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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, the common law of the Missouri Supreme Court and Revised Missouri Statutes Section 484.040.

STATEMENT OF FACTS

Background and Disciplinary History

Respondent Renae Lynn Ehler received her license to practice law in the State of Missouri in October, 1997. App.31, 48.

Ms. Ehler has had prior contact with this Court for a disciplinary matter. On October 21, 2005, Ms. Ehler was placed on probation for two years after receiving a stayed six month suspension in Case No. SC87152. Ms. Ehler properly requested that she be released from the probation after successfully completing the term. That request was granted. While on probation, Ms. Ehler ran and was elected to the position of Prosecuting Attorney of Chariton County, Missouri.

Miller Dissolution

In May, 2007, Robert Ann Miller hired Ms. Ehler to represent her in a dissolution of marriage against her then husband, Harold Bing Miller. Respondent filed the Petition for Dissolution of Marriage on May 24, 2007 in the Chariton County Circuit Court. Mr. Miller was represented by Mr. James Cooksey in the dissolution.

Discovery was conducted by both parties, including, but not limited to Interrogatories and Request for Production of Documents filed by both sides. All discovery was completed and the parties ultimately appeared on January 16, 2008 for a resolution of the case. The parties agreed that all marital property would be disposed of by selling it at auction. This sale included real estate and personal

property acquired during the marriage. The proceeds were then to be divided between the parties. Also considered in the distribution of funds were any bills paid after separation by the parties. Both parties submitted an accounting of those bills.

Two federal income tax refund checks payable to Ms. Kimmel, the former Ms. Miller, and Mr. Miller were deposited into Respondent's trust account. The sum total of the two checks was \$1,225.63. App. 8 (T.14), 33, 48.

After the sale, two checks were issued for distribution of the sale funds. The first was for \$52,481.22 from Chariton Abstract Escrow representing the net sale proceeds for the marital residence. App. 8 (T. 14), 33.48.

An additional check representing the balance of the sale proceeds was deposited into Respondent's account on July 7, 2008. That check was issued from Iman Auction for \$13,832.66. App. 8 (T 14-15), 33, 48.

The net proceeds deposited into Respondent's trust account from the Miller dissolution was \$67,539.51.

Respondent sent a letter to Mr. Cooksey setting out the proposed distribution of the funds for the Millers. The letter included funds to be disbursed to the creditors on marital debt as agreed by the parties in January. The distribution also included allowances for the bills submitted by the Millers that they had paid after the date of separation. App. 33, 49, 112-113. Payments were issued to the creditors as indicated in the letter. The checks issued by Respondent

to the creditors ultimately were presented to Regional Missouri Bank and paid from Respondent's trust account.

After the creditors' checks had cleared and all accounts were settled, Respondent then issued checks to Mr. Miller and Ms. Kimmel according to the amounts listed in the July letter to Mr. Cooksey. No notice was ever given to Respondent of an error or dispute of the amounts to be paid or to whom.

In October, 2008 Ms. Kimmel filed a complaint with the Office of Chief Disciplinary Counsel against Respondent. Kelly Dillon conducted an investigation of the complaint and completed an audit of Respondent's trust account. Thereafter, Ms. Dillon and Carl Schaeperkoetter met with Respondent at her office in Keytesville. They then explained to Respondent the nature of the complaint and the issues with the amounts for distribution. At that time Respondent paid Ms. Kimmel a cashier's check for \$3,066.70 and paid Mr. Miller a cashier's check in the amount of \$23,527.14.

According to Ms. Dillon's calculations, an additional \$2,104.82 was owed to each of the parties. No further payments have been made to date.

The audit performed by Ms. Dillon further indicated that personal and office expenses had been paid out of the trust account by Respondent. The sum of those payments was \$3,3474.48. App. 36, 50, 54-58.

Craig Gorham Representation

In October, 2007 Respondent was contacted by Craig Gorham to represent him in a small claim matter pending in Linn County Associate Court. The case

involved a dispute over unpaid water bills for the home Mr. Gorham and his family were currently living in. App. 37, 50. Respondent agreed to represent Mr. Gorham. Early in the representation, Mr. Gorham indicated it would be acceptable for Respondent to speak with his current wife, Dixie Gorham, regarding the matter.

