IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
DERRICK R. WILLIAMS, SR.,	)	**Supreme Court #SC86450**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

CARL SCHAEPERKOETTER #30467
SHARON K. WEEDIN #30526
STAFF COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

RULES

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

Respondent Derrick R. Williams, Sr., was conditionally admitted to Missouri's bar and licensed to practice law on October 17, 2001. **App. 32**. About a year before gaining admission to Missouri's bar, Mr. Williams was licensed and practiced law in New York State. **App. 5 (T. 4)**. Respondent was born in 1958, making him 42 or 43 years old at the time of his conditional admission to Missouri's bar. He is in private practice in Cape Girardeau County, Missouri. **App. 32**. Mr. Williams has no prior disciplinary history, although he was conditionally admitted to the Missouri Bar pursuant to a monitoring agreement because of concerns with his credit history. **App. 91-93**.

Procedural History

A three count information was filed against Respondent and served upon Respondent by certified mail on March 20, 2004. **App. 32-40**. Respondent filed his answer to the information on March 30, 2004. **App. 41-45**. On April 30, 2004, Jeffrey Maguire, David Limbaugh, and Gregory Deimund were appointed to the disciplinary hearing panel. **App. 57-58**. Mr. Maguire was designated as the presiding officer. The disciplinary hearing was scheduled for August 11, 2004. **App. 59-60**. After Mr. Maguire's tragic death in the summer of 2004, Stephen Taylor was appointed presiding officer in his stead. **App. 61**.

The case was heard on August 11, 2004. Testimony was taken from attorneys Kenneth Reynolds, **App. 5-17 (T. 16-62)**, Robert Grosser, **App. 17-21 (T. 62-79)**, Respondent Derrick R. Williams, Sr., **App. 22-27 (T. 82-103)**, and Reginald Williby,

App. 27-29 (T. 103-110). Also admitted into evidence were joint exhibit A, which consisted of Informant Exhibits 1 through 22, **App. 69-126**, and Informant Exhibit 23. **App. 127**.

The disciplinary hearing panel initially advised the parties on August 11, 2004, of what its finding and recommendation would be, **App. 31 (T. 117-119)**, and issued its written findings of fact, conclusions of law and recommendation on September 23, 2004, recommending that Respondent be publicly reprimanded for his conduct involving Count I and finding in Respondent's favor on Count II. **App. 128-134**.

Stipulation

Informant and Respondent entered into a stipulation on August 11, 2004, regarding Counts I and III. The stipulation is shown in the record as Informant Exhibit 3. Count III was dismissed. The stipulation on Count I regarded facts; there was no stipulation as to a recommended discipline. In Count I the parties stipulated to the following facts.

Respondent was conditionally admitted to practice law in the state of Missouri on October 17, 2001, pursuant to a monitoring agreement executed on October 12, 2001. The monitoring agreement was entered into because of concerns by the Board of Law Examiners regarding financial matters, specifically charged off debts and items in collection. Respondent was to have three years from the date of the agreement to bring delinquent financial obligations to current status. Respondent further was not to default on any other financial obligations not in existence at the time of the monitoring

agreement, and to provide the Office of Chief Disciplinary Counsel with quarterly evidence of the status of his financial obligations. Any violation of the monitoring agreement by the Respondent would be deemed to be a violation of Missouri Supreme Court Rule 4-8.4(d) (conduct prejudicial to the administration of justice). Failure to provide the Office of Chief Disciplinary Counsel with timely quarterly reports would be a violation of Missouri Supreme Court Rule 4-8.1(b) (failure to respond to demands for information from a disciplinary authority).

Respondent failed to provide quarterly reports to the Office of Chief Disciplinary Counsel for the fourth quarter 2001 and the second quarter 2002. Respondent provided erroneous information to the Office of Chief Disciplinary Counsel for the reports due for the first quarter 2002, third quarter 2002, fourth quarter 2002, second quarter 2003, and third quarter 2003. In each of these reports Respondent listed payments made to creditors who in fact had not been paid the amounts listed, if at all, during that reporting period.

Respondent stipulated that his conduct in Count I violated Rules 4-8.4(d) and 4-8.1(b).

