

**IN THE SUPREME COURT  
STATE OF MISSOURI**

**IN RE:**

**ROBERT LEO DEVOTO,**

**Respondent.**

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**Supreme Court #SC94017**

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**INFORMANT'S BRIEF**

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Respectfully submitted,

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#29141

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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

### I. Background and Disciplinary History

Robert Leo DeVoto, Respondent, was licensed to practice law in Missouri in 1979. **App. 3.** He currently practices in St. Louis. His license is currently in good standing. **App. 3.** The address Respondent designated in his most recent registration with the Missouri Bar is: 9322 Manchester Road, St. Louis, MO 63119. **App. 3; 19.**

Respondent has a prior disciplinary history. In the Supreme Court case of *In Re: Robert L. DeVoto*, Case No. SC85780, on January 27, 2004, Respondent received a sanction of an indefinite suspension with leave to apply for reinstatement after six months, with the suspension stayed and Respondent placed on a two-year term of probation. **App. 47.** Respondent successfully completed his term of probation and the Supreme Court issued an Order of successful completion on January 29, 2007. **App. 47.**

In the aforesaid Case No. SC85780, Respondent was sanctioned for violation of Supreme Court Rules 4-8.1(b), 4-8.4(c) and (d), and 4-5.5(c). Respondent's rule violations all resulted from a failure to complete and truthfully report required hours of continuing legal education pursuant to Missouri Supreme Court Rule 15. Respondent practiced law during a three year period in which he was not MCLE compliant, a violation of Rule 4-5.5(c). Respondent provided misleading information to the Missouri Bar, claiming credit for CLE programs he had not actually attended, a violation of Rules 4-8.4(c) and (d), and failed to initially respond to requests for information from the Office of the Chief Disciplinary Counsel ("OCDC"), a violation of Rule 4-8.1(c). No client complaints were involved in the aforesaid disciplinary case and no client issues were discovered during the

investigation or the probation term, nor were there any issues involving the Respondent's trust account. **App. 47.** Respondent was not disciplined before that case and he has not been disciplined since that case.

This case consists of eight allegations of professional misconduct. Informant and Respondent stipulated to facts, conclusions of law, and a recommended sanction. Under the agreement, Respondent's license would be suspended, and he would be placed on probation under Rule 5.225. On December 13, 2013, a Disciplinary Hearing Panel conducted a hearing to determine whether to accept the stipulated agreement and was advised by the parties that they required additional time to complete the written stipulation. **App. 68.** Subsequently, Informant submitted the executed Joint Stipulation of Facts, Joint Conclusions of Law and Joint Recommended Discipline (the "Joint Stipulation"). The Hearing Panel accepted the Joint Stipulation, incorporating the same into its Decision rendered on January 10 2014. **App. 68-69.**

The version of Rule 4-1.15 at issue in the counts below is Rule 4-1.15, as amended on October 29, 2009, effective January 1, 2010, as Respondent's misconduct occurred prior to July 1, 2013 when the amendment dated October 30, 2012, became effective.

### **Count I**

In 2012, Respondent represented Kathleen Nicely in a claim for personal injuries sustained by Ms. Nicely in an automobile accident. **App. 21; 47-48.** On or about March 19, 2012, Ms. Nicely's legal matter was settled by Respondent and the settlement proceeds were deposited into Respondent's trust account. **App. 21-22; 48.** The Settlement Statement dated March 19, 2012 indicated a gross settlement amount of \$430,000 less attorney's fees

of \$82,500. **App. 22; 48.** On April 10, 2012, Ms. Nicely received her share of the settlement proceeds, in the sum of \$281,839.94; ( $\$281,839.94 + \$63,333.33$  (lien amount paid) +  $\$2,327.27$  (expenses) +  $\$82,500$  (fees) =  $\$430,000$ ). **App. 48.**

Respondent failed to remove from his trust account the attorney fees due and owing to him in a timely manner, issuing trust account checks made payable to himself, as and for his attorneys fees, as follows:

