

**IN THE SUPREME COURT  
STATE OF MISSOURI**

---

**IN RE:**

**DOROTHY L. SAVORY**

**Respondent.**

)  
)  
)  
)  
)

**Supreme Court #SC93482**

---

**INFORMANT'S BRIEF**

---

ALAN D. PRATZEL #29141  
CHIEF DISCIPLINARY COUNSEL

CHARLES W. GOTSCHALL #27744  
Special Representative, Region IV  
4700 Belleview, Suite 215  
Kansas City, MO 64112  
(816) 561-2300  
(816) 561-0760 (fax)  
[cwgots@mcleodusa.net](mailto:cwgots@mcleodusa.net)

ATTORNEY FOR CHIEF  
DISCIPLINARY COUNSEL

## **TABLE OF CONTENTS**

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES .....	2
STATEMENT OF JURISDICTION.....	4
STATEMENT OF FACTS .....	5
Background and Disciplinary History.....	5
Disciplinary Case .....	5
Count I - State v. Darrel W. White, Jr.....	7
Count II - John Thomas.....	11
Disciplinary Hearing Panel Decision .....	14
POINT RELIED ON .....	18
I.....	18
II. ....	19
III. ....	20
ARGUMENT .....	21
I.....	21
Violation of Rule 4-3.3 Regarding Candor Toward the Tribunal.....	22
II. ....	26
III. ....	30
CONCLUSION.....	35
CERTIFICATE OF SERVICE .....	36
CERTIFICATION: RULE 84.06(c) .....	36

## **TABLE OF AUTHORITIES**

### **CASES**

In re Bear, 578 S.W.2d 928 (Mo. banc 1979).....	33
In re Belz, 258 S.W.3d 38 (Mo. banc 2008) .....	22
In re C Ver Dught, 825 S.W.2d 847 (Mo. banc 1992).....	20, 32
In re Caranchini, 956 S.W.2d 910 (Mo. banc 1997).....	18, 19, 25, 29, 30, 31, 32
In re Coleman, 295 S.W.3d 870 (Mo. banc 2009).....	31
In re Crews, 159 S.W.3d 355, 358 (Mo. banc 2005) .....	18, 21, 23, 26
In re Cupples, 952 S.W.2d 226 (Mo. banc 1997) .....	22
In re Cupples, 979 S.W.2d 936 (Mo. banc 1998) .....	32
In re Disney, 922 S.W.2d 12 (Mo. banc 1996).....	18, 25
In re Ehler, 319 S.W.3d 442 (Mo. banc 2010).....	19, 21, 26, 27, 28, 29
In re Harris, 890 S.W.2d 299 (Mo. banc 1994) .....	30
In re Kopf, 767 S.W.2d 20 (Mo. banc 1989) .....	19, 28
In re Littleton, 719 S.W.2d 772, 777 (Mo. banc 1986) .....	20, 30, 32
In re Oberhellman, 873 S.W.2d 851 (Mo. banc 1994) .....	32
In re Shelhorse, 147 S.W.3d 79, 80 (Mo. banc 2004) .....	21
In re Staab, 719 S.W.2d 780 (Mo. banc 1986) .....	31
In re Storment, 873 S.W.2d 227 (Mo. banc 1994).....	20, 31, 33
In re Wiles, 107 S.W.3d 228, 229 (Mo. banc 2003).....	33

## **OTHER AUTHORITIES**

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

..... 18, 20, 22, 23, 24, 25, 31, 32, 34

## **RULES**

Rule 4-1.1..... 19, 26

Rule 4-1.3..... 19, 26, 27, 28

Rule 4-1.4..... 19, 26, 28

Rule 4-3.3..... 18, 21, 22, 24, 25, 31, 33

Rule 4-8.4(a) ..... 28, 29

Rule 4-8.4(c) ..... 18, 21

Rule 4-8.4(d) ..... 18, 19, 21, 26

Rule 5.15(c)..... 18, 21

Rule 5.225 ..... 20, 30

### **STATEMENT OF JURISDICTION**

Jurisdiction over lawyer 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**

### **Background and Disciplinary History**

Respondent Dorothy L. Savory, born in 1978, was licensed to practice law in Missouri in 2005. Her license is currently in good standing. Respondent's Kansas City practice is now limited to Municipal Court defense and some criminal defense work. **App. 35 (Tr. 21)**. Respondent has no prior disciplinary history.

### **Disciplinary Case**

In a letter dated December 23, 2011, the Respondent, by counsel Robert G. Russell, notified disciplinary authorities of an incident involving her ethical misconduct which occurred during a preliminary hearing on December 14, 2011, in the Circuit Court of Jackson County, Missouri. The Jackson County Prosecuting Attorney, Jean Peters Baker, alerted disciplinary authorities to the alleged misconduct of Respondent by letter dated December 28, 2011. Ms. Baker's complaint letter attached a Motion to Disqualify Respondent as defense counsel in the matter of *State of Missouri v. Darrel W. White, Jr.*, pending in Division 26 of the Circuit Court of Jackson County, Missouri before Judge Kenneth R. Garrett, III. **App. 86-92**. Judge Garrett also reported Respondent's conduct to the Office of Chief Disciplinary Counsel by letter dated January 12, 2012. **App. 93-95**.

