

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**ROY KING, JR.,** ) **Supreme Court #SC89442**  
 )  
**Respondent.** )

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**INFORMANT'S BRIEF**

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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

### Background and Disciplinary History

Respondent Roy King, Jr. was admitted to Missouri's bar on September 10, 1985. **App. 119, 123.**<sup>1</sup>

Respondent has been previously disciplined. Specifically, this Court publicly reprimanded Respondent on June 27, 1996 for violating Rule 4-1.16(d) (failing to return third-party funds held in trust). In addition, Respondent has been admonished on the following three (3) occasions: in March 1999 for violating Rule 4-1.5(c) (failing to have a written contingent fee agreement) and Rule 4-1.16(d) (failing to return client funds held in trust); in February 1998 for violating Rule 4-1.3 (diligence), Rule 4-1.4 (communication) and Rule 4-1.5(c) (failing to have a written contingent fee agreement); and in May 1998 for violating Rule 4-1.5(c) (failing to have a written contingent fee agreement). **App. 159-166.**

In or about March, 2007, Mr. King was briefly administratively suspended from the practice of law due to his failure to timely comply with his Missouri Continuing

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<sup>1</sup> The facts contained herein are drawn from the testimony elicited and the exhibits admitted into evidence at the hearing in this matter held on May 18, 2007. Citations to the trial testimony before the Disciplinary Hearing Panel are denoted by the appropriate Appendix page reference followed by the specific transcript page reference in parentheses, for example “**App. \_\_\_ (Tr. \_\_\_)**”. Citations to the pleadings and trial exhibits are denoted by the appropriate Appendix page reference.

Legal Education requirements for the 2005-06 reporting year. **App. 78-80 (Tr. 76-78)**. In or about April 2007, Mr. King became MCLE compliant for the 2005-06 reporting year and was retroactively reinstated pursuant to Rule 15.06. **App. 79 (Tr. 77)**. Mr. King did not practice law during his brief administrative suspension. **App. 80 (Tr. 78)**.

#### The Phenix Representation and Complaint

Respondent represented Shelby R. Phenix (“Phenix”) in a property damage lawsuit filed in the Circuit Court of Jackson County, Missouri. **App. 15 (Tr. 13)**. The representation arose out of a December 23, 2003 accident in which Phenix’s automobile was damaged while it was parked in a driveway in Kansas City, Missouri. Phenix alleged that Michael Straws intentionally rammed his vehicle into the Phenix automobile causing extensive damage. **App. 12 (Tr. 10)**.

Phenix initially filed a small claims petition against Straws, but subsequently decided that he needed an attorney to assist him. **App. 13-14 (Tr. 11-12)**.

Phenix hired Respondent on March 16, 2004 to handle the claim on his behalf to recover monetary damages from Straws. Respondent told Phenix that he would handle the case for a flat fee of \$850.00. **App. 15 (Tr. 13)**. Respondent told Phenix not to appear for the hearing on the small claims petition because he would re-file the damage claim in the Associate Circuit Court Division. **App. 143**.

Even though no written representation agreement was executed, Phenix paid Respondent the requested attorney’s fee of \$850.00. **App. 15 (Tr. 13), 133**. In furtherance of his claim, Phenix provided Respondent with an estimate of damage to his

automobile, photographs of the damage and a letter from his insurance company. **App. 16 (Tr. 14).**

Respondent filed a Petition for Damages in the Circuit Court of Jackson County, Missouri on April 26, 2004. Respondent, however, failed to notify Phenix of the filing of the lawsuit until he provided a copy of the client file to Phenix on November 10, 2004. **App. 17-18 (Tr. 15-16), 134-136.**

Between April and September 2004, Phenix made several attempts to contact Respondent regarding the status of his case. He tried to contact Respondent via telephone and voice mail, but Respondent did not respond to his requests for information regarding the status of his case. **App. 20 (Tr. 18).**

In early September 2004, Phenix saw Respondent at a social gathering and inquired about his case. Respondent stated: “You don’t have nothing to say to me.” **App. 25 (Tr. 23).**

Phenix continued to write and call Respondent about the status of his case. Respondent did not respond to those requests for information. **App. 25 (Tr. 23).**

Phenix submitted his complaint against Respondent to the Office of Chief Disciplinary Counsel on October 13, 2004. **App. 26 (Tr. 24), 142-143.** On October 8, 2004, Respondent filed a Motion to Withdraw from the Phenix case. **App. 26-27 (Tr. 24-25), 144-145.**