DHP Hearing

A hearing was held on August 11, 2004, to present the stipulation (Informant Exhibit 3) on Count I and to present evidence on Count II.

After law school, Respondent initially practiced law in the state of New York for about a year, but decided to return to Missouri to practice. **App. 5 (T. 14)**. Respondent was conditionally admitted to practice in Missouri pursuant to a monitoring agreement

because of concerns the Board of Law Examiners had about his credit history. **App. 84-90**. The Board of Law Examiners admitted Respondent to the practice of law despite seven prior felony convictions, all from around 1981 or 1982. **App. 25 (T. 94-95)**. The Board of Law Examiners was aware of those prior convictions at the time Respondent was licensed to practice law; no conditions in the monitoring agreement involved those prior convictions. **App. 25 (T. 95)**.

Respondent's first employment in Missouri was for the public defender's office at $2,000.00 per month. **App. 5, 24 (T. 14, 92)**. Respondent then was hired by the law firm of Reynolds and Gold, commencing employment on June 17, 2002. **App. 6 (T. 20)**. Respondent gave the public defender's office two weeks' notice before joining Reynolds and Gold. **App. 27 (T. 103)**. Respondent was hired to be the attorney running the Cape Girardeau office for the Springfield based firm, with the Cape Girardeau office emphasizing bankruptcy and social security cases. **App. 6 (T. 20)**. He received a flat salary to work at least 40 hours/week. **App. 7 (T. 21)**. Respondent was employed by Reynolds and Gold from June 17, 2002, until September 16, 2002; on that date he was discharged and escorted from the office. **App. 9, 19, 23 (T. 29, 70, 87)**.

While employed by Reynolds and Gold between June 17, 2002, and September 16, 2002, Respondent signed a written contract for legal services on June 26, 2002, with individuals named Franklin Perry and Jimmy Anthony. **App. 117**. Respondent on June 26, 2002, entered his appearance on behalf of Franklin Perry and Jimmy Anthony in the Cape Girardeau County case of *Red and Blue Enterprises, Inc. v. Franklin Perry and Jim Anthony*, case number 02CV737061, stating in his entry of appearance that "defendants

retained counsel on yesterday, Tuesday, June 25, 2002." **App. 118**. The docket sheet for *Red and Blue Enterprises, Inc. v. Franklin Perry and Jimmy Anthony* show those two civil defendants were served with summons on June 19, 2002. **App. 119-120**. The letterhead for the contract for legal services set forth in Exhibit 14 had the address and telephone number of the Reynolds and Gold law firm, but the letterhead said "The Law Office of Derrick R. Williams." **App. 117**. Respondent received $200.00 from Mr. Franklin and Mr. Anthony on June 25, 2002. It was not deposited with the firm of Reynolds and Gold. **App. 14, 23 (T. 52, 86)**.

On July 17, 2002, while employed by Reynolds and Gold, Respondent sent a letter to an individual named Gregory Jones enclosing copies of documents filed on behalf of Mr. Jones and thanking Mr. Jones for a recent payment of $300.00 received on July 12, 2002. **App. 121**. That $300.00 payment was never deposited with the firm of Reynolds and Gold. **App. 8, 14, 18 (T. 28, 52, 67)**. The letter written to Mr. Jones had the address and telephone number of the Reynolds and Gold law firm, but the letterhead at the top said "Derrick R. Williams Attorney at Law." **App. 121**. The docket sheet in the Bollinger County case of *Sandra M. Jones v. Gregory Jones*, case number 32V019500050, shows Respondent filed a motion to set aside judgment as void on July 31, 2002. **App. 123**.

On September 15, 2002, attorneys Kenneth Reynolds and Robert Grosser traveled from the Springfield office of Reynolds and Gold to Cape Girardeau to meet with Mr. Williams the next day. They already had decided to discharge Respondent from the firm. **App. 7, 17 (T. 22-24, 64)**. Reynolds and Grosser went to the Cape Girardeau office the

evening before the meeting. While at the office they found in Respondent's desk Exhibits 14 and 17, the documents with the firm's address and telephone number, but with the name "Derrick R. Williams Attorney at Law" on the letterhead. **App. 8, 17 (T. 26, 64)**. Reynolds and Grosser also found an intake sheet having the letterhead "Derrick R. Williams Attorney and Counselor at Law" with the address and telephone number the same as that of the Reynolds and Gold law firm; the sheet was entitled "Personal Injury Intake Sheet." **App. 8, 19 (T. 26, 69)**.

