

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
WESLEY EUGENE SANDERS,) **Supreme Court #SC93625**
)
Respondent.)

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

RANDEE S. STEMMONS #31391
Region XV Special Representative
101 East Dallas
PO Box 389
Mount Vernon, MO 65712-0389
(417) 466-3121
(417) 466-4336 (fax)
randeestemmons@mchsi.com

ATTORNEY FOR INFORMANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF JURISDICTION 3

STATEMENT OF FACTS 4

POINTS RELIED ON..... 7

 I..... 7

 II..... 8

ARGUMENT 9

 I..... 9

 II..... 11

The Missouri Standard 12

The ABA Guidelines 14

CONCLUSION 17

CERTIFICATE OF SERVICE 18

CERTIFICATION: RULE 84.06(C) 18

TABLE OF AUTHORITIES

Cases

In re Caranchini, 956 S.W.2d 910 (Mo. banc 1997)..... 12

In re Carey, 89 S.W.3d 477 (Mo. banc 2002) 12, 13

In re Donaho, 98 S.W.3d 871 (Mo. banc 2003) 13

In re Griffey, 873 S.W.2d 600 (Mo. banc 1994)..... 11

In re Kazanas, 96 S.W.3d 803, 808 (Mo. banc 2003) 11

In re Shelhorse, 147 S.W.3d 79 (Mo. banc 2004) 8, 13

In re Wallingford, 799 S.W.2d 76 (Mo. banc 1990)..... 12

Other Authorities

ABA Standards for Imposing Lawyer Sanctions (1991 ed.) 8, 11, 14, 15, 16

Rules

Missouri Supreme Court Rule 4-3.3 12

Missouri Supreme Court Rule 4-8.1 7, 8, 9, 10, 13

Missouri Supreme Court Rule 4-8.4 7, 8, 9, 10, 12

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 Wesley Eugene Sanders was licensed as an attorney in Missouri on September 29, 2004. **App. 2, 7.** His Missouri Bar Number is 56466 and his license is currently in good standing. **App. 2, 7.**

Respondent received an Admonition dated June 13, 2007 for the violation of Missouri Supreme Court Rule 4-7.3 (Direct Contact with Prospective Clients). **App. 2, 7.** The Admonition was the result of Respondent mailing a letter of solicitation to prospective clients that did not comply with the requirements of Rule 4-7.3. **App. 2, 7.**

The present disciplinary proceeding is the result of Respondent submitting a complaint against his former wife to the Office of the Chief Disciplinary Counsel under a false name.

On May 16, 2011, the Office of the Chief Disciplinary Counsel received a complaint against attorney Rita Sanders. **App. 3, 7.** The complainant purported to be Lisa Terrill and the signature on the complaint was that of Lisa Terrill. Rita Sanders is the former wife of Respondent. Lisa Terrill is the maiden name of Respondent's current wife.

After investigation by the Region XV Disciplinary Committee in Springfield, Missouri, it was determined that the complaint against attorney Rita Sanders was actually submitted by Respondent and that Respondent signed Lisa Terrill's name to the complaint.

The Region XV Disciplinary Committee found probable cause to believe that Respondent had violated the Rules of Professional Conduct and an Information was filed on June 27, 2012. **App. 2, 4.** Respondent's Answer to the Information was received on or about August 27, 2012. **App. 7, 8.** Respondent admitted all allegations of the Information in his Answer. **App. 7, 8.**

The Chair of the Missouri Supreme Court Advisory Committee appointed a Disciplinary Hearing Panel (the "Panel") in this case on September 7, 2012. **App. 9-11.**

Informant and Respondent entered into a Joint Stipulation of Facts, Joint Conclusion of Law and Joint Recommended Discipline. **App. 12-16.** The Disciplinary Hearing Panel adopted the facts, conclusions and recommendation set forth in the Stipulation on June 27, 2013. **App. 18-23.**

The Panel found that Respondent was guilty of committing professional misconduct under Rule 4-8.4(a) as a result of violating:

A. Rule 4-8.4(c) Misconduct for engaging in conduct involving dishonesty, deceit or misrepresentation by filing a complaint with the Office of the Chief Disciplinary Counsel under another's name; and

B. Rule 4-8.1(a) Bar Admission and Disciplinary Matters for knowingly making a false statement of material fact in connection with a disciplinary matter.

App. 20.

The Panel found the following aggravating circumstances, pursuant to the ABA Standards for Imposing Lawyer Sanctions:

- A. 9.22(a) Prior disciplinary offense, and
- B. 9.22(b) Dishonest or selfish motive.

App. 18, 21.

The Panel found the following mitigating circumstances, pursuant to the ABA Standards for Imposing Lawyer Sanctions:

- A. 9.32(l) Remorse, and
- B. 9.32(e) Full and free disclosure to the disciplinary authority and cooperative attitude toward the proceedings.

App. 18, 21.

The Panel recommended that the Respondent receive a Reprimand. **App. 18, 21.**

Informant accepted the Panel's decision on July 18, 2013. **App. 24.** Respondent did not file an Acceptance of the Panel's decision. However under Rule 5.19(a), a failure to timely file a notice rejecting the panel's decision shall be deemed an acceptance of the decision.