May 2, 2012	\$5,000
May 14, 2012	\$2,000
May 23, 2012	\$8,000
July 9, 2012	\$3,000
July 20, 2012	\$2,000
September 25, 2012	\$5,000

**App. 22-23; 48.** (Additional attorney fees were paid prior to May 2, 2012 and attorney's fees were paid to Arthur Hyatt as co-counsel. **App. 48.**)

At the hearing, Respondent acknowledged that by failing to promptly remove his attorney's fees from the trust account, his earned fees remained in the trust account for more than six months, which is improper commingling of his personal funds with the client's funds in his trust account. **App. 23.**

The parties stipulated that Respondent violated Rule 4-1.15(c) by commingling his personal funds and the client's funds in his trust account.

## Count II

Respondent represents a client named Geile in a multi-party product liability case. **App. 41; 49.** Respondent explained to the OCDC that he deposited his own funds into the trust account to pay for future case expenses. **App. 41; 49.** Respondent stated that, “because expenses would ultimately be charged against any recovery, I put an advance in the client trust account.” **App. 41; 49.** Respondent could not produce records evidencing the date and/or amount of the advance. **App. 49.** At the hearing, Respondent acknowledged his professional misconduct. **App. 41.**

The parties stipulated that Respondent violated Rule 4-1.15(c) by commingling his personal funds and the client’s funds in his trust account; and Rule 4-1.15(e) by depositing his own funds into his trust account.

## Count III

In 2012, Respondent represented Air Now, Inc. in a workers’ compensation matter involving injuries incurred by an employee and a dispute between Air Now, Inc. and the workers’ compensation insurance company, Cincinnati Casualty Company. **App. 23; 49-51.** On or about July 23, 2012, Respondent deposited \$7,500 “cash” into his trust account. **App. 23.** Respondent stated at the hearing that he received this sum from Bette Derges, the principal owner and sole stockholder of Air Now, Inc., for costs advanced. **App. 23-24.** On

or about July 27, 2012, Respondent issued his trust account check #1922 in the sum of \$5,050 payable to Thomas, Hoops, CPA on behalf of his client Air Now, Inc. **App. 25.**<sup>1</sup>

On or about March 25, 2013, a portion of Air Now, Inc.'s lawsuit was settled and Respondent deposited the settlement proceeds of \$53,919.85 into his trust account. **App. 25; 50.** On or about April 10, 2013, Respondent issued a trust account check payable to Ms. Derges in the amount of \$7,500. **App. 24; 50.** Respondent's Settlement Statement dated May 4, 2013 indicated a gross settlement amount of \$53,919.85, less \$7,500 "advanced," hourly attorney fees of \$37,419.85 and \$9,000 due to client. **App. 25-27; 50.** Proceeds from the Air Now, Inc. settlement were distributed to the client on April 12, 2013 in the sum of \$9,000 (\$16,500 was due to the client, less \$7,500 which was advanced by the client and paid back to the client by Respondent from his trust account on April 10, 2013). **App. 50-51.** The \$9,000 check was drawn on Respondent's operating account and payable to Ms. Derges. **App. 50.**

Respondent stated in written correspondence that the \$7,500 was an advance for multiple cases, including Air Now, Inc. **App. 26.** At the hearing, Respondent explained that his reference to "multiple cases" included the first part of the Air Now, Inc. legal matter which had settled, as well as the second part of the lawsuit which remained pending. **App. 25-27.** However, Respondent did not have complete records documenting the distribution

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<sup>1</sup> In a question to Respondent at the Disciplinary Hearing on December 13, 2013, Informant's Counsel misstates the amount of check #1922 as \$5,065. The check amount was actually \$5,050. **App. 25.**

of all proceeds from the Air Now, Inc. settlement and was unable to provide Informant with adequate documentation of how expenses had been “advanced”. **App. 50.**

Respondent also issued trust account checks payable to himself, as and for his attorney’s fees, for a period of one month after the settlement proceeds were deposited into his trust account, as follows:

April 9, 2013	\$6,000
April 9, 2013	\$7,000
April 12, 2013	\$8,000
April 26, 2013	\$12,000