Discovery requests were file in the case and forwarded to Mr. Gorham by Respondent. The current Ms. Gorham, Dixie, delivered documentation to Respondent regarding the time frame when they lived in Iowa instead of their current residence in Missouri. Respondent requested the discovery requests be fully answered and signed by Mr. Gorham and provided additional copies to Mr. Gorham by hand delivery to his wife and mailing an additional copy. Mr. Gorham indicated he had never seen the discovery requests. App. 21 (T. 64). The complete discovery answers were not provided to Respondent by either Mr. or Ms. Gorham. A default judgment was entered against Mr. Gorham. App. 20 (T. 61-62).

Disciplinary Case

Informant file the Information in this case on April 15, 2009. Respondent's answer was timely filed on May 18, 2009. App. 48. A Disciplinary Hearing Panel was appointed on July 6, 2009. App. 3-4. The Panel held its hearing in this matter on August 26, 2009. App. 5.

The Panel issued its Findings of Fact, Conclusions of Law and Decision on November 12, 2009. The Panel found regarding the Kimmel/Miller complaint that

Respondent violated the following Missouri Rules of Professional Conduct: Rule 4-1.1 on competence that Respondent failed to correctly calculate the money owed to Ms. Kimmel and Mr. Miller and failed to deliver the correct amount to them; Rule 4-1.3 on diligence by failing to deliver the money owed to Ms. Kimmel and Mr. Miller in a timely fashion; Rule 4-1.4 on communication by failing to communicate with her client about the money owed and failing to communicate with Mr. Miller and his counsel about the money owed to Mr. Miller; Rule 4-1.15 by failing to safekeep money owed to Ms. Kimmel and Mr. Miller, instead utilizing a portion of the money for other improper purposes; and Rule 4-8.4 (c) by engaging in conduct involving deceit and misrepresentation.

With regard to the Gorham complaint, they indicated Respondent had violated the Missouri Rules of Professional Conduct under Rule 4-1.1 on competence by failing to provide counsel with the information requested in discovery so as to avoid entry of a judgment against Mr. Gorham and Rule 4-1.3 on diligence by failing to provide opposing counsel with the information requested in discovery so as to avoid entry of a judgment against Mr. Gorham.

The Panel further considered the aggravating and mitigating circumstances present before determining the level of discipline. The mitigating circumstances included the personal and emotional problems of Respondent as well as her cooperative attitude and disclosure to the disciplinary body. The aggravating circumstances included prior disciplinary offenses; dishonest or selfish motive;

pattern of misconduct; multiple offenses and indifference to making restitution to the injured parties.

The Panel recommended that Respondent be disbarred.

The informant filed its notice of acceptance of the Panel's decision on November 20, 2009. App. 157. The Respondent filed her notice of rejection of the Panel's decision on December 30, 2009. App. 160. Informant filed the record in this case on February 1, 2010.

POINTS RELIED ON

I.

**RESPONDENT SHOULD NOT BE SUBJECT TO DISCIPLINE BY
THE SUPREME COURT BECAUSE:**

- A. SHE DID NOT VIOLATE THE RULES OF PROFESSIONAL
CONDUCT INVOLVING COMPETENCE, DILIGENCE,
COMMUNICATION, SAFEKEEPING PROPERTY, DECEIT
OR MISREPRESENTATION OF THE HANDLING OF
CLIENT AND THIRD PARTY FUNDS IN THE
KIMMEL/MILLER DISSOLUTION PROCEEDINGS;**
- B. SHE DID NOT VIOLATE THE RULES OF PROFESSIONAL
CONDUCT INVOLVING COMPETENCE AND DILIGENCE
IN HER REPRESENTATION OF CRAIG GORHAM IN THE
CASE REGARDING A DISPUTED WATER BILL.**

In re Murphy, 732 S.W.2d 895 (Mo. banc 1987)

In re Waldron, 790 S.W.2d 456 (Mo. banc 1990)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