Attorneys Reynolds and Grosser both testified that at the September 16, 2002, meeting Respondent initially denied taking the $200.00 for representation of Perry/Anthony and $300.00 for representation of Jones, then stated he was doing pro bono work for friends, and finally admitted that he had taken the money because he was short on funds. At that time Reynolds and Grosser told Respondent they were terminating him. **App. 8-9, 19 (T. 28-29, 70)**.

Respondent testified that Perry, Anthony, and Jones were preexisting clients prior to his being hired by Reynolds and Gold. Respondent further stated his position was the funds did not belong to the firm because of the preexisting relationship. **App. 22-23 (T. 82-86)**. Respondent and attorney Reynolds both acknowledged that there was no discussion at the time of the original job interview regarding any preexisting clients of Respondent. **App. 7, 10, 23 (T. 21, 35, 85)**. Reynolds stated he assumed Respondent had no clients since one cannot practice law on the side while a public defender. **App. 7, 10 (T. 21, 35)**. Respondent later characterized his failure to talk about any alleged preexisting clients as an error in judgment. **App. 24, 29 (T. 89, 112)**.

The firm of Reynolds and Gold retained $500.00 of advance fee payments from other clients as an offset against the $500.00 Franklin and Jones had paid to Respondent. **App. 15, 20-21 (T. 56, 76-77)**. Part of that decision was based on the documentation the firm found on September 15 and the other part of the determination was Respondent's admission to Reynolds and Grosser on September 16 that he had taken the money. **App. 21 (T. 77)**.

Respondent admitted that he used a letterhead with his name only in dealing with Franklin, Anthony, and Jones, **App. 117, 121**, but stated he did so because he did not want to confuse them into thinking they were firm clients. **App. 24 (T. 90)**. Respondent did admit that he never told anyone at the Reynolds firm about his attorney-client relationship with Franklin/Anthony and Jones. **App. 24 (T. 91)**. Respondent testified he generated his own letters to Franklin/Anthony and Jones, and that no firm resources were used in preparation of the documents. **App. 27 (T. 102-103)**.

Attorney Reginald Williby testified as a character witness for Respondent. **App. 27-29 (T. 103-110)**. He is an associate in Respondent's firm. **App. 2 (T. 4)**. He stated that he believed that Respondent exhibited exemplary character. **App. 28 (T. 105)**. He said Respondent always has been upfront about his past criminal history and encouraged people not to do what he had done. **App. 28 (T. 106)**. He stated that Respondent's reputation among his clients was okay. **App. 28 (T. 108)**. He stated that he had learned from Respondent "how to sell a client, how to get a client to separate his money, give money to you," **App. 29 (T. 109)**, and that he had never heard Respondent counsel somebody and tell a lie or do anything dishonest to get out of trouble. **App. 29 (T. 109)**.

POINTS RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED RULES 4-8.1(b) AND 4-8.4(d) IN THAT RESPONDENT STIPULATED THAT HE FAILED TO PROVIDE TWO QUARTERLY REPORTS TO THE OCDC REGARDING HIS MONITORING AGREEMENT, STIPULATED TO PROVIDING ERRONEOUS INFORMATION IN FIVE OTHER QUARTERLY REPORTS, AND FURTHER STIPULATED TO THE RULE VIOLATIONS.

In re Harris, 890 S.W.2d 299 (Mo. banc 1994)

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

In re Shelhorse, 147 S.W.3d 79 (Mo. banc 2004)

Rule 4-8.1(b)

Rule 4-8.4(d)

POINTS RELIED ON

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION IN THAT HE FAILED TO DEPOSIT LEGAL FEES WITH HIS FIRM DURING THE COURSE OF EMPLOYMENT, FAILED TO INFORM HIS FIRM OF ALLEGED "PREEXISTING" CLIENTS, USED HIS FIRM'S OFFICE ADDRESS AND TELEPHONE NUMBER ON PLEADINGS, LETTERS, AND AN INTAKE FORM WITHOUT ALSO USING THE FIRM'S NAME, AND REPRESENTED CLIENTS IN A PERSONAL CAPACITY WHILE A FULL TIME EMPLOYEE OF THE FIRM.