**App. 27; 50-51.** These disbursements to Respondent account for only \$33,000 of the \$37,419.85 due him. Respondent explained at the hearing that he was still receiving invoices for the Air Now, Inc. legal matter because the second part had not yet been resolved. **App. 27.** He wanted to leave sufficient funds in the trust account to cover these unpaid incoming invoices. **App. 27.**

In addition, Respondent did not have complete records documenting the distribution of his earned fees from the Air Now, Inc. settlement and was unable to provide Informant with adequate documentation as to the disbursement of his earned fees. **App. 51.**

The parties stipulated that Respondent violated Rule 4-1.15(c) by commingling personal funds and the client’s funds in his trust account; and Rule 4-1.15(d) by failing to maintain complete records of his trust account.

#### Count IV

In 2012, Respondent represented Leona Thacker in a workers' compensation injury claim, without having a written contingent fee agreement. **App. 27-28; 51.** On or about April 20, 2012, Respondent advanced \$500 to Ms. Thacker from his operating account to help her pay for her medications. **App. 28; 51.** The case settled on or about August 21, 2012. **App. 28-29; 51.** The Settlement Statement indicated a gross settlement amount of \$18,399.74 less \$500 advanced to the client on April 20, 2012 for her medication. **App. 28-29; 51.** Respondent was able to document payment to his client after settlement, but was unable to provide complete records to document payment of all expenses advanced and for what purpose. **App. 51.**

The parties stipulated that Respondent violated Rule 4-1.5(c) by not obtaining a contingent fee agreement signed by the client; Rule 4-1.8(e) by providing financial assistance to a client in connection with pending litigation; and Rule 4-1.15(d) by failing to maintain complete records of his trust account.

#### Count V

In 2012 and 2013, Respondent represented Derrick Mitchell in a claim against Bi-State Development Agency. **App. 30; 52-53.** The case was settled in early January of 2013. **App. 30.**

On or about January 8, 2013, Respondent deposited \$18,000 into his trust account, this amount representing the settlement proceeds from the Derrick Mitchell matter. **App. 30-31; 52.** Respondent then issued a trust account check, payable to himself, as and for his

attorney's fees, in the amount of \$6,000, leaving \$12,000 of the settlement proceeds in the trust account.

Prior to receiving the settlement proceeds, Respondent made five advances to Mr. Mitchell as follows: (i) \$50 on February 12, 2010; (ii) \$50 on April 7, 2010; (iii) \$705 on April 22, 2011; (iv) \$750 on August 3, 2011; and (v) \$500 on December 7, 2011, for a total of \$2,055 advanced. **App. 31; 52.** Respondent's Settlement Statement dated January 17, 2013 indicated that the client's total share of the settlement proceeds (\$12,000) was reduced for payment of case-related expenses (\$489.92), advances made to Mr. Mitchell prior to receipt of the settlement proceeds (\$2,055), and the sum of \$3,819.05 which Respondent withheld from the settlement proceeds for "outstanding medical bills subject to negotiation." **App. 31; 52.** On January 16 and 17, 2013, Respondent issued two trust account checks totaling \$5,636.03, payable to the clients, as and for the remaining balance of client's share of the settlement proceeds.

Respondent then issued a trust account check, payable to himself, on January 18, 2013, in the amount of \$3,000, and another on January 31, 2013, payable to himself, in the amount of \$1,000. As of February 20, 2013, the medical bills had not been paid yet no money remained in Respondent's trust account from the settlement proceeds. **App. 31-32; 53.**

Respondent stated that on August 16, 2013, he paid one of the three medical bills, City of St. Louis Ambulance, in the sum of \$329.40. Central Finance Control for St. Louis University is owed \$2,227.39. Respondent offered \$500 to settle this claim and received no

response. Respondent was unsure of the amount owed to a radiologist, but stated that he made an offer of settlement and received no response. **App. 32; 53.**

On December 17, 2013, Respondent sent correspondence to his clients and enclosed his trust account check #1019 payable to the clients in the sum of \$2,920.99, and on December 18, 2013, Respondent sent his trust account check #1020 payable to the client in the sum of \$568.66 representing the balance of the amount withheld by Respondent for the payment of medical bills. **App. 53.**

The parties stipulated that Respondent violated Rule 4-1.15(c) by commingling his personal funds and the client's funds in his trust account; Rule 4-1.8(e) by providing financial assistance to his client in connection with pending litigation; Rule 4-8.4(c) by using the client's funds for his own personal use; and Rule 4-1.15(i) by failing to promptly deliver funds to the client or third parties.

