

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
ISABEL SIEDBAND,) **Supreme Court #SC86455**
)
Respondent.)

INFORMANT'S BRIEF

OFFICE OF
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STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

In April of 1998, Alexandra Singer and a roommate leased an apartment on Forsyth Street in St. Louis from Manuel Fernandez. **App. 98-99**. The building in which the apartment was leased was titled solely in Mr. Fernandez's name. **App. 32 (T. 50)**. Mr. Fernandez died on April 30, 1998. **App. 131**.

Mr. Fernandez was survived by his wife, Rosario Fernandez, a minor daughter, Caroline Fernandez, and Respondent, Isabel Siedband, formerly known as Isabel Fernandez and Isabel Leroux. **App. 113**. Rosario Fernandez is Respondent's stepmother. Mr. Fernandez's will leaves the contents of his office to Isabel, and the remainder of his estate to Rosario. **App. 31 (T. 47), 100-101**.

On May 11, 1998, Rosario, who has trouble understanding English, **App. 30 (T. 42)**, and Respondent met with Robert Spalding, a lawyer of many years experience who has concentrated in probate and estate planning since 1990. **App. 58-59 (T. 157-159)**. Respondent told Mr. Spalding that she was not certain how some of her father's real estate was titled. **App. 59 (T. 160-161)**. Mr. Spalding explained that only property titled in Mr. Fernandez's name alone would be subject to probate under his will. **App. 59 (T. 160)**. Mr. Spalding told Respondent that if there were property subject to the will, the will would have to be filed within one year of Mr. Fernandez's death. Otherwise, a

petition to determine heirs would have to be filed to distribute any property titled solely in Mr. Fernandez's name in accordance with the intestacy statute. **App. 59 (T. 161).**¹

Subsequent to the meeting with Mr. Spalding, Respondent learned that the two apartment buildings on Forsyth Street were titled solely in her father's name. **App. 32 (T. 50).** Respondent called Mr. Spalding several weeks after their initial meeting, but told him she was still trying to ascertain who owned the property in question. **App. 60 (T. 162).**² Mr. Spalding's file and notes corroborate that Respondent did not tell him there was real estate titled solely in Mr. Fernandez's name until after the one year period for filing the will had passed. **App. 60-61 (T. 163-166).**

Respondent, who was born in 1973, took law school classes over a period of seven years. She attended classes in Spain for three years. She took some Spanish law classes by correspondence while she was in the United States. Respondent attended a masters

¹ Respondent testified in *Singer v. Siedband*, CV1AC-14654, that Mr. Spalding did not say anything to her or her stepmother about a one year time frame to file the will until after the year had passed. **App. 36-37 (T. 69-70).**

² Respondent testified in *Singer v. Siedband*, CV1AC-14654, that when she telephoned Mr. Spalding a few weeks after their initial meeting, she told him the real estate at issue was titled solely in her father's name.

degree program at Washington University in the spring of 2002. **App. 30 (T. 42-43)**. Respondent was admitted to Missouri’s bar in the fall of 2002.³

In March of 1999, Respondent had a meeting with attorney Tom Osterholt about some rental property, including the building on Forsyth in which Ms. Singer was a tenant. Respondent told Mr. Osterholt that her father had gifted the property to her, that she lived in one of the buildings, and managed the property. **App. 49-50 (T. 119-123), 54 (T. 140)**.⁴ She did not tell him her father was deceased. **App. 54 (T. 139-140)**. On March 22, 1999, Mr. Osterholt’s office received a completed “Attorney Notice to File” form from Respondent, which Mr. Osterholt uses as his instruction from the client to file suit for delinquent rent. **App. 107**. In March of 1999, Mr. Osterholt filed a petition for delinquent rent naming Alexandra Singer and her former roommate as defendants. The petition named Respondent as the plaintiff in her capacity as an individual. **App. 108-110**.

³ More information regarding Respondent’s admission to the bar is provided later in this statement of facts.