In re Cupples, 952 S.W.2d 226 (Mo. banc 1997)

In re Cupples, 979 S.W.2d 932 (Mo. banc 1998)

In re Kazanas, 96 S.W.3d 803 (Mo. banc 2003)

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

Rule 4-8.4(c)

POINTS RELIED ON

III.

THE SUPREME COURT SHOULD IMPOSE A SANCTION OF A SIX MONTH SUSPENSION BECAUSE RESPONDENT'S CONDUCT INVOLVED DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION IN THAT HE KNOWINGLY WITHHELD CASES AND MATERIAL INFORMATION FROM HIS LAW FIRM, PROVIDED ERRONEOUS INFORMATION TO THE OCDC, AND FAILED TO RESPOND TO DEMANDS FOR INFORMATION FROM THE OCDC.

ABA Standard for Imposing Lawyer Sanctions (1991 ed. and 1992 amendments)

In re Cupples, 952 S.W.2d 226 (Mo. banc 1997)

In re Cupples, 979 S.W.2d 932 (Mo. banc 1998)

State v. French, 79 S.W.3d 896 (Mo. banc 2002)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE VIOLATED RULES 4-8.1(b) AND 4-8.4(d) IN THAT RESPONDENT STIPULATED THAT HE FAILED TO PROVIDE TWO QUARTERLY REPORTS TO THE OCDC REGARDING HIS MONITORING AGREEMENT, STIPULATED TO PROVIDING ERRONEOUS INFORMATION IN FIVE OTHER QUARTERLY REPORTS, AND FURTHER STIPULATED TO THE RULE VIOLATIONS.

Respondent's admission to Missouri's bar in 2001 was conditioned, by the Board of Law Examiners, on his compliance with the terms of a Monitoring Agreement. Monitoring agreements are a mechanism used by the Board of Law Examiners to provide oversight when the Board has concerns that a particular problem, which has come to light during the application for admission process, may negatively impact a lawyer's practice. The Office of Chief Disciplinary Counsel is tasked with overseeing compliance with the Board's monitoring agreements.

In this instance, concerns about Respondent's credit history prompted the monitoring agreement, which was prepared by the Board of Law Examiners and executed by the Respondent, a representative of the Board of Law Examiners, and a representative of the Office of Chief Disciplinary Counsel. The monitoring agreement imposed on

Respondent the duty to report quarterly to the Office of Chief Disciplinary Counsel information about his personal finances, bring his delinquent financial obligations to current status within three years, and not default on any other financial obligations. Given Respondent's conditional admission to the Bar, and further given Respondent's admission notwithstanding his previous criminal record, Respondent should have been very sensitive to the need to comply in all respects with the terms of the monitoring agreement. Instead, Respondent repeatedly violated the terms of the agreement.

Respondent failed altogether, in two separate quarters, to submit quarterly reports. He did not submit reports to the OCDC for the fourth quarter 2001 and the second quarter of 2002. The fourth quarter of 2001 was the very first quarter covered by the agreement; Respondent demonstrated a cavalier attitude toward complying with the agreement from the beginning. The second quarter of 2002 coincided in part with the time frame of the charges that will be discussed under Point II. Respondent also, in five separate quarterly reports, provided information that erroneously stated he had made payments to creditors in that quarter, when in fact those payments had not been made.

Respondent stipulated to violating the terms of the monitoring agreement. He stipulated that by furnishing "erroneous" information to the Office of Chief Disciplinary Counsel, he engaged in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d). It is important to note that the language of the stipulation, that Respondent provided "erroneous" information in his reports to OCDC, captures only the most superficial factual basis for Respondent's conduct. In point of fact, Respondent stated in several reports that he had made payments to creditors that HAD NOT BEEN MADE,

i.e., Respondent misrepresented known facts. He also stipulated that, by failing to submit quarterly reports to the Office of Chief Disciplinary Counsel, he failed to comply with a demand for information from a disciplinary authority in violation of Rule 4-8.1(b).

