

**In the Supreme Court of Iowa**

---

**Supreme Court No. 20-0005  
Grievance Commission No. 893**

---

**Iowa Supreme Court  
Attorney Disciplinary Board,**

**Appellee,**

**vs.**

**Eric D. Tindal,**

**Appellant**

---

**Appeal from the Report of the Iowa Supreme Court Grievance  
Commission**

---

**Appellee's Final Brief**

---

**Wendell J. Harms, AT0003209  
Iowa Judicial Branch Building  
1111 East Court Avenue  
Des Moines, IA 50319-5003  
Telephone: (515) 348-4684  
Fax: (515) 348-4699  
wendell.harms@iowacourts.gov**

**Attorney for Appellee**

## Table of Contents

Table of Authorities .....	4
Statement of Issues Presented for Review .....	7
Routing Statement.....	12
Statement of the Case.....	12
Nature of the Case .....	12
Course of Proceedings and Disposition.....	12
Commission’s Conclusion.....	13
Commission’s Aggravating Circumstance .....	13
Commission’s Mitigating Circumstances.....	13
Commission’s Recommendations.....	14
Tindal’s Appeal .....	14
Statement of the Facts .....	14
Eric Tindal Testimony .....	14
Michael Mullins Testimony .....	16
Debra Minot Testimony .....	17
Jeffrey Lang Testimony .....	17
Gerald Feuerhelm Testimony.....	17
Tyler Buller Testimony .....	17
Count I – Lucas Appeal .....	18
Count II – Cannon Appeal.....	19
Count III - Miniffee Appeal .....	21
Count IV – Shelton Appeal .....	22
Count V – Mitchell Appeal.....	24
Count VI – Labarbera Appeal.....	25
Count VII – McIntosh Appeal .....	26
Count VIII – Moore Appeal.....	27

Count IX – Smith Appeal .....	28
Count X – Campbell Appeal .....	29
Count XI – Gaston Appeal.....	35
Count XII – Ruiz Appeal.....	37
Count XIII – Wiggins Appeal .....	38
Applicable Disciplinary Rules.....	39
Iowa Rule of Professional Conduct 32:1.3 - Diligence .....	39
Iowa Rule of Professional Conduct 32:3.2 – Expediting Litigation.....	42
Iowa Rule of Professional Conduct 32:8.4(d) – Conduct Prejudicial to the Administration of Justice .....	44
Argument .....	54
Error Preservation and Scope and Standard of Appellate Review .....	54
I. Did the Grievance Commission Err in Finding Tindal Violated Rule 32:8.4(d)?.....	55
II. Did the Grievance Commission Err in Finding Tindal’s Prior Reprimand Would Have Been More Severe Had the Additional Default Notices Been Available in October 2018? .....	56
III. Did the Grievance Commission Err in Recommending Suspension of Tindal’s Law License?.....	61
Aggravating Factors.....	65
Prior Disciplinary Offenses.....	65
A Pattern of Misconduct .....	68
Multiple Offenses .....	68

Refusal to Acknowledge Wrongful Nature of Conduct.....	69
Substantial Experience in the Practice of Law .....	71
Conclusion .....	72
Request for Nonoral Submission .....	74
Certificate of Compliance with Typeface Requirements and Type – Volume Limitation.....	75

## Table of Authorities

### Cases

<i>Attorney Disciplinary Bd. v. Barnhill</i> 885 N.W.2d 408.....	71
<i>Attorney Disciplinary Bd. v. Barry</i> 908 N.W.2d 217 (Iowa 2018).....	67
<i>Attorney Disciplinary Bd. v. Bergmann</i> 938 N.W.2d 16 (Iowa 2020).....	52, 53, 61, 62
<i>Attorney Disciplinary Bd. v. Conroy</i> 845 N.W.2d 59 (Iowa 2014).....	47, 48
<i>Attorney Disciplinary Bd. v. Goedken</i> 939 N.W.2d 97 (Iowa 2020).....	53, 54
<i>Attorney Disciplinary Bd. v. Hedgecoth</i> 862 N.W.2d 354 (Iowa 2015).....	41, 43, 44, 49, 50
<i>Attorney Disciplinary Bd. v. Jacobsma</i> 920 N.W.2d 813 (Iowa 2018).....	71
<i>Attorney Disciplinary Bd. v. Kieffer-Garrison</i> 847 N.W.2d 489 (Iowa 2014).....	40, 41, 43
<i>Attorney Disciplinary Bd. v. Kingery</i> 871 N.W.2d 109 (Iowa 2015).....	41, 42, 44
<i>Attorney Disciplinary Bd. v. Knopf</i> 793 N.W.2d 525 (Iowa 2011).....	44, 45

<i>Attorney Disciplinary Bd. v. Marks</i>	
814 N.W.2d 532 (Iowa 2012).....	59
<i>Attorney Disciplinary Bd. v. Moorman</i>	
729 N.W.2d 801 (Iowa 2007).....	58, 59
<i>Attorney Disciplinary Bd. v. Nelson</i>	
838 N.W.2d 528 (Iowa 2013).....	47
<i>Attorney Disciplinary Bd. v. Noel</i>	
933 N.W.2d 190 (Iowa 2019).....	52, 57
<i>Attorney Disciplinary Bd. v. Parrish</i>	
925 N.W.2d 163 (Iowa 2019).....	68, 69, 70, 72
<i>Attorney Disciplinary Bd. v. Sears</i>	
933 N.W.2d 214 (Iowa 2019).....	69
<i>Attorney Disciplinary Bd. v. Stansberry</i>	
922 N.W.2d 591 (Iowa 2019).....	70
<i>Attorney Disciplinary Bd. v. Taylor</i>	
814 N.W.2d 259 (Iowa 2012).....	45, 46, 47
<i>Attorney Disciplinary Bd. v. Tompkins</i>	
733 N.W.2d 661 (Iowa 2007).....	63, 64, 65
<i>Attorney Disciplinary Bd. v. Turner</i>	
918 N.W.2d 130 (Iowa 2018).....	68
<i>Attorney Disciplinary Bd. v. Vandel</i>	
889 N.W.2d 659 (Iowa 2017).....	66, 69, 70, 71
<i>Attorney Disciplinary Bd. v. Weiland</i>	
862 N.W.2d 627 (Iowa 2015).....	50, 51, 65, 66
<i>Attorney Disciplinary Bd. v. Weiland</i>	
885 N.W.2d 198 (Iowa 2016).....	66
<i>Attorney Disciplinary Bd. v. West</i>	
901 N.W.2d 519 (Iowa 2017).....	66, 67
<i>Bd. of Prof'l Ethics &amp; Conduct v. D'Angelo</i>	
652 N.W.2d 213 (Iowa 2002).....	58
<i>Bd. of Prof'l Ethics &amp; Conduct v. O'Brien</i>	
690 N.W.2d 57 (Iowa 2004).....	58
<i>Comm. on Prof'l Ethics &amp; Conduct v. Clauss</i>	
468 N.W.2d 213 (Iowa 1991).....	59

## Other Authorities

Iowa Code of Prof'l Responsibility	
DR 1-102(A)(6) .....	64
Iowa Code of Prof'l Responsibility	
DR 1-102(A)(5) .....	63
Iowa Code of Prof'l Responsibility	
DR 6-101(A)(3) .....	64
Iowa R. App. P 6.804(4) .....	46
Iowa R. App. P. 6.1101 .....	12
Iowa R. App. P. 6.903(1)(g)(1).....	75
Iowa R. of Prof'l Conduct	
32:1.1 .....	64
Iowa R. of Prof'l Conduct	
32:1.3 .....	12, 13, 31, 35, 37, 38, 39, 40, 41, 60, 61, 62, 64, 67, 69, 72
Iowa R. of Prof'l Conduct	
32:1.4(a) .....	61, 62, 67, 72
Iowa R. of Prof'l Conduct	
32:1.4(a)(2).....	12, 13, 61, 62, 72
Iowa R. of Prof'l Conduct	
32:1.4(a)(3).....	12, 13, 61, 62, 67, 72
Iowa R. of Prof'l Conduct	
32:1.4(a)(4).....	12, 13, 61, 62, 72
Iowa R. of Prof'l Conduct	
32:3.2 .....	12, 13, 31, 35, 37, 38, 42, 43, 44, 45, 60, 61, 67, 69, 72
Iowa R. of Prof'l Conduct	
32:3.4(c) .....	31, 35, 37, 38
Iowa R. of Prof'l Conduct	
32:8.4(d)....	12, 13, 31, 35, 37, 38, 41, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 60, 61, 63, 64, 67, 69, 72

## Statement of Issues Presented for Review

### I. Did the Grievance Commission Err in Finding Tindal Violated Rule 32:8.4(d)?

#### Cases

*Attorney Disciplinary Bd. v. Bergmann*  
938 N.W.2d 16 (Iowa 2020)

*Attorney Disciplinary Bd. v. Conroy*  
845 N.W.2d 59 (Iowa 2014)

*Attorney Disciplinary Bd. v. Goedken*  
939 N.W.2d 97 (Iowa 2020)

*Attorney Disciplinary Bd. v. Hedgecoth*  
862 N.W.2d 354 (Iowa 2015)

*Attorney Disciplinary Bd. v. Jacobsma*  
920 N.W.2d 813 (Iowa 2018)

*Attorney Disciplinary Bd. v. Kieffer-Garrison*  
847 N.W.2d 489 (Iowa 2014)

*Attorney Disciplinary Bd. v. Kingery*  
871 N.W.2d 109 (Iowa 2015)

*Attorney Disciplinary Bd. v. Knopf*  
793 N.W.2d 525 (Iowa 2011)

*Attorney Disciplinary Bd. v. Nelson*  
838 N.W.2d 528 (Iowa 2013)

*Attorney Disciplinary Bd. v. Noel*

933 N.W.2d 190 (Iowa 2019)

*Attorney Disciplinary Bd. v. Taylor*  
814 N.W.2d 259 (Iowa 2012)

*Attorney Disciplinary Bd. v. Weiland*  
862 N.W.2d 627 (Iowa 2015)

### **Other Authorities**

Iowa R. of Prof'l Conduct  
32:8.4(d)

## **II. Did the Grievance Commission Err in Finding Tindal's Prior Reprimand Would Have Been More Severe Had the Additional Default Notices Been Available in October 2018?**

### **Cases**

*Attorney Disciplinary Bd. v. Bergmann*  
938 N.W.2d 16 (Iowa 2020)

*Attorney Disciplinary Bd. v. Marks*  
814 N.W.2d 532 (Iowa 2012)

*Attorney Disciplinary Bd. v. Moorman*  
729 N.W.2d 801 (Iowa 2007)

*Attorney Disciplinary Bd. v. Noel*  
933 N.W.2d 190 (Iowa 2019)

*Attorney Disciplinary Bd. v. Weiland*  
862 N.W.2d 627 (Iowa 2015)

*Bd. of Prof'l Ethics & Conduct v. D'Angelo*  
652 N.W.2d 213 (Iowa 2002)

*Bd. of Prof'l Ethics & Conduct v. O'Brien*  
690 N.W.2d 57 (Iowa 2004)