⁴ Respondent testified in *Singer v. Siedband* that she told Mr. Osterholt from the outset that she was the personal representative of her father’s estate, which owned the building. **App. 33 (T. 56-57)**. She denied telling Mr. Osterholt that the buildings were gifted to her and claimed she “constantly” told him that she did not own the property. **App. 34 (T. 60), 38 (T. 75)**.

Respondent and Rosario Fernandez met for a second time with Mr. Spalding on May 24, 1999. **App. 61 (T. 166-167)**. Between the first meeting in May of 1998 and the second meeting in May of 1999, Respondent never told Mr. Spalding that the real estate on Forsyth was titled solely in her father's name, making the property subject to probate. **App. 60 (T. 165)**. So when Mr. Fernandez's will was given to Mr. Spalding in May of 1999, he advised the Fernandezes that it was too late to file the will, and that they would have to file a petition to determine heirs and distribute the property according to the intestacy statute. **App. 61 (T. 167-168)**. Respondent stood to inherit one-fourth of her father's estate under the intestacy law; under his will she was to receive office furniture. **App. 37 (T. 70)**. Respondent told Mr. Spalding that she and her stepmother wanted the will filed anyway, despite the fact that Mr. Spalding warned them that it would probably be rejected. **App. 61 (T. 168-169)**.

The Petition for Probate of Will and for Letters Testamentary was typed by Mr. Spalding's secretary in accordance with Mr. Spalding's notes, which reflected an accurate death date for Mr. Fernandez. **App. 64-65 (T. 180-182)**. According to Mr. Spalding and an expert at "questioned documents," all blanks on the petition, which was typed by Mr. Spalding's secretary, were filled in with typed information at the same time. **App. 64 (T. 179-181)**. The year of Mr. Fernandez's death was incorrectly typed on the petition as "99," rather than "98," which was the accurate year of his death. **App. 111**. Mr. Spalding attributes the mistake to a typographical error by his secretary. **App. 64-65 (T. 181-182)**.

Respondent, who was designated as personal representative in her father's will and on the petition for probate, went back to Mr. Spalding's office the next day, May 25, 1999, to sign the paperwork. She reviewed the petition to make sure it was correct before she signed it. **App. 37 (T. 71-73).**⁵ According to Mr. Spalding, Respondent said nothing to him about the space for the death year being blank when she came in to sign the petition. **App. 62 (T. 171).** The petition for probate reflecting the incorrect year of Mr. Fernandez's death was filed on May 26, 1999. Letters testamentary were issued by the probate court in June. **App. 62 (T. 172), 136-138.**

The estate subject to probate, including the two rental properties on Forsyth, was inventoried at a value of approximately \$580,000.00. **App. 62 (T. 173), 115-119.** Rental income is not listed on the appraisal, because Respondent did not tell Mr. Spalding anything about rental income. Nor did Respondent tell Mr. Spalding about the pending lawsuit against Ms. Singer for delinquent rent. **App. 62 (T. 173).**

In late September of 1999, Respondent met with Mr. Osterholt to prepare for the rent trial. Respondent told Mr. Osterholt for the first time that she was the personal representative of her father's estate, which included the building involved in the rent case. Mr. Osterholt told Respondent that the rent case should have been brought in the

⁵ Respondent testified that the space for the year of her father's death on the petition had been left blank when she reviewed and signed the document. Respondent testified that Mr. Spalding told her that they would leave the year of death blank and try, in that way, to slip it past the probate court. **App. 37 (T. 72-73).**

name of the personal representative, so he would have to make an oral motion to amend at trial. **App. 51 (T. 126-127), 54 (T. 140)**. Mr. Osterholt then had a paralegal obtain a certified copy of the letters testamentary in order to establish Respondent's status as personal representative of the estate that owned the building. **App. 51 (T. 127-128)**.