Lawyers are required to provide prompt and courteous responses to requests for information from disciplinary authorities. *In re Harris*, 890 S.W.2d 299, 302 (Mo. banc 1994). It should go without saying that the information must be accurate. The repetitive nature of Respondent's failure either to provide quarterly reports at all, or to submit ones containing false information, constitutes knowing disregard of his obligations to the legal profession. *In re Frank*, 885 S.W.2d 328, 334 (Mo. banc 1994). Such lapses, given the latitude already extended to Respondent by virtue of his conditional admission, are inexcusable. See *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004).

ARGUMENT

II.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE HE ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION IN THAT HE FAILED TO DEPOSIT LEGAL FEES WITH HIS FIRM DURING THE COURSE OF EMPLOYMENT, FAILED TO INFORM HIS FIRM OF ALLEGED "PREEXISTING" CLIENTS, USED HIS FIRM'S OFFICE ADDRESS AND TELEPHONE NUMBER ON PLEADINGS, LETTERS, AND AN INTAKE FORM WITHOUT ALSO USING THE FIRM'S NAME, AND REPRESENTED CLIENTS IN A PERSONAL CAPACITY WHILE A FULL TIME EMPLOYEE OF THE FIRM.

At the hearing on August 11, 2004, the disciplinary hearing panel stated its conclusion that Informant had not proved the allegation of dishonest and deceitful misconduct, under Count II of the information, by a preponderance of the evidence and recommended dismissal of that count. The Informant strongly disagrees with the Panel's conclusion. The evidence set forth below establishes by more than a preponderance of evidence that Respondent violated Rule 4-8.4(c), i.e., that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, during the three months that Respondent was a member of the Reynolds and Gold law firm.

Respondent was employed by Reynolds and Gold on June 17, 2002, and was terminated on September 16, 2002. These dates are not in dispute. It is also undisputed that Respondent received $200.00 from legal clients Franklin Perry and Jimmy Anthony in June 2002, and $300.00 from legal client Gregory Jones in July 2002, both legal fees being paid directly to Respondent during the time of his employment by the firm.

Respondent contends that he was entitled to retain this money and represent those individuals because they were clients of his before he joined the firm. Respondent's self-serving testimony is the only evidence supporting this position. He did not produce Franklin Perry, Jimmy Anthony, or Gregory Jones to testify in this case. He did not produce any documentary evidence showing any communications or actions taken on behalf of any of those individuals prior to his employment on June 17, 2002. He had only given two weeks' notice to his prior full time employer, the State Public Defender.

Documentary evidence refutes Respondent's testimony. He entered into a written contract for legal services with Franklin Perry and Jimmy Anthony and entered his appearance in their case on June 26, 2002, nine days after his employment by Reynolds and Gold. **App. 117, 119-120.** The entry of appearance even states that "Defendants retained counsel on yesterday, Tuesday, June 25, 2002." **App. 118**. All of these documents were created after Respondent began working for the firm.

The contract for legal services entered into between Respondent and Mssrs. Perry and Anthony, **App. 117**, bears the address and telephone number of the Reynolds and Gold law firm, but the firm's name is nowhere to be found on the contract. Instead, the contract bears the firm name "The Law Office of Derrick R. Williams." Respondent's

failure to identify his law firm employer on any of the documents created in his representation of Perry, Anthony, and Jones is exacerbated by the fact that he failed at any time during the course of his employment to disclose his "private" clientele to his employer, the firm. Attorneys Reynolds and Grosser did not discover the existence of Respondent's activities on behalf of Franklin Perry, Jimmy Anthony, and Gregory Jones until discovering documentary evidence of the representations at the firm's Cape Girardeau office on September 15, 2002. As this Court pointed out in *In re Cupples*, 979 S.W.2d 932, 934 (Mo. banc 1998), Respondent potentially exposed his employer to malpractice liability by failing to identify "his" clients to the firm and thereby allow for the necessary conflicts checks to occur.