*Comm. on Prof'l Ethics & Conduct v. Clauss*  
468 N.W.2d 213 (Iowa 1991)

### **Other Authorities**

Iowa R. of Prof'l Conduct  
32:1.3

Iowa R. of Prof'l Conduct  
32:1.4(a)

Iowa R. of Prof'l Conduct  
32:1.4(a)(2)

Iowa R. of Prof'l Conduct  
32:1.4(a)(3)

Iowa R. of Prof'l Conduct  
32:1.4(a)(4)

Iowa R. of Prof'l Conduct  
32:3.2

Iowa R. of Prof'l Conduct  
32:8.4(d)

### III. Did the Grievance Commission Err in Recommending Suspension of Tindal's Law License?

#### Cases

*Attorney Disciplinary Bd. v. Bergmann*  
938 N.W.2d 16 (Iowa 2020)

*Attorney Disciplinary Bd. v. Tompkins*  
733 N.W.2d 661 (Iowa 2007)

*Attorney Disciplinary Bd. v. Weiland*  
862 N.W.2d 627 (Iowa 2015)

*Attorney Disciplinary Bd. v. Weiland*  
885 N.W.2d 198 (Iowa 2016)

#### Other Authorities

Iowa Code of Prof'l Responsibility  
DR 1-102(A)(6)

Iowa Code of Prof'l Responsibility  
DR 1-102(A)(5)

Iowa Code of Prof'l Responsibility  
DR 6-101(A)(3)

Iowa R. of Prof'l Conduct  
32:1.1

Iowa R. of Prof'l Conduct  
32:1.3

Iowa R. of Prof'l Conduct  
32:1.4(a)

Iowa R. of Prof'l Conduct  
32:1.4(a)(2)

Iowa R. of Prof'l Conduct  
32:1.4(a)(3)

Iowa R. of Prof'l Conduct  
32:1.4(a)(4)

Iowa R. of Prof'l Conduct  
32:3.2

Iowa R. of Prof'l Conduct  
32:8.4(d)

## **Routing Statement**

The Supreme Court should retain this case because under Iowa R. App. P. 6.1101 “[t]he Supreme Court shall ordinarily retain the following types of cases: ... e. Cases involving lawyer discipline.”

## **Statement of the Case**

### **Nature of the Case**

The Attorney Disciplinary Board (Board) brought this lawyer disciplinary action against Eric D. Tindal (Tindal) alleging violations of the Iowa Rules of Professional Conduct (Rules) 32:1.3; 32:1.4(a)(2), (3), and (4); 32:3.2; and 32:8.4(d).

### **Course of Proceedings and Disposition**

On April 10, 2019, the Board filed its Complaint against Tindal. On May 9, 2019, Tindal filed his Answer.

On June 28, 2019, Board filed its Amended Complaint. Appendix (App.) pages (pp.) 6-29. On August 27, 2019, Tindal filed his Answer to the Amended Complaint. App. pp. 30-39.

On August 28, the Commission heard the parties’ evidence.

On January 2, 2020, the 613<sup>th</sup> Division of the Commission filed its Findings of Fact, Conclusions of Law, and Recommended Sanctions. Commission Report. App. pp. 40-59.

### **Commission's Conclusion**

The Commission concluded that Tindal violated Rules 32:1.3, 32:3.2, and 32:8.4(d). App. pp. 55-56. The Commission concluded that Tindal did not violate Rules 32:1.4(a)(2), (3), or (4). App. pp. 56-58.

### **Commission's Aggravating Circumstance**

The Commission concluded that this aggravating factor existed as to Tindal: two prior disciplinary offenses. App. pp. 51-52.

### **Commission's Mitigating Circumstances**

The Commission concluded that these mitigating factors existed as to Tindal: 1) competency; 2) cooperation with the Board; 3) taking "some corrective action" in removing himself from the court-appointed list in appellate cases and in limiting the number of counties in which he takes court appointments; 4) implementing some scheduling tools; 5) paying all penalties assessed; and 6) the Supreme Court not dismissing any of these appeals. App. p. 52.

## **Commission's Recommendations**

The Commission recommended that the Court suspend Tindal's law license for 30 days. App. pp. 58-59.

## **Tindal's Appeal**

On January 10, 2020, Tindal filed his notice of appeal with the Court. App. p. 60. Tindal did not file a notice of appeal with the Commission clerk.

## **Statement of the Facts**

The Board is a Commission of the Supreme Court of Iowa. App. pp. 6, 30 ¶ 1.

Tindal has a license to practice law in Iowa; he obtained his license in 2000. App. pp. 6, 30 ¶ 2.

At the time of the conduct alleged herein, Tindal maintained his offices in Iowa and Johnson Counties. App. pp. 6, 30 ¶ 3.

## **Eric Tindal Testimony**

For 17 years, Tindal had a general practice. App. p. 251 line (l.) 24 – p. 252 l. 3. Since 2017, Tindal has focused his practice on criminal defense. App. p. 254 ll. 5-7.

Notwithstanding the default notices that he received, Tindal does not believe that he caused harm to any of his appellate clients. App. p. 255 l. 24 – p. 256 l. 8. The supreme court did not dismiss any of his appeals. App. p. 256 ll. 18-20. Tindal testified that neither the criminal defendant nor the post-conviction relief petitioner is harmed by delays in the appellate process so long as the appeal is not dismissed. App. p. 298 l. 7 – p. 299 l. 1 & App. p. 304 l. 23 – p. 305 l. 5.

Tindal acknowledged his prior public reprimand arising from a series of appellate default notices. Tr. p. 27 l. 22 – p. 28 l. 7 & App. pp. 112-230.

Tindal testified that requests to extend appellate deadlines are common. App. p. 258 l. 22 – p. 259 l. 4. He has filed motions to enlarge time. App. p. 275 ll. 2-10. The first extension is typically for 30 days and is granted by the appellate clerk. App. p. 259 ll. 6-8. The appellate clerk grants the second extension too for 21 to 30 days. App. p. 259 ll. 9-13. A supreme court justice makes the decision on a third request for extension. App. p. 259 ll. 13-15.

Tindal testified to his belief that if he cured the default within the 15 days identified in the notice of default, then no ethical issue would arise. App. p. 300 ll. 2-14, App. p. 303 ll. 6-9, & App. p. 306 ll. 21-24. Even

after he received a public reprimand in October 2018, exhibit 15, Tindal believed that if he cured the default and paid the penalty within 15 days, then he was not acting unethically. App. p. 312 l. 25 – p. 313 l. 18.

Tindal testified that he has a difficult time identifying what harm or prejudice there is to the court system when the appellate clerk issues default notices for missed deadlines. App. p. 300 ll. 21-24 & App. p. 304 l. 23 – p. 305 l. 5.

In March 2019, Tindal revised his State Public Defender contract to discontinue accepting appointments to handle criminal or post-conviction relief appeals. App. p. 270 l. 18 – p. 271 l. 1.

Tindal had not represented any of the clients in these 13 appeals before his appointment to handle their appeals. App. p. 272 ll. 11-16.

### **Michael Mullins Testimony**

Judge Michael Mullins had not reviewed any documents before he testified in this case. App. p. 291 ll. 19-23. He had not reviewed Tindal's public reprimand. App. p. 291 l. 24 – p. 292 l. 2.

### **Debra Minot Testimony**

Judge Debra Minot had not reviewed any documents before she testified in this case. App. p. 293 ll. 14-18. She had reviewed Tindal's public reprimand when the supreme court issued it. App. p. 293 ll. 19-25.

### **Jeffrey Lang Testimony**

Jeffrey Lang had not reviewed any documents before he testified in this case. App. p. 295 ll. 21-23. He had reviewed Tindal's public reprimand. App. p. 295 l. 23 – p. 296 l. 10. He did not know the subject matter of this case. App. p. 296 ll. 16-19.

### **Gerald Feuerhelm Testimony**

Gerald Feuerhelm had not reviewed Tindal's public reprimand. App. p. 297 ll. 4-7.

### **Tyler Buller Testimony**

Tyler Buller (Buller) is an assistant attorney general; he handles criminal trials and appeals. App. p. 71 l. 24 – p. 72 l. 3. He has handled over 320 appeals. App. p. 72 ll. 13-15.

Buller had not reviewed Tindal's public reprimand. App. p. 88 ll. 20-24.

Buller has never received an appellate default notice. App. p. 95 ll. 1-7.

In 2015, Buller authored an article that appeared in *The Journal of Appellate Practice and Process*. App. p. 81 l. 21 – p. 82 l. 6.

His article concluded, in part:

The bottom line is that court-appointed attorneys must get better at their job and perform better on the metrics used in this study. They must improve their advocacy to win a more-comparable numbers of cases, they must file papers with fewer technical and procedural problems, they must seek further review more often, and they must present more compelling cases in further-review applications to obtain Supreme Court review.

Tyler J. Buller, *Public Defenders and Appointed Counsel in Criminal Appeals: The Iowa Experience*, 16 J. App. Prac. & Process 183, 234 (2015).

### **Count I – Lucas Appeal**

On May 8, 2017, Alan L. Lucas (Lucas) appealed the district court’s decision in his criminal case, Linn County FECR094149; the appellate docket is 17-0741. App. pp. 6, 30 ¶ 4 & Ex. 1 pp. 1-2.

On May 30, the district court appointed Tindal to represent Lucas. App. pp. 6, 30 ¶ 5 & Ex. 1 pp. 3-4.

On July 17, 2017, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 6, 30 ¶ 6 & Ex. 1 pp. 5-7.

On July 10, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve the appendix. App. pp. 6, 30 ¶ 7 & Ex. 1 pp. 8-10. This was the third notice of default in this appeal. App. p. 273 l. 24 – p. 274 l. 8. In September 2017, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve the proof brief and designation of appendix. App. p. 274 ll. 9-16 & App. pp. 218-20. In December 2017, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve an amended proof brief. App. p. 274 ll. 17-22 & App. pp. 221-23.

On July 12, Tindal filed and served the appendix. App. pp. 7, 30 ¶ 8. This filing cured the notice of default. App. p. 258 ll. 16-21. On July 12, he paid the penalty assessment. App. pp. 7, 30 ¶ 9.

### **Count II – Cannon Appeal**

On June 6, 2017, Paul H. Cannon (Cannon) appealed the district court's decision in his post-conviction relief case, Scott County PCCE126464; the appellate docket is 17-0885. App. pp. 7, 31 ¶ 13 & Ex. 2 pp. 1-3.

On August 16, 2017, the district court appointed Tindal to represent Cannon. App. pp. 7, 31 ¶ 14 & Ex. 2 pp. 4-5.

On October 23, 2017, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 8, 31 ¶ 16 & Ex. 2 pp. 10-12.

On December 12, 2017, Tindal filed a motion asking for a 30-day extension to file Cannon's proof brief and appendix designation. App. pp. 8, 31 ¶ 17 & Ex. 2 pp. 13-14. On December 12, the clerk granted his motion; the new deadline was January 11, 2018. App. pp. 8, 31 ¶ 18 & Ex. 2 pp. 15-16.