The rent trial in *Fernandez v. Singer* was conducted on October 5, 1999. **App. 51 (T. 129)**. Mr. Osterholt successfully moved to have Respondent, as personal representative of Mr. Fernandez's estate, substituted as plaintiff. **App. 52 (T. 133)**. At the close of the case, Ms. Singer's attorney moved to dismiss the case on the grounds that Respondent's status as personal representative had been obtained by an invalid filing in the probate court, i.e., that decedent's date of death on the petition was off by a year. **App. 53 (T. 135)**.

Mr. Osterholt obtained a recess in the rent trial and thereafter conferred in his office with Respondent. **App. 53 (T. 136)**. At this conference, Respondent told Mr. Osterholt for the first time about missing the one year deadline for filing the will. She told him that Mr. Spalding had advised filing the will and petition anyway, but leaving the year of her father's death on the petition blank to see whether the probate court would catch it. **App. 53 (T. 136-137), 54 (T. 140-141)**. On the basis of what Respondent told him, Mr. Osterholt drafted a "Verified Motion to Dismiss the Probate Estate of Manual L. Fernandez," which was filed in the probate court on November 2, 1999. **App. 53-54 (T. 137-138), 120-122**.

After Mr. Spalding received a letter from Respondent dismissing him as the estate's attorney, he went to the probate court and discovered the date was incorrectly

typed on the petition. **App. 65 (T. 184)**. He also then filed a motion to set aside administration. **App. 123-124**.

In November of 2001, Alexandra Singer's father, a doctor in the state of Maryland, filed suit against Respondent, Mr. Osterholt, and Mr. Spalding, alleging fraud. **App. 74 (T. 221), 125-129**.

In February of 2002, Respondent applied to take the Missouri bar exam. In answer to the following question:

Have you ever been a party to any legal proceeding (including civil, equity, administrative, family court, or domestic abuse proceedings)?

Respondent identified *Fernandez v. Singer*, 99AC-006894 (rent case), *Singer v. Siedband*, 01AC-01654 (fraud case), and *Siedband v. Fernandez*, 00CC-003589. The latter case was a partition case filed by Respondent in October of 2000 against her stepmother and stepsister seeking the partition sale of the two buildings on Forsyth. Respondent dismissed the partition case in May of 2001.

The Board of Law Examiners held a hearing with Respondent on June 27, 2002, to inquire into the three civil actions listed on her bar application. **App. 2-14**. Respondent was the only witness who testified at the informal hearing. The Board advised Respondent that it had approved her character and fitness to practice law by letter dated June 28, 2002. **App. 147**. Ms. Siedband passed the July 2002 bar examination and was admitted to the Missouri bar in September of 2002.

Singer v. Siedband, 1AC-14654 (fraud case) was tried before a St. Louis County jury on April 21, 22, and 23, 2003. Respondent testified. **App. 29-46 (T. 41-46)**. Mr.

Osterholt testified. **App. 49-58 (T. 118-156)**. Mr. Spalding testified. **App. 58-66 (T. 157-186)**. An expert on “questioned documents” testified. **App. 68-72 (T. 195-210)**. And Mr. Singer testified. **App. 72-77 (T. 210-232)**. The fraud case was submitted to the jury under a version of MAI 23.05, which included the following elements:

First, defendant Siedband signed the petition for probate of will and for letters testamentary for the estate of Manuel Lopez Fernandez representing to the probate court that the date of death was April 30, 1999; and

Second, the representation was false; and

Third, defendant knew it was false;⁶

The jury returned a verdict in favor of the plaintiff and against Respondent. **App. 89 (T. 279), 145-146**. The jury assessed compensatory and punitive damages against Respondent. **App. 145-146**. Respondent appealed the judgment solely on the issue of Dr. Singer’s legal standing to bring a fraud case against her under the probate code’s fraud statute. Respondent did not appeal the sufficiency of the evidence to support the jury’s verdict that she committed fraud by knowingly presenting a false date of death to the probate court. The Eastern District Court of Appeals affirmed the judgment on May 18, 2004. *Singer v. Siedband*, 138 S.W.3d 750 (Mo. App. 2004). **App. 148-153**.