Respondent duplicated the deceitful misconduct by taking on representation of Gregory Jones, a representation that was initiated even later in Respondent's employment with the firm than the Perry/Anthony matter. Respondent wrote a letter to Mr. Jones on July 17, 2002, advising him about documents to be filed on his behalf in Bollinger County, telling of a future court date, and acknowledging receipt of a $300.00 fee, received on Monday, July 15, 2002. Once again, the letterhead reflects Reynolds and Gold's address and telephone number, but no mention of the firm of Reynolds and Gold. Instead, the letterhead reflects only the name of "Derrick R. Williams Attorney at Law." **App. 121**. Respondent's handwritten notes from his representation of Mr. Jones make no reference to any date prior to July 15, 2002. **App. 122**. Respondent entered his appearance on behalf of Mr. Jones in a civil case on July 31, 2002, **App. 123**, and a

criminal case on September 4, 2002. **App. 124-125**. As with the Perry and Anthony matter, at no time did Respondent advise his employer of his representation of Mr. Jones.

In addition, Mr. Reynolds and Mr. Grosser on September 15 found a document entitled "personal injury intake sheet" bearing the address and telephone number of the firm, but, once again, bearing the letterhead of "Derrick R. Williams Attorney and Counselor at Law." If Respondent's conduct was not dishonest, the personal injury intake sheet in his name alone would not have existed. And, once again, Respondent's use of an intake sheet bearing his name alone, without revealing what he was doing to the employer law firm, allowed the representations to go forward without conflicts checks against Reynolds and Gold's existing and former clients. Respondent's conduct could have subjected both his clients, and the law firm, to substantial harm. The documentary evidence credibly refutes Respondent's testimonial claim of preexisting clients, and even if Respondent's claim is true, he violated Rule 4-8.4(c) by his concealment of the "side business" from his firm.

Respondent's position also is refuted by the testimony of both Mr. Reynolds and Mr. Grosser. Both were present for the September 16 meeting. Both confronted Respondent about the documents. Respondent first attempted to deny what they had found, but finally admitted to Reynolds and Grosser that he had taken the money because he was short on funds. While Respondent denies making that admission, his testimony is contradicted in at least two other ways. The handwritten notes of Kenneth Reynolds taken at or about the time of the meeting contradict Respondent's testimony. **App. 127**.

While not definitive proof, those notes buttress the testimony of both Mr. Reynolds and Mr. Grosser regarding Respondent's admissions at the September 16 meeting.

Secondly, Respondent's claims should be assessed against what the evidence shows his financial situation to have been at that time. Respondent testified he was not under any financial hardship in September 2002. However, it was during this same time period that Respondent stipulated, pursuant to the Count I charges, that he failed altogether to file a quarterly report (second quarter 2002), and that his third quarter 2002 quarterly report contained "erroneous" financial information, reflecting payments to creditors that he had not made. Mr. Reynolds' and Mr. Grosser's testimony that they confronted Respondent on September 16, that Respondent acknowledged taking money that belonged to the firm, and that he did so because he was short on funds, is all the more credible in light of Respondent's admissions about his financial situation at the time in question.

Lawyers' interactions with their firms can result in violations of the Rules of Professional Conduct. See *In re Kazanas*, 96 S.W.3d 803 (Mo. banc 2003); *In re Cupples*, 952 S.W.2d 226 (Mo. banc 1997) (*Cupples I*); *In re Cupples*, 979 S.W.2d 932 (Mo. banc 1998) (*Cupples II*); *In re Maier*, 664 S.W.2d 1 (Mo. banc 1984). In *Cupples I* the Court noted that lawyers within a firm have a duty to treat each other fairly and honestly and to put the interests of the firm before their individual interests. 952 S.W.2d at 236. An attorney should not compete with the firm for business opportunities. Id.

The facts underlying *Cupples II* are particularly applicable to the instant case. Cupples, while of counsel to his new firm, used the firm's office address on pleadings for

his private clients without revealing the name of the firm, performed services for his private clients during regular business hours of the firm, and collected fees from cases to which the firm committed its assets without advising the firm of the fees or paying the firm any part of the fees. Mr. Cupples' license was suspended without leave to apply for reinstatement for six months. 979 S.W.2d at 936-937. This Court concluded in both *Cupples I* and *Cupples II* that the lawyer's conduct was in violation of Rule 4-8.4(c).