On January 11, Tindal filed a second motion asking for a 14-day extension to file Cannon's proof brief and appendix designation. App. pp. 8, 31 ¶ 19 & Ex. 2 pp. 17-18. On January 16, the clerk granted his motion; the new deadline was February 12, 2018. App. pp. 8, 31 ¶ 20 & Ex. 2 pp. 19-20.

On March 1, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Cannon's proof brief and appendix designation. App. pp. 8, 31 ¶ 21 & Ex. 2 pp. 21-23. The clerk issued this notice 17 days after the February 12 deadline.

On March 14, Tindal filed and served Cannon's proof brief and appendix designation. App. pp. 8, 31 ¶ 22. This filing cured the notice of default. App. p. 260 ll. 8-19. On March 14, he paid the penalty assessment. App. pp. 8, 31 ¶ 23.

On August 31, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve the appendix. App. pp. 8, 31 ¶ 24 & Ex. 2 pp. 24-26.

On September 14, 2018, Tindal filed and served the appendix. App. pp. 8, 31 ¶ 25. On September 14, he paid the penalty assessment. App. pp. 8, 31 ¶ 26.

### **Count III - Miniffee Appeal**

On October 20, 2017, Tacari T. Miniffee (Miniffee) appealed the district court's decision in his criminal case, Dubuque County FECR119298; the appellate docket is 17-1661. App. pp. 9, 31 ¶ 29 & Ex. 3 pp. 1-2.

On December 6, 2017, the district court appointed Tindal to represent Miniffee. App. pp. 9, 31 ¶ 30 & Ex. 3 pp. 3-5.

On March 9, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 9, 31 ¶ 32 & Ex. 3 pp. 10-12.

On May 2, 2018, Tindal filed a motion asking for a 30-day extension to file Miniffee's proof brief and appendix designation. App. pp. 10, 32 ¶ 33 & Ex. 3 pp. 13-14. On May 11, the clerk granted his motion; the new deadline was May 30, 2018. App. pp. 10, 32 ¶ 34 & Ex. 3 pp. 15-16.

On July 10, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Miniffee's proof brief and appendix designation. App. pp. 10, 32 ¶ 35 & Ex. 3 pp. 17-19. The clerk issued this notice 41 days after the May 30 deadline.

On July 25, Tindal filed a motion asking for a 48-hour extension to file Miniffee's proof brief and appendix designation. App. pp. 10, 32 ¶ 36 & Ex. 3 pp. 20-21. On July 26, Justice Wiggins granted his motion; the new deadline was July 27. Ex. 3 pp. 22-23.

On July 27, Tindal filed and served Miniffee's proof brief and appendix designation. App. pp. 10, 32 ¶ 38. This filing cured the notice of default. App. p. 261 ll. 9-15. On July 27, he paid the penalty assessment. App. pp. 10, 32 ¶ 39.

#### **Count IV – Shelton Appeal**

On October 27, 2017, Trenton D. Shelton (Shelton) appealed the district court's decision in his criminal case, Scott County FECR373455; the appellate docket is 17-1724. App. pp. 11, 32 ¶ 41 & Ex. 4 pp. 1-3.

On November 1, 2017, the district court appointed Tindal to represent Shelton. App. pp. 11, 32 ¶ 42 & Ex. 4 pp. 4-5.

On January 2, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 11, 32 ¶ 44 & Ex. 4 pp. 11-13.

On January 26, Tindal filed a motion asking for a 30-day extension to file Shelton's proof brief and appendix designation. App. pp. 11, 32 ¶ 45 & Ex. 4 pp. 14-15. On January 26, the clerk granted his motion; the new deadline was February 28, 2018. App. pp. 11, 32 ¶ 46 & Ex. 4 pp. 16-17.

On March 1, 2018, Tindal filed a motion asking for a 21-day extension to file Shelton's proof brief and appendix designation. App. pp. 11, 32 ¶ 47 & Ex. 4 pp. 18-19. On March 1, the clerk granted his motion; the new deadline was March 21, 2018. App. pp. 11, 32 ¶ 48 & Ex. 4 pp. 20-21.

On April 3, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Shelton's proof brief and appendix designation. App. pp. 11, 32 ¶ 49 & Ex. 4 pp. 22-24. The clerk issued this notice 13 days after the March 21 deadline.

On April 17, Tindal filed and served Shelton's proof brief and appendix designation. App. pp. 11, 32 ¶ 50. This filing cured the notice of default. App. p. 262 l. 1 – p. 263 l. 11. On April 17, he paid the penalty assessment. App. pp. 11, 32 ¶ 51.

On July 11, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve the appendix. App. pp. 12, 32 ¶ 52 & Ex. 4 pp. 25-27.

On July 12, Tindal filed and served the appendix. App. pp. 12, 32 ¶ 53. On July 12, he paid the penalty assessment. App. pp. 12, 33 ¶ 54.

### **Count V – Mitchell Appeal**

On November 7, 2017, John N. Mitchell (Mitchell) appealed the district court’s decision in his post-conviction relief case, Scott County PCCE127668; the appellate docket is 17-1800. App. pp. 13, 33 ¶ 58 & Ex. 5 pp. 1-2.

On November 16, the district court appointed Tindal to represent Mitchell. App. pp. 13, 33 ¶ 59 & Ex. 5 pp. 3-5.

On December 14, 2017, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 13, 33 ¶ 61 & Ex. 5 pp. 9-11.

Tindal did not file any motions to enlarge time in the Mitchell appeal. App. p. 276 ll. 14-20.

On February 16, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Mitchell’s proof brief and appendix designation. App. pp. 13, 33 ¶ 62 & Ex. 5 pp. 12-14. The clerk issued this notice 14 days after the February 2 deadline.

On February 28, Tindal filed and served Mitchell’s proof brief and appendix designation. App. pp. 13, 33 ¶ 63. This filing cured the notice of

default. App. p. 263 ll. 12-23. On February 28, he paid the penalty assessment. App. pp. 13, 33 ¶ 64.

On July 11, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve the appendix. App. pp. 13, 33 ¶ 65 & Ex. 5 pp. 15-17.

On July 12, Tindal filed and served the appendix. App. pp. 13, 33 ¶ 66. On July 12, he paid the penalty assessment. App. pp. 13, 33 ¶ 67.

#### **Count VI – Labarbera Appeal**

On November 3, 2017, Michael J. Labarbera (Labarbera) appealed the district court’s decision in his criminal case, Washington County FECR006329; the appellate docket is 17-1804. App. pp. 14, 33 ¶ 71 & Ex. 6 p. 1.

On December 12, 2017, the district court appointed Tindal to represent Labarbera. App. pp. 14, 33 ¶ 72 & Ex. 6 pp. 2-3.

On February 20, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 14, 34 ¶ 74 & Ex. 6 pp. 8-10.

On April 12, 2018, Tindal filed a motion asking for a 30-day extension to file Labarbera’s proof brief and appendix designation. App. pp. 15, 34 ¶ 75 & Ex. 6 pp. 11-12. On April 12, the clerk granted his

motion; the new deadline was May 11, 2018. App. pp. 15, 34 ¶ 76 & Ex. 6 pp. 13-14.

On July 10, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Labarbera's proof brief and appendix designation. App. pp. 15, 34 ¶ 77 & Ex. 6 pp. 15-17. The clerk issued this notice 60 days after the May 11 deadline.

On July 13, Tindal paid the penalty assessment. App. pp. 15, 34 ¶ 78. On July 16, he filed and served Labarbera's proof brief and appendix designation. App. pp. 15, 34 ¶ 79. This filing cured the notice of default. App. pp. 263 l. 24 – p. 264 l. 13.

### **Count VII – McIntosh Appeal**

On December 27, 2017, Eric McIntosh, Jr. (McIntosh) appealed the district court's decision in his criminal case, Washington County FECR006424; the appellate docket is 17-2085. App. pp. 16, 34 ¶ 82 & Ex. 7 p. 1.

On January 24, 2018, the district court appointed Tindal to represent McIntosh. App. pp. 16, 34 ¶ 83 & Ex. 7 pp. 2-3.

On February 16, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 16, 34 ¶ 85 & Ex. 7 pp. 8-10.

On April 9, 2018, Tindal filed a motion asking for a 30-day extension to file McIntosh's proof brief and appendix designation. App. pp. 16, 34 ¶ 86 & Ex. 7 pp. 11-12. On April 10, the clerk granted his motion; the new deadline was May 9, 2018. App. pp. 16, 34 ¶ 87 & Ex. 7 pp. 13-14.

On June 8, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve McIntosh's proof brief and appendix designation. App. pp. 16, 34 ¶ 88 & Ex. 7 pp. 15-17. The clerk issued this notice 30 days after the May 9 deadline.

On June 23, Tindal filed and served McIntosh's proof brief and appendix designation. App. pp. 16, 34 ¶ 89. This filing cured the notice of default. App. p. 264 ll. 14-23. On June 23, he paid the penalty assessment. App. pp. 16, 34 ¶ 90.

### **Count VIII – Moore Appeal**

On January 16, 2018, Quayshan L. Moore (Moore) appealed the district court's decision in his criminal case, Scott County FECR386810; the appellate docket is 18-0123. App. pp. 17, 35 ¶ 94 & Ex. 8 p. 1.

On January 19, the district court appointed Tindal to represent Moore. App. pp. 17, 35 ¶ 95 & Ex. 8 pp. 2-3.

On March 20, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 17, 35 ¶ 97 & Ex. 8 pp. 9-11.

Tindal did not file any motions to enlarge time in the Moore appeal. App. p. 277 ll. 19-23.

On June 7, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Moore's proof brief and appendix designation. App. pp. 18, 35 ¶ 98 & Ex. 8 pp. 12-14. The clerk issued this notice 29 days after the May 9, 2018, deadline.

On June 20, Tindal filed and served Moore's proof brief and appendix designation. App. pp. 18, 35 ¶ 99. This filing cured the notice of default. App. p. 264 l. 24 – p. 265 l. 7. On June 20, he paid the penalty assessment. App. pp. 18, 35 ¶ 100.

### **Count IX – Smith Appeal**

On February 21, 2018, Douglas K. Smith (Smith) appealed the district court's decision in his criminal case, Johnson County OWCR117228; the appellate docket is 18-0329. App. pp. 19, 35 ¶ 103 & Ex. 9 pp. 1-2.

On April 26, 2018, the district court appointed Tindal to represent Smith. App. pp. 19, 35 ¶ 104 & Ex. 9 pp. 3-5.

On May 3, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 19, 35 ¶ 106 & Ex. 9 pp. 10-12.

On May 29, Tindal filed a motion asking for a 21-day extension to file Smith's proof brief and appendix designation. App. pp. 19, 35 ¶ 107 & Ex. 9 pp. 13-14. On May 30, the clerk granted his motion; the new deadline was June 19, 2018. App. pp. 19, 35 ¶ 108 & Ex. 9 pp. 15-16.

On July 24, 2018, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Smith's proof brief and appendix designation. App. pp. 19, 35 ¶ 108 & Ex. 9 pp. 17-19. The clerk issued this notice 35 days after the June 19 deadline.