Later in November 2004, Phenix again saw Respondent at a social gathering and inquired about the status of his case. Respondent became angry and verbally abused Phenix in a loud voice using profane language. **App. 25-28 (Tr. 23-26).** At the hearing

before the Disciplinary Hearing Panel held on May 18, 2007, Respondent made the following statement and admissions:

- “Yes, I told him, I called him everything except a child of God. **App. 87 (Tr. 85).**
- “Hell, he is right, I am ready to whip his ass. **App. 92 (Tr. 90).**
- “I am through with this. This is the second time you have put your hands on me. Now you almost made me break your neck. Let’s fight.” **App. 92 (Tr. 90).**
- “...I mean, I am cussing and I am mad.” **App. 95 (Tr. 93).**

Respondent and Phenix had a physical confrontation which resulted in them rolling down a hill. Respondent was so confrontational and disorderly that he was ordered to leave the premises by security personnel. **App. 193.** At the Panel hearing, Respondent made the following statement and admission:

- “We almost fell on top of each other going down the hill and then I am just mad. When he doesn’t want to fight, okay, I get in my car and left.” **App. 95 (Tr. 93).**

Phenix applied for and received an Order of Protection against the Respondent from the Jackson County Circuit Court. **App. 30-31 (Tr. 28-29), 146-148.**

On December 13, 2004, Judge Peggy Stevens McGraw denied Respondent’s Motion to Withdraw, however, after learning that Phenix had received an Order of Protection against Respondent, Judge McGraw reversed her previous ruling and granted the Motion to Withdraw. **App. 153.**

#### Disciplinary Proceeding

The Office of Chief Disciplinary Counsel received the complaint from Phenix against Respondent on October 13, 2004 and referred it for investigation to the Region IV

Disciplinary Committee. **App. 142-143.** On March 17, 2005, the Region IV Disciplinary Committee investigated the matter, found probable cause and voted to issue an Information against Respondent. **App. 119-122.** Informant served the Information in this case on Respondent on January 11, 2007. Respondent timely filed his Answer to the Information on or about February 9, 2007. **App. 123-124.** The Chair of the Missouri Supreme Court Advisory Committee appointed a Disciplinary Hearing Panel in this case on February 27, 2007. **App. 180-181.** Informant filed an Amended Information in March 2007, which Respondent timely answered on April 14, 2007. **App. 125-130.** The Panel held its evidentiary hearing in this matter on May 18, 2007. **App. 3, 186.**

On May 13, 2008, the Panel issued its Findings of Fact, Conclusions of Law and Recommendation. **App. 190-202.** The Panel found that Respondent violated Rule 4-1.1 of the Missouri Rules of Professional Conduct in that Respondent failed to provide competent representation to Phenix in connection with the lawsuit against Straws. The Panel also found that Respondent violated Rule 4-1.4 of the Rules of Professional Conduct in that Respondent failed to keep Phenix reasonably informed about the status of his lawsuit and failed to promptly comply with reasonable requests for information from Phenix as to the status of the lawsuit. Finally, the Panel found that Respondent violated Rule 4-8.4(d) of the Rules of Professional Conduct in that Respondent's conduct in using profane language and in fighting with his client at a public social gathering in November 2004 constituted conduct prejudicial to the administration of justice. **App. 193-194.**

In determining the appropriate level of discipline, the Panel found the following aggravating circumstances:

- Respondent has been previously disciplined in that he was publicly reprimanded by this Court in 1996 and has received three (3) letters of admonition;
- Respondent's prior discipline, coupled with the specific findings of professional misconduct found in the case at bar, constituted a pattern of misconduct;
- Respondent committed multiple offenses in his representation of Phenix; and
- Respondent refused to acknowledge the wrongful nature of his misconduct. **App. 194-195.**

Based on the foregoing findings and conclusions, the Disciplinary Hearing Panel recommended that Respondent (i) be suspended from the practice of law in the State of Missouri for a period of one (1) year, (ii) that the suspension be stayed, and (iii) in lieu of enforcement of said suspension, Respondent be placed on probation for a period of one (1) year under conditions specified by the Panel. **App. 195-202.**

By letter dated May 19, 2008 to the Missouri Supreme Court Advisory Committee, the Informant accepted the written decision and recommendation of the Disciplinary Hearing Panel. **App. 203.** By letter dated June 3, 2008 to the Chair of the Disciplinary Hearing Panel, Respondent rejected the Panel's decision. **App. 204.** Informant filed the record in this matter with the Court on July 11, 2008.