### **Count VI**

In 2012, Respondent represented Lawrence Duffield in a claim against DirecTV Home Services, Inc. **App. 33; 54.** The case was settled on or about August 2012. **App. 33; 54.** On or about August 27, 2012, Respondent deposited two checks from DirecTV into his trust account as follows: (a) \$10,039.85 payable to Respondent, representing Respondent's attorney's fees in the Duffield matter; and (b) \$15,059.78 payable to Mr. Duffield, representing Mr. Duffield's portion of the settlement proceeds. **App. 33-34; 54.** On or about November 1, 2012, Respondent issued a trust account check #1940 in the sum of \$14,754.83 (\$15,059.78 less \$304.95 for case-related expenses), payable to Mr. Duffield. **App. 34; 54.**

The parties stipulated that Respondent violated Rule 4-1.15(c) by commingling his personal funds with the client's funds in his trust account; Rule 4-1.3 by failing to distribute the settlement amounts to his client in a reasonable time after settlement; and Rule 4-1.15(e) by depositing his own funds into his trust account.

### **Count VII**

On or about February 25, 2013, Respondent issued a trust account check in the amount of \$750, causing an overdraft in the amount of \$621.15. Respondent's trust account was overdrawn due to his poor record keeping and commingling of his personal funds with the client's funds in his trust account. **App. 34.** As a result, Respondent obtained a check from a person named David Fischer in the amount of \$3,000 and deposited the check into his trust account on or about March 8, 2013. The \$3,000 check was not an advance fee payment for future service to Mr. Fischer or an advance fee payment of anticipated expenses in a lawsuit. The \$3,000 check was a "loan" and was necessitated by the fact that Respondent's trust account was overdrawn. **App. 34-35.**

The parties stipulated that Respondent violated Rule 4-1.15(c) by commingling his personal funds and the client's funds in his trust account; and Rule 4-1.15(e) by depositing his own funds into his trust account.

### **Count VIII**

On March 4, 2013, the OCDC received an overdraft notification on Respondent's client trust account at PNC Bank. On March 6, 2013, the OCDC directed correspondence to Respondent requesting a response within ten (10) days. Respondent failed to answer the letter. **App. 35-36; 55-56.**

On March 26, 2013, the OCDC again sent correspondence to Respondent requesting certain information and documentation. On April 1, 2013, Respondent provided a portion of, but not all of, the requested information and documentation. Respondent did not provide copies of deposited items. **App. 36; 55.**

On April 10, 2013, the OCDC directed a third written request to Respondent, requesting a response on or before April 26, 2013. **App. 36; 55.** On May 30, 2013, having not received the requested information and documentation from Respondent, the OCDC issued its subpoena. Only by subpoena did the OCDC receive all necessary information to review Respondent's trust account. **App. 36-37; 56.**

The parties stipulated that Respondent violated Rule 4-8.1(c) by failing to respond to the OCDC's lawful demand for information.