On August 8, 2018, Tindal filed and served Smith's proof brief and appendix designation. App. pp. 19, 35 ¶ 110. This filing cured the notice of default. App. p. 266 ll. 7-12. On August 8, he paid the penalty assessment. App. pp. 19, 35 ¶ 111.

### **Count X – Campbell Appeal**

On June 14, 2018, Edward A. Campbell, Jr. (Campbell) appealed the district court's decision in his post-conviction relief case, Scott County PCCE129302; the appellate docket is 18-1052. App. pp. 20, 36 ¶ 115 & Ex. 10 pp. 1-2.

On July 16, 2018, the district court appointed Tindal to represent Campbell. App. pp. 20, 36 ¶ 116 & Ex. 10 pp. 3-5.

On August 10, 2018, Tindal wrote to Campbell. App. pp. 20, 36 ¶ 117A & App. p. 231.

On August 29, the clerk filed a document authored by Campbell entitled “letter: to chief justice & my lawyer.” App. pp. 20, 36 ¶ 117B & App. p. 232. Campbell wrote, in part: “Dear appellate PCR Attorney I haven’t heard from you or don’t know our Appellate Plan.” Tindal received a copy of this filing. App. pp. 20, 36 ¶ 117C. On August 30, he wrote to Campbell. App. pp. 20, 36 ¶ 117D & App. p. 233.

On September 4, 2018, the clerk filed a document authored by Campbell entitled “Request / Letter.” App. pp. 21, 36 ¶ 117E & App. p. 234. Campbell wrote, in part: “1. I’m asking my lawyer to look at all of my pro se motions that I filed Pre-Trial and on Direct Appeal and further review so you can get a feel of the case & see about some of my Issues. 2. If you can contact property or the mail room at I.M.C.C. I can send my Transcripts of All events ....” Tindal received a copy of this filing. App. pp. 21, 36 ¶ 117F. He did not respond to Campbell. App. pp. 21, 36 ¶ 117G & App. p. 278 ll. 9-24.

On September 13, the clerk filed a document authored by Campbell entitled “Motion to receive & Review.” App. pp. 21, 36 ¶ 117H; App. p. 235; & App. p. 279 ll. 4-8. Campbell wrote, in part: “1. I’m asking for my lawyer to send the mailroom here at I.M.C.C., so I can send my lawyer my transcripts because they’re highlighted & underlined (all Transcripts).” Tindal received a copy of this filing. App. pp. 21, 36 ¶ 117I. He did not respond to Campbell. App. pp. 21, 36 ¶ 117J & App. p. 279 ll. 15-17.

Tindal never obtained Campbell’s highlighted transcripts. App. p. 279 ll. 18-20.

On September 26, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 21, 36 ¶ 118 & Ex. 10 pp. 9-11. Campbell’s proof brief and designation of appendix were due 50 days from September 26. App. pp. 280 l. 25 – p. 281 l. 4. Tindal did not communicate this deadline to Campbell. App. p. 281 ll. 18-21.

On October 3, 2018, the Court publicly reprimanded Tindal for violating Rules 32:1.3, 32:3.2, 32:3.4(c), and 32:8.4(d) regarding 21 appellate defaults issued to him from November 1, 2016 to October 31, 2017. App. pp. 114-15 & 117-18.

On October 22, the clerk filed a document authored by Campbell entitled “Request for brief date.” App. pp. 21, 36 ¶ 118A & App. p. 236.

Campbell wrote, in part: “1. Dear Clerk of Court. Could you or my lawyer please write me & Tell me what’s the deadline; for my submission of my appellate briefs.” Tindal received a copy of this filing. App. pp. 21, 36. ¶ 118B. He did not respond to Campbell. App. pp. 21, 36 ¶ 118C & App. p. 282 ll. 11-14.

Tindal testified that he did not pay much attention to the documents that Campbell filed. App. p. 282 ll. 15-23.

On November 19, 2018, Tindal filed a motion asking for a 35-day extension to file Campbell’s proof brief and appendix designation. App. pp. 21, 36 ¶ 119 & Ex. 10 pp. 12-14. He did not communicate this request for an extension of time to Campbell. App. p. 283 ll. 6-10. On November 20, the clerk granted his motion; the new deadline was December 21, 2018. App. pp. 21, 36 ¶ 120 & Ex. 10 pp. 15-16. Tindal did not communicate this new deadline to Campbell. App. p. 283 ll. 16-19.

On December 3, 2018, the clerk filed a document authored by Campbell entitled “Letter to: Chief Justice.” App. pp. 21, 36 ¶ 120A & App. p. 237. Campbell wrote, in part: “1. Haven’t heard from my lawyer in so long, and I, was wondering why my appellate briefs haven’t been filed.” Tindal received a copy of this filing. App. pp. 21, 37 ¶ 120B. He did not respond to Campbell. App. pp. 21, 37 ¶ 120C & App. p. 284 ll. 10-13.

On December 19, the clerk filed a document authored by Campbell entitled “Amendment & Inquiry”. App. pp. 22, 37 ¶ 120D & App. p. 238. Campbell wrote, in part: “1. What is my lawyer doing to help me? Why is it taking so long to file his briefs? Why won’t he write me back?” Tindal received a copy of this filing. App. pp. 22, 37 ¶ 120E. He did not respond to Campbell. App. pp. 22, 37 ¶ 120F & App. pp. 284 l. 25 – p. 285 l. 3.

On December 28, the clerk of the district court for Scott County filed a document authored by Campbell entitled “Motions to Withdraw /Fire my Lawyer.” App. pp. 22, 37 ¶ 120G & App. pp. 239-40. Campbell wrote, in part: “1. Attorney Erik (sic) Tindal hasn’t filed any briefs for me nor has he responded to none of my letters! 2. He’s incompetent. I want him gone.” Tindal received a copy of this filing. App. pp. 22, 37 ¶ 120H. He did not respond to Campbell. App. pp. 22, 37 ¶ 120I.

On December 31, the clerk filed a document authored by Campbell entitled “Letter to Justice / Motion to Compel.” App. pp. 22, 37 ¶ 120J & App. p. 241. Campbell wrote in part: “2. Why have my lawyer not filed my briefs?” Tindal received a copy of this filing. App. pp. 22, 37 ¶ 120K. He did not respond to Campbell. App. pp. 22, 37 ¶ 120L & App. p. 286 ll. 11-14.

On December 31, the clerk filed a document authored by Campbell entitled “Motion: To Fire – Withdraw.” App. pp. 22, 37 ¶ 120M & App. p. 242. Campbell wrote, in part: “1. I want Eric Tindal off of my case he hasn’t done nothing for me! He’s said he couldn’t! He only won (1) case. .... 3. It’s been 7 months, No briefs been filed.” Tindal received a copy of this filing. App. pp. 22, 37 ¶ 120N. He did not respond to Campbell. App. pp. 22, 37 ¶ 120O & App. p. 287 ll. 19-23.

On January 10, 2019, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Campbell’s proof brief and appendix designation. App. pp. 22, 37 ¶ 121 & Ex. 10 pp. 17-19. The clerk issued this notice 20 days after the December 21 deadline.

On January 10, the clerk filed a document authored by Campbell entitled “Motion for Remand to District for Termination of Counsel or Withdrawal.” App. pp. 22, 37 ¶ 121A & App. p. 243. Campbell wanted Tindal removed from his case, and he wrote, in part: “He’s been my lawyer for 6 months He has done nothing for me. He’s incompetent. He doesn’t communicate with me. He hasn’t filed a brief in 6 months.”

On January 11, Tindal filed a motion to withdraw in the district court in Scott County because Campbell and he “have had an

unreconcilable breakdown in communication and [Campbell] has filed a complaint with the [Board].” App. pp. 23, 37 ¶ 122 & Ex. 10 pp. 22-23. On January 15, the district court in Scott County granted his motion to withdraw. App. pp. 23, 37 ¶ 123 & Ex. 10 pp. 24-26.

On January 23, Tindal wrote to Campbell. App. pp. 23, 37 ¶ 123A & App. p. 244. This was this third communication with Campbell. App. p. 288 ll. 1-5.

Tindal’s file does not contain any other communications with Campbell. App. pp. 288 l. 23 – p. 289 l. 1. He never spoke with Campbell by telephone. App. p. 310 ll. 9-14. He acknowledged that he should have communicated better with Campbell. App. pp. 310 l. 24 – p. 311 l. 3.

### **Count XI – Gaston Appeal**

On July 26, 2018, Ernest T. Gaston (Gaston) appealed the district court’s decision in his criminal case, Cedar County AGCR025331; the appellate docket is 18-1293. App. pp. 24, 37 ¶ 125 & Ex. 11 pp. 1-2.

On August 8, 2018, the district court appointed Tindal to represent Gaston. App. pp. 24, 38 ¶ 126 & Ex. 11 pp. 3-5.

On October 3, 2018, the Court publicly reprimanded Tindal for violating Rules 32:1.3, 32:3.2, 32:3.4(c), and 32:8.4(d) regarding 21

appellate defaults issued to him from November 1, 2016 to October 31, 2017. App. pp. 114-15 & 117-18.

On December 7, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 24, 38 ¶ 128 & Ex. 11 pp. 10-12.

On December 28, Tindal filed a motion asking for a 25-day extension to file Gaston's proof brief and appendix designation. App. pp. 24, 38 ¶ 129 & Ex. 11 pp. 13-14. On January 2, 2019, the clerk granted his motion; the new deadline was January 28, 2019. App. pp. 24, 38 ¶ 130 & Ex. 11 pp. 15-16.

On January 29, Tindal filed a motion asking for a 14-day extension to file Gaston's proof brief and appendix designation. App. pp. 24, 38 ¶ 131 & Ex. 11 pp. 17-18. On January 30, the clerk granted his motion; the new deadline was February 11, 2019. App. pp. 24, 38 ¶ 132 & Ex. 11 pp. 19-20.

On March 8, 2019, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Gaston's proof brief and appendix designation. App. pp. 25, 38 ¶ 133 & Ex. 11 pp. 21-23. The clerk issued this notice 25 days after the February 11 deadline.

On March 21, Tindal filed and served Gaston's proof brief and appendix designation. App. pp. 25, 38 ¶ 134. This filing cured the notice

of default. App. pp. 267 l. 19 – p. 268 l. 6. On March 21, he paid the penalty assessment. App. pp. 25, 38 ¶ 135.

### **Count XII – Ruiz Appeal**

On September 28, 2018, Raul V. Ruiz (Ruiz) appealed the district court’s decision in his criminal case, Scott County FECR386821; the appellate docket is 18-1703. App. pp. 25, 38 ¶ 137 & Ex. 12 p 1.

On October 3, 2018, the Court publicly reprimanded Tindal for violating Rules 32:1.3, 32:3.2, 32:3.4(c), and 32:8.4(d) regarding 21 appellate defaults issued to him from November 1, 2016 to October 31, 2017. App. pp. 114-15 & 117-18.

