

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
RENAE LYNN EHLER,) **Supreme Court #SC90652**
)
Respondent.)

INFORMANT'S REPLY BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240
Alan.Pratzel@courts.mo.gov

INFORMANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES..... 2

POINTS RELIED ON 3

 I 3

ARGUMENT..... 4

 I 4

CONCLUSION 12

CERTIFICATE OF SERVICE..... 13

CERTIFICATION: RULE 84.06(C) 13

TABLE OF AUTHORITIES

Cases

In re Belz, 258 S.W.3d 38 (Mo. banc 2008).....3, 9, 11

In re Kazanas 96 S.W.3d 803 (Mo. banc 2003).....3, 9, 10

Rules

Rule 4-1.1 8, 9

Rule 4-1.3 8, 9, 10

Rule 4-1.4 9, 10

Rule 4-1.15 9

Rule 4-1.15(a)..... 10

Rule 4-1.15(b)..... 10

Rule 4-1.16(d)..... 10

Rule 4-8.1(b)..... 10

Rule 4-8.4(c)..... 9

POINTS RELIED ON

I.

**THE SUPREME COURT SHOULD DISBAR RESPONDENT
BECAUSE:**

**(A) SHE ENGAGED IN PROFESSIONAL MISCONDUCT
INVOLVING DECEIT AND MISREPRESENTATION, FAILED TO
SAFEKEEP PROPERTY, FAILED TO COMPETENTLY AND
DILIGENTLY REPRESENT HER CLIENTS, AND FAILED TO
REASONABLY COMMUNICATE WITH HER CLIENTS;**

**(B) SHE HAS PREVIOUSLY BEEN DISCIPLINED BY THIS
COURT FOR SIMILAR PROFESSIONAL MISCONDUCT;**

**(C) THE ABA SANCTION STANDARDS AND THE PRESENCE OF
SIGNIFICANT AGGRAVATING CIRCUMSTANCES SUPPORT
DISBARMENT; AND**

**(D) THE DISCIPLINARY HEARING PANEL RECOMMENDED
DISBARMENT.**

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

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

ARGUMENT

I.

THE SUPREME COURT SHOULD DISBAR RESPONDENT BECAUSE:

(A) SHE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING DECEIT AND MISREPRESENTATION, FAILED TO SAFEKEEP PROPERTY, FAILED TO COMPETENTLY AND DILIGENTLY REPRESENT HER CLIENTS, AND FAILED TO REASONABLY COMMUNICATE WITH HER CLIENTS;

(B) SHE HAS PREVIOUSLY BEEN DISCIPLINED BY THIS COURT FOR SIMILAR PROFESSIONAL MISCONDUCT;

(C) THE ABA SANCTION STANDARDS AND THE PRESENCE OF SIGNIFICANT AGGRAVATING CIRCUMSTANCES SUPPORT DISBARMENT; AND

(D) THE DISCIPLINARY HEARING PANEL RECOMMENDED DISBARMENT.

The Respondent's Brief ¹ contains factual misstatements that are unsupported by and inconsistent with the evidentiary record in this case. In addition, Respondent's Brief

¹ Respondent's Brief was filed out of time by leave of Court on March 23, 2010. In addition, notwithstanding the fact that Respondent "certified" to this Court that she

misinterprets the controlling case law in an attempt to sidestep responsibility for her professional misconduct. Informant will reply herein to only a few of the most egregious factual and legal misstatements.

Respondent failed to accurately account for the marital estate funds collected on behalf of Roberta Kimmel and Harold Miller and failed to accurately and timely deliver the parties their respective portions of the funds. Respondent claims that (i) no one ever objected to her proposed distribution of funds to her client, Ms. Kimmel, or to Mr. Miller, (ii) no one ever suggested that there were errors in her calculations, and (iii) that she timely delivered the marital estate assets to the parties. **Respondent's Brief at 13-14.** These assertions are simply not true. The record evidence clearly establishes that Respondent failed to accurately account to the parties for the marital estate funds that it was her responsibility to collect and failed to timely transmit those funds to her client and to Mr. Miller.

On June 25, 2008, Respondent sent Mr. Miller's attorney, James Cooksey, a letter outlining her plans for distribution of the marital estate assets. **App. 112-113.** In that letter, Respondent listed payments to various third parties, including a payment to be paid to her for attorney's fees. **App. 112-113.** In July 2008, Respondent made the payments to the creditors listed in the June 25, 2008 letter and also paid herself from those sums. Respondent failed to make any payment to Ms. Kimmel until September 2008 and failed

mailed Informant her Brief on March 23, 2010, she did not actually transmit the brief to Respondent until March 25, 2010.

to make any payment to Mr. Miller until January 2009, and then only after the OCDC had audited Respondent's trust account and directed Respondent to make a payment to Mr. Miller. **App. 9-10 (T. 18-20), 35, 49, 54-58.** In other words, Respondent took no action to pay Mr. Miller until forced to by the OCDC.