In a letter dated March 9, 2012, John Thomas also notified disciplinary authorities of alleged misconduct by Respondent. Mr. Thomas had retained Respondent in April of 2008 to bring action on his behalf against M.J. Kelly Finance Company, Western Heritage Insurance Company, Abbott Insurance, Inc.,

and Elizabeth Mundell in the Circuit Court of Jackson County, Missouri. **App. 129-130.**

After investigation by a Regional Disciplinary Committee, a two-count information was filed on December 6, 2012. In Count I, Respondent was charged with violation of Rule 4-3.3 (lawyer shall not knowingly make a false statement of fact to a tribunal); Rule 4-3.4 (lawyer shall not counsel or assist a witness to testify falsely)<sup>1</sup>; Rule 4-3.5(d) (lawyer shall not engage in conduct intended to disrupt a tribunal); Rule 4-8.4(c) (lawyer shall not engage in conduct involving fraud, deceit or misrepresentation); and, Rule 4-8.4(d) (professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice). **App. 4-12.** The alleged misconduct therein occurred in the course of Respondent's handling of the case pending before Judge Garrett in December of 2011.

Respondent was further charged in Count II with violation of Rule 4-1.1 (competence); Rule 4-1.3 (diligence); Rule 4-1.4 (communication); and, Rule 4-1.16(d) (refused to return the client's file) for misconduct occurring in connection with her representation of John Thomas. **App. 4-12.**

---

<sup>1</sup> Informant withdrew the alleged violation of Rule 4-3.4 at the hearing before the Disciplinary Hearing Panel on April 13, 2013.

Count I

State v. Darrel W. White, Jr.

Associate Circuit Judge Kenneth R. Garrett, III, sits in Division 26 of the Jackson County Circuit Court. **App. 93-95.** On December 14, 2011, a preliminary hearing was scheduled in his courtroom in the case of *State of Missouri v. Darrel W. White, Jr.* On or about October 27, 2011, Respondent had filed her entry of appearance on behalf of Defendant Darrel W. White, Jr., in defense of a charge brought by the State of Missouri for robbery in the second degree, a class B felony. **App. 58-66; 67-81; 82-85; 86-92; 93-95; 96-116; 171-207; DHP Exhibit 7.** As the case was called, the lawyers entered their appearances, but the Defendant did not come forward. **App. 93-95; 96-116.** The Court asked Respondent as to the whereabouts of her client. **App. 93-95; 117-128; 171-207.** Respondent indicated her client was present and motioned to an individual in the courtroom to join her at the counsel table. **App. 96-116; 171-207.** The Judge asked the individual to join Respondent at the counsel table so the preliminary hearing could begin. **App. 93-95; 117-128; 171-207.** At that point Respondent had the individual come forward to the counsel table, who was later identified as the Defendant's twin brother, but Respondent made no record that he was not the actual Defendant in the case. **App. 93-95; 96-116.**

Testimony was then elicited from the victim of a robbery by the State's assistant prosecuting attorney. She testified that on the evening of September 29, 2011, she was walking home from work when she heard running foot steps behind



her and then felt a jerk of her purse. A struggle ensued but the perpetrator was eventually able to take her purse. She did not feel threatened but was angry and suffered a minor injury to her left ring finger. **App. 96-116**. She further testified that she believed the individual who had robbed her was the person seated at the counsel table with Respondent. **App. 96-116; 171-207**.

Based on the investigation that she conducted prior to the preliminary hearing, Respondent believed that the victim would have a difficult time identifying her client as the perpetrator of the alleged crime based on the short period of time that the victim had to view him. **App. 51-52 (Tr. 83-87); 96-116; 117-128**. Respondent believed that if her client, Darrel White, Jr. were seated at the counsel table with her that the victim would be almost certain to identify him as the perpetrator. During her investigation prior to the preliminary hearing, Respondent learned that Mr. White is a fraternal twin. Mr. White's twin brother is Darrion White. **App. 42 (Tr. 46-48); 96-116; 171-207; DHP Exhibit 7**. Before the preliminary hearing, Respondent decided that she would have both the Defendant, Darrel White, Jr., and his twin brother, Darrion White, attend the preliminary hearing.

Respondent's plan was to have the Defendant, Darrel White, Jr., remain outside the courtroom in the hallway at the inception of the hearing, at least during the victim's testimony, and to have the Defendant's twin brother, Darrion White, in the courtroom but not seated at the counsel table. The Respondent's desire was to create an issue of cross-racial identification during the preliminary hearing **App.**

**117-128.** Respondent's plan was that, after the victim had testified and made an identification of the perpetrator, she would then have the Defendant, Darrel White, Jr., enter the courtroom and advise the court of the misidentification. Respondent did not advise the court or the assistant prosecuting attorney of her plan before the hearing even though she realized prior to any testimony that her plan was a "mistake". **App. 117-128.** According to her plan, Darrion White was in the courtroom when the case was called for preliminary hearing, and the Defendant, Darrel White, Jr., was outside the courtroom in the hallway. **App. 117-128.** As the hearing began, the Defendant's twin brother was seated on the bench located directly behind the counsel table. Judge Garrett continuously asked Respondent to have her client come forward. Because she did not want a warrant to be issued for her client, she motioned for the twin brother to join her at the counsel table. **App. 117-128.**