On October 4, the district court appointed Tindal to represent Ruiz. App. pp. 26, 38 ¶ 138 & Ex. 12 pp. 2-4.

On November 29, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 26, 38 ¶ 140 & Ex. 12 pp 9-11.

On January 15, 2019, Tindal filed a motion asking for a 30-day extension to file Ruiz’s proof brief and appendix designation. App. pp. 26, 38 ¶ 141 & Ex. 12 pp. 12-13. On January 16, the clerk granted his motion; the new deadline was February 18, 2019. App. pp. 26, 38 ¶ 142 & Ex. 12 pp. 14-15.

On March 8, 2019, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Ruiz's proof brief and appendix designation. App. pp. 26, 38 ¶ 143 & Ex. 12 pp. 16-18. The clerk issued this notice 18 days after the February 18 deadline.

On March 20, Tindal filed and served Ruiz's proof brief and appendix designation. App. pp. 26, 38 ¶ 144. This filing cured the notice of default. App. p. 268 ll. 7-20. On March 20, he paid the penalty assessment. App. pp. 26, 38 ¶ 145.

### **Count XIII – Wiggins Appeal**

On October 3, 2018, the Court publicly reprimanded Tindal for violating Rules 32:1.3, 32:3.2, 32:3.4(c), and 32:8.4(d) regarding 21 appellate defaults issued to him from November 1, 2016 to October 31, 2017. App. pp. 114-15 & 117-18.

On November 16, 2018, Larry Wiggins, Jr. (Wiggins) appealed the district court's decision in his criminal case, Scott County FECR389410; the appellate docket is 18-1989. App. pp. 27, 39 ¶ 147 & Ex. 13 p. 1.

On November 28, the district court appointed Tindal to represent Wiggins. App. pp. 27, 39 ¶ 148 & Ex. 13 pp. 2-4.

On December 20, 2018, the clerk filed the notice of the briefing deadline in this appeal. App. pp. 27, 39 ¶ 150 & Ex. 13 pp. 8-10.

Tindal did not file any motions to enlarge time in the Wiggins appeal. App. p. 290 ll. 15-19.

On February 22, 2019, the clerk filed a notice of default and assessment of penalty to Tindal for his failure to file and serve Wiggins' proof brief and appendix designation. App. pp. 27, 39 ¶ 151 & Ex. 13 pp. 11-13. The clerk issued this notice 14 days after the February 8 deadline.

On March 8, 2019, Tindal filed and served Wiggins' proof brief and appendix designation. App. pp. 27, 39 ¶ 152. This filing cured the notice of default. App. pp. 268 l. 21 – p. 269 l. 6. On March 8, he paid the penalty assessment. App. pp. 27, 39 ¶ 153.

### **Applicable Disciplinary Rules**

#### **Iowa Rule of Professional Conduct 32:1.3 - Diligence**

In its Report, the Commission concluded that Tindal violated Iowa Rule of Professional Conduct 32:1.3, Diligence. On appeal, Tindal does not challenge that conclusion.

Rule 32:1.3 states: “A lawyer shall act with reasonable diligence and promptness in representing a client.”

Comment [1] to the Rule provides, in part:

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience

to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.

Comment [2] to the Rule provides: “A lawyer's work load must be controlled so that each matter can be handled competently.”

Comment [3] to the Rule provides, in part:

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions .... Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. ....

In *Attorney Disciplinary Bd. v. Kieffer-Garrison*, 847 N.W.2d 489 (Iowa 2014), the Court suspended Lori Kieffer-Garrison's law license for at least six months for violating, *inter alia*, Rule 32:1.3. *Id.* at 492, 496. The Court wrote, in part:

Kieffer-Garrison violated this rule in repeatedly failing to comply with deadlines imposed by the rules of this court in nine separate criminal cases and in failing to promptly pay penalties imposed by the court. The documentary evidence of more than twenty default notices issued to her in those cases overwhelmingly supports our finding of this violation.

*Id.* at 492. In 2009 and 2010, the Board had privately admonished Kieffer-Garrison for violating Rules 32:1.3 and 32:8.4(d) for failing to cure a notice of default from the Supreme Court clerk. *Id.* at 491. The Court found one aggravating factor, writing, “Kieffer–Garrison’s neglect of legal matters ... were serial acts of misconduct, rather than an isolated misadventure. ‘Normally, a pattern of misconduct gives rise to enhanced sanctions.’ (citation omitted).” *Id.* at 496.

In *Attorney Disciplinary Bd. v. Hedgecoth*, 862 N.W.2d 354 (Iowa 2015), the Court suspended John Hedgecoth’s law license for at least three months for violating, *inter alia*, Rule 32:1.3. *Id.* at 360-61, 367. Two of the Rule 32:1.3 matters related to Hedgecoth “repeatedly” missing deadlines and to him receiving several default notices in appellate cases, one a postconviction-relief case and one a criminal case. *Id.* at 357-58, 361. The Court wrote, “We have often found attorneys violated rule 32:1.3 when they consistently or repeatedly missed deadlines, failed to file required documents, or were unreasonably slow to act. (citations omitted).” *Id.* at 361.

In *Attorney Disciplinary Bd. v. Kingery*, 871 N.W.2d 109 (Iowa 2015), the Court suspended Heather Kingery’s law license for 60 days for violating, *inter alia*, Rule 32:1.3. *Id.* at 117-18, 125-26. Kingery received a

notice of default for failing to file a proof brief and appendix designation. *Id.* at 113. This event, along with failing to appear at district court hearings, established a “pattern” that violated this Rule. *Id.* at 117-18. The Court concluded that an aggravating factor was the number of clients affected, writing,

Additionally, the sheer number of clients affected by Kingery's conduct—more than a dozen—is an aggravating factor. *See Kieffer–Garrison*, 847 N.W.2d at 496 (concluding when an attorney neglected nine matters, the evidence showed “serial acts of misconduct, rather than an isolated misadventure”); *Conroy*, 845 N.W.2d at 67 (selecting a more severe sanction in part because the attorney neglected seven matters).

*Id.* at 122.

### **Iowa Rule of Professional Conduct 32:3.2 – Expediting Litigation**

In its Report, the Commission concluded that Tindal violated Iowa Rule of Professional Conduct 32:3.2, Expediting Litigation. On appeal, Tindal does not challenge that conclusion.

Rule 32:3.2 states: “A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”

Comment [1] to the Rule provides, in part:

Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a

lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. .... It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action is having some substantial purpose other than delay. ....

In *Attorney Disciplinary Bd. v. Kieffer-Garrison*, 847 N.W.2d 489 (Iowa 2014), the Court suspended Lori Kieffer-Garrison’s law license for at least six months for violating, *inter alia*, Rule 32:3.2. *Id.* at 492-93, 496.

The Court wrote, in part,

We conclude Kieffer–Garrison's serial failures to comply with the requirements of this court's procedural rules governing the timely presentation and progression of appeals constituted a violation of her obligation to demonstrate reasonable efforts to expedite numerous appeals consistent with her clients' interests. (footnote omitted).

*Id.* at 493.

In *Attorney Disciplinary Bd. v. Hedgecoth*, 862 N.W.2d 354 (Iowa 2015), the Court suspended John Hedgecoth’s law license for at least three months for violating, *inter alia*, Rule 32:3.2. *Id.* at 361-62, 367. Two of the Rule 32:3.2 matters related to Hedgecoth “repeatedly fail[ing] to follow court rules governing timely presentation and progression of appeals.” *Id.* at 362. In a post-conviction relief appeal, Hedgecoth received

two default notices. *Id.* at 357. In a criminal appeal, Hedgecoth received two default notices. *Id.* at 358. At the Commission hearing, Hedgecoth reported that he had “already taken steps to cease his appellate practice.” *Id.* at 360.

In *Attorney Disciplinary Bd. v. Kingery*, 871 N.W.2d 109 (Iowa 2015), the Court suspended Heather Kingery’s law license for 60 days for violating, *inter alia*, Rule 32:3.2. *Id.* at 120, 125-26. Kingery received a notice of default for failing to file a proof brief and appendix designation. *Id.* at 113. This event, along with failing to appear at district court hearings, established a “pattern” that violated Rule 32:3.2. *Id.* at 120.

**Iowa Rule of Professional Conduct 32:8.4(d) – Conduct  
Prejudicial to the Administration of Justice**

In its Report, the Commission concluded that Tindal violated Iowa Rule of Professional Conduct 32:8.4(d), Conduct Prejudicial to the Administration of Justice.

Rule 32:8.4(d) states: “It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.”

In *Attorney Disciplinary Bd. v. Knopf*, 793 N.W.2d 525 (Iowa 2011), the Court suspended Rolland Knopf’s law license for at least three months for violating, *inter alia*, Rule 32:8.4(d). *Id.* at 530, 532. The Board charged

Knopf with violating Rules 32:3.2 and 32:8.4(d) regarding the appeal he had taken following his conviction, by guilty plea, to two counts of second-degree fraudulent practice. *Id.* at 529. Knopf stipulated to the fact that he did not timely file a proof brief and appendix designation, that he ignored the clerk’s notice of default, and that, as a result, the Court dismissed his appeal. *Id.* The Court concluded that because neither the stipulation nor the exhibits “support[ed] a finding that Knopf’s dilatory handling of his appeal was done for the purpose of frustrating the implementation of his sentence[,]” Knopf did not violate Rule 32:3.2. He did violate Rule 32:8.4(d), however; the Court wrote,

That is not to say, however, that his actions did not violate rule 32:8.4(d). Neglect of an appeal resulting in its dismissal constitutes conduct prejudicial to the administration of justice. (citation omitted). Ignoring deadlines and orders, which results in default notices from the clerk of court, hampers “ ‘the efficient and proper operation of the courts’ ” and therefore is prejudicial to the administration of justice. (citations omitted).

*Id.* at 530.

In *Attorney Disciplinary Bd. v. Taylor*, 814 N.W.2d 259 (Iowa 2012), the Court concluded that Karen Taylor did not violate Rule 32:8.4(d) in her handling of two appeals. *Id.* at 268.

Taylor represented Norin in a CINA matter; on November 10, the district court denied Norin's request for a change of placement, and Taylor filed a notice of appeal on December 10. *Id.* at 262-63. The guardian ad litem filed a motion to dismiss the appeal because the appeal deadline was 15 days, not 30 days; the Court agreed and dismissed the appeal. *Id.* at 263.

Taylor represented Coleman in a dissolution decree modification; when the district court denied Coleman's modification request, Taylor filed a timely notice of appeal, but she did not disclose on the combined certificate whether the expedited deadline applied. *Id.* at 264. The Court granted the appellee's motion to dismiss the appeal, noting that Taylor had not complied with Rule of Appellate Procedure 6.804(4). *Id.*

Regarding these two appeals, the Court concluded:

In this case, Taylor did not allow the appeals to be administratively dismissed following the clerk's default notice. (citation omitted). The record does not indicate whether the clerk filed any default notice related to either appeal. (citations omitted). Instead, the record shows the dismissals resulted from motions to dismiss filed by the opponents of Norin and Coleman in light of Taylor's negligent failure to appreciate the applicability of the expedited deadlines. Under these circumstances, the Board has failed to establish by a convincing preponderance of the evidence

Taylor's conduct was prejudicial to the administration of justice under rule 32:8.4(d).

