

**IN THE SUPREME COURT  
STATE OF MISSOURI**

---

**IN RE:** )  
 )  
**KENNETH A. LEEDS,** ) **Supreme Court #SC93930**  
 )  
**Respondent.** )

---

---

**RESPONDENT'S BRIEF**

---

BROWN & JAMES, P.C.  
Steven H. Schwartz, #36436  
Todd A. Lubben, #54746  
800 Market Street, Suite 1100  
St. Louis, Missouri 63101  
314.421.3400  
Fax: 314.421.3128  
sschwartz@bjpc.com  
tlubben@bjpc.com

*Attorneys for Respondent*

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF JURISDICTION.....1

STATEMENT OF FACTS..... 2

POINT(S) RELIED ON.....6

ARGUMENT.....7

CONCLUSION.....14

CERTIFICATE OF SERVICE.....15

CERTIFICATION: RULE 84.06(C).....16

## **TABLE OF AUTHORITIES**

### **CASES**

*In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009)

### **OTHER AUTHORITIES**

ABA Standards for Imposing Lawyer Sanctions (1992)

### **RULES**

Rule 5.225

Rule 5.285

**STATEMENT OF JURISDICTION**

Respondent adopts Informant's Statement of Jurisdiction.

## STATEMENT OF FACTS

Informant's brief contains one factual error. The DHP hearing in this matter occurred on May 21, 2013, not on December 16, 2013.

Respondent agrees with and adopts the remaining facts from Informant's Statement of Facts. Respondent sets forth these additional facts to emphasize certain aspects of Respondent's personal background which are relevant to mitigating factors.

Respondent and his wife, Toni, began their relationship in 1995 and were married in 2007. A492. Both Respondent and Toni had children from a prior marriage. A518; A492.

Toni's daughter ("Tiffini")<sup>1</sup> gave birth to Toni's first grandchild, Jason, in 2004 and to Toni's second grandchild, Skye, in 2006. A519; A492. Because Tiffini was involved with drugs and other criminal matters, Toni was appointed legal guardian of both those children until the guardianship was terminated and Tiffini retained custody in early 2007. A492 – A493.

Between February 2007 and June 2009, although Respondent and Toni no longer had physical custody of Jason and Skye, they were heavily involved in

---

<sup>1</sup> In various portions of the Appendix, Tiffini was sometimes referred to as "Jane" to protect her identity.

caring for those grandchildren due in part to Tiffini's substance abuse issues. A493; A519.

In June, 2009, Tiffini gave birth to another child, Anthony. Respondent and Toni immediately took custody of Anthony because it had been determined that Tiffini was using drugs during her pregnancy. A519-520. The following month, Respondent and Toni also took custody of Jason and Skye because Tiffini was sent to jail due to substance abuse issues. A519. This was a life-altering and difficult time for Respondent, as he was essentially transformed from a 54 year-old grandparent to a 54 year-old parent of three young children. A520-521. Instead of beginning to look forward to retirement like his peers, Respondent's focus shifted to taking care of, and providing for, this extended family. A520-521.

Then, in February, 2011, the unthinkable happened: Jason and Skye were killed in a house fire while visiting Tiffini. A524; A546-547 At the time, Jason was six years-old and Skye was five years-old. Respondent suffered incomparable pain due to the death of his two grandchildren. A524.

Shortly before the house fire, in January, 2011, Tiffini gave birth to a daughter, Emily. A524-525 Respondent and Toni adopted Anthony in April, 2011 and are in the process of adopting Emily while they continue to serve as Anthony's adopted parents. A496-497; A525.

For over 30 years, Respondent has successfully practiced law in Missouri and Illinois with only one formal complaint from a client which resulted in admonishment. A522. Respondent has never shown any sign of lacking competence to practice law. His clients are generally happy with his services. A549. He has a good reputation among other lawyers. A551.

Throughout his career, Respondent has provided pro bono legal services to low-income clients. A510-511. He generally devotes between 10 to 15 percent of his legal services to those cases. A530. Respondent's pro bono clients would have great difficulty finding another pro bono lawyer if Respondent was suspended from practicing law. A528.

In addition, Respondent would have great difficulty supporting his family if he was unable to practice law. Toni has been out of the work force since 2009 due in part to her role in caring for Respondent's adopted grandchildren. A527-528. Her prospects of re-entering the work force are slim since she has little or no skill sets. A527-528.