⁶ Disciplinary counsel is in the process of obtaining a certified copy of the verdict director actually submitted to the jury in *Singer v. Siedband*. Counsel will file it with the Court upon its receipt.

POINT RELIED ON

I.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE TO PRACTICE LAW FOR THREE YEARS AND STAY THE SUSPENSION SUBJECT TO A THREE YEAR PERIOD OF PROBATION BECAUSE A STAYED SUSPENSION COUPLED WITH A LENGTHY PERIOD OF MONITORED PROBATION IS APPROPRIATE IN THAT, WHILE A JURY FOUND, IN A JUDGMENT THAT HAS BECOME FINAL, THAT RESPONDENT COMMITTED FRAUD AGAINST A PROBATE COURT, THE CONDUCT OCCURRED BEFORE RESPONDENT WAS ADMITTED TO MISSOURI'S BAR AND RESPONDENT WAS CANDID ABOUT THE PENDENCY OF THE CIVIL LITIGATION IN THE APPLICATION PROCESS.

In re Richards, 63 S.W.2d 672 (Mo. banc 1933)

In re Wong, 275 A.D.2d 1, 710 N.Y.S.2d 57 (2000)

Stratmore v. State Bar, 123 Cal. Rptr. 101, 538 P.2d 229 (banc 1975)

Rule 4-3.3(a)(1)

Rule 4-8.4(c)

Rule 5.33

ARGUMENT

I.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE TO PRACTICE LAW FOR THREE YEARS AND STAY THE SUSPENSION SUBJECT TO A THREE YEAR PERIOD OF PROBATION BECAUSE A STAYED SUSPENSION COUPLED WITH A LENGTHY PERIOD OF MONITORED PROBATION IS APPROPRIATE IN THAT, WHILE A JURY FOUND, IN A JUDGMENT THAT HAS BECOME FINAL, THAT RESPONDENT COMMITTED FRAUD AGAINST A PROBATE COURT, THE CONDUCT OCCURRED BEFORE RESPONDENT WAS ADMITTED TO MISSOURI'S BAR AND RESPONDENT WAS CANDID ABOUT THE PENDENCY OF THE CIVIL LITIGATION IN THE APPLICATION PROCESS.

The timeline set forth below demonstrates the conundrum posed by the facts of this case.

April 30, 1998

Manuel Fernandez dies

May 1998

Respondent and Rosario Fernandez meet with Mr. Spalding.

March 1999	Respondent meets with Mr. Osterholt and tells him the buildings on Forsyth were gifted to her by her father.
May 26, 1999	Respondent signs a petition for probate of will on which the year of her father's death is stated as 1999, not 1998.
October 1999	During rent trial in <i>Siedband v. Singer</i> , it is revealed that the petition for probate of will, which was the basis for Respondent's standing as plaintiff, had been filed with an incorrect date of death.
November 2001	Singer files <i>Singer v. Siedband</i> , a civil fraud suit, against Respondent.
February 2002	Respondent applies to take Missouri bar, revealing the pendency of <i>Singer v. Siedband</i> .
June 2002	Board of Law Examiners conducts an informal hearing at which Respondent testifies about <i>Singer v. Siedband</i> . The Board of Law Examiners approves her character and fitness to sit for the bar.
July 2002	Respondent takes and passes the Missouri bar exam.

April 2003

Singer v. Siedband is tried before a jury. The jury finds that Respondent signed the petition for probate of will knowing the year of her father's death was incorrectly stated on it and that the probate court relied on the material misrepresentation in opening the estate. Respondent appeals the judgment solely on the issue of standing.

May 2004

Missouri Court of Appeals affirms the judgment in *Singer v. Siedband*, 138 S.W.3d 750 (Mo. App. 2004).