By order dated October 1, 2013, this Court ordered the Chief Disciplinary Counsel to file the complete record in this cause before October 31, 2013 and the cause briefed pursuant to Rule 84.24(i). **App. 44.**

POINTS RELIED ON

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT 4-8.4(c) AND 4-8.1(a) BY SUBMITTING A COMPLAINT TO THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL UNDER A FALSE NAME AND IS THEREFORE SUBJECT TO DISCIPLINE.

Missouri Supreme Court Rule 4-8.1

Missouri Supreme Court Rule 4-8.4

POINTS RELIED ON

II.

RESPONDENT SHOULD BE REPRIMANDED FOR HIS MISCONDUCT BECAUSE A REPRIMAND IS THE MOST APPROPRIATE SANCTION PURSUANT TO THE AMERICAN BAR ASSOCIATION STANDARDS FOR IMPOSING LAWYER SANCTIONS AND MISSOURI CASE LAW.

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

Missouri Supreme Court Rule 4-8.1

Missouri Supreme Court Rule 4-8.4

ABA Standards for Imposing Lawyer Sanctions

ARGUMENT

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT 4-8.4(c) AND 4-8.1(a) BY SUBMITTING A COMPLAINT TO THE OFFICE OF THE CHIEF DISCIPLINARY COUNSEL UNDER A FALSE NAME AND IS THEREFORE SUBJECT TO DISCIPLINE.

Respondent violated Rules 4-8.4(c) and 4-8.1(a) by filing a complaint with the Office of the Chief Disciplinary Counsel under a false name and is therefore subject to discipline.

On May 16, 2011, the Office of the Chief Disciplinary Counsel received a complaint against attorney Rita Sanders. The complainant was Lisa Terrill and the signature on the complaint was purportedly that of Lisa Terrill. Rita Sanders is the former wife of Respondent. Lisa Terrill is the maiden name of Respondent's current wife. During the investigation of the complaint, the Region XV Disciplinary Committee discovered that the complaint filed was actually submitted by Respondent and he signed the name "Lisa Terrill." Respondent has admitted that he filed the complaint and signed his current wife's maiden name thereto.

Rule 4-8.1 Bar Admission and Disciplinary Matters states:

... a lawyer in connection with a disciplinary matter shall not:

(a) knowingly make a false statement of material fact.

Rule 4-8.4 Misconduct states:

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Respondent's submission of a complaint was presumably with the intent to cause the Office of the Chief Disciplinary Counsel to investigate and initiate disciplinary proceedings against his former wife. The name and required signature on the complaint are material facts in the complaint process. Respondent knew he was making a false statement and his action involved deceit and misrepresentation requiring discipline. He thereby violated Rules 4-8.1 and 4-8.4(c) and is subject to discipline by this Court.

ARGUMENT

II.

RESPONDENT SHOULD BE REPRIMANDED FOR HIS MISCONDUCT BECAUSE A REPRIMAND IS THE MOST APPROPRIATE SANCTION AS SUGGESTED BY THE ABA STANDARDS OF IMPOSING LAWYER SANCTIONS AND MISSOURI CASE LAW

In determining a sanction for attorney misconduct, this Court historically relies on three sources. First and foremost, the Court applies its own standards to maintain consistency, fairness, and ultimately, to accomplish the well-established goals of protecting the public and maintaining the integrity of the profession. Those standards are written into law, of course, when the Court issues opinions in attorney discipline cases. *In re Kazanas*, 96 S.W.3d 803, 808 (Mo. banc 2003).

For additional guidance, the Court frequently relies on the ABA's Standards for Imposing Lawyer Sanctions (1991 ed.). Those guidelines recommend baseline discipline for specific acts of misconduct, taking into consideration the duty violated, the lawyer's mental state (level of intent), and the extent of injury or potential injury, *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). Once the baseline guideline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. ABA *Standards for Imposing Lawyer Sanctions* (1991 ed.).

The Court also considers the recommendation of the Disciplinary Hearing Panel that heard the case. In this instance, the Panel recommended that Respondent be reprimanded for his professional misconduct. **App. 18-23.**

The Missouri Standard

This Court considered a similar case where the attorney filed two affidavits purportedly signed by her client; she actually signed her client's name to the Affidavit and notarized this signature. The lawyer also executed a false certificate of service. This Court held that a Reprimand was the appropriate sanction. *In re Wallingford*, 799 S.W.2d 76 (Mo. banc 1990).

Disciplinary actions involving false statements to a tribunal (Rule 4-3.3) or that are prejudicial to the administration of justice (Rule 4-8.4) have resulted in more serious discipline. The submission of false discovery responses in a pending case, as well as other violations, resulted in the attorneys involved being suspended. *In re Carey*, 89 S.W.3d 477 (Mo. banc 2002). A lawyer's use of a forged document in a legal proceeding after she discovered it was forged, as well as numerous other violations of the Rules of Professional Conduct, resulted in disbarment. *In re Caranchini*, 956 S.W.2d 910 (Mo. banc 1997).