In over 30 years of practice, this matter is the first indication that Respondent has not handled his trust account properly. Respondent self-reported the incident that led to this proceeding and was fully cooperative with the OCDC. A513. He admitted all the facts and he showed remorse for his actions. He voluntarily took steps to rectify the situation by turning over his trust account to a

bonded accounting firm, Brown Smith Wallace, LLC. A515-517. He has also ensured that all his clients have received the money that is owed to them. In addition, he sought help and treatment from a medical care professional. *See* Medical Records filed under seal on March 27, 2014.

**POINT RELIED ON**

**I.**

**THE COURT SHOULD DISCIPLINE RESPONDENT BY IMPOSING A STAYED SUSPENSION WITH PROBATION BECAUSE PROBATION IS APPROPRIATE UNDER THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, THE RELEVANT MITIGATING FACTORS, THE MISSOURI COURT RULES AND MISSOURI CASE LAW.**

*In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009)

*ABA Standards for Imposing Lawyer Sanctions* (1991 ed.)

Missouri Supreme Court Rule 5.225

Missouri Supreme Court Rule 5.285

## ARGUMENT

### I.

**THE COURT SHOULD DISCIPLINE RESPONDENT BY IMPOSING A STAYED SUSPENSION WITH PROBATION BECAUSE PROBATION IS APPROPRIATE UNDER THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, THE RELEVANT MITIGATING FACTORS, THE MISSOURI COURT RULES AND MISSOURI CASE LAW.**

As discussed below, Respondent has served the community for over 30 years as a reputable and well-respected attorney. Beginning in 2009, he experienced a series of tragic events which he now realizes impacted his ability to properly administer his law firm's trust account. Due in part to the absence of any intentional misconduct and in part to the presence of mitigating factors, Informant and Respondent agree that a stayed suspension with probation is more than sufficient in this matter.

In its brief, Informant explained that suspension under ABA Standard 4.12 is inappropriate since Respondent's misconduct originated from lack of appreciation for his ethical obligations regarding client money and, in large part, from personal, emotional, and mental problems. Respondent agrees that he did not knowingly or

intentionally violate any rules with a profit motive. Respondent further agrees that the ABA standards do not call for a suspension under these circumstances.

Furthermore, Respondent qualifies for probation under Rule 5.225. That rule states:

(2) A lawyer is eligible for probation if the lawyer;

(A) Is unlikely to harm the public during the period of probation and can adequately be supervised;

(B) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and

(C) Has not committed acts warranting disbarment.

Respondent falls squarely within Rule 5.225. As to Rule 5.225(A), Respondent, shortly after he learned that he had mismanaged his trust account, hired Brown Smith Wallace, LLC accounting firm to manage and monitor his client trust account. A515-A517. He has also seen a licensed medical professional to help him cope with personal issues. A530-A531; A562. Respondent is therefore unlikely to harm the public during the probationary period.

Furthermore, Respondent is able to perform legal services without causing the courts or profession to fall into disrepute as required by Rule 5.225(B). As evidence, Respondent produced an affidavit from a former client and from one of Respondent's peers describing Respondent's high quality legal services. A549-

A551. In addition, Respondent provides substantial pro bono services. Thus, the record reflects that Respondent can perform legal services without causing the courts or profession to fall into disrepute.

Furthermore, Rule 5.225 is applicable because Respondent has not committed acts warranting disbarment. The ABA Standard 4.12 sets the bar at suspension for commingling when a lawyer knows or should know that he is dealing improperly with client money and causes injury or potential injury to a client. Per ABA Standard 4.13, reprimands can be used when lawyers are merely negligent in dealing with client funds and cause injury or potential injury to a client. While Respondent's actions may require more than a reprimand, those actions do not rise to the level of suspension under 4.12. See *In re Coleman* 295 S.W.3d 857 (Mo. banc 2009) (suspension with a period of probation imposed on lawyer who regularly commingled his funds with client funds in trust account and who had three separate prior disciplinary sanctions entered against him). None of Respondent's clients were harmed and Respondent did not comprehend the extent to which he was mishandling his trust account. Because Respondent meets the three factors in Rule 5.225, he is eligible for probation.

The ABA Standards for Imposing Lawyer Sanctions also set forth a number of mitigating factors for the court to consider when imposing discipline of on lawyer. First, Respondent's upstanding character and reputation is a mitigating

factor under ABA Standard 9.32(f). Respondent's peers and clients recognize that Respondent provides quality legal services, is a strong advocate for clients and functions as an "asset to the community." A549-550; A551. His good character is further evidenced by his substantial pro bono work. A511-512; A530. Respondent routinely represents people from low-income areas of Missouri who need legal services but cannot afford to pay a lawyer. A510-511. If he were suspended, his current pro bono clients would struggle to locate another attorney who would not charge a fee A528. Thus, under that mitigating factor, a stayed suspension with probation is appropriate.