What sets this discipline case apart from most is that the conduct for which discipline is believed appropriate actually occurred several years before Respondent was admitted to the bar, although the basis for proceeding against Respondent, i.e., a jury verdict finding Respondent guilty of fraud against a state court, was reached and became final after Respondent was admitted to the bar. The unique juxtaposition of the conduct, Respondent's subsequent admission to the bar, and a jury's post-admission assessment of preadmission fraud is unlikely to recur often. Due, however, to the seriousness of the jury's conclusion, i.e., a finding that Respondent knowingly misrepresented a material fact to a court, disciplinary counsel is obliged to seek a sanction from this Court tailored

to monitor Respondent's conduct over a period of time.⁷ The jury's verdict establishes facts that constitute violation of the Rule proscribing the making of a false statement of material fact to a court (Rule 4-3.3(a)(1)) and the Rule proscribing conduct involving dishonesty, fraud, deceit, or misrepresentation (Rule 4-8.4(c)).

Respondent was represented by counsel throughout the negotiation of the sanction jointly submitted by the parties to the Court. The discipline jointly proposed by disciplinary counsel and Respondent would subject Respondent to a three year period of stayed suspension, during which time she would practice subject to a concurrent period of probation. The probation terms are designed to permit disciplinary counsel to monitor Respondent's conduct by way of quarterly reports to the probation monitor. Actual suspension has not been recommended in large part because the conduct did predate Respondent's admission to the bar, and Respondent was forthright in revealing the pending civil suit in the bar admission process.

Since 1933, this Court has recognized its implied, or inherent, authority, independent from statutory authority, to "admit and disbar attorneys who from time immemorial have in a peculiar sense been regarded as their officers." *In re Richards*, 63 S.W.2d 672 (Mo. banc 1933). Prior to *Richards*, a Missouri lawyer absolved by jury

⁷ The jury's finding of facts constituting fraud is preclusive against Respondent for the purpose of determining whether those facts constitute violation of the Rules of Professional Conduct. *In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997), cert den. 524 U.S. 940.

verdict from criminal conviction was likewise not subject to professional discipline. While the occasion will not often arise, the Court's inherent authority to discipline its officers should extend to those infrequent instances when preadmission conduct becomes a concern.

Typically, preadmission misconduct will be identified and evaluated during the admissions process by the body appointed by the Court to oversee the admissions process, the Board of Law Examiners. In point of fact, the procedures set forth in Rule 8 to snare unfit applicants worked so far as circumstances in this case permitted: Respondent appropriately revealed on her bar application that she was a defendant in a pending civil lawsuit and attached a copy of the first amended petition, which alerted the board that fraud allegations were pending against Respondent.⁸

The board then noticed a hearing to question Respondent about the pending fraud case. At the time of that informal hearing, at which Respondent was the only witness, the fraud suit was nine months away from trial. Having satisfied itself with Respondent's

⁸ A bar applicant's failure to fully and accurately reveal information on a bar application, which is not the situation in this case, is clearly professional misconduct subject to the Court's disciplinary reach. See *In re Warren*, 888 S.W.2d 334 (Mo. banc 1994) (false statement on Illinois bar application). Cf. *In re Coleman*, 492 S.W.2d 750 (Mo. banc 1973) (Respondent violated a professional duty and was subject to discipline for failing to insure that the Advisory Committee was aware he had resigned from Oregon's bar while under charges, prior to his return to Missouri and resumption of practice here).

explanation for the allegations in the case, the board approved Respondent's character and fitness to take the bar exam. It was not until some seven months after she had passed the exam and been admitted that a jury determined Respondent's conduct to have been fraudulent.

An attorney discipline proceeding is not civil or criminal in nature, but sui generis. It is an "investigation by the Court of the conduct of its officers the object of which is not the punishment of the offender but the protection of the court," and public. *In re Sparrow*, 90 S.W.2d 401, 404 (Mo. banc 1935). Given the seriousness of the object, the fitness of an attorney to practice should be determined on the merits. *In re Cupples*, 952 S.W.2d 226, 232 (Mo. banc 1997) (quoting from *In re Pate*, 232 Mo. App. 478, 119 S.W.2d 11, 24 (1938)). The reach of a disciplinary proceeding's inquiry into a lawyer's fitness to practice extends and includes conduct not related to her practice of law. *In re Panek*, 585 S.W.2d 477 (Mo. banc 1979) (lawyer defrauded office share/law school classmate); *In re Kirtz*, 494 S.W.2d 324 (Mo. banc 1973) (per curiam) (fraudulent conduct by corporate executive/lawyer); *In re Wilson*, 391 S.W.2d 914 (Mo. banc 1965) (conversion from home for the aged by a lawyer, but in his capacity as the Home's president). And the Court is not limited by its Rules in exercising its power to govern the conduct of its officers. Rule 5.33.