POINTS RELIED ON

II

**THE SUPREME COURT SHOULD NOT DISBAR RESPONDENT
BECAUSE:**

- A. SHE DID NOT ENGAGE IN PROFESSIONAL MISCONDUCT INVOLVING DECEIT OR MISREPRESENTATION; NOR DID SHE FAIL TO SAFEKEEP HER CLIENT OR THIRD PARTY'S PROPERTY; NOR DID SHE FAIL TO COMPETENTLY AND DILIGENTLY REPRESENT HER CLIENTS; NOR FAIL TO REASONABLY COMMUNICATE WITH HER CLIENT.**
- B. RESPONDENT'S ACTIONS AND THE CIRCUMSTANCES PRESENT DO NOT WARRANT NOR SUPPORT DISBARMENT.**

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

In re Belz, 258 S.W.3d 38 (Mo. banc 2008)

In re Oberhellman, 873 S.W.2d 851 (Mo. banc 1994)

In re Snyder, 35 S.W.3d 380 (Mo. banc 2000)

ARGUMENT

I.

**RESPONDENT SHOULD NOT BE SUBJECT TO DISCIPLINE BY THE
SUPREME COURT BECAUSE:**

**A. SHE DID NOT VIOLATE THE RULES OF PROFESSIONAL
CONDUCT INVOLVING COMPETENCE, DILIGENCE,
COMMUNICATION, SAFEKEEPING PROPERTY, DECEIT OR
MISREPRESENTATION OF THE HANDLING OF CLIENT AND
THIRD PARTY FUNDS IN THE KIMMEL/MILLER
DISSOLUTION PROCEEDINGS;**

**B. SHE DID NOT VIOLATE THE RULES OF PROFESSIONAL
CONDUCT INVOLVING COMPETENCE AND DILIGENCE IN
HER REPRESENTATION OF CRAIG GORHAM IN THE CASE
REGARDING A DISPUTED WATER BILL.**

The primary purpose of disciplinary actions or sanctions against an attorney is to protect the public and maintain the integrity of the legal profession. *In re Murphy*, 732 S.W.2d 895 (Mo. banc 1987), *In re Waldron*, 790 S.W.2d 456 (Mo. banc 1990). In making the determination if discipline is warranted and to what extent that discipline should be delivered, the Court is allowed to take into consideration many different factors. Some of which include, the attorney's actions and motives; the likelihood that these same actions will be repeated; any

extenuating circumstances that have may have been present. ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

In the case at bar, Respondent was retained by Roberta Ann Miller, now Kimmel, to represent her in a dissolution proceeding. At the conclusion of that dissolution, the parties agreed to sell all of their marital property and the proceeds from that sale were to be divided between the parties. When the proceeds had been deposited into Respondent's trust account, she provided a proposed distribution of funds to Mr. James Cooksey for his review. The same proposal was provided to Ms. Kimmel. At no point in time did Mr. Cooksey, Ms. Kimmel, or Mr. Miller object to the proposed distribution or suggest there were any errors with the calculations.

The Informant indicates that Respondent failed to timely deliver funds to Ms. Kimmel and Mr. Miller. However, Ms. Kimmel testified that she received a check from Respondent for the amount indicated in the distribution letter in September, after all the creditors had been paid and those checks had cleared Respondent's trust account. There was no testimony disputing the fact that a check was also mailed to Mr. Miller for his portion of the proceeds as set forth in the same letter.

Ms. Dillon indicated in her testimony that at all times, there were sufficient funds in Respondent's trust account to cover the amount to be disbursed to Mr. Miller according to the distribution letter. Had Mr. Miller presented the check for his portion of the funds, it would have been honored. App. 10 (T. 23).

When Ms. Dillon indicated to Respondent there was an error in her calculations, there was no dispute about the error by Respondent. Only that she was not aware there was a problem and that was the first she knew about a problem. App. 10 (T. 21).

Further, when confronted about the funds owed Mr. Miller, Respondent indicated that a check had been issued to him at the same time a check was issued to Ms. Kimmel. It had simply never been presented for payment to her bank.

The checks were issued to Ms. Kimmel and Mr. Miller in a timely fashion once the outstanding bills were paid. Respondent did not hold the funds or unduly delay distributing the funds in accordance with the proposed distribution letter.

