. Johnson wrote Respondent several times asking for a refund of the $200.00. She never responded. He then filed a complaint with BAMSL's Fee Dispute program. Ms. Hardge-Harris did not participate in the telephone hearing conducted to resolve the conflict. Although Respondent testified that she was not given proper notice of the hearing, it should be noted that the program denied her request to set aside its decision in Mr. Johnson's favor. Respondent has never returned any of the $200.00 to Mr. Johnson. These facts support the panel's conclusions that Respondent violated Rule 4-1.16(d) by

not returning the money to Mr. Johnson as he requested, and that her failure to do so was dishonest, in violation of Rule 4-8.4(c).

ARGUMENT

III.

THE SUPREME COURT SHOULD IMPOSE NO LESS THAN A TWELVE MONTH SUSPENSION BECAUSE A SIGNIFICANT INTERRUPTION IN RESPONDENT'S PRIVILEGE TO PRACTICE LAW IS NECESSARY IN THAT LESSER SANCTIONS HAVE NOT SERVED TO PROTECT THE PUBLIC OR PRESERVE THE INTEGRITY OF THE PROFESSION.

This is the fourth time Respondent has been before the Missouri Supreme Court as the subject of a disciplinary action. In addition to the matters that have made it to the Supreme Court level, the disciplinary system has admonished Respondent seven times. Virtually all of the disciplinary matters involve diligence and communication issues, among others, and this Court's 1993 *Hardge-Harris* decision is Missouri's seminal case on what the Court expects from its officers facing charges in the attorney discipline system.

Yet, Respondent is back again, a disciplinary hearing panel having concluded that she violated, among others, the diligence rule, the communication rule, and, perhaps least excusable, her duty to cooperate with disciplinary authorities. Clearly, the message has not been received, the public has not been protected, and Respondent continues to erode the integrity of the profession.

Lengthy suspensions have been imposed by the Court in several cases involving multiple rule violations coupled with disciplinary history. In a case in which the Respondent lawyer had a history of two prior admonitions, *In re Frank*, 885 S.W.2d 328 (Mo. banc 1994), the record established that Mr. Frank had repeatedly neglected and failed to communicate with clients and handled their matters incompetently. And, as in this case, the lawyer "repeatedly disregarded his responsibility to the legal profession by failing to respond to disciplinary authorities." The Court went on to say that "[a]lthough respondent's actions reflect a pattern of neglect, the volume and repeated nature of respondent's ethical violations make the question of whether to disbar or suspend a close question." 885 S.W.2d at 334 (emphasis added). The Court suspended Mr. Frank's license without leave to apply for reinstatement for two years and imposed special conditions as prerequisites to any application for reinstatement.

A six-month suspension was imposed in *In re Stricker*, 808 S.W.2d 356 (Mo. banc 1991), where the record, very much as in this case, established violation of Rules 4-1.3, 4-1.4(a), 4-3.2, 4-1.16, 4-8.1(b), and 4-8.4(c). Mr. Stricker, who was paralyzed from the waist down, had one recent admonition, prior to the case before the Court, which "appears to have improved" his ethical conduct "somewhat." The Court, however, noted that the Respondent "appears not to confront his difficulties but rather to use them to avoid the consequences of his inattentiveness and untruthfulness." 808 S.W.2d at 361. Likewise, perusal of Ms. Hardge-Harris' testimony in this case demonstrates that she has, over a 19 year span of disciplinary history, fine-tuned the excuse game to concert readiness.

The ABA Standards, in Standard Rule 8.1, designate disbarment in cases where lawyers violate the terms of a prior disciplinary order or have been previously suspended for the same or similar misconduct. Standard Rule 8.2 prescribes suspension in cases where a lawyer has been previously reprimanded for the same or similar misconduct. Of course, prior disciplinary offenses, a pattern of misconduct, multiple offenses, and substantial experience in law practice are all aggravating factors recognized in the Standards and are glaringly present in this record. Standard Rule 9.22(a)(c)(d)(i).

The conduct underlying the Dunn and Johnson complaints is not of such an extreme nature as to demonstrate Respondent's unfitness to continue in the practice of law. But, the unique length and breadth of Respondent's disciplinary history demonstrates that lesser sanctions have done little or nothing to curb her misconduct. For these reasons, disbarment, or a lengthy suspension of at least twelve months duration, is recommended.

CONCLUSION

Respondent may hold the unenviable record of the most disciplinary trips of any lawyer to the Missouri Supreme Court. Lower sanctions have not accomplished their purpose. The Court is urged to impose a license interrupting sanction of, at the minimum, twelve months.

Respectfully submitted,

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

By: _____

Sharon K. Weedin #30526
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2005, two copies of Informant's Brief have been sent via First Class mail to:

Peggy Hardge-Harris
462 North Taylor, #301
St. Louis, MO 63108

_____
Sharon K. Weedin

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06b);

3. Contains 4,015 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Sharon K. Weedin

APPENDIX