## **II. Respondent's Efforts to Improve**

The Disciplinary Hearing Panel questioned Respondent about his practice methods and his efforts to improve. Respondent informed the Panel that he had retained an accountant to manage his client trust account. He also explained that he had purchased Quicken software to assist him in keeping an accurate accounting of his trust account funds. **App. 38-39.**

**POINT RELIED ON**

**RESPONDENT’S LICENSE SHOULD BE SUSPENDED WITH THE  
SUSPENSION STAYED AND HE SHOULD BE PLACED ON  
PROBATION IN ORDER TO IMPROVE HIS PRACTICE AND  
PROTECT HIS FUTURE CLIENTS.**

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

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

*In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003)

ABA Standards for Imposing Lawyer Sanctions (1992)

Rule 4-1.3

Rule 4-1.5

Rule 4-1.8(e)

Rule 4-1.15

Rule 4-8.1(c)

Rule 4-8.4(c)

Rule 5.225

## ARGUMENT

**RESPONDENT'S LICENSE SHOULD BE SUSPENDED WITH THE  
SUSPENSION STAYED AND HE SHOULD BE PLACED ON  
PROBATION IN ORDER TO IMPROVE HIS PRACTICE AND  
PROTECT HIS FUTURE CLIENTS.**

### Violations

Violations of Rules 4-1.15, 4-1.3, 4-1.5(c), 4-1.8(e), 4-8.1(c) and 4-8.4(c) are established by stipulation. In conducting a hearing, the Disciplinary Hearing Panel further developed facts and found the violations as stipulated. In light of those stipulations, the brief will discuss the recommended sanction.

### Sanction

The Court relies on several sources when determining the appropriate sanction to impose for purposes of attorney discipline, including the parties' recommendations or stipulations, hearing panel recommendations, applicable rules, e.g. Rule 5.225 (the probation rule), application of the ABA Standards for Imposing Lawyer Sanctions and consideration of previous Missouri Supreme Court decisions for consistency. Similarly, in deciding what sanctions to recommend, the OCDC and the Regional Disciplinary Committees routinely consider all of those sources, whether they are reaching a stipulation or whether in more adversarial settings. As importantly, the OCDC attempts to consider the Court's many unreported decisions made in stipulated and contested cases. Recognizing the uniqueness of each case, patterns and trends are nevertheless apparent. As with reported decisions, the OCDC attempts to analyze each unreported decision, considering the

particular facts, the level of harm, the level of intent, the nature of the violations, and the mitigating and/or aggravating circumstances. Using all sources, the analysis is then applied to each new case. The recommended sanction is made with an assumption that consistent sanctions in common cases have, over time, become de facto standards, even without reported decisions. However, depending on the case, certain facts require deviation from the standards. It is the goal of the OCDC to recommend sanctions in accord with those apparent standards and to justify or explain any deviations from the standards. In imposing sanctions, the OCDC recognizes that the purpose of attorney discipline is to “protect the public, ensure the administration of justice, and maintain the integrity of the profession.” *In re Coleman*, 295 S.W.3d 857, 869 (Mo. banc 2009) (citing ABA Standards for Imposing Lawyer Sanctions (1992)).

The Court’s sanction analysis is often based on the ABA Standards when determining the appropriate sanction to impose for purposes of attorney discipline. *Coleman*, 295 S.W.3d at 869. The ABA Standards indicate that in reaching its determination, the Court should consider the attorney’s ethical duties, mental state and the injury caused by the attorney’s misconduct. ABA Standards for Imposing Lawyer Sanctions (Theoretical Framework) (1992).

In the present case, Respondent admits that he violated his duties to his clients, the legal system and his profession by commingling his personal funds with the clients’ funds in his trust account (Rule 4.1.15(c)); by depositing his own funds into his trust account (Rule 4-1.15(e)); by failing to maintain complete records of his trust account (Rule 4.1.15(d)); by failing to promptly deliver funds to the client or third parties (Rule 4-1.15(i)); by failing to

distribute settlement amounts to his client within a reasonable time after settlement (Rule 4-1.3); by failing to obtain a contingent fee agreement signed by his client (Rule 4-1.5(c)); by providing financial assistance to a client in connection with pending litigation (Rule 4-1.8(e)); and by using the clients' funds for his own personal use (Rule 4-8.4(c)). Respondent's misuse of his client trust account was done either knowingly or with extremely negligent disregard of the Rules of Professional Conduct. While it does not appear that there was actual injury to Respondent's clients, the potential for injury was significant.