No modern Missouri cases discussing the issue of preadmission misconduct were discovered. In 1901, the St. Louis Court of Appeals stated in *State ex rel. Johnson v. Gebhart*, 87 Mo. App. 542, 549 (1901), that "misconduct previous to the admission of an attorney to practice, while it may be ground for refusing him license, is none whatever for

disbarment.” Because *Gebhart* is the decision of an inferior court and predates by many years this Court’s assumption to itself of regulatory authority over the legal profession, the *Gebhart* case is of little or no precedential value.

Courts in other jurisdictions have expressly addressed whether a court has authority to sanction lawyers for preadmission misconduct. The jurisdiction to do so is found in courts’ inherent power to regulate the admission, conduct, and disciplining of attorneys, as well as in adherence to the judiciary’s obligation to protect the public and maintain the integrity of the profession from unfit members of the bar. *In re Wong*, 275 A.D.2d 1, 710 N.Y.S.2d 57 (2000) (per curiam). The timeline of events in *Wong* mirrors the instant case insofar as Mr. Wong was disciplined for preadmission misconduct that was not judicially resolved until some years after his bar admission. Mr. Wong was disciplined for sexual misconduct that occurred before he was admitted to the bar, although the misconduct was not reported to law enforcement authorities and prosecuted until after Respondent had been admitted.

The California Supreme Court disciplined a lawyer for padding expenses charged to New York law firms, although the conduct occurred before the lawyer was admitted to the California bar. In *Stratmore v. State Bar*, 123 Cal. Rptr. 101, 538 P.2d 229 (banc 1975), the California Supreme Court concluded that since the court has the inherent power to discipline lawyers for conduct committed in or out of the profession, “it is irrelevant that Stratmore’s misconduct preceded his admission to practice.” 538 P.2d at 231. In *Office of Disciplinary Counsel v. Zdrok*, 645 A.2d 830 (Pa. S. Ct. 1994), a lawyer was disciplined for being convicted of “loitering and prowling at nighttime,” although

the conduct occurred on September 15, 1986, and Zdrok was not admitted to the bar until November 1, 1986. The Pennsylvania Supreme Court noted:

[W]e see no unfairness in disciplining Zdrok for conduct committed prior to his admission to the bar. Disciplinary proceedings are not for the purpose of punishment, but rather seek to determine the fitness of an officer of the court to continue in that capacity and to protect the courts and the public from the official ministrations of persons unfit to practice.

645 A.2d at 834. And, in *State ex rel. Oklahoma Bar Assn v. Brandon*, 450 P.2d 824 (Okla. S. Ct. 1969), a lawyer was disciplined for using an electronic device to make long distance phone calls in such a way as to avoid being billed for the calls. Mr. Brandon was disciplined even though all but one of the calls were made while he was a student in law school.

In light of Respondent's acquiescence in the proposed sanction and the seriousness of the now final jury verdict, and in view of the Court's inherent authority to regulate its officers' conduct, the Court is urged to accept the stipulated sanction.

CONCLUSION

In a verdict that is final, a jury found facts substantiating Respondent's violation of Rule 4-3.3(a)(1) (knowing making of false statement of material fact to a court) and 4-8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). The Court should suspend Respondent's license to practice law for three years, stay the suspension, and order Respondent to serve a period of probation on the terms set forth in the joint stipulation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2005, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First

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CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06b);
3. Contains 4,146 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

Sharon K. Weedon

APPENDIX