*Id.* at 267-68.

In *Attorney Disciplinary Bd. v. Nelson*, 838 N.W.2d 528 (Iowa 2013), the Court suspended Brian Nelson's law license for 30 days for violating, *inter alia*, Rule 32:8.4(d). *Id.* at 540-41, 545. Nelson ignored the appellate clerk's notice of default for failing to file the combined certificate in an appeal brought for a client named Hackman. *Id.* at 533. The Court dismissed the appeal. *Id.* In finding a violation of Rule 32:8.4(d), the Court wrote, in part, "An attorney who ignores deadlines and orders, resulting in default notices from the clerk of court, impedes 'the efficient and proper operation of the courts' and thus, is prejudicial to the administration of justice. (citations omitted)." *Id.* at 540.

In *Attorney Disciplinary Bd. v. Conroy*, 845 N.W.2d 59 (Iowa 2014), the Court suspended James Conroy's law license for at least six months for violating, *inter alia*, Rule 32:8.4(d). *Id.* at 65, 68. The Board's case arose primarily from Conroy's court-appointed representation of six clients who had pending criminal appeals. *Id.* at 62. The Court succinctly described Conroy's conduct:

The alleged facts were generally the same in each of the six cases. After being appointed appellate counsel, Conroy neglected the appeals. Default notices were issued to Conroy by the Iowa Supreme Court, and he failed to cure the defaults. His failure to cure the defaults subjected each appeal to dismissal. Rather than dismiss each appeal, however, in each case the Iowa Supreme Court removed Conroy as appellate counsel and new counsel was appointed.

*Id.* Even though the Court did not dismiss any of Conroy's appeals, the Court wrote,

The same conduct described above also violates Iowa Rule of Professional Conduct 32:8.4(d). This rule prohibits "conduct that is prejudicial to the administration of justice." (citation omitted). An attorney violates rule 32:8.4(d) when his or her "misconduct results in additional court proceedings or causes court proceedings to be delayed or dismissed." (citation omitted). Failing to comply with appellate deadlines is prejudicial to the administration of justice. (citation omitted). With respect to all ... matters at issue here, Conroy's neglect resulted in substantial delays and extraordinary expenditure of court time and resources. This includes substantial time and resources of the clerk of the appellate courts, clerk of court, district court, and this court as well. Accordingly, we conclude Conroy violated rule 32:8.4(d).

*Id.* at 65.

In *Attorney Disciplinary Bd. v. Hedgecoth*, 862 N.W.2s 354 (Iowa 2015), the Court suspended John Hedgecoth's law license for at least three months for violating, *inter alia*, Rule 32:8.4(d). *Id.* at 363, 367.

The court appointed Hedgecoth to represent Odell Everett, Jr. in a post-conviction relief appeal. *Id.* at 357. When he failed to file a combined certificate and an application to waive the filing fee, the clerk issued a notice of default. *Id.* Although Hedgecoth allowed the 15 days to elapse, the Court later granted his request for an extension of time to file the required documents. *Id.* When he missed the extension deadline, the clerk issued a second notice of default. *Id.* He failed to cure the default, and the Court removed him as Everett's counsel and notified the Board. *Id.*

The court appointed Hedgecoth to represent Stephanie Sexton in a criminal appeal. *Id.* at 358. When he failed to file a combined certificate and an application to waive the filing fee, the clerk issued a notice of default. *Id.* He then filed the required documents. *Id.* The clerk issued a second notice of default when he failed to timely file a proof brief and an appendix designation. *Id.* He failed to cure the default, and the Court removed him as Sexton's counsel and notified the Board. *Id.*

The Court concluded that Hedgecoth violated Rule 32:8.4(d) and wrote: “Hedgecoth's neglect of multiple cases caused the court to prepare and send default notices and ultimately required this court to remove him as counsel in two appeals. Accordingly, we find Hedgecoth violated rule 32:8.4(d). (citations omitted).” *Id.* at 363.

In *Attorney Disciplinary Bd. v. Weiland*, 862 N.W.2d 627 (Iowa 2015), the Court publicly reprimanded Kenneth Weiland, Jr. for violating, *inter alia*, Rule 32:8.4(d) when he failed to dismiss an appeal. *Id.* at 637-38, 643. Weiland represented Ryan Pierce in a domestic relations appeal. *Id.* at 631. After filing a notice of appeal on January 31, 2013, Weiland failed to file and serve the combined certificate or pay the filing fee. *Id.* On March 8, 2013, the clerk sent Weiland a notice of default. *Id.* at 631-32. On March 25, Weiland contacted the court reporter to order the transcript; he filed the combined certificate, but he did not serve a copy on the court reporter. *Id.* at 632. On June 5, 2013, after receiving a failure to file transcript notice from the clerk, the court reporter advised the clerk that Weiland had not ordered the transcript, nor had he paid the required deposit. *Id.* On June 17, the Court ordered Weiland to serve the combined certificate on the court reporter and pay the deposit by June

27. *Id.* On July 18, 2013, after learning that Weiland had not completed these tasks, the Court dismissed Pierce’s appeal. *Id.*

Weiland testified that Pierce had not paid him for the transcript, but he did not dismiss the appeal because he was trying to protect his appeal rights. *Id.* at 634. Nonetheless, the Court concluded:

Although Weiland’s conduct did not amount to neglect, Weiland was not relieved “ ‘from taking steps to end the matter.’ ” (citations omitted). On June 17, this court ordered Weiland to “serve court reporter McCarville with the combined certificate and pay her required deposit” by June 27. The June 17 order further notified Weiland that “failure to pay [for] the transcript ... [would] result in [the] appeal being dismissed.” Weiland knew by the June 27 deadline that Pierce would be unable to pay for the transcript, yet he took no action to dismiss the appeal. His inaction caused the clerk to prepare and file an order three weeks later accomplishing the dismissal. “ ‘Our case law makes it clear that an attorney cannot use a default notice to dismiss an appeal in lieu of the attorney’s obligation to comply with our appellate rules.’ ” (citations omitted). Weiland violated rule 32:8.4(d).

*Id.* at 638.

The deputy clerk of the appellate courts, Christine Mayberry, testified at the Weiland Commission hearing, and the Court described part of her testimony: “She further testified that when the clerk’s office is required to send default notices, it causes ‘a significant drain on [the office’s] workload.’ (footnote omitted).” *Id.* at 633.

In *Attorney Disciplinary Bd. v. Noel*, 933 N.W.2d 190 (Iowa 2019), the Court concluded that Matthew Noel violated Rule 32:8.4(d) in his representation of Janelle Huffman in a civil suit in district court. *Id.* at 193, 204-05. The Court wrote:

Noel's neglectful and untimely handling of discovery matters resulted in additional court proceedings and caused other court proceedings to be delayed. His conduct resulted in opposing counsel filing a motion to compel and a motion for sanctions, which led to three additional court proceedings—one on each motion and one on the sanctions amount. His conduct also resulted in the extension of the deadline for filing motions for summary judgment and the trial being delayed from March 13, 2017, to May 22, 2017. (citations omitted).

We acknowledge the undesirable effect of Noel's conduct is not as egregious as in other cases. (citations omitted). Nevertheless, Noel's conduct interfered with the operation of the court system by causing three additional hearings, delaying the summary judgment filing deadline, and delaying the date of trial. We find by a convincing preponderance of the evidence that Noel violated rule 32:8.4(d).

*Id.* at 204-05.

In *Attorney Disciplinary Bd. v. Bergmann*, 938 N.W.2d 16 (Iowa 2020), the Court publicly reprimanded Beau Bergmann for violating, *inter alia*, Rule 32:8.4(d). *Id.* at 23, 26. One of the matters on which the

Court based this conclusion was the appeal of perjury conviction. *Id.* at 20. Bergmann and another attorney, Kenneth Weiland, each received a notice of default from the appellate clerk for failure to file and served the combined certificate and to pay the appeal fee. *Id.* Weiland completed these steps, but Bergmann did nothing. *Id.* Later, the clerk issued a notice of default to each of them for failure to file and serve a proof brief and appendix designation. *Id.* Neither of them completed these items, and the Court dismissed the appeal. *Id.* In concluding that Bergmann violated Rule 32:8.4(d), the Court wrote, “Here Bergmann’s conduct necessitated additional court action and proceedings ....” *Id.* at 23.

In *Attorney Disciplinary Bd. v. Goedken*, 939 N.W.2d 97 (Iowa 2020), the Court suspended Duane Goedken’s law license for at least 90 days for violating, *inter alia*, Rule 32:8.4(d). *Id.* at 106-07, 110. He received delinquency notices in five estates and one trust. *Id.* at 101-04. In concluding that Goedken violated Rule 32:8.4(d), the Court wrote:

“There is no precise test for determining whether an attorney’s conduct violates the rule.” (citation omitted). In general, acts that are prejudicial to the administration of justice “hamper[ ] the efficient and proper operation of the courts or of ancillary systems upon which the courts rely.” (citations omitted). “We have consistently held an attorney’s misconduct causing prolonged or additional court proceedings violates this rule.” (citation omitted). This is

true because such proceedings waste “valuable judicial and staff resources.” (citations omitted).

1. Violation of rule 32:8.4(d) due to neglect. We have held receipt of repeated delinquency notices is conduct prejudicial to the administration of justice. (citation omitted). This rule forbids attorneys from using the clerk of court as a “private tickler system” to remind them to file required reports. (citations omitted).

Here, the clerk of court was forced to issue nine delinquency notices to Goedken, and the district court wasted significant time attempting to schedule and hold hearings related to those delinquencies. Although some of those delinquency notices were issued during a time when mitigating factors were present in Goedken’s life, the delinquency notices in the Wathan trust were sent prior to Goedken’s heart attack, eye issues, and the death of his daughter. Indeed, the repeated delinquencies in the trust suggest Goedken was using the clerk of court as a “private tickler system.” We therefore find Goedken’s handling of the five estates and the Wathan trust was conduct prejudicial to the administration of justice in violation of rule 32:8.4(d).

*Id.* at 107.

## **Argument**

### **Error Preservation and Scope and Standard of Appellate Review**

The Board agrees that Tindal preserved the issues presented for appellate review. The Board agrees with Tindal that the scope and standard of appellate review is *de novo*.

**I. Did the Grievance Commission Err in Finding Tindal Violated Rule 32:8.4(d)?**

Tindal's dilatory handling of these 13 appeals prejudiced the administration of justice. His reliance on the clerk's default notices to serve as a tickler system to remind him to complete tasks in these appeals hampered the efficient and proper operation of the courts.

Tyler Buller's testimony and the record in this case demonstrated that extensions of time in criminal and post-conviction appeals are routinely granted. Notwithstanding this accepted avenue of delaying resolution of these appeals, based on the default notices that he received, Tindal failed to file a motion for an extension 16 times in 55 weeks. On average, he failed to file more than one motion per month for these 12.8 months.