The Office of Chief Disciplinary Counsel is mindful that the Court warned the Bar in *Kazanas* that "partners and shareholders of a law firm . . . [should] work out financial differences among themselves. Disciplinary review is not a proper venue for the general airing of such problems and must not be used as leaverage in such disputes." *In re Kazanas,* 96 S.W.3d 803, 808-809 (Mo. banc 2003). The record in this matter establishes, however, something far beyond the financial dispute between Mr. Williams and Reynolds and Gold. Respondent committed multiple dishonest acts, thereby putting at issue his fitness to practice law. See *In re Disney,* 922 S.W.2d 12, 15 (Mo. banc 1996) (questions of a lawyer's honesty go to the heart of fitness to practice law). Respondent violated Rule 4-8.4(c) and should be disciplined.

ARGUMENT

III.

THE SUPREME COURT SHOULD IMPOSE A SANCTION OF A SIX MONTH SUSPENSION BECAUSE RESPONDENT'S CONDUCT INVOLVED DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION IN THAT HE KNOWINGLY WITHHELD CASES AND MATERIAL INFORMATION FROM HIS LAW FIRM, PROVIDED ERRONEOUS INFORMATION TO THE OCDC, AND FAILED TO RESPOND TO DEMANDS FOR INFORMATION FROM THE OCDC.

Respondent has stipulated to violation of Rules 4-8.1(b) and 4-8.4(d). Informant has proven violation of Rule 4-8.4(c) by more than a preponderance of evidence. Because this case involves more than one instance of misconduct, the most serious incident is the appropriate one to consider for purposes of sanctions analysis. ABA Standards for Imposing Lawyer Sanctions (1991 ed.), at p. 6. In this case, Mr. Williams' dishonest and deceitful conduct, as charged under Count II and proven by the evidence described under Point II, is the appropriate misconduct to scrutinize per the sanctions model.

The model for determining sanctions set forth in the ABA's Standards requires identification of four factors: to which of four groups was a duty violated, the lawyer's mental state, the extent of injury or potential injury resulting from the misconduct, and

recognition of the aggravating and/or mitigating factors present in the record. See ABA Standards, at page 5. The Count II charges implicate Respondent's duty, owed both to the general public and the legal system, not to engage in conduct involving dishonesty, deceit, or misrepresentation.

The second factor to be considered under the ABA model is the lawyer's mental state. Evidence regarding an individual's mental state is almost never provable by direct evidence; proof of mental state generally rests on circumstantial evidence. See *State v. French*, 79 S.W.3d 896, 900 (Mo. banc 2002). The preponderance of evidence in this case demonstrates a knowing, if not intentional, mental state. The documentary evidence produced by Informant shows Respondent sent letters to clients, accepted fee payments, filed entries of appearance, used letterhead with his name only on it, and had in his possession a personal injury intake form in his name only, all while an associate in a law firm and all during a period he acknowledged never informing the firm about his separate clientele. Even if, as Respondent argues, he had a preexisting attorney-client relationship with those clients, Respondent would not be relieved of the obligation to disclose information about his ongoing legal work to his employer. In *Cupples II* this Court, even when assuming as true Mr. Cupples' version of the facts regarding his own private clients, said that Mr. Cupples was dishonest and deceitful in his dealings with his law firm by failing to advise it of his separate practice, his use of the firm's office address on pleadings for his private clients, and his performance of services for his private clients during regular business hours at the firm. 979 S.W.2d at 935-936. In addition, Mr. Reynolds and Mr. Grosser testified that Respondent admitted to them he had taken

$500.00 in client fees because he needed the money. All of this is clear evidence of, at the least, a knowing mental state.

The third factor in sanctions analysis is recognition of the injury or potential injury caused as a consequence of the misconduct. While the Reynolds and Gold law firm ultimately did not lose the $500.00 in fees procured by Respondent from his "personal clients," inasmuch as the firm withheld $500.00 from the money due to Respondent after his termination, the potential harm to the integrity of the legal system is always present when a lawyer is shown capable of lies and deceit. The harm that could have resulted from Respondent's flaunting of conflicts safeguards is another consideration. Potential injury to the integrity of the system is also appropriate to consider in sanction analysis.