Respondent's claim that no one ever suggested that her calculations were erroneous is not true. After receiving a check from Respondent in September 2008, Ms. Kimmel knew from her own calculations that the amount sent to her by Respondent was incorrect and insufficient. Ms. Kimmel contacted Respondent to request an accounting of the funds that Respondent had collected and distributed from the marital estate. **App. 13 (T. 33-34).** Respondent never provided the accounting to Ms. Kimmel.

Respondent's claim that she timely paid the marital estate assets to Ms. Kimmel and Mr. Miller ignores the overwhelming record evidence. The payment to her own client was not made until September 2008, some three months after Respondent's June 25, 2008 letter. That payment was only made after Ms. Kimmel left numerous messages for Respondent and finally "got to the point where I would just leave a very detailed, explicit message that she's got my money, I need my money, I want it now." **App. 13 (T. 32).**

Similarly, the payment to Mr. Miller was not made until January 29, 2009, some seven months after Respondent's June 25, 2008 letter. Mr. Miller testified that he never received any check from Respondent until after January 29, 2009. **App. 17-18 (T. 51-53).** In the interim, Mr. Cooksey wrote to Respondent on October 17, 2008 and notified her that his client, Harold Miller "has still not received a check from you completing the

trust transactions...Again, Harold has not received his [check] and therefore **I now have a problem**...If for some reason Harold's check has not been mailed out please do so and send to me at the above office...If I do not hear from you, I will have to assume that something is amiss.” **App. 114 (emphasis in original)**. As stated above, Respondent failed to make any payment to Mr. Miller until January 2009, after the OCDC had audited Respondent's trust account and directed Respondent to make a payment to Mr. Miller. **App. 9-10 (T. 18-20), 35, 49, 54-58**. In other words, Respondent took no action to pay Mr. Miller in response to Mr. Cooksey's October 2008 letter and did not do so until forced to by the OCDC. The Disciplinary Hearing Panel properly found that the payments were unreasonably delayed and constituted professional misconduct on the part of the Respondent.

Respondent's assertions regarding her representation of the Gorhams are misleading and ignore the record evidence in this case. Respondent asserts that she could not provide opposing counsel with discovery responses that had not been provided to her by her clients, implying that the Gorhams failed to provide her with answers to interrogatories filed in the case and that it was their fault that the Court entered a default judgment against them. **Respondent's Brief at 14**. Both Gorhams testified before the Disciplinary Hearing Panel that Respondent never provided them with copies of interrogatories and therefore they did not have the opportunity to provide answers thereto. **App. 21, 22 (T. 64, 71)**. In addition, the Gorhams testified that they provided Respondent with compelling evidence establishing that they did not reside in the subject property at the time that the unpaid utility bills were incurred. Specifically, the Gorhams

provided Respondent with bank statements, tax papers and school records evidencing that they had lived in Iowa during the relevant time period during which the water bills were generated at the subject property in Missouri. **App. 20, (T. 60)**. Respondent did not utilize the information and documentation provided by the Gorhams in defense of the pending lawsuit. Instead, Respondent appeared in court on July 28, 2008, in response to a motion for sanctions filed by the plaintiff and stated that the Gorhams had not provided the information to her. **App. 146**. The court entered a judgment by default against the Gorhams in the amount of \$1,900 as a sanction under Rule 61.01(b)(1) for failure to comply with plaintiff's discovery requests. **App. 20 (T. 61), 146**.

Respondent asserts that "the Panel did not indicate they found Dixie Gorham to be credible in her testimony." **Respondent's Brief at 14**. The Panel, in fact, found Craig Gorham to be a credible witness. **App. 154**. The Panel made no findings as to the credibility of either Dixie Gorham or Respondent.

The record evidence in this case is undisputed by Respondent and overwhelmingly supports a finding that she repeatedly breached her duty of good faith and fidelity to her clients. The Panel found that the Respondent violated the Rules of Professional Conduct in the following respects:

- Rule 4-1.1 on competence in that Respondent failed to correctly calculate the money owed to Ms. Kimmel and Mr. Miller and failed to deliver the correct amount to them;
- Rule 4-1.3 on diligence by failing to deliver the money owed to Ms. Kimmel and Mr. Miller in a timely fashion;

- Rule 4-1.4 on communication by failing to communicate with her client about the money owed and failing to communicate with Mr. Miller and his counsel about the money owed to Mr. Miller;
- Rule 4-1.15 by failing to safekeep money owed to Ms. Kimmel and Mr. Miller, instead utilizing a portion of the money for other improper purposes; and
- Rule 4-8.4(c) by engaging in conduct involving deceit and misrepresentation.

With regard to the Gorham complaint, the Panel found that Respondent violated the following Missouri Rules of Professional Conduct:

- Rule 4-1.1 on competence by failing to provide opposing counsel with the information requested in discovery so as to avoid entry of a judgment against her clients; and
- Rule 4-1.3 on diligence by failing to provide opposing counsel with the information requested in discovery so as to avoid entry of a judgment against her clients.