Pursuant to the ABA Standards, suspension is an appropriate sanction in various circumstances, including, (a) in matters involving the failure to preserve client's property, when a lawyer knows or should have known that he or she is dealing improperly with client property and causes injury or potential injury to a client (Section 4.12 of the ABA Standards), and (b) when a lawyer engages in conduct that is in violation of a duty owed to the profession and causes injury or potential injury to a client, the public or the legal system (Section 7.2 of the ABA Standards). Respondent's misuse of his trust account is consistent with these standards. Therefore, a suspension is the appropriate baseline for sanction analysis.

The ABA Standards provide that after completion of the initial sanction analysis, the Court may also consider aggravating or mitigating circumstances in determining the appropriate sanction. In the instant case, Respondent is a long-standing member of The Missouri Bar, having been in practice since 1979. Throughout his 35 years in practice, he was only disciplined on one occasion for violating the Rules of Professional Conduct. The

sanction, a stayed suspension with probation, resulted from his failure to complete and report the required hours of continuing legal education pursuant to Missouri Supreme Court Rule 15. Respondent continued to practice law during a three year period in which he was not MCLE compliant, a violation of Rule 4-5.5(c). Respondent provided misleading information to The Missouri Bar, claiming credit for CLE programs he had not actually attended, a violation of Rules 4-8.4(c) and (d), and failed to initially respond to requests for information from the Disciplinary Counsel, a violation of Rule 4-8.1(c). On January 27, 2004, Respondent received a sanction of an indefinite suspension with leave to apply for reinstatement after six months, with the suspension stayed and Respondent placed on a two-year term of probation.

Respondent's prior suspension occurred more than 10 years ago, not as a result of misuse of the client trust account, but rather for failure to complete and truthfully report his continuing legal education hours pursuant to Missouri Supreme Court Rule 15. Respondent has never been sanctioned for mismanaging his client trust account. Furthermore, Respondent successfully completed his term of probation, which the Missouri Supreme Court acknowledged in its Order entered on January 29, 2007.

No clients were actually injured by Respondent's misuse of the client trust account, and there were no client complaints that triggered the 2004 discipline or the present investigation. To the contrary, despite Respondent's poor recordkeeping, it appears that Respondent, of his own accord, paid each of the clients referenced in Counts I-VI above the total sum due to them, without prompting from the OCDC to do so. The above-mentioned mitigating factors support the recommended discipline of a stayed suspension.

In addition to the factors set forth in the ABA Standards, the Court must also consider the applicable rules and decisions of the Missouri Supreme Court, as well as the stipulations of the parties and the recommendations of the Disciplinary Hearing Panel. In the present case, the parties submitted a proposed Joint Stipulation to the Disciplinary Hearing Panel, in which the parties stipulated to the facts, conclusions of law, and recommended discipline. The parties agreed that it is appropriate to suspend Respondent's license indefinitely with leave to apply for reinstatement after six months, with the suspension stayed and Respondent placed on probation for a period of two years in accordance with the Terms and Conditions of Probation incorporated into the Joint Stipulation adopted by the Disciplinary Hearing Panel in their decision dated January 10, 2014.

Missouri case law also suggests that a stayed suspension is appropriate under the present circumstances. See *In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003) where the Court indefinitely suspended Mr. Wiles' license, with leave to apply for reinstatement after six months, staying the suspension and placing Mr. Wiles on probation, pursuant to Rule 5.225, for one year. In that case, Mr. Wiles had a significant disciplinary history in both Missouri and Kansas, unlike Respondent. He had been previously admonished for four diligence violations, five communication violations, one safeguarding client property violation, and one violation for engaging in conduct prejudicial to the administration of justice. *Wiles* at 229. He had also received two admonitions from Kansas disciplinary authorities. *Id.*

The Supreme Court in *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008), held that Mr. Belz had misappropriated client funds in violation of the Rules of Professional Conduct.

The Court found several mitigating factors which justified a sanction of a stayed suspension, rather than disbarment. *Id.* Specifically, Mr. Belz showed remorse for his actions and had repaid his clients all amounts due before the OCDC even became involved. *Id.* at 46. As a result, the court found no actual harm to any of Mr. Belz's clients. Furthermore, Mr. Belz made significant efforts to improve his practice in order to protect future clients. *Id.* at 40.