The final factor to be considered pursuant to the Standards framework is consideration of the aggravating and mitigating factors. The aggravating factors, listed at Standard 9.2, present in this record are numerous and bespeak a paucity of character. Respondent was in financial distress at the time of the conduct at issue, providing a dishonest or selfish motive for his conduct. Respondent had a dishonest motive for blatantly misstating facts in his reports to OCDC; if he purported to be making the prescribed payments to his creditors, OCDC would leave him alone. A pattern of misconduct is shown by the evidence that, on seven different occasions, Respondent submitted either inaccurate or no information to the Office of Chief Disciplinary Counsel in response to his obligation to provide quarterly reports. And, during a short three month period of employment with a law firm, Respondent took on two cases about which he failed to either advise the firm or share fees with the firm. There are multiple offenses

in this case. Respondent, by his own stipulated admission, failed to comply with demands for information from a disciplinary authority. Respondent also refuses to acknowledge the wrongful nature of his conduct.

The mitigating factors are listed in Standard 9.32. While there is an official absence of a prior disciplinary record (Respondent has been licensed only since October 2001), the violation of a monitoring agreement is akin to a violation involving a prior matter.[1] Respondent was relatively new to the practice of law at the time of the misconduct, but it should be borne in mind that Respondent was in his 40s when he began the practice of law, i.e., he was not a novice straight out of school. Respondent offered no other evidence in mitigation of sanction.

The ABA Standard most applicable to this case is Standard 7.0. Standard 7.2 states "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system." ABA Standards for Imposing Lawyer Sanctions (1992 amendments). Respondent's conduct in this case was at least "knowing" in nature. He should be suspended for a period of time. Informant recommends that Respondent's license be suspended without leave to apply for reinstatement for six months.

[1] The fact of Respondent's seven felony convictions, all committed prior to his admission to Missouri's bar, is not discussed in this brief because the Board of Law Examiners, in its discretion, admitted Respondent to the practice of law without conditions relating to Respondent's history of criminal convictions.

Missouri case law supports suspension on the facts of this case. In *Cupples II* the Court considered Respondent's acts while in an "of counsel" relationship to a firm. Mr. Cupples' misconduct, like Mr. Williams', included failure to disclose "private" clients to his firm and use of the firm's address on pleadings without identifying the firm. Mr. Cupples received a six month suspension. While suspension was a greater sanction than the Court imposed in *Cupples I,* where the Respondent received a public reprimand, the Court noted in *Cupples I* that there was at that time no Missouri case law squarely addressing an attorney's ethical obligation to his firm. Additionally, Mr. Cupples had in his favor the mitigating factor of twenty years of practice without previous discipline, a mitigator not present in this case. And, unlike Mr. Cupples' situation in 1993, Mr. Williams had the advantage of the *Cupples* cases to guide him. Further, it should be remembered that Respondent was only conditionally licensed by Missouri authorities to practice at all, the condition being his compliance with the terms of a monitoring agreement. Mr. Williams has admitted not only not complying with, but misrepresenting his compliance with, that agreement. Respondent's knowing violation of multiple rules implicating a pattern of misconduct warrants a six month suspension under both the ABA Standards and Missouri case law.

CONCLUSION

Respondent violated the trust reposed in him by the Board of Law Examiners, the Office of Chief Disciplinary Counsel, his employer, and his clients. He did not comply with the terms of the agreement by which he was conditionally admitted to practice, and he deceived his employer and clients by taking on clients and using the firm's address and phone number without revealing to either the clients or his law firm the existence of the other. Respondent's conduct was in violation of Rules 4-8.1(b) (failure to respond to demands for information from disciplinary authorities), 4-8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 4-8.4(d) (conduct that is prejudicial to the administration of justice). The Office of Chief Disciplinary Counsel recommends that the Court sanction Respondent by suspending his privilege to practice law without leave to apply for reinstatement for six months.

Respectfully submitted,

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

By: _____

Carl Schaeperkoetter #30467
Sharon K. Weedin #30526
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2005, two copies of Informant's Brief have been sent via First Class mail to:

Derrick R. Williams, Sr.
1166 Greenway Drive, Suite B4
Jackson, MO 63755

_____
Carl Schaeperkoetter

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 6,201 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.

_____
Carl Schaeperkoetter

APPENDIX