During the examination of the State's witness it was determined by a police witness that the Defendant Darrel W. White, Jr., was actually outside of the courtroom. The officer asked Mr. White who was present in the courtroom and he told the officer it was his twin brother. **App. 93-95.** The Defendant then told the officer he had been instructed by Respondent not to attend the hearing. **App. 86-92.** The officer notified the assistant prosecutor who then asked the Court for a recess of the hearing. After inquiry from the Judge and the assistant prosecuting attorney, it was determined that the individual seated at the counsel table was not the Defendant but rather the Defendant's twin brother. Although he had no

connection to the case he stated he was asked by the Respondent to sit in the Courtroom during the preliminary hearing. **App.86-92; 93-95; 96-116; 117-128; 171-207.**

When Judge Garrett asked about her actions, Respondent replied that she made no fraudulent representations and that she had never represented that the individual present at counsel table was her client. **App. 13-27; 171-207.** When the Judge asked who was present with her at the counsel table, Respondent indicated that the individual was “the person identified by the victim as the one who committed the robbery.” **App. 13-27; 171-207.** Respondent claimed the only affirmation she made to the court was that her client was present, and that she had asked “Mr. White” to come forward. **App. 13-27; 171-207.**

Judge Garrett inquired of the individual seated at counsel table and asked him if he was Darrel White Jr., and the individual responded that he was not. **App. 13-27; 93-95; 171-207.** The court allowed the individual to be sworn in and the individual then represented under oath that he was Darrion White, the twin brother of Darrel White, Jr. **App. 13-27; 93-95; 171-207.** Both individuals had nearly identical facial features, although they are fraternal twins. **App. 13-27; 93-95; DHP Exhibit 7.** Darrion White testified that at the time the hearing commenced, his brother Darrel White, Jr., was not present and that he had been instructed by the Respondent to sit with her at the counsel table throughout the proceedings. **App. 13-27; 93-95; 171-207.**

Judge Garrett made findings that the individual present at the time the hearing commenced was not Darrel W. White Jr., that Darrion White was asked to sit at the counsel table after the court's instruction for the Defendant to come forward, and the Respondent had made false representations to the court. **App. 13-27; 93-95; 171-207.**

## Count II

### John Thomas

In or about April of 2008, Respondent was retained to represent John Thomas in his cause of action against M.J. Kelly Finance Company, Western Heritage Insurance Company, Abbott Insurance, Inc., and Elizabeth Mundell in the Circuit Court of Jackson County, Missouri. **App. 129-130; 131-157.**

The initial case was dismissed without prejudice in approximately May of 2010. Respondent told Mr. Thomas she needed additional time to learn the applicable procedural rules. Respondent told Mr. Thomas that the case could be dismissed without prejudice and then refiled within one year. Mr. Thomas agreed to the dismissal without prejudice. **App. 129-130; 131-157.**

Respondent did not refile the case within one year from the date of the prior dismissal without prejudice. **App. 129-130; 131-157.**

Respondent failed to communicate with Mr. Thomas about the refile of his case and around April of 2011, Mr. Thomas contacted Respondent to inquire on the progress of his case. Respondent and Mr. Thomas set up a meeting. **App. 129-130; 131-157.**

Respondent refiled the case in September 2011, more than four months after the expiration of the one year period for refiling a case previously dismissed without prejudice. **App. 129-130; 131-157.**

A Case Management Conference was set in the new lawsuit for February 6, 2012. **App. 129-130; 131-157.**

During the Case Management Conference, Respondent requested a continuance of the Conference to March 5, 2012. The reason that Respondent requested the continuance was because Respondent had failed to obtain proper service of process on the Defendants. **App. 129-130; 131-157; 158-161.**

Mr. Thomas appeared at the February 6, 2012, Case Management Conference. Respondent did not provide Mr. Thomas as explanation as to why the Case Management Conference was continued. **App. 129-130; 131-157.**

On February 6, 2012, the Court granted Respondent's request for a continuance, and set the Case Management Conference for March 5, 2012. In its order granting the continuance, the Court noted that the Defendants had not been served, that no summonses had been issued in the case and that no service instructions appeared in the Court's file. The Court also noted that the Court's file was void of Circuit Court Form 4 or any service information from plaintiff's counsel. The Court's order further stated that "[i]f service of process has not been undertaken by the next Case Management Conference, this case may be dismissed for want of prosecution." **App. 129-130; 131-157; 162.**

On February 23, 2012, Respondent filed a Request for Service of Process on the Defendants to ensure their presence at the March 5, 2012 Case Management Conference, as the Court had warned that it would dismiss the case for want of prosecution without proper service. **App. 129-130; 131-157.**

On March 5, 2012, Respondent appeared at the Jackson County Courthouse an hour and a half late for the Case Management Conference. Respondent states that she had previously advised the Court that she would be late due to another matter pending before Division 33 of the Circuit Court of Jackson County in Independence, Missouri. **App. 129-130; 131-157; 162.**