**POINTS RELIED ON**

**I.**

**RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT IN HIS REPRESENTATION OF HIS CLIENT BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, BY FAILING TO REASONABLY COMMUNICATE WITH HIS CLIENT AND BY FAILING TO DILIGENTLY HANDLE THE MATTER FOR WHICH HE WAS RETAINED**

*In re Warren*, 888 S.W.2d 334 (Mo. banc 1994)

*In re Frick*, 694 S.W.2d 473 (Mo. banc 1985)

Rule 4-8.4(d)

Rule 4-1.4

Rule 4-1.3

**POINTS RELIED ON**

**II.**

**THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LAW LICENSE,  
STAY THE SUSPENSION AND PLACE RESPONDENT ON PROBATION  
CONSISTENT WITH THE RECOMMENDATION AND TERMS SET FORTH IN  
THE DECISION OF THE DISCIPLINARY HEARING PANEL**

*A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)*

## ARGUMENT

### I.

#### **RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT IN HIS REPRESENTATION OF HIS CLIENT BY ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, BY FAILING TO REASONABLY COMMUNICATE WITH HIS CLIENT AND BY FAILING TO DILIGENTLY HANDLE THE MATTER FOR WHICH HE WAS RETAINED**

It is well settled that the findings of fact and conclusions of law made by the Disciplinary Hearing Panel are advisory. *In re Cupples*, 979 S.W.2d 932, 933 (Mo. banc 1998). In a disciplinary proceeding, this Court reviews the evidence *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. *In re Snyder*, 35 S.W.3d 380 (Mo. banc 2000). In the instant case, Informant submits that the findings of fact, conclusions of law and disciplinary recommendation made by the Panel are supported by clear and convincing evidence.

The attorney-client relationship between Respondent and Shelby Phenix was short-lived and marked by inattention on the part of Respondent. As the relationship neared an end, Respondent exacerbated his neglect by engaging in a verbal and physical confrontation with his client.

Violation of Rule 4-8.4(d). The Disciplinary Hearing Panel properly found that Respondent's abusive conduct toward his client, including verbal harassment and a

physical confrontation, constituted prohibited conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d) of the Rules of Professional Conduct. The Panel noted that Respondent admitted to the following statements:

- “Yes, I told him, I called him everything except a child of God.” **App. 87 (Tr. 85).**
- “Hell, he is right, I am ready to whip his ass.” **App. 92 (Tr. 90).**
- “I am through with this. This is the second time you have put your hands on me. Now you almost made me break your neck. Let’s fight.” **App. 92 (Tr. 90).**
- “...I mean, I am cussing and I am mad.” **App. 95 (Tr. 93).**

The Panel also found that Respondent engaged in a physical struggle with his client Phenix that caused them to roll down a hill. Respondent admitted in his testimony that he only stopped fighting and left when he realized that his client refused to participate in the fight. Phenix thereafter applied for and received an Order of Protection against Respondent from the Jackson County Circuit Court. **App. 30-31 (Tr. 28-29), 146-148.**

In addition to violating Rule 4-8.4(d), Respondent’s conduct toward his client also constituted “moral turpitude”, which this Court has defined as “an act of baseness, vileness or depravity in the private and social duties which man owes to his fellow-man or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything done contrary to justice, honesty, modesty and good morals.” *In re Warren*, 888 S.W.2d 334, 335-336 (Mo. banc 1994). *See also: In re*

*Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992); *In re Frick*, 694 S.W.2d 473, 479 (Mo. banc 1985).

In *Frick*, the Court ruled that an attorney who repeatedly and viciously harassed an ex-paramour who was also his client and engaged in a hateful letter-writing campaign directed at her was guilty of moral turpitude. In so doing, the Court emphasized the fact that the malicious acts were directed at a client and noted that such conduct lessened the public's confidence in the legal profession. The Court disbarred Frick as a result of his criminal conviction for the unlawful use of a weapon as well as for sending "extremely hateful" letters to his victim.

In *Warren*, the Court suspended an attorney who, *inter alia*, harassed his ex-wife and her then-husband by sending a letter that contained a death threat, by challenging the husband to a fight and by cautioning his ex-wife and husband that they should be on the alert because some night he would be waiting in the dark for them.

It is not necessary that an attorney be charged criminally in order for harassing or threatening conduct to be considered moral turpitude. Thus, in the *Frick* case, the attorney's vicious letters to his client were offered as evidence of motive in his criminal case, but were not criminally charged. Likewise, in the *Warren* case, the Court found that the attorney's statement that he "would be waiting in the dark" constituted moral turpitude even though that particular threat was not the subject of a criminal charge.