Furthermore, Respondent has experienced more trauma and heartache in the past few years than any one person should experience in an entire lifetime. First, from 2004 to 2007, Respondent stepped up and helped his future wife, Toni, raise two small grandchildren, Jason and Skye. After the birth mother, Tiffini, retained custody in 2007, Respondent continued to be heavily involved in Jason and Skye's lives. A492 – A493.

Then, in 2009, his life was once again turned upside down when Tiffini was sent to prison for allegedly using drugs while she was pregnant with another child, Anthony. A494. Respondent and his wife once again took custody of Jason and Skye along with Anthony. A519-520. At that point, instead of serving the role of

grandparents, Respondent and Toni essentially became parents and sole providers of three children under the age of six. A520.

Despite this upheaval in his life, Respondent continued to run a successful law practice while also caring for three young children. However, in 2011, the unthinkable happened: Jason and Skye were killed in a house fire while visiting their mother. A524; A546. The death of two grandchildren would obviously be traumatic and overwhelming to anyone. This event was especially tragic and painful for Respondent due to the unique role he played in raising Jason and Skye.

Until recently, Respondent did not fully comprehend the toll these tragic events took on his well-being and mental state. Respondent now realizes that the events which commenced in 2009 were a significant contributing factor towards the trust account issues. A523-524. Mr. Leeds' personal and emotional problems arising from these events are relevant mitigating factors under Rule 9.32(c).

ABA Standard 9.32(f) also provides that the absence of a dishonest or selfish motive is a mitigating factor. In this case, there is no evidence that Respondent acted dishonestly or selfishly. Instead, the record shows Respondent's actions are directly linked to a series of traumatic events that were outside of Respondent's control. The absence of a dishonest or selfish motive is yet another mitigating factor that supports a stayed suspension with probation in this matter.

These traumatic events also caused Respondent to experience major depression which directly contributed to Respondent's misconduct. *See* Medical Records filed under seal on March 27, 2014. That diagnosed mental disorder is a mitigating factor under Rule 5.285.

Although technically not a mitigating factor, the effect a suspension would have on Respondent, his clients and his family should be noted. Respondent and his wife currently maintain custody of Anthony, their grandson whom they adopted on April 5, 2011, and Emily, their granddaughter who was born shortly before the 2011 house fire. A527-A528. His wife has been out of work for over three years and has limited options for rejoining the work force. A527-528. Respondent's family, including the grandchildren, would be devastated if Respondent could not earn an income.

It should also be noted that Respondent's competency to practice law is not an issue in this case. While dealing with various personal issues, Respondent never missed a filing deadline, court date or did anything to hurt his client's interest. A524. As discussed above, his clients and peers both recognize the high quality legal services provided by Respondent. A549-551. Respondent now realizes that, while doing his best to serve his family and his profession, he needed to be a better business person and needed to properly monitor his bank accounts. As a result of this action, Respondent has a better understanding of how to

accomplish those goals and will be working with a well-respected and bonded accounting firm, Brown Smith Wallace, LLC to properly maintain those accounts.

In summary, the legal profession needs more lawyers like Respondent who seek to help the community through substantial pro bono efforts while caring for an extended family. Mr. Leeds has lived through a series of tragic events and continues to raise two grandchildren. He now realizes that these horrific events caused him to lose control of his trust account. Those personal and emotional issues, along with the additional circumstances discussed above, are significant mitigating factors under ABA Standard 9.32(c). Probation is warranted under Rule 5.225 and the ABA Standards.

**CONCLUSION**

For all of the foregoing reasons and those stated in Informant's Brief, Respondent respectfully prays that this Court approve the Stipulation and Proposed Terms of Conditions of Probation agreed upon by the parties and enter its order accordingly.

RESPECTFULLY SUBMITTED,

BROWN & JAMES, P.C.

/s/ Steven H. Schwartz  
Steven H. Schwartz, #36436  
Todd A. Lubben, #54746  
800 Market Street, Suite 1100  
St. Louis, Missouri 63101  
314.421.3400  
Fax: 314.421.3128  
sschwartz@bjpc.com  
tlubben@bjpc.com

*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of May, 2014, a true and correct copy of the foregoing was sent through the Missouri Supreme Court electronic filing system to:

Maia Brodie  
Special Representative, Division 4  
222 S. Central, Suite 708  
St. Louis, Missouri 63105

Attorney for Informant  
Chief Disciplinary Counsel

/s/ Steven H. Schwartz

**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 2,243 words, according to Microsoft Word, which is the

word processing system used to prepare this brief.

/s/ Steven H. Schwartz

#11731122