At the time of the March 5, 2012, Case Management Conference, the Defendants had still not been properly served. **App. 129-130; 131-157.**

At the Case Management Conference, Mr. Thomas spoke with the Court, and asked whether he could have Respondent removed from the case. Based on its discussion with Mr. Thomas, the Court granted another continuance to May 7, 2012, for the Case Management Conference. In its order granting the continuance, the Court stated that “[f]ailure to obtain service on the Defendants by this case management conference may result in dismissal of the case.” **App. 129-130; 131-157; 163.**

On the afternoon of March 5, 2012, Mr. Thomas met with Respondent to terminate the lawyer-client relationship and to retrieve his case file. **App. 37-38 (Tr. 27-32); 129-130; 131-157.**

While at Respondent's office, Respondent delivered Mr. Thomas's case file to him. As Mr. Thomas was leaving the office, Respondent requested certain documents from the file, including the lawyer/client engagement letter and her daily activity log, so that she could retain the originals of those documents. Respondent made copies of the documents that she retained and provided them to Mr. Thomas. **App. 38 (Tr. 30-32); 129-130; 131-157.**

Mr. Thomas retained new counsel to handle the matter originally filed by Respondent and ultimately settled his case. He believes that Respondent's conduct caused him to lose his right to bring a negligence claim. Mr. Thomas was only able to pursue a breach of contract claim which he believes forced him to settle the case for a fraction of his alleged damages. **App. 38 (Tr. 32-33); 129-130; 131-157.**

### **DISCIPLINARY HEARING PANEL DECISION**

Respondent acknowledges and admits she violated Rule 4-3.3 in failing to advise the court that the person accompanying her at the counsel table was not the Defendant, Darrel W. White, Jr. **App. 13-27; 171-207.**

Respondent admits she violated Rule 4-3.4 by allowing the court to believe the Defendant was present at the counsel table although that charge was later withdrawn by Informant at the DHP hearing on April 13, 2013. **App. 13-27; 171-207.** Respondent denies she violated Rule 4-3.5(d). **App. 13-27.**

Respondent admits she violated Rule 4-8.4(c) by failing to advise the court that the person who was present at the preliminary hearing was not the Defendant,

Darrel White, Jr., but the Defendant's twin brother. **App. 13-27; 82-85.** Respondent also acknowledges and admits she violated Rule 4-8.4(d) by allowing the court to believe that the person at the counsel table was the Defendant when she knew him to be the fraternal twin brother of the Defendant. **App. 13-27; 171-207.**

At the hearing before the Disciplinary Hearing Panel the parties submitted a Partial Stipulated Findings of Fact and Conclusion of Law and Recommended Discipline. **App. 171-207.** The stipulation was made with the understanding that it would not be binding on this court. **App. 171-207.** Informant and Respondent nonetheless agreed to be bound by the factual stipulations. **App. 164-170.**

The panel accepted the partial stipulation at the hearing and on May 22, 2013, made detailed Findings of Fact and a recommendation of discipline. **App. 210-232.**

As to Count I, the panel concluded Respondent had violated Rule 4-3.3 in that: (a) Respondent made a false statement of material fact to the court by directing Darrian White to the counsel table in response to the court's request that Respondent have her client at the counsel table; and (b) Respondent failed to correct a false statement of material fact to the court by failing to advise the court that the person accompanying her at the counsel table was not the Defendant and by allowing the court to believe the Defendant was present at the counsel table **App. 210-232.**



The panel further concluded that Respondent's conduct violated Supreme Court Rule 4-8.4(c) in that Respondent failed to advise the court that the person who was present at the preliminary hearing was not the Defendant but was the Defendant's brother. **App. 210-232.** The panel also concluded Respondent's conduct violated Supreme Court Rule 4-8.4(d), in that Respondent allowed the court to believe that the person accompanying Respondent at the counsel table was the actual Defendant when she knew him to be the Defendant's fraternal twin brother. **App. 210-232.**

The panel concluded the conduct did not violate Supreme Court Rule 4-3.5(d) and the Informant does not dispute that finding here. **App. 210-232.**

As to Count II, the Disciplinary Hearing Panel concluded Respondent's conduct violated Missouri Supreme Court Rule 4-1.1, in that Respondent failed to provide competent representation to her client John Thomas. **App. 210-232.** The panel also concluded Respondent's conduct violated Missouri Supreme Court Rule 4-1.3 (diligence) and Missouri Supreme Court Rule 4-1.4 (communication) by not acting with requisite diligence and not communicating with her client John Thomas. The panel thus concluded Respondent's conduct violated Missouri Supreme Court Rule 4-8.4(d), in that her conduct was prejudicial to the administration of justice. **App. 210-232.**

Finally, the panel found Respondent did not violate Rule 4-1.16(d) by failing to return her complete file to Mr. Thomas upon termination of the attorney-

client relationship and the Informant does not dispute the finding or recommendation here.