In the case at bar, Respondent's admissions to the Disciplinary Hearing Panel that he challenged his client to a fight, threatened to "break his neck", and engaged in a physical struggle with Phenix constituted acts of baseness and depravity that support a

finding of moral turpitude. In addition, such conduct between an attorney and his client poisoned the attorney-client relationship and was prejudicial to the administration of justice in violation of Rule 4-8.4(d).

Violation of Rule 4-1.4. The evidence adduced at the Panel hearing in this matter established the following:

- After being retained by Phenix in March 2004, Respondent filed a Petition for Damages on behalf of his client in Jackson County Circuit Court on April 26, 2004. Respondent, however, failed to notify Phenix of the filing of the lawsuit until he provided a copy of the client file to Phenix on November 10, 2004. **App. 17-18 (Tr. 15-16), 134-136.**
- Between May and September 2004, Phenix called and faxed Respondent in an attempt to determine the status of his claim against Straws. Respondent failed to respond to those inquiries. **App. 20 (Tr. 18), 25 (Tr. 23).**
- During September 2004, Phenix continued to send letters and faxes to Respondent inquiring about the status of his claim against Straws. **App. 22-25 (Tr. 20-23), 137, 138, 139-141.** Respondent failed to respond to any of these inquiries. **App. 25 (Tr. 23).**
- In early October 2004, Phenix saw Respondent at a bar and acknowledged him. Respondent simply said to his client, “You don’t have nothing to say to me.” **App. 25 (Tr. 23).**

Phenix submitted his complaint against Respondent to the Office of Chief Disciplinary Counsel on October 13, 2004. **App. 26 (Tr. 24), 142-143.** Respondent

thereafter filed a motion to withdraw as Phenix's attorney in the pending Jackson County Circuit Court case. **App. 144-145.**

Based upon the foregoing, the Disciplinary Hearing Panel properly found that Respondent violated Rule 4-1.4 of the Rules of Professional Conduct by failing to keep his client reasonably informed regarding the status of the legal matter he was handling and by failing to promptly respond to reasonable requests for information from his client. As the Comment to Rule 4-1.4 explains, reasonable communication between a lawyer and his client is necessary for the client to effectively participate in the representation. While regular communication is advisable, the Comment makes clear that a prompt response to a reasonable request for information is mandatory.

Respondent failed to respond to his client's reasonable requests for information regarding the status of the claim against Straws and thereby violated Rule 4-1.4.

Violation of Rule 4-1.3. In its Amended Information, Informant charged that Respondent violated Rule 4-1.3 of the Rules of Professional Conduct by failing to diligently and promptly handle his client's claim against Straws. The Disciplinary Hearing Panel failed to make a specific finding regarding this charge, finding instead that Respondent failed to provide competent representation to his client in violation of Rule 4-1.1.

The Comment to Rule 4-1.3 notes that no professional shortcoming is more widely resented by the public than procrastination, noting that unreasonable delay can cause the client needless anxiety and undermine the client's confidence in the lawyer's trustworthiness. The facts of the instant case are illustrative.

Informant submits that by failing to take any substantive action to move his client's claim forward between April 26, 2004 (the date that he filed the Petition for Damages) and December 15, 2004 (the date that the trial court judge granted Respondent's motion to withdraw), Respondent neglected the legal matter entrusted to him by his client and violated Rule 4-1.3.

## ARGUMENT

### II.

#### **THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LAW LICENSE, STAY THE SUSPENSION AND PLACE RESPONDENT ON PROBATION CONSISTENT WITH THE RECOMMENDATION AND TERMS SET FORTH IN THE DECISION OF THE DISCIPLINARY HEARING PANEL**

This Court has relied on the ABA's *Standards for Imposing Lawyer Sanctions* (1991 Edition) to determine the appropriate discipline to be imposed in attorney discipline cases. *See, e.g., In re Crews*, 159 S.W.3d 355, 360-61 (Mo. banc 2005); *In re Warren*, 888 S.W.2d 334 (Mo. banc 1994); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994).

ABA Standard 3.0 states that the courts should consider four primary factors when imposing sanctions after a finding that a lawyer has committed professional misconduct:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating and mitigating factors.