With regard to the Gorham matter, Respondent could not provide to opposing counsel what had not been provided to her. By Mr. Gorham's own testimony, he never saw the interrogatory questions in his case. Eventhough Dixie Gorham testified that she had multiple copies of them and thought she had provided enough information to satisfy them. Mr. Gorham further stated he asked Dixie Gorham about the discovery requests after a conversation with Respondent and still was not provided with them. That was contradictory to Dixie Gorham's testimony. The Panel did not indicate they found Dixie Gorham to be credible in her testimony. Respondent was told by Mr. Gorham to communicate with Dixie Gorham regarding his case. Which she did. However, Dixie Gorham was not forthcoming nor cooperative in providing the information to Respondent so that the discovery could be properly answered.

ARGUMENT

II.

**THE SUPREME COURT SHOULD NOT DISBAR RESPONDENT
BECAUSE:**

- A. SHE DID NOT ENGAGE IN PROFESSIONAL MISCONDUCT INVOLVING DECEIT OR MISREPRESENTATION; NOR DID SHE FAIL TO SAFEKEEP HER CLIENT OR THIRD PARTY'S PROPERTY; NOR DID SHE FAIL TO COMPETENTLY AND DILIGENTLY REPRESENT HER CLIENTS; NOR FAIL TO REASONABLY COMMUNICATE WITH HER CLIENT.**
- B. RESPONDENT'S ACTIONS AND THE CIRCUMSTANCES PRESENT DO NOT WARRANT NOR SUPPORT DISBARMENT.**

In determining if an attorney should be disbarred, the Court is allowed to take several factors into consideration. Not the least of which is the attorney's intent and actions. The Informant cites several cases in which the Court determined that disbarment was the appropriate remedy when there were issues with client funds. Each of those cases are very different from the case as bar. In each of the cases cited by Informant, it was determined that the attorney was deceitful and dishonest in their actions. When confronted by their clients or the disciplinary officials they were less than forthcoming about their actions. Specifically, *In re Kazanas*, 96 S.W.3d 803 (Mo. Banc 2003) addressed an attorney that not only stole from his clients but also his partners. He furthered his

wrongdoing by trying to hide his actions and falsify accounting to protect himself. That is not the case here. Respondent provided an accounting to opposing counsel for his review. She also provided it to her client. There was no response or objection to the figures by either. They had an opportunity to review and object to them while Respondent waited for the checks that had been issued to clear the account. No such objections were ever made. The first and only notice ever provided to Respondent of her error was in her office by Ms. Dillon and Mr. Schaeperkoetter.

This case is also distinguishable from *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008) for a similar reason. In that case, Mr. Belz attempting to conceal the fact that he was taking monies from clients' trust accounts. He did self report his activity to the disciplinary counsel, but only after his partners discovered what had happened and directed him to do so.

This Court has gone further in recent cases when looking at the aggravating and mitigating circumstances surrounding the facts in a case as in *Belz* by considering other factors in determining the correct sanction. Rather than disbarring him, the Court suspended *Belz* for three years. *Id.* at 47.

In the case at bar, Respondent did not attempt to hide or conceal any wrongdoing. In fact, there was nothing to indicate that she intentionally did anything to steal or misappropriate any client funds. When asked for an explanation of the funds in her trust account, Respondent was unable to provide them because of computer issues. She had lost the hard drive on her computer and

had to recreate the accounting on her trust account. She further stated she did it to the extent she was able to short of going through each individual client file in her office to document the use of each deposit into and check written out of the trust account.

As for restitution to her client and Mr. Miller, Respondent explained her financial situation to the Panel in that she also has a dissolution pending and is totally without funds to make payments toward restitution at this time. It was not that Respondent blatantly refused to do so, but the current financial situation makes it impossible for her to do so. As previously stated, Respondent is still going through a divorce. She is a single parent caring for three children with minimal support from their father. She has been required to pay a portion of guardian ad litem fees for the children in that divorce due to allegations of abuse by the father as well.

The Informant would have this Court believe that Respondent has done things similar in the past. When in reality, the issues addressed in the previous discipline were totally different. In those cases, the work was performed for bankruptcy filings and show causes were not addressed because of Respondent's failure to properly supervise and instruct her staff on how to proceed. The matters were dismissed and Respondent repaid the clients their fees. One exception was a bankruptcy case that was not filed because of a dispute between Respondent and her clients. Those funds were also refunded.

