

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

**SEAN E. BRYANT,
Respondent.**

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SUPREME COURT#SC05686

RESPONDENT’S BRIE

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 PROCEDURAL HISTORY

October 26, 2015	Information
December 1, 2015	Respondent’s Answer to Information
December 3, 2015	Appointment of Disciplinary Hearing Panel
February 4, 2016	DHP Hearing
March 9, 2016	DHP Decision
March 11, 2016	Acceptance of DHP decision by Informant
April 6, 2016	Rejection of DHP decision by Respondent
May 10, 2016	Record Submitted

BACKGROUND AND DISCIPLINARY HISTORY

Respondent Sean Bryant was admitted to The Missouri Bar on December 2, 2011. 1 Respondent’s license is in good standing.

Respondent has not been previously disciplined. Respondent, however, previously overdrafted his trust account and was the subject of an audit by the Office of Chief Disciplinary Counsel (OCDC). The OCDC ultimately closed the investigative file with a caution and

recommended that Respondent attend a CLE on the proper use of the trust account. Respondent failed to attend a trust account CLE.

Based on the record evidence as set forth above, the Panel found that Respondent violated the following Rules of Professional Conduct:

- Rule 4-1.15(a) by failing to hold the property of a client separate from his own property;
- Rule 4-1.15(f) by failing to maintain complete records of Respondent's trust account;
- Rule 4-1.15(d) by failing to promptly deliver funds in his possession to the client or to the appropriate third parties;
- Rule 4-8.4(c) by misappropriating client funds and by engaging in conduct involving dishonesty and fraud; and
- Rule 4-8.1(a) by knowingly making a false statement of material fact to the disciplinary authority.

The Panel found that Respondent violated ethical duties owed to Respondent's clients and the legal profession as a whole. App. 142. The Panel found that Respondent acted intentionally. The Panel found that Respondent's client suffered actual injury as a result of his professional misconduct. App. 143. Finally, the Panel found that ABA Standards 4.11, 4.41(b), and 6.1 were applicable and required disbarment.

In aggravation, the Panel found a dishonest and selfish motive [ABA Standard 9.22(b)]; bad faith obstruction of the disciplinary proceeding by intentional failure to comply with orders of the disciplinary agency [ABA Standard 9.22(c)]; and multiple offenses [ABA Standard 9.22(d)]. In mitigation, the Panel found that Respondent was remorseful [ABA Standard 9.32(1)].

Based on the above referenced findings and conclusions, the Panel recommended that the Respondent be disbarred. The Informant accepted the Panel's recommendation on March 11, 2016. The Respondent rejected the Panel's recommendation on April 6, 2016, citing mental disabilities and substance abuse conditions which existed at the time of the violations.

ARGUMENT

I.

RESPONDENT SHOULD NOT BE SUBJECT TO DISBARMENT BECAUSE:

A. HE ACKNOWLEDGES THAT HE VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY FAILING TO SAFE KEEP FUNDS ENTRUSTED TO HIM BY HIS CLIENT WILLIAMS AND BY MISAPPROPRIATING SUCH FUNDS TO SUPPORT A DRUG AND ALCOHOL ADDICTION; AND

B. HE VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY LYING TO THE OFFICE OF CHIEF DISCIPLINARY COUNSEL DURING THE COURSE OF ITS INVESTIGATION OF HIS PROFESSIONAL MISCONDUCT.

C. THROUGHOUT THE PAST YEAR, RESPONDENT WAS SUFFERING FROM A DEBILITATING SUBSTANCE ABUSE PROBLEM, AND FURTHER THAT HE SUFFERED FROM SEVERE DEPRESSION.

D. THE NATURE OF RESPONDENT'S CONDITION RENDERED HIM INCAPABLE OF PERFORMING IN A MANNER CONSISTENT WITH THE RULES OF CONDUCT.

The record evidence in this case is undisputed by Respondent and overwhelmingly supports a finding that he breached his duty of good faith and fidelity to his client William Williams.