Lawyers are officers of the Court and must abide by substantive and procedural rules which shape the administration of justice. By engaging in a verbal and physical confrontation with his client, Respondent violated a duty owed to his client and to the legal profession to conduct himself in a manner consistent with the administration of justice. *See* ABA Standard 7.0 (Violation of Duties Owed to the Profession). The

seriousness of the violation was exacerbated by Respondent's neglect of the legal matter entrusted to him and by his failure to reasonably communicate with his client in violation of ABA Standard 4.4.

Respondent's mental state was one of intentional and knowing disregard for the attorney-client relationship. Respondent testified that he "called him [his client] everything except a child of God." **App. 87 (Tr. 85)**. Respondent threatened to break his client's neck, threatened him to a fight and ultimately engaged in a physical confrontation with his client. His lack of diligence and failure to communicate was no less intentional.

The injury to the client and to the profession that flowed from Respondent's misconduct is evident. In addition to paying Respondent an \$850.00 attorney's fee, Phenix's claim against Straws for the damage done to his automobile was significantly delayed by Respondent's neglect. In this regard, the only money Phenix ever recovered from Straws was \$800 in restitution that the Municipal Court ordered Straws to pay as part of the disposition of his criminal charges. **App. 13 (Tr. 11), 73 (Tr. 71)**. Finally, there is obvious damage to the public's perception of the legal profession and to the administration of justice when an attorney engages in verbal and physical confrontations with a client or with anyone else.

After finding that Respondent violated the Rules of Professional Conduct, the Panel, consistent with the provisions of the *ABA Standards for Imposing Lawyer Sanctions (1991 ed.)*, considered the following aggravating circumstances:

- Respondent has been the subject of significant prior discipline. **App. 159-166.**

Specifically, this Court publicly reprimanded Respondent on June 27, 1996 for

violating Rule 4-1.16(d) (failing to return third-party funds held in trust). In addition, Respondent has been admonished on the following three (3) occasions: in March 1999 for violating Rule 4-1.5(c) (failing to have a written contingent fee agreement) and Rule 4-1.16(d) (failing to return client funds held in trust); in February 1998 for violating Rule 4-1.3 (diligence), Rule 4-1.4 (communication) and Rule 4-1.5(c) (failing to have a written contingent fee agreement); and in May 1998 for violating Rule 4-1.5(c) (failing to have a written contingent fee agreement). *See ABA Standards for Imposing Lawyer Sanctions*, Section 9.22(a).

- Respondent's prior discipline, coupled with the specific findings of professional misconduct in the instant case, constitute a pattern of misconduct and multiple offenses committed by Respondent. *See ABA Standards for Imposing Lawyer Sanctions*, Section 9.22(c).
- Respondent refused to acknowledge the wrongful nature of his misconduct in the case at bar. *See ABA Standards for Imposing Lawyer Sanctions*, Section 9.22(g).

Based on the foregoing, the Panel recommended that Respondent be suspended from the practice of law for one (1) year, provided, however, that said suspension be stayed and in lieu of enforcement thereof, Respondent be placed on probation for a period of one (1) year. The terms of probation recommended by the Panel include, *inter alia*, appointment of a probation monitor and mentor, quarterly reporting to the OCDC, attendance at the Ethics School developed by the OCDC and The Missouri Bar, certification of client trust account activity and maintenance of legal malpractice insurance.

Informant concurs in the discipline recommended by the Disciplinary Hearing Panel and submits that the evidence and the *ABA Standards for Imposing Lawyer Sanctions* support such a disposition.

### **CONCLUSION**

Respondent committed professional misconduct by (i) verbally threatening his client and engaging in a physical confrontation with his client, (ii) by failing to keep his client reasonably informed about the status of his case and by failing to promptly comply with reasonable requests from his client for information regarding his case, and (iii) by failing to diligently and promptly handle the legal matter entrusted to him by his client. The presence of significant aggravating circumstances, including prior misconduct and Respondent's refusal to take responsibility for, or even acknowledge, the wrongful nature of his conduct, support the imposition of discipline. Informant respectfully requests that this Court suspend Respondent from the practice of law for one (1) year, provided, however, that said suspension be stayed and in lieu of enforcement thereof, Respondent be placed on probation for a period of one (1) year consistent with the probationary terms set forth in the decision of the Disciplinary Hearing Panel.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of August, 2008, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First

Class mail to:

Roy King, Jr.  
Law Office of Roy King, Jr.  
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Kansas City, MO 64110

Respondent

\_\_\_\_\_  
Alan D. Pratzel

**CERTIFICATION: RULE 84.06(c)**

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 4,354 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.

\_\_\_\_\_  
Alan D. Pratzel

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