The panel accepted the recommendation of discipline as stipulated by the parties that Respondent be suspended indefinitely from the practice of law with said suspension stayed and Respondent placed on probation for a period of two years. Several conditions of the probation were recommended including that the Respondent submits quarterly reports to the OCDC; complies with the Rules of Professional Conduct; attends Ethics School and Continuing Legal Education classes; maintains malpractice insurance, employs a management consultant; submits a business plan and budget; maintains a case management system and calendaring system; ensures better client communication; agrees to audits by OCDC and to supervision of her law practice by a mentor. **App. 171-207; 210-232.** Both parties concurred with the panel's decision.

**POINT RELIED ON**

**I.**

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT IN ACCORDANCE WITH THE STIPULATION OF THE PARTIES AND THE FINDINGS AND RECOMMENDATION OF THE DISCIPLINARY HEARING PANEL BECAUSE SHE VIOLATED RULES 4-3.3, 4-8.4(c) AND 4-8.4(d), IN THAT SHE KNOWINGLY MISLED THE COURT BY DIRECTING HER CLIENT'S TWIN BROTHER TO SIT AT THE COUNSEL TABLE AS THOUGH HE WERE THE DEFENDANT.**

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

*In re Caranchini*, 956 S.W.2d 910, 916 (Mo. banc 1997)

*In re Disney*, 922 S.W.2d 12 (Mo. banc 1996)

Rule 5.15(c)

Rule 4-3.3

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

**II.**

**THE SUPREME COURT SHOULD DISCIPLINE  
RESPONDENT IN ACCORDANCE WITH THE  
STIPULATION OF THE PARTIES AND THE FINDINGS  
AND RECOMMENDATION OF THE DISCIPLINARY  
HEARING PANEL BECAUSE SHE VIOLATED RULES 4-1.1,  
4-1.3, 4-1.4. AND 4-8.4(d) BY NOT PROVIDING  
COMPETENT REPRESENTATION, NOT ACTING WITH  
REASONABLE DILIGENCE AND BY FAILING TO KEEP  
HER CLIENT REASONABLY INFORMED AS TO THE  
STATUS OF HIS CASE.**

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

*In re Caranchini*, 956 S.W.2d 910, 916 (Mo. banc 1997)

*In re Kopf*, 767 S.W.2d 20 (Mo. banc 1989)

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4

**III.**

**THE SUPREME COURT SHOULD SUSPEND  
RESPONDENT'S LICENSE, STAY THE SUSPENSION FOR  
A PERIOD OF TWO YEARS AND PLACE RESPONDENT  
ON PROBATION BECAUSE SUSPENSION IS  
APPROPRIATE WHEN A LAWYER KNOWINGLY  
ENGAGES IN CONDUCT THAT VIOLATES DUTIES OWED  
TO THE PROFESSION AND TO CLIENTS.**

*In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986)

*In re Storment*, 873 S.W.2d 227, 231 (Mo. banc 1994)

*In re C Ver Dught*, 825 S.W.2d 847 (Mo. banc 1992)

Rule 4-3.3

Rule 5.225

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

## ARGUMENT

### I.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT IN ACCORDANCE WITH THE STIPULATION OF THE PARTIES AND THE FINDINGS AND RECOMMENDATION OF THE DISCIPLINARY HEARING PANEL BECAUSE SHE VIOLATED RULES 4-3.3, 4-8.4(c) AND 4-8.4(d), IN THAT SHE KNOWINGLY MISLED THE COURT BY DIRECTING HER CLIENT'S TWIN BROTHER TO SIT AT THE COUNSEL TABLE AS THOUGH HE WERE THE DEFENDANT.**

In this Rule 5 original disciplinary proceeding, the Court reviews the evidence de novo, independently determines all issues pertaining to credibility of witnesses and the weight of the evidence and draws its own conclusion of Law. *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010). The disciplinary hearing panel's findings of fact, legal conclusions, and sanction recommendation are advisory to the Court. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005) (per curiam). Rule violations must be proven by a preponderance of the evidence. Supreme Court Rule 5.15(c). Where misconduct is proven by a preponderance of the evidence, violations of the Rules of Professional Conduct are grounds for discipline. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004).

In 1986, Missouri adopted the American Bar Association's Model Rules of Professional Conduct. Though the Rules in Missouri now exist with variation, the Model Rules are used by a majority of other states. *In re Cupples*, 952 S.W.2d 226 (Mo. banc 1997); *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008) (where this Court analyzed other state disciplinary law in reaching a conclusion in Missouri).

#### Violation of Rule 4-3.3 Regarding Candor Toward the Tribunal

A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. Rule 4-3.3 (2007).

Rule 4-3.3 sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. Performance of these duties is qualified by the advocate's duty of candor to the tribunal. The lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence the lawyers knows to be false. Rule 4-3.3 Comment (1). There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. Rule 4-3.3 Comment (3). The duties stated in Rule 4-3.3 (a) and (b) apply to all lawyers, including defense counsel in criminal cases. Rule 4-3.3 Comment (7).