As a busy and experienced litigator, Tindal knew how to track deadlines and appointments. In his court-appointed appeal work, however, Tindal too often relied on the clerk of court. In this record, the clerk of court might wait 18, 29, 35, 41, or 60 days before opening a 15-day window provided in the default notice.

While Tindal doubts that the court system is prejudiced or harmed by his approach to appellate deadlines, the Court's opinions addressing this Rule indicate otherwise. While Tindal can be critical of the speed at which the appellate courts issue opinions, this does not give him license to play a repetitive role in attracting the clerk's attention by way of receiving a default notice.

The Court should reject Tindal's argument that a violation of Rule 32:8.4(d), in the context of appellate defaults, should only be found in those cases in which the Court dismissed the appeal. In *Conroy* and *Hedgecoth* the Court found violations of this Rule even though it had not dismissed the appeals.

The Court should conclude that Tindal violated Rule 32:8.4(d).

**II. Did the Grievance Commission Err in Finding Tindal's  
Prior Reprimand Would Have Been More Severe Had the  
Additional Default Notices Been Available in October  
2018?**

The Commission did not err in finding that Tindal's prior reprimand would have been more severe had the additional default notices been available in October 2018.

In *Attorney Disciplinary Bd. v. Noel*, 933 N.W.2d 190 (Iowa 2019), (*Noel II*), the Court analyzed the issue of “prior discipline” and its effect on determining the appropriate sanction in a subsequent case against the attorney. *Id.* at 205-06.

In October 2017, the Board filed an ethics complaint against Matthew Noel for intentionally overbilling the State Public Defender from November 2008 to January 1, 2014. *Id.* at 193. (*Noel I*). In February 2019, the Court suspended Noel’s law license for one year; the citation for this case is 923 N.W.2d 575 (Iowa 2019).

In July 2018, the Board filed an ethics complaint against Noel regarding his representation of Janelle Huffman in a civil suit. 933 N.W.2d at 195-96. (*Noel II*). Noel represented Huffman from December 2015 to July 27, 2017. *Id.* 205-06. In September 2019, the Court issued its opinion that publicly reprimanded Noel. *Id.* at 190, 206.

In *Noel II*, the Court rejected the Board’s argument that the sanction in *Noel I* should be considered as prior discipline. *Id.* at 205. The Court concluded, “for prior discipline to qualify as an aggravating factor, we must have disciplined an attorney before he or she commits the subsequent act.” *Id.* Applying this rationale to the facts in the Board’s case

against Tindal, only the four default notices that he received in the first quarter of 2019, issued after the October 2018 reprimand, would be “prior discipline.”

In *Noel II*, the Court referenced the approach it had taken in *Attorney Disciplinary Bd. v. Moorman*, 729 N.W.2d 801 (Iowa 2007). *Id.* at 206. In *Moorman*, the Court decided to reprimand Ryan Moorman after it had suspended his license because

[a]ll of Moorman's conduct that is the subject of the present disciplinary action occurred prior to June 16, 2004, the date we suspended Moorman's license to practice law for two years. Moorman's conduct in the prior disciplinary proceeding and in this proceeding is similar and demonstrates the same pattern of conduct. Under these circumstances, we are allowed to impose a concurrent sanction instead of a consecutive sanction. *See Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. O'Brien*, 690 N.W.2d 57, 58-59 (Iowa 2004) (finding even if at the time of the previous disciplinary action the court had been aware of the newly charged violations, which occurred prior to the previous disciplinary action, it is unlikely that this information would have resulted in a more lengthy suspension; and therefore running the suspension concurrent to the previous suspension); *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. D'Angelo*, 652 N.W.2d 213, 215 (Iowa 2002) (imposing a concurrent sentence, reasoning if additional violations had been brought to the court's attention at the time of the previous sanction, the court “seriously doubt[s] that respondent's prior suspension ... would have been

enlarged”). Had we been aware of the conduct that is the subject of this disciplinary proceeding at the time of our previous decision, it is unlikely this conduct would have caused us to suspend Moorman's license for longer than two years. Because Moorman's license is presently under suspension, we see no purpose served by ordering another suspension insofar as a deterrence or protection of the public is concerned. *See Comm. on Prof'l Ethics & Conduct v. Clauss*, 468 N.W.2d 213, 215 (Iowa 1991) (reprimanding an attorney for conduct that occurred before a prior suspension when the conduct that was the subject of the present proceeding would not have lengthened the prior suspension).

*Id.* at 805-06.

In *Attorney Disciplinary Bd. v. Marks*, 814 N.W.2d 532 (Iowa 2012), the Court decided to reprimand Samuel Marks after it had suspended his license because

all of Marks' conduct that is the subject of the present disciplinary action occurred prior to the date in 2009 when we suspended his license for thirty days. Had we been aware in 2009 of the conduct that is the subject of the present disciplinary proceeding, it is unlikely that we would have suspended Marks' license for more than thirty days. *See Iowa Supreme Ct. Att'y Disciplinary Bd. v. Moorman*, 729 N.W.2d 801, 805–06 (Iowa 2007). Therefore, we see no reason to elevate Marks' sanction here. A public reprimand will do.

*Id.* at 542.

In both *Moorman* and *Marks*, the Court imposed reprimands on attorneys who had served a period of suspension. In this case, the Court reprimanded Tindal in October 2018 for violating Rules 32:1.3, 32:3.2, and 32:8.4(d) because he had received 26 default notices from December 2016 through December 2017 in 16 appellate cases. App. pp. 114-15, 117-18, & 121-230. Now the Court has before it 16 more default notices issued to Tindal, the last four of which would be considered as prior discipline, in 13 appellate cases from February 2018 through March 2019.

In contrast to the suspensions the Court imposed in the “first case” brought against attorneys Clauss, D’Angelo, O’Brien, Moorman, and Marks, the Court did not suspend Tindal’s license in his “first case.” The Court is not faced with the question whether Tindal’s “first case suspension” would have been longer had it known about these additional appellate defaults. Instead, the Court faces the question whether it would have merely reprimanded Tindal in October 2018 had it known about and considered the mounting toll of appellate delinquencies beginning to accrue in February 2018. Finding violations of Rules 32:1.3, 32:3.2, and 32:8.4(d) in 13 Counts, the Commission concluded that the Court would

answer that question, “No.” The Board urges the Court to answer “No” and suspend Tindal’s law license in this “second case” for incurring these additional appellate defaults.

### **III. Did the Grievance Commission Err in Recommending Suspension of Tindal’s Law License?**

The Commission did not err in recommending that the Court suspend Tindal’s law license for 30 days. Tindal’s conduct in these 13 Counts violated at least three Rules, namely Rules 32:1.3, 32:3.2, and 32:8.4(d). Based on the evidence adduced at the hearing, however, the Court should also conclude that in Count X Tindal also violated Rules 32:1.4(a)(2), (3), and (4).

Since the Board filed its post-hearing brief in October 2019, the Court decided *Attorney Disciplinary Bd. v. Bergmann*, 938 N.W.2d 16 (Iowa 2020). Beau Bergmann’s client in a custody proceeding had difficulty “repeatedly” in contacting him; Bergmann acknowledged that he received the calls, but he “failed to timely respond.” *Id.* at 20. In concluding that Bergmann violated Rule 32:1.4(a), the Court wrote:

“We have concluded attorneys violate both subsections (a)(3) and (a)(4) [of rule 32:1.4] by failing to keep their clients informed about the status of their case and neglecting

to respond to client inquiries.” (citation omitted). In the [custody] matter, the record is minimally adequate for us to conclude that Bergmann violated this rule. He admits that his client had trouble reaching him, that he received phone calls from the client, and that he failed to respond to the phone calls. (citation omitted). This conduct establishes a violation of rule 32:1.4(a).

*Id.* at 22. Notwithstanding Campbell’s nettlesome nature, Tindal had an obligation to respond to and communicate with him. His three perfunctory letters to Campbell did not meet the duties imposed by Rules 32:1.4(a)(2), (3), and (4).

Tindal asks the Court to find an “absence of harm to any client” as a mitigating factor; the Court should reject this request. Campbell’s correspondence to the Court and to Tindal included in exhibit 16 demonstrates his anxiety about the lack of discernible progress in his appeal. Comment [3] to Rule 32:1.3 specifically recognizes “unreasonable delay can cause a client needless anxiety ....”

Further, regardless of the harm to clients, there was real harm to the court system. In the absence of a calendaring system to which Tindal paid attention, the Clerk of Court’s office provided Tindal with deadline reminders in the form of default notices. Providing this service to Tindal can hardly qualify as good use of the Clerk’s time. Embedded in Rule

32:8.4(d) is the notion of harm to the judicial system; that harm should be reflected in Tindal's sanction.

In arguing that the Commission erred in recommending a license suspension, Tindal cites to page 66 of the 2014 *Conroy* case<sup>1</sup> (six-month suspension) for the quotation "much more serious violations or aggravating circumstances" from the 2012 *Humphrey* case<sup>2</sup> (three-month suspension). In the paragraph from the *Conroy* case in which this quotation occurs, the Court cited to cases involving one-year suspensions. The Tindal Commission did not err in recommending a 30-day suspension.

Tindal cites the *Tompkins* case in support of his argument that the Court should reprimand, rather than suspend, him. In *Attorney Disciplinary Bd. v. Tompkins*, 733 N.W.2d 661 (Iowa 2007), the Court reprimanded Richard Tompkins, Jr. for violating DR 1-102(A)(5)<sup>3</sup> and

---

<sup>1</sup> 845 N.W.2d 59, 66 (Iowa 2014).

<sup>2</sup> 812 N.W.2d 659, 668 (Iowa 2012).

<sup>3</sup> DR 1-102(A)(5) stated: A lawyer shall not ... Engage in conduct that is prejudicial to the administration of justice.

(6),<sup>4</sup> DR 6-101(A)(3),<sup>5</sup> and Rules 32:1.1, 32:1.3, and 32:8.4(d). *Id.* at 666-69, 670. The Board’s case against Tompkins involved his representation, under court appointments, of Derrick Crume, a parent involved in a CINA case, and Larry Hull, a defendant with a criminal appeal. *Id.* at 664-66. The Court wrote this summation of Tompkins’ harmless misconduct:

Tompkins neglected his representation of Crume by failing to communicate with Crume and respond to his inquiries. Further, without his client's consent, Tompkins allowed Hull's appeal to be administratively dismissed, neglecting his client, and wasting judicial resources. However, it seems little prejudice was caused to either Crume or Hull.

*Id.* at 669.

The Court identified these prior disciplinary actions against Tompkins: 1) A two-year suspension in 1987 “for unlawfully entering residences and searching for women’s undergarments ...[;]” 2) A reprimand for neglecting a client matter in 1997; and 3) A reprimand for charging a non-refundable minimum fee in 1998. *Id.* at 670.

---

<sup>4</sup> DR 1-102(A)(6) stated: A lawyer shall not ... Engage in any other conduct that adversely reflects on the fitness to practice law.

<sup>5</sup> DR 6-101(A)(3) stated: A lawyer shall not ... Neglect a client’s legal matter.