App. 152-154.

The Panel recommended that Respondent be disbarred. **App. 155.**

The prior opinions of this Court in attorney discipline cases support disbarment in this case. In an effort to avoid discipline, Respondent unsuccessfully attempts to distinguish the facts in the case at bar from those present in *In re Kazanas*, 96 S.W.3d 803 (Mo. banc 2003) and *In re Belz*, 258 S.W.3d 38 (Mo. banc 2008). To the extent that the cases are distinguishable, it is because there are aggravating circumstances present in the case at bar that were not present in the *Kazanas* and *Belz* cases.

The attorney in the *Kazanas* case had no disciplinary history prior to the misconduct that resulted in his disbarment. In this case, however, Ms. Ehler has a prior disciplinary history that is closely related to the professional misconduct with which she has been charged. Specifically, in Case No. SC87152, Respondent received a stayed six month suspension with two years of probation on October 7, 2005 for violating the following Rules of Professional Conduct:

- Rule 4-1.3 on diligence for failing to take action on behalf of clients and failing to return money to them within a reasonable time after being requested to do so by the clients;
- Rule 4-1.4 on communication by failing to reasonably communicate with clients regarding the status of their cases;
- Rule 4-1.15(a) [now Rule 4-1.15(c)] on safekeeping property by failing to maintain clients' fees and expenses in Respondent's trust account until earned;
- Rule 4-1.15(b) [now Rule 4-1.15(f)] on safekeeping property by failing to deliver money when due;
- Rule 4-1.16(d) on withdrawal by failing to refund unearned fees and unused costs to former clients in a timely manner; and
- Rule 4-8.1(b) [now Rule 4-8.1(c)] by failing to respond to reasonable requests for information from the Office of Chief Disciplinary Counsel.

App. 117-142.

Respondent's prior disciplinary history is particularly significant as an aggravating circumstance because it occurred in close temporal proximity to the current professional misconduct. In addition, the prior disciplinary history involved the same or similar misconduct involving violations of many of the same rules involved in this case. In accordance with the Court's well-established system of graduated, progressive discipline, Respondent should be disbarred.

The attorney in the *Belz* case also had no disciplinary history prior to the misconduct that resulted in his three year suspension from the practice of law. In addition, the Court noted that Belz had self-reported his misconduct and made full restitution of the misappropriated funds to the affected client. *In re Belz*, 258 S.W.3d at 46.

No such mitigating circumstances are present in this case. Respondent Ehler failed to provide a requested accounting and failed to make full restitution to either Ms. Kimmel or Mr. Miller. Respondent claims that her current financial situation makes it impossible for her to make restitution at this time. **Respondent's Brief at 17.** This claim, however, is of little import inasmuch as the money that was misappropriated never belonged to Respondent.

In addition, unlike the attorney in the *Belz* case, Respondent failed to make a self-report to the OCDC. To the contrary, Roberta Kimmel filed a complaint with the OCDC on October 31, 2008 after Respondent failed to pay her all funds due and after Respondent refused to provide Ms. Kimmel with an accounting. In addition, Respondent failed to pay additional funds to Ms. Kimmel and any funds to Mr. Miller until after

OCDC staff confronted Respondent and directed her to pay the remaining balance of money owed to her client and Mr. Miller.

CONCLUSION

Respondent engaged in professional misconduct involving competence, diligence, communication, safekeeping property, deceit and misrepresentation in her handling of client and third party funds in the Kimmel/Miller divorce proceedings. Respondent also engaged in professional misconduct involving competence and diligence in her representation of the Gorhams in litigation that resulted in the entry of a default judgment against her clients. The presence of aggravating factors, including (i) a prior history of discipline involving similar misconduct, (ii) a pattern of misconduct, (iii) a selfish and deceitful motivation driving her actions, and (iv) an indifference to making full restitution to those injured by her actions, require disbarment.

Respectfully submitted,

OFFICE OF CHIEF DISCIPLINARY
COUNSEL

ALAN D. PRATZEL
Chief Disciplinary Counsel

By: _____
Alan D. Pratzel, #29141
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
Fax: (573) 635-2240
Email: Alan.Pratzel@courts.mo.gov

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2010, two copies of Informant's Reply Brief and a disk containing the Brief in Word format have been sent via First Class United States Mail, postage prepaid, to:

Renaë Lynn Ehler
Attorney at Law
23414 O'Bryan Ave.
Keytesville, MO 65261

Alan D. Pratzel

CERTIFICATION: RULE 84.06(c)

I hereby certify to the best of my knowledge, information and belief, that this reply brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 2,477 words, according to Microsoft Word, which is the word processing system used to prepare this Reply Brief; and
4. That Trend Micro Anti-Virus software was used to scan the disk for viruses and that it is virus-free.

Alan D. Pratzel