In the present action, it is undisputed that Respondent had both her client, Darrel White, Jr. and his fraternal twin brother appear at a preliminary hearing in Division 26 in Kansas City, Missouri. She knew the victim would have a difficult time identifying her client as the perpetrator and believed that if he was seated at

the counsel table with her the victim would be almost certain to identify him. She advised her client to remain outside the courtroom and asked his twin brother to be present. Respondent failed to advise the court or the assistant prosecuting attorney of her plan even though she realized prior to any testimony that her plan was a mistake. When asked to have her client come forward to the counsel table she motioned for the Defendant's twin brother to join her. She failed to advise the court that the person accompanying her was not the Defendant. She admits that she made an unspoken representation to the court that the person at the counsel table was the defendant.

When considering the level of discipline to impose for violation of the Rules of Professional Conduct, this Court has considered the propriety of the sanctions under the American Bar Association model rules for lawyer discipline ("ABA Standards"). *In re Crews*, 159 S.W.3d 355, 360 (Mo. banc 2005). The ABA Standards divide rule violations into four categories that include violations of duties owed to the clients, duties owed to the public, duties owed to the legal system and duties owed to the profession. See Standards for Imposing Lawyer Sanctions, American Bar Association, 1991. The Respondent's conduct in the present action has run afoul of her duties to the legal system, the profession and to her clients.

The ABA Standards do not account for multiple charges of misconduct. The notes to the ABA Standards provide that when a lawyer violates multiple Rules of Professional Responsibility, the ultimate sanction imposed should be at



least consistent with the sanction for the most serious instance of misconduct and often should be greater than the sanction for the most serious misconduct. See Section II-Theoretical Framework of the ABA Standards. In the case at bar, the most serious violations committed by Respondent pertain to her violation of duties owed to the legal system.

Respondent's violation of Rule 4-3.3 is governed by the ABA Standard 6.12, which provides that a suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court **or that material information is improperly being withheld**, (emphasis added) and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Disbarment is generally appropriate when a lawyer's intentional deception causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding. ABA Standard 6.11.

A reprimand is appropriate when a lawyer is negligent in taking remedial action when material information is being withheld. ABA Standard 6.13.

In Respondent's case, Respondent was very aware at the moment she directed her client's twin brother to join her at the counsel table that her conduct was unethical. Her actions were deliberate, premeditated and motivated by her own zealous desire to have her client acquitted. She knowingly withheld information to the court. She knowingly, with admitted deliberation, failed to take

remedial measures and allowed the hearing to proceed and misled the tribunal. These are circumstances where her failure is the equivalent of an affirmative misrepresentation.

A lawyer's participation in the presentation of false evidence is the clearest kind of ethical breach. See commentary to ABA Standard 6.11. Because disbarment is the most severe of the sanctions, it has typically been reserved for those instances where a lawyer is clearly unfit to continue to practice law. *In re Disney*, 922 S.W.2d 12 (Mo. banc 1996); *In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997). In *Caranchini* the Court determined the lawyer violated Rule 4-3.3 by knowingly representing to a tribunal that she lacked knowledge of a potential party's change of residence and by falsely representing that she could correct the testimony of work environment witness to her client. This violation, along with numerous others, resulted in her disbarment.

Respondent's conduct constitutes deceit and a lawyer who participates in such deceptive practices is guilty of gross professional misconduct. Respondent's courtroom charade, however, constitutes one passive yet intentional act of deceit and one mind boggling mistake of the head. This Court has reserved disbarment for persons clearly unfit to practice law. Respondent's conduct does not rise to this level of sanction but is clearly worthy of suspension from the practice of law.

## II.

**THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT IN ACCORDANCE WITH THE STIPULATION OF THE PARTIES AND THE FINDINGS AND RECOMMENDATION OF THE DISCIPLINARY HEARING PANEL BECAUSE SHE VIOLATED RULES 4-1.1, 4-1.3, 4-1.4. AND 4-8.4(d) BY NOT PROVIDING COMPETENT REPRESENTATION, NOT ACTING WITH REASONABLE DILIGENCE AND BY FAILING TO KEEP HER CLIENT REASONABLY INFORMED AS TO THE STATUS OF HIS CASE.**

Rule 4-1.1 requires a lawyer to represent a client competently. Competent representation includes “the legal knowledge, skill, thoroughness, and preparation reasonably necessary to complete the representation.” *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010); *In re Crews*, 159 S.W.3d 359 (Mo. banc 2005) (per curiam). Respondent admittedly undertook the representation of Mr. Thomas without the requisite, skill or knowledge to handle his case. She freely admits to her failure to provide competent representation to Mr. Thomas. She admits she was not qualified to handle the Thomas matter and should not have taken it on. She admits that because of her inexperience and because of her time constraints that she did not have the skill necessary to competently represent Mr. Thomas. Her lack of

familiarity with the local rules and lack of preparation demonstrates a lack of competence for which discipline is appropriate.

Rule 4-1.3 states, “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” Respondent denies violating this rule in connection with her representation of Mr. Thomas, however, the Disciplinary Hearing Panel correctly found otherwise. Respondent advised her client that his case could be dismissed without prejudice and refiled within one year. Based on this advice, Mr. Thomas agreed to the dismissal but Respondent failed to refile the case within the one year period.