Rule 4-1.15 Violations. The evidence establishes and the Panel found that Respondent violated the following provisions of Rule 4-1.15 in his handling of the \$6,000 cash entrusted to him by Ronetta Johnson on behalf of client Williams:

- Rule 4-1.15(a) in that Respondent failed to hold the \$6,000 cash separate from his own property;
- Rule 4-1.15(d) in that Respondent failed to promptly deliver the \$6,000 given him by Johnson on behalf of client Williams to the appropriate third party, the Family Support Payment Center. By failing to promptly deliver the funds to the FSPC, Respondent caused injury to his client Williams, who remained incarcerated in the St. Louis County Justice Center due to child support arrearages.
- Rule 4-1.15(f) in that Respondent failed to maintain complete and accurate records of his trust account activity.

Rule 4-8.4(c) Violation. The evidence establishes that Respondent stole \$2,500 of the cash entrusted to him by Johnson on behalf of client Williams and used the money to support his drug addiction. The Panel correctly found that Respondent thereby violated Rule 4-8.4(c) by engaging in conduct involving fraud, dishonesty and deceit.

Rule 4-8.1(a) Violation. During the course of the Informant's investigation of the trust

account overdraft, Respondent falsely stated to the Informant's investigator that he had kept the \$6,000 cash in a bank bag in his law office file cabinet until he was discharged from the residential drug and alcohol recovery program, at which time he gave the \$6,000 cash to his brother in order to obtain a cashier's check and pay the FSPC. In truth, Respondent used \$2,500 of the money entrusted to him in order to support his drug and alcohol addiction. The Panel correctly found that Respondent violated Rule 4- 8.1(a) by failing to cooperate in the disciplinary authority's investigation of his misconduct by knowingly making a false statement of fact to the Informant.

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT

BECAUSE:

A. ALTHOUGH HE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING DECEIT AND MISREPRESENTATION; HE FAILED TO SAFE KEEP HIS CLIENT'S PROPERTY; AND HE LIED TO THE OFFICE OF DISCIPLINARY COUNSEL IN THE COURSE OF ITS INVESTIGATION OF HIS PROFESSIONAL MISCONDUCT, RESPONDENT WAS SUFFERING FROM DEBILITATING SUBSTANCE ABUSE PROBLEMS AND SEVERE DEPRESSION;

B. THIS COURT'S DECISIONS, THE ABA SANCTION STANDARDS AND THE PRESENCE OF SIGNIFICANT MITIGATING CIRCUMSTANCES WARRANT DISCIPLINE, BUT NOT DISBARMENT;

AND

C. THE DISCIPLINARY HEARING PANEL COULD HAVE RECOMMENDED SUSPENSION.

In determining the appropriate sanction for attorney misconduct, this Court historically relies on several sources.

The Court also 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 discipline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

Examine the case of *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008). In that case, Belz committed professional misconduct when he "borrowed" client funds from their trust accounts. While the Court noted that disbarment is the usual result in misappropriation cases because of

the egregious nature of the misconduct, it also held that mitigating and aggravating factors are always considered in determining the appropriate sanction. *Id.* at 39. The Court found the presence of compelling mitigating circumstances, including the fact that (a) Belz suffered from bipolar disorder that was causally connected to the misappropriations, (b) he self-reported his professional misconduct, (c) he made timely and voluntary restitution, and (d) he had no prior disciplinary history. Based on this “unusual array of mitigating circumstances”, the Court suspended Belz for three years. *Id.* at 47.

The case at bar is analogous to Belz. Respondent admittedly suffers from the disease of alcoholism and drug addiction and depression that may clearly contributed to the theft of client funds. Specifically, there is a record evidence to support a finding that Respondent was receiving treatment to enable recovery from the disease as indicated by a “meaningful and sustained period of successful rehabilitation.” ABA Standard 9.32(i)(3).

The problems were the result of Respondent’s alcoholism and addiction problems. As there is indication Respondent has a meaningful and sustained period of successful rehabilitation, and should be considered a mitigating factor.

Respondent did report his misconduct to the members of the bar, and allowed them to take over his duties while in treatment.

CONCLUSION

Respondent admits that he engaged in serious professional misconduct involving safe keeping property, deceit and misrepresentation in his handling of client and third party funds. The presence of mitigating factors, including (i) a substance abuse condition, (ii) mental health disease, and (iii) acknowledging remorse to disciplinary authority, require discipline in the form of suspension, treatment, and education.

Respectfully submitted,

/s/Sean E. Bryant

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2016, the Respondent’s Brief was sent to Informant’s counsel via the Missouri Supreme Court e-filing system to:

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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);

/s/Sean E. Bryant

Sean Bryant