Other factors that this Court should consider when determining the proper action is protection of the public from Respondent. While on probation through this Court, Respondent successfully ran for Prosecuting Attorney of Chariton County. The Orders of Probation were published in the local papers by her opponent during the course of the election. The Public still felt secure in electing her to that position. Further, shortly after taking office, Respondent audited the books of the prosecutor's office and discovered that approximately \$400.00 was missing from the account. This was later confirmed by an audit regularly performed by the State of Missouri. That money was subsequently recovered and properly disbursed.

The last date that expenses were paid out of the trust account was February, 2008. Which was a month after being released from probation. App. 86. The funds from the Miller dissolution were not deposited until after that time. Respondent also explained to Ms. Dillon and Mr. Schaeperkoetter once she discovered the error, which was prior to being contacted by them, she corrected it. The documentation problems again stem back to lack of a computer for a period of time. Not intentionally trying to deceive any one or steal monies. The payments were made when Respondent was on probation and being monitored by the Office of Chief Disciplinary Counsel and presumably an audit or something along those lines was to occur before she was released from probation. Certainly not something she would do if she desired to keep her license.

Also, Respondent no longer has a private office and does only minimal private practice since taking office. She also has no intention of returning to private practice at this time. Therefore, exposure to the public is minimal and any risk to the public is practically nonexistent.

The ABA Guidelines indicate that the starting point is disbarment where the lawyer “knowingly converts” client property. However, that is not the case in this instance at all. There was no testimony or evidence presented to indicate that the issues with the Miller funds were intentional or even knowingly done by Respondent. Ms. Dillon, Ms. Kimmel and Mr. Miller all testified that there was no notice to Respondent prior to the contact from the disciplinary office that there was a discrepancy with the distribution of funds. The Miller money was not deposited into Respondent’s trust account until over a month after the last time any expenses were paid from that account, so there was no commingling of their funds or use of their funds for those expenses.

The Court is to review the evidence presented on a *de novo* basis to draw its own conclusions. *In re Snyder*, 35 S.W.3d 380 (Mo. Banc 2000); *In re Oberhellman*, 873 S.W.2d 851 (Mo. Banc 1994). The evidence presented in this case does not warrant Respondent being disbarred.

In the Miller matter, Respondent did timely provide the funds, according to her calculations to Ms. Kimmel and Mr. Miller. It is unknown what happened to the check issued to Mr. Miller. Respondent did communicate to Mr. Miller through his counsel regarding the distribution of funds and received no objection

to her calculations. Respondent did not use their funds for improper purposes. Nor did she engage in any conduct involving deceit or misrepresentation.

As for the Gorham matter, Respondent was never provided the information necessary to properly respond to the discovery requests made of Mr. Gorham. Dixie Gorham testified that she received the interrogatory questions and never gave them to Mr. Gorham to answer nor did she ever give the completed responses to Respondent. She only gave Respondent some documents regarding their residency for a short time. Respondent was unable to respond because Dixie Gorham refused to provide the necessary information.

CONCLUSION

Respondent did not engage in professional misconduct involving competence, diligence, communication, safekeeping property, deceit or misrepresentation during the Miller dissolution proceedings. Respondent did not engage in professional misconduct involving competence or diligence in her representation of Craig Gorham. There is no indication of a pattern of misconduct by Respondent. There has been no evidence to support a selfish or deceitful motive on Respondent's part. There was no evidence to support that Respondent is indifferent to making full restitution in this matter. Disbarment is not the appropriate remedy in this case.

Respectfully Submitted,

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RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of March, 2010, two copies of Respondent's Brief and a disk containing the Brief in Word format have been sent via U.S. Mail, postage prepaid to:

Mr. Alan D. Pratzel
Office of Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109

Rena L. Ehler

CERTIFICATION: RULE 84.06 (C)

I hereby 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 3,815 words, according to Microsoft Word, which is the word processing system used to prepare this Brief; and
4. That AVG Anti-virus software was used to scan the disk for viruses and that it is virus free.

Rena L. Ehler