Similarly, Respondent had also made restitution to his clients prior to the OCDC's involvement, and therefore, under *Belz*, there was no actual harm to Respondent's clients. Furthermore, Respondent's testimony at the disciplinary hearing suggested that Respondent had been unaware that his actions constituted violations of the Rules of Professional Conduct. Respondent did not intend to defraud any of his clients. Having become aware of his misconduct, Respondent retained an accountant and purchased Quicken for accurate accounting of his client trust account. Respondent's actions clearly demonstrate his remorse and concern for his clients, as well as his attempt to improve his practice for the benefit and protection of his clients.

In the *Coleman* case, Mr. Coleman was cited for numerous ethical violations, including misuse of his trust account. In a separate disciplinary action, Mr. Coleman had been ordered to pay a \$750 fee, plus costs to the clerk of the Court. Thereafter, Mr. Coleman issued a check from his trust account for the amount due. Upon learning of this, the OCDC opened a complaint and initiated its investigation. During that investigation, it was discovered that Mr. Coleman deposited checks received for settlement proceeds into his trust account; however, while Mr. Coleman paid out the clients' share of the proceeds upon the check clearing, he, on occasion, left his share in the trust account and wrote checks for

personal obligations directly out of the trust account. Additionally, Mr. Coleman did not keep records or ledgers for his trust account that identified deposits made.

The Court found that the nature of Mr. Coleman's conduct justified the suspension of Mr. Coleman's license to practice law, without leave to reapply for one year, and then considered the ABA Standards that provide for lesser discipline where the behavior was not intentional. The Court stated that "The ABA Standards suggest that probation is the appropriate punishment when the conduct can be corrected and the attorney's right to practice law needs to be monitored or limited rather than revoked." ABA Standards, Rule 2.7 Probation, Commentary.

Like Mr. Coleman, Respondent's "actions arose out of ignorance of the rules of professional conduct instead of an intention to violate the rules, and it is likely that his misconduct can be remedied by education and supervision." *Coleman*, 295 S.W.3d at 871. While Respondent has acknowledged his misconduct and misuse of his trust account, the evidence indicates that he did not misuse the trust account intentionally or with intent to defraud, but rather out of ignorance and poor recordkeeping. Respondent has further conveyed his efforts and intent to improve his practice and procedures in order to better serve his clients in the future.

Based on Rule 5.225, Respondent is eligible for probation because: (a) he is unlikely to harm the public during a period of probation and he can be adequately supervised; (b) he is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and (c) he has not committed acts warranting disbarment. [Rule 5.225(a)].

Considering the stipulated facts, Respondent's previous disciplinary history, and all mitigating factors, it is stipulated that an appropriate sanction in this case would be that the Respondent be suspended indefinitely, with leave to apply for reinstatement after six months, with the suspension stayed and Respondent placed on probation for a period of two years in accordance with the Terms and Conditions of Probation incorporated into the Joint Stipulation adopted by the Disciplinary Hearing Panel in their decision dated January 10, 2014.

**CONCLUSION**

Informant asks the Court: (a) to find that Respondent violated the Rules of Professional Conduct as set out in the Stipulation; (b) to suspend Respondent's license indefinitely with no leave to apply for reinstatement until for six months; (c) to order probation for two years in conformity with the Stipulation; (d) to establish as the terms and conditions of probation those contained in the Stipulation; and (e) to tax all costs in this matter to Respondent, including the \$1,000 fee pursuant to Rule 5.19(h).

Respectfully submitted,

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ATTORNEY FOR INFORMANT  
CHIEF DISCIPLINARY COUNSEL

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of May, 2014, the Informant’s Brief was sent via the Missouri Supreme Court e-filing system to Respondent’s counsel:

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St. Louis, MO 63117

Attorney for Respondent



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Joyce M. Capshaw

**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 5,225 words, according to Microsoft Word, which is the word

processing system used to prepare this brief; and



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Joyce M. Capshaw