Citing five reprimand cases from 1997 to 2007, the Court decided “the appropriate sanction for Tompkins' neglect and failure to respond to the Board's notices is a public reprimand. (citations omitted).” *Id.* at 670.

Notwithstanding the *Tompkins'* sanction, the Commission did not err in recommending a suspension of Tindal's law license. Considering Tindal's arrogant indifference to the time limitations imposed by the appellate rules, including his indifference identified in the October 2018 reprimand and his indifference identified in this record, and his arrogant indifference to Campbell's inartful appeals for information, the Court should accept the Commission's recommendation and suspend Tindal's law license.

### **Aggravating Factors**

The Court should consider these aggravating factors as it considers the sanction it should impose.

### **Prior Disciplinary Offenses**

In *Attorney Disciplinary Bd. v. Weiland*, 862 N.W.2d 627 (Iowa 2015), the Court commented on prior discipline as an aggravating factor:

“[T]he prior disciplinary history of an attorney is [one] factor we must consider....” (citation omitted). “In so doing, we

consider both prior admonitions and prior public discipline.” (citation omitted). “Prior misconduct is more suggestive of increased sanctions when it involves the same type of conduct as the conduct currently subject to discipline.” (citation omitted).

*Id.* at 641.

In *Attorney Disciplinary Bd. v. Weiland*, 885 N.W.2d 198 (Iowa 2016), the Court commented on the “series of private admonitions, public reprimands, and suspensions” Kenneth Weiland, Jr. had received:

The prior disciplinary history of an attorney is a significant aggravating factor we must consider when imposing a sanction for violations of our rules. (citation omitted). This is particularly true when the current rule violations involve the same type of conduct as the prior conduct subject to discipline. (citation omitted).

*Id.* at 215.

In *Attorney Disciplinary Bd. v. Vandel*, 889 N.W.2d 659 (Iowa 2017), the Court considered Pamela Vandel’s prior discipline, consisting of “both prior admonitions and prior public discipline[,]” as an aggravating factor.

*Id.* at 669.

In *Attorney Disciplinary Bd. v. West*, 901 N.W.2d 519 (Iowa 2017), the Court concluded that Kim West’s prior private admonition was an aggravating factor, writing, “While a prior private admonition is not

discipline, we consider it an aggravating factor because it put West on notice of his ethical requirements. (citation omitted).” *Id.* at 528.

In *Attorney Disciplinary Bd. v. Barry*, 908 N.W.2d 217 (Iowa 2018), the Court summarized its position that prior discipline is an aggravating factor in determining the appropriate sanction for Sean Barry: “Prior disciplinary action is a significant aggravating factor. (citations omitted). ‘This is particularly true when the current rule violations involve the same type of conduct as the prior conduct subject to discipline.’ (citations omitted).” *Id.* at 234.

In December 2012, the Board privately admonished Tindal for violating Rules 32:1.3 and 32:1.4(a)(3) in his representation of Vincent Allen in an appeal of his post-conviction relief case. App. pp. 104-11. On June 24, 2011, the appellate clerk issued a notice of default to Tindal for failing to file and serve the proof brief and designation of appendix. App. pp. 106-07. On January 17, 2012, the appellate clerk issued a notice of default to Tindal for failing to file and serve the final briefs. App. pp. 108-09.

In October 2018, the supreme court publicly reprimanded Tindal for violating Rules 32:1.3, 32:3.2, and 32:8.4(d) from December 29, 2016

through December 29, 2017, in his representation of 16 appellate clients. App. pp. 114-15 & 117-18. During this 12-month period, Tindal accumulated 26 appellate default notices.

The Court should find Tindal's prior disciplinary offenses to be an aggravating factor in imposing a sanction on him.

### **A Pattern of Misconduct**

In *Attorney Disciplinary Bd. v. Turner*, 918 N.W.2d 130 (Iowa 2018), the Court wrote: "A pattern of misconduct is an aggravating factor. (citation omitted)." *Id.* at 154.

In June 2011 and January 2012, and from December 2016 through March 2019, Tindal demonstrated an inability to comply with appellate deadlines. This inability established a pattern of misconduct.

The Court should find Tindal's pattern of misconduct to be an aggravating factor in imposing a sanction on him.

### **Multiple Offenses**

In *Attorney Disciplinary Bd. v. Parrish*, 925 N.W.2d 163 (Iowa 2019), the Court found that Eric Parrish violated multiple professional conduct

rules; the Court wrote, “Multiple rule violations are an aggravating factor giving rise to more serious sanctions. (citations omitted).” *Id.* at 181.

In *Attorney Disciplinary Bd. v. Sears*, 933 N.W.2d 214 (Iowa 2019), the Court wrote that “multiple violations of disciplinary rules” are an aggravating factor. *Id.* at 224.

In this case, Tindal violated Rules 32:1.3, 32:3.2, and 32:8.4(d) multiple times for 13 clients. The Court should find Tindal’s multiple offenses to be an aggravating factor in imposing a sanction on him.

#### **Refusal to Acknowledge Wrongful Nature of Conduct**

In *Attorney Disciplinary Board v. Vandel*, 889 N.W.2d 659 (Iowa 2017), the Court concluded that Pamela Vandel refused to acknowledge the wrongful nature of all her conduct, writing,

Finally, an “attorney’s failure to appreciate the wrongfulness of his or her actions is an aggravating circumstance.” (citation omitted). On the other hand, “[a] mitigating factor is the attorney’s recognition of some wrongdoing.” (citation omitted). During the commission’s sanctions hearing, Vandel said she is not good at managing money and admitted to trust account violations. However, she never acknowledged that she repeatedly made false statements to the trial court, opposing counsel, the court of appeals, and the Board. Further, she adamantly denied her conduct caused any harm to Nichole.

*Id.* at 669-70.

In *Attorney Disciplinary Bd. v. Stansberry*, 922 N.W.2d 591 (Iowa 2019), the Court concluded that Benjamin Stanberry failed to acknowledge his wrongdoing, writing, “Failure to appreciate wrongfulness of one’s actions is also an aggravating circumstance. (citation omitted).” *Id.* at 600.

In *Attorney Disciplinary Bd. v. Parrish*, 925 N.W.2d 163 (Iowa 2019), the Court concluded that Eric Parrish failed to acknowledge his wrongdoing, writing, “Finally, Parrish simply refused to take responsibility for his actions. Refusing to admit wrongful conduct and showing no remorse is an aggravating factor. (citation omitted).” *Id.* at 182.

Tindal refused to acknowledge the wrongful nature of his conduct. He testified that his timely compliance with the multiple notices of default he received cleared him of any wrongdoing. He further testified that his delay in filing appellate documents harmed no one, including his clients and the court system. The cases cited throughout this brief demonstrate that the Court has a contrary view on the “ethics” of receiving multiple appellate default notices. Rather than acknowledge his

violations of the cited Rules, Tindal asks the Court to ratify the “wait for the default notice” approach to appellate practice. The Court should reject this invitation.

The Court should find Tindal’s refusal to acknowledge the wrongful nature of his conduct to be an aggravating factor in imposing a sanction on him.

### **Substantial Experience in the Practice of Law**

In *Attorney Disciplinary Bd. v. Vandel*, 889 N.W.2d 659 (Iowa 2017), the Court found Pamela Vandel’s 20 years of practicing law to be an aggravating factor; the Court wrote: “we consider substantial experience in the practice of law an aggravating factor affecting our determination. (citation omitted).” *Id.* at 669.

In *Attorney Disciplinary Board v. Jacobsma*, 920 N.W.2d 813 (Iowa 2018), the Court considered Michael Jacobsma’s experience as an aggravating factor, writing,

Years of experience as an attorney can be considered an aggravating factor. For example, in *Iowa Supreme Court Attorney Disciplinary Board v. Barnhill*, we considered the attorney’s twenty years of experience as an aggravating factor. 885 N.W.2d 408, 424–25 (Iowa 2016). Like the attorney in *Barnhill*, Jacobsma had twenty years of

experience as an attorney when he engaged in the misconduct at issue. Jacobsma's twenty years of experience are substantial and we view them as an aggravating factor. (citation omitted).

*Id.* at 819.

In *Attorney Disciplinary Bd. v. Parrish*, 925 N.W.2d 163 (Iowa 2019), the Court concluded that Eric Parrish's 17 years of law practice was an "aggravating factor in imposing discipline." *Id.* at 181.

Tindal has been an Iowa lawyer since 2000, a 20-year period.

The Court should find Tindal's substantial experience in the practice of law to be an aggravating factor in imposing a sanction on him.

### **Conclusion**

The Board met its burden of proving by a convincing preponderance of the evidence that Tindal violated Rules 32:1.3, 32:3.2, and 32:8.4(d) in all 13 Counts. In Count X, the Board met its burden of proving by a convincing preponderance of the evidence that Tindal violated Rules 32:1.4(a)(2), (3), and (4).

Based on Tindal's conduct and the aggravating factors established in this case, the Court should suspend Tindal's law license for at least 60 days. Tindal's continuing misconduct after the Court's October 2018

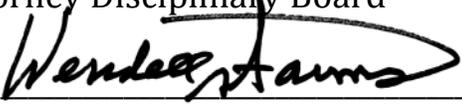
public reprimand for similar misconduct occurring between December 2016 and December 2017 forecloses the appropriateness of a second public reprimand.

Iowa case law regarding appellate default notices does not support Tindal's assertion that timely compliance with the default notice absolves him from any consequences under the Rules of Professional Conduct. The evidence in this record establishes that extensions of time are routinely granted in criminal and post-conviction relief appeals. Tindal asked for and received a number of these extensions. The Court should not accept Tindal's invitation to ratify a process by which an attorney obtains his or her final extension by way of the appellate clerk's 15-day default notice.

The Rules of Professional Conduct and Iowa case law establish that Tindal had an obligation to respond to and communicate with Campbell, even though he was a difficult client. Tindal made no reasonable effort to do so.

Applying the evidence developed in this record with the pertinent Rules and case law yields the conclusion that Tindal's law license should be suspended for at least 60 days.

Iowa Supreme Court  
Attorney Disciplinary Board

By: 

Wendell J. Harms, AT0003209

Iowa Judicial Branch Building

1111 East Court Avenue

Des Moines, IA 50319-5003

Telephone: (515) 348-4684

Fax: (515) 348-4699

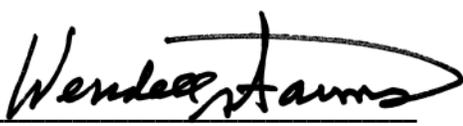
E-mail:

wendell.harms@iowacourts.gov

Attorney for the Appellee

### **Request for Nonoral Submission**

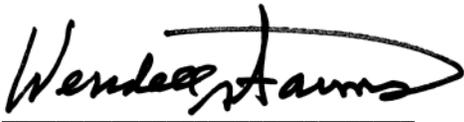
The Board requests submission of the case without oral argument.



Wendell J. Harms

**Certificate of Compliance with Typeface  
Requirements and Type - Volume Limitation**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Cambria in 14 point and contains 13045 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Wendell J. Harms

6/2/2020

Date