

IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:

WESLEY EUGENE SANDERS,

Respondent.

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Supreme Court #SC93625

RESPONDENT'S BRIEF

CARVER, CANTIN & GRANTHAM



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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

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 in good standing.

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 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. With her consent, the complaint was signed by Wesley Eugene Sanders as Lisa Terrill.¹ Rita Sanders is the former wife of Respondent. Lisa Terrill is the maiden name of Respondent's current wife.

¹ Attached to Respondent's brief is correspondence from Lisa Terrill-Sanders acknowledging that she was aware of the circumstances leading up to the filing of

After investigation by Region XV Disciplinary Committee in Springfield, Missouri, it was verified 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. 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. 18-13.

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

complaint, agreed with the purpose of the complaint and authorized Wesley Eugene Sanders to sign the complaint. See Respondent's Exhibit 1.

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. (.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(1) 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 file a notice rejecting the panel's decisions 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 ADMITS THAT HE 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

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 Madison, 282 S.W.3d 350, 360 (Mo. banc 2009)

In Re Wallingford, 799 S.W.2nd 76 (Mo. banc 1990)

Missouri Supreme Court Rule 4-8.1

Missouri Supreme Court Rule 4-8.4

ARGUMENT

I.

RESPONDENT ADMITS THAT HE 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 WESLEY EUGENE SANDERS adopts Informant's first Point Relied On in its brief and admits that he 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 using the maiden name of second wife Lisa Terrell and is therefore subject to discipline by this Court.

On May 16, 2011, Respondent caused a complaint against his ex-wife, attorney Rita Sanders, to be filed with the Office of Chief Disciplinary Counsel under the name of Lisa Terrill, his present wife.² Although Lisa

² Attached to Respondent's brief is correspondence from Lisa Terrill-Sanders acknowledging that she was aware of the circumstances leading up to the filing of

Terrill authorized Respondent to sign her name to the complaint, Respondent by signing Lisa Terrill's name to the complaint knowingly made a false statement of a material fact in connection with a disciplinary matter, a violation of Rules of Conduct 4-8.4(c) and 4-8.1(a).

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.

Respondent WESLEY EUGENE SANDERS adopts Informant's Second Point Relied On in its brief and asserts that he should be sanctioned with a public reprimand as suggested by the ABA Standards of Imposing Lawyer Sanctions and Missouri case law.

Each disciplinary case ultimately stands on its own facts, but the ABA Standards for Imposing Lawyer Sanctions provides guidance for appropriate discipline. *In re Madison*, 282 S.W.3d 350, 360 (Mo. banc 2009); *In re* complaint, agreed with the purpose of the complaint and authorized Wesley Eugene Sanders to sign the complaint. See Respondent's Exhibit 1.

Downs, 363 S.W.2d 679, 691 (Mo. banc 1963). Following the model laid out in ABA Standard 3.0, four factors are considered in determining the appropriate discipline: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's misconduct; and (4) aggravating and mitigating circumstances. *In re Stewart*, 342 S.W.3d 307, 309 (Mo. 2011).

When the foregoing standards for determining appropriate discipline are applied to the agreed upon and admitted facts in this cause of action it is reasonable that the sanction of a reprimand be imposed.

As noted in Informant's brief, *In Re Wallingford*, 799 S.W.2nd 76 (Mo. banc 1990) provides insight into the Court's ruling in a similar case. In *Wallingford*, the offending attorney falsely signed the name of a client to an affidavit and then notarized the signature as being the true signature of the client. *Id* at 77. There, this Court found that attorney Wallingford had made a false statement of a material fact or law to a tribunal and imposed the sanction of a reprimand. In its discussion of the case it noted: "An attorney should not execute a certificate of service unless the facts stated are known to the attorney to be true. Any departure from these precepts diminishes the stature and credibility of the entire legal profession." *Id.* at 78.

Although this case varies from *Wallingford* in the sense that the false statement was not used on behalf of a client and to the detriment of another party in a lawsuit it is nevertheless true that such conduct diminishes the stature and credibility of attorney Sanders.

Another factor to take into account is that there was from Lisa Terrill at least some color of authority for signing the unverified complaint. Admittedly, Respondent made a serious error in judgment by signing his wife's name to the Information with or without her consent and that is the particular error in this case. To be clear, however, the content of the complaint was not part of the error and is not mentioned as a component of the offending conduct. This is significant because it goes to the question of prejudice and the fact that there was *de minimus* harm to the public or to the integrity of the law as a result of Respondent's professional misconduct.

It is widely accepted that "the purpose of discipline is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession. Those twin purposes may be achieved both directly, by removing a person from the practice of law, and indirectly, by imposing a sanction which serves to deter other members of the Bar from engaging in similar conduct." *In re Stewart*, 342 S.W.3d at 309 (Mo. 2011).

As noted in Informant's brief, the ABA Standards for Imposing Lawyer Sanctions, Standard 5.1 addresses 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.

Among these choices, we can conclude that Respondent's conduct was not criminal and while it does reflect on his fitness to practice, it does not seriously do so.

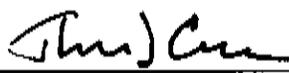
ABA standards 9.22(a), 9.22(b), 9.32(l) and 9.32 (e) direct us to consider prior disciplinary offenses, dishonest and selfish motivation along with remorse and full and free disclosure to and cooperation with the disciplinary authority.

Respondent admitted his wrongdoing in his Answer to the Information and voluntarily entered into a Joint Stipulation of Facts. These actions have avoided a prolonged and significant expenditure of time and effort. Respondent chose this course of action because he recognized the error in his conduct and acknowledges that the sanction of a reprimand is appropriate under the circumstances.

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 action in filing a complaint under a false name reflects poorly on his ability to practice law, meeting the ABA Standard for a Reprimand. However, his actions did not rise to the level that it "seriously adversely" reflected upon his fitness to practice law as required for more stringent discipline. Accordingly, Respondent respectfully requests that the Court reprimand Respondent for his violations of the Rules of Professional Conduct.

Respectfully submitted,

By 
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CERTIFICATE OF SERVICE

I certify that on this 20th 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:

Randee S. Stemmons
Special Representative, Region XV
101 E. Dallas
P.O. Box 389
Mount Vernon, MO 65712-0389

Attorney for Informant



Thomas D. Carver

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 2,192 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



Thomas D. Carver