The *Carey* and *Caranchini* cases can be distinguished from the present case because they involved false documents knowingly used in pending litigation and verified in some form by the attorneys in question. In this case, the complaint filed by Respondent with the OCDC against another attorney was not verified.

A lawyer making a false statement of material facts in a disciplinary matter in violation of Rule 4-8.1 has led to suspension by this Court. In *In re Donaho*, 98 S.W.3d 871 (Mo. banc 2003), the lawyer provided proof of restitution to the disciplinary committee investigating the complaint. The Committee later discovered that the two money orders provided as proof of restitution were never sent to the client. Informant submits that the conduct in the *Donaho* case is more serious than the conduct of the Respondent in this case. Attorney Donaho attempted to deceive disciplinary authorities in an effort to avoid discipline.

In *In re Shelhorse*, 147 S.W.3d 79 (Mo banc 2004), the Court reprimanded an attorney who failed to respond to the lawful demands of a disciplinary authority in violation of 4-8.1(c).

This Court has long held that the purpose of discipline is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession. *In re Carey*, 89 S.W.3d 477 (Mo. banc 2002). Respondent has practiced law since 2004 and has received one admonition for improper direct contact with a prospective client. There does not appear to be a pattern of misconduct that requires protection of the public.

The integrity of the legal profession has been adversely affected by Respondent's conduct because the misrepresentation was made to the very agency responsible for monitoring the conduct of the profession. The complaint filed by Respondent could have been filed in Respondent's name and the allegations investigated by the OCDC. Respondent made the extremely poor choice of signing his wife's name to the complaint.

Although this “judgment call” adversely affects Respondent's fitness to practice law, it does not seriously affect his professional abilities. Most importantly, there was *de minimus* harm to the public or integrity of the law as a result of Respondent's professional misconduct.

The ABA Guidelines

The ABA Standards for Imposing Lawyer Sanctions, Standard 5.1 addresses those actions that result in the Failure to Maintain Personal Integrity:

5.11 **Disbarment** is generally appropriate when:

(a) a lawyer engaged in serious criminal conduct a necessary element of which included intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation or theft ...; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 **Suspension** is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 **Reprimand** is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5.14 **Admonition** is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Respondent's conduct was not criminal, thus the issue in imposing discipline is whether his conduct *seriously* reflected upon his fitness to practice law, an element for a disbarment or suspension. If Respondent's conduct adversely reflects on his fitness to practice law but does not rise to the level of seriously doing so, a Reprimand is appropriate. Because the conduct involved deceit or misrepresentation, an Admonition is not appropriate.

The Panel considered the following aggravating circumstances set forth in the ABA Standards:

9.22(a) Prior disciplinary offense.

9.22(b) Dishonest or selfish motive.

The complaint was against Respondent's former wife, filed under a false name, therefore strongly implying that it was for dishonest or selfish motive.

The Panel also considered the following mitigating circumstances set forth in the ABA Standards:

9.32(l) Remorse.

9.32(e) Full and free disclosure to the disciplinary authority and cooperative attitude toward the proceedings.

The Respondent admitted his misconduct in his Answer to the Information. Respondent voluntarily entered into the Joint Stipulation of Facts and Joint Conclusion of Law, thereby avoiding the expense and time consuming efforts of a hearing.

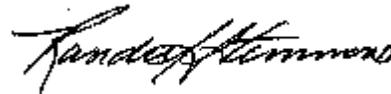
Informant concurs with the discipline recommended by the Panel and submits that the evidence, ABA Standards and Missouri case law support such a disposition.

CONCLUSION

Respondent committed professional misconduct in violating Rules 4-8.4(c) and 4-8.1(a) by filing the complaint with the Office of the Chief Disciplinary Counsel under another's name. Respondent's actions in filing a complaint under a false name with the very entity that investigates lawyer discipline reflects adversely on his ability to practice law, meeting the ABA Standard for a Reprimand. However, his actions did not rise to the level such that it "seriously adversely" reflected on his fitness to practice as required for more stringent discipline. Accordingly, Informant respectfully requests that the Court reprimand Respondent for his violations of the Rules of Professional Conduct.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel



By: _____
 Randee S. Stemmons #31391
 Special Representative, Region XV
 101 East Dallas
 PO Box 389
 Mount Vernon, MO 65712-0389
 (417) 466-3121 – Phone
 (417) 466-4336 – Fax
randeestemmons@mchsi.com

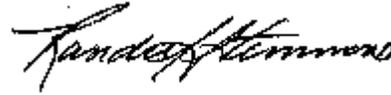
ATTORNEY FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2013, a true and correct copy of the foregoing was served via the electronic filing system pursuant to Rule 103.08 on:

Thomas D. Carver
901 E. St. Louis St., #1600
Springfield, MO 65806

Attorney for Respondent

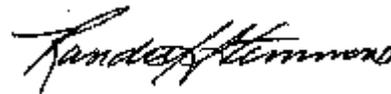


Randee S. Stemmons

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 2,529 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Randee S. Stemmons