After refiling the matter in September of 2011, four months after the expiration of the one year period had passed, Respondent failed to obtain process service on the Defendants resulting in a continuance of a Case Management Conference. Ten days before the next conference, Respondent filed a Request for Service of Process on the Defendants, as the Court had warned that it would dismiss the case for want of prosecution without process service. She then arrived an hour and a half late for the Case Management Conference and the Defendants had still not been properly served. The Disciplinary Hearing Panel correctly found that Respondent violated Rule 4-1.3 by not diligently pursuing her client’s objectives through multiple continuances, extensions and case dismissals.

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 [.]” *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010); Rule 4-

1.3 Comment 3. In some instances, “the client’s legal position may be destroyed” *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010).

Respondent’s lack of diligence caused numerous delays in the prosecution of the case. Her failure to refile caused Mr. Thomas to lose his right to bring a negligence claim. Although he was able to retain new counsel to handle the matter, he was only able to pursue a breach of contract claim which he believes forced him to settle the case for a fraction of his alleged damages. Respondent’s conduct clearly shows a lack of diligence and violates Rule 4-1.3.

Communication with a client is essential to maintaining a productive attorney – client relationship. *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010). Rule 4-1.4 requires a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information.

Respondent’s failure to communicate with her client about refiling his case and attempts to obtain service on the Defendants clearly violates Rule 4-1.4. Although she denies her conduct violated the rule, the Disciplinary Hearing Panel correctly found that she failed to keep her client reasonably informed as to the status of his cause of action.

Nothing is more irritating to clients, or more damaging to the public perception of the legal profession from inattention to clients’ business. *In re Kopf*, 767 S.W.2d 20 (Mo. banc 1989).

Rule 4-8.4(a) states that “[i]t is professional misconduct for a lawyer to: (a) violate or attempt to violate Rules of Professional Conduct.” Respondent has

clearly and admittedly violated several rules and therefore “has necessarily violated Rule 4-8.4(a).” *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010); *In re Caranchini*, 956 S.W.2d 910, 916 (Mo. banc 1997).

### III.

**THE SUPREME COURT SHOULD SUSPEND  
RESPONDENT'S LICENSE, STAY THE SUSPENSION FOR  
A PERIOD OF TWO YEARS AND PLACE RESPONDENT  
ON PROBATION BECAUSE SUSPENSION IS  
APPROPRIATE WHEN A LAWYER KNOWINGLY  
ENGAGES IN CONDUCT THAT VIOLATES DUTIES OWED  
TO THE PROFESSION AND TO CLIENTS.**

The purpose of discipline is not to punish the lawyer, but to protect the public and maintain the integrity of the legal profession. 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 Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986). “[T]his Court is authorized to administer four types of discipline: reprimand; indefinite suspension; suspension for a fixed period; and disbarment.” *In re Caranchini*, 956 S.W.2d 910, 919 (Mo. banc 1997).

Recently this Court amended its rules to clarify eligibility for conditional discipline and to set out strict requirements for such sanction. Rule 5.225 (2013). This Court in the past has ordered specific conditions to reprimands. *In re Harris*, 890 S.W.2d 299 (Mo. banc 1994). Probation, as a part of a stayed suspension, has been utilized since the rule was adopted and put into effect in 2003. This Court, the disciplinary system, the Bar and the public have all benefited from conditional

discipline as a tool to protect the public and maintain the integrity of the profession.

When this Court finds a lawyer has committed multiple acts of misconduct, “the ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among the violations.” *In re Coleman*, 295 S.W.3d 870 (Mo. banc 2009). In this case, Respondent’s most egregious act of misconduct is her violation of Rule 4-3.3 by: (a) directing her client’s twin brother to the counsel table in response to the Court’s request that she have her client come forward; and, (b) by failing to correct her “mistake” and advising the Court her client was actually in the hallway and allowing the Court to believe the Defendant was present at the counsel table.

In cases of false statements, fraud, or misrepresentation, this Court issues reprimands only if the lawyer is negligent in determining whether her statements or documents are false or fails to take remedial action when material information is withheld. *In re Storment*, 873 S.W.2d 227, 231 (Mo. banc 1994); *In re Caranchini*, 956 S.W.2d 919 (Mo. banc 1997); ABA Standard Rule 6.11.

For isolated instances of misconduct or clearly inappropriate acts with minimal harm to the client, a reprimand may be more appropriate. *In re Staab*, 719 S.W.2d 780 (Mo. banc 1986). In *Staab*, the Respondent was reprimanded for neglecting the affairs of two clients resulting in dismissal of actions. The Court found the lawyer “did not seek personal gain by his actions” and that “there was no irreparable harm to the clients”. *Id.* at 784. The gravity of the misconduct in



this case and the adverse or potentially adverse effect on the legal proceeding eliminates reprimand as an appropriate discipline.

Disbarment is appropriate when a lawyer with intent to deceive the Court makes a false statement, submits a false document, or inappropriately withholds material information. Disbarment should be reserved for fraud cases in which it is clear that the lawyer should not be at the Bar. *In re Littleton*, 719 S.W.2d 777 (Mo. banc 1986); *In re Caranchini* 956 S.W.2d 919 (Mo. banc 1997). This Court has “imposed the ultimate sanction of disbarment where a lawyer’s conduct involved dishonesty and misrepresentation”. *In re Cupples*, 979 S.W.2d 936 (Mo. banc 1998). Disbarment is generally appropriate when a lawyer, with the intent to deceive the Court, makes a false statement or inappropriately withholds material information and causes a significant or potentially significant adverse effect on the legal proceeding. ABA Standard Rule 6.11.

Each disciplinary case involves unique facts and circumstances and clearly this matter is very unusual. Informant can find no factually similar cases reported involving conduct of this nature although several cases, previously cited, involve lawyer conduct in a courtroom setting.

Convincing a client not to mention her remarriage during a social security proceeding warranted a six-month suspension from this Court. *In re C. Ver Dught*, 825 S.W.2d 847 (Mo. banc 1992). Seeking to retain federal diversity jurisdiction by falsely claiming his client was a resident of a state other than Missouri warranted disbarment. *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994).

Counseling a witness to testify falsely during a recess of a trial resulted in disbarment for a lawyer who with the intent to deceive, participated in presenting false evidence. *In re Stormont*, 873 S.W.2d 227 (Mo. banc 1994).

In *In re Bear*, 578 S.W.2d 928 (Mo. banc 1979) a lawyer was disciplined for tampering with evidence in a criminal case by erasure of a tape recorded interview of a police officer. The Court found, under the special circumstances of the case, it was not the lawyers prerogative to destroy the tape, regardless of his motives, as those determinations are for a judicial officer to handle. The Court found the lawyer to have violated former Rule DR 7-102(A)(6) or the antecedent of Rule 4-3.3 and issued a reprimand.

This Court has considered the gravity of the conduct, as well as the aggravating and mitigating circumstances, when determining appropriate lawyer sanctions. *In re Wiles*, 107 S.W.3d 228, 229 (Mo. banc 2003). After misconduct has been established other circumstances may be considered in deciding what sanction to impose. Other than multiple offenses and dishonesty as a motive, no other aggravating circumstances exist in this case. On the contrary, several factors weigh in mitigation such as: absence of a prior disciplinary record; full and free disclosure to the disciplinary board and cooperative attitude towards the proceeding; inexperience in the practice of law; and remorse. Respondent's absence of a disciplinary record and her inexperience in the practice of law are key factors the Court should consider in arriving at the appropriate sanction.

Respondent's conduct was admittedly calculated and intentional and not merely negligent. She was motivated by the desire to have her client acquitted by deceptive and misleading tactics. Suspension is appropriate when the lawyer knows that false statements are being submitted to the Court or that material information is inappropriately withheld and takes no remedial action. ABA Standard Rule 6.12. Here Respondent intentionally acted to deceive the Court and the State's witness. She failed to inform the Court of her deception and caused an adverse effect on the legal proceeding. Suspension is the appropriate sanction in this case.

Respondent is however, admittedly inexperienced in the practice of law and finds herself before this Court with an otherwise clean disciplinary record. She has shown remorse for her conduct, self-reported and cooperated fully with the disciplinary authorities throughout these proceedings. It is critically necessary for Respondent to reevaluate her practice and familiarity with the Rules that govern lawyers in this State. To that end the Chief Disciplinary Counsel, the Disciplinary Hearing Panel and the Respondent, with the assistance of counsel, have arrived at a fair and reasonable recommendation for this Court. The sanction includes indefinite suspension from the practice of law stayed with a two year probationary period. The conditions include educational requirements and oversight by members of the Bar and the Office of Chief Disciplinary Counsel. The conditions are onerous but Respondent's conduct justifies the need for compliance with all the recommendations of the Disciplinary Hearing Panel.

## CONCLUSION

Respondent Savory made false statements or unspoken representations to the Court and failed to remediate her conduct causing an adverse effect on the legal proceeding and damage to the integrity of the profession. Her failures in representing her client in a civil litigation matter show a lack of competence and inexperience in the practice of law. Informant respectfully requests this Court suspend the Respondent from the practice of law for two (2) years, provided, however, that said suspension be stayed and in lieu of enforcement thereof, Respondent be placed on probation subject to all of the probationary terms set forth in the recommendation of the Disciplinary Hearing Panel.

Respectfully submitted,

ALAN D. PRATZEL, MO #29141  
CHIEF DISCIPLINARY COUNSEL



By: \_\_\_\_\_  
Charles W. Gotschall #27744  
Special Representative, Region IV  
4700 Belleview, Suite 215  
Kansas City, MO 64112  
[cwgots@mcleodusa.net](mailto:cwgots@mcleodusa.net)  
(816) 561-2300  
(816) 561-0760 (fax)

ATTORNEY FOR CHIEF  
DISCIPLINARY COUNSEL

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of October, 2013, the Informant's Brief was sent through the Missouri Supreme Court e-filing system to Respondent's counsel:

Robert G. Russell  
KEMPTON & RUSSELL, LLC  
114 East Fifth Street  
P. O. Box 815  
Sedalia, MO 65302-0815



---

Charles W. Gotschall

**CERTIFICATION: RULE 84.06(c)**

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 7,101 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



---

Charles W. Gotschall