

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
WARREN STEVEN RIVES) **Supreme Court #SC89188**
)
Respondent.)

RESPONDENT’S BRIEF

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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 adopts Informant's Statement of Facts. Additionally, Respondent states that Respondent and Mr. Clarence Hawk were formerly associated in the practice of law.

Further, after Respondent's plea of guilty, he self-reported to the Office of the Chief Disciplinary Counsel.

Additionally, \$1,113.50 was a fairly standard amount of fines in the City of Lake Ozark, which included two \$500.00 fines, court costs and recoupment fees.

POINT RELIED ON

**THE SUPREME COURT SHOULD PUBLICLY REPRIMAND
RESPONDENT BECAUSE HE PLED GUILTY TO A
MISDEMEANOR OF THIS STATE WHICH DID NOT INVOLVE
INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE
NOR MORAL TURPITUDE, IN THAT, DURING THE COURSE OF
HIS DUTIES AS A MUNICIPAL PROSECUTOR, RESPONDENT
RECEIVED MONEY FROM AN ACCUSED DEFENDANT IN THE
MUNICIPALITY FOR THE PURPOSE OF PAYING THE
DEFENDANT'S FINE AND RESPONDENT FAILED TO PAY SAME
IN FULL DUE TO HIS NEGLIGENCE AND POOR BOOKKEEPING.**

In re: Forris D. Elliott, 694 S.W.2d 262 (Mo. 1985)

In re: Randall B. Kopf, 767 S.W.2d 20 (Mo. 1989)

In re: Thomas P. McBride, 938 S.W.2d 905 (Mo. 1997)

In the Matter of George H. Miller, 568 S.W. 2d 246 (Mo. banc 1978)

In re: Allen I. Harris, 890 S.W. 2d 299 (Mo. 1994)

In re: Gerald L. Warren, 888 S.W. 2d 334 (Mo. 1994)

In re: Kenneth Edmond Shunk, 847 S.W. 2d 789 (Mo. 1993)

In the Matter of H....S...., 229 Mo. App. 44, 69 S.W. 325 (Mo. App. E.D. 1934)

In re: Duncan, 844 S.W. 2d 443 (Mo. 1992)

In re: Stanley L. Wiles, 107 S.W. 3d 228 (Mo. 2003)

Missouri Supreme Court Rule 5.21(a)

ARGUMENT

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT BECAUSE HE PLED GUILTY TO A MISDEMEANOR OF THIS STATE WHICH DID NOT INVOLVE INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE NOR MORAL TURPITUDE, IN THAT, DURING THE COURSE OF HIS DUTIES, AS A MUNICIPAL PROSECUTOR, RESPONDENT NEGLIGENTLY RECEIVED MONEY FROM AN ACCUSED DEFENDANT IN THE MUNICIPALITY FOR THE PURPOSE OF PAYING THE DEFENDANT’S FINE AND RESPONDENT FAILED TO PAY SAME IN FULL DUE TO HIS NEGLIGENCE AND POOR BOOKKEEPING.

Respondent has cooperated with this investigation from the beginning, despite the fact that the investigation did not stem from Tracie Geisler but from a disgruntled ex-associate, Clarence Hawk. However this investigation began, Respondent was wrong when he failed to transfer all of the money received to the City of Lake Ozark for Ms. Geisler’s plea of guilty. On it’s face, this could be seen as a potential act which is “contrary to justice, honesty ... and good morals.” *In re Gerald L. Warren*, 888 S.W. 2d 334, 336 (Mo. 1994) *citations omitted*. However, as evidenced by Respondent’s cooperation with the investigation, his statements to

the investigators, his willingness to enter a plea of guilty without a trial, his taking responsibility for his actions, his self-reporting of this event to the Office of the Chief Disciplinary Counsel, his continued employment with the City of Lake Ozark as the municipal prosecutor for a period of time after this event and his repayment of the amount of negligently withheld, Respondent suggests to this Court that his actions do not violate Supreme Court Rule 5.21(a).

This plea of guilty to the misdemeanor of “official misconduct,” when looked at under the facts of this case, is not a “misdemeanor involving interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or moral turpitude.” Supreme Court Rule 5.21(a). Respondent, acting as the city prosecutor, negligently received money from a defendant in municipal court. Respondent intended to turn this money over to the Lake Ozark Municipal Court when all was received and the final plea able to be entered. Respondent failed to do so. It was not Respondent’s intention to misappropriate or steal this money, nor was it Respondent’s intention to interfere with the administration of justice. Respondent simply failed to realize that his office had not paid all monies received from Tracie Geisler over to the city for the Defendant’s plea. This was due to Respondent’s negligence and poor bookkeeping practice. Upon the realization of the error, during the criminal investigation, that monies were still owed, Respondent offered to pay the monies to the municipal

court. This was eventually done as part of the negotiated plea into which Respondent entered. Public reprimand is the appropriate discipline for this action. *In re: Forris D. Elliott*, 694 S.W.2d 262 (Mo. 1985).

This Court has reserved suspension from the practice of law for more severe cases than the case at bar. *In re: Kenneth Edmond Shunk*, 847 S.W.2d 789 (Mo. 1993); *Warren, supra*; *In the matter of H--- S---*, 229 Mo. App. 44, 66 S.W. 325, (Mo. App. E.D. 1934); and *In re Duncan*, 844 S.W. 2d 443 (Mo. 1992).

The Eastern District has eloquently defined the lawyer's duty in our society as follows:

...it is his continuing duty to maintain the high purposes and functions of both bench and bar as instruments of fair dealing between man and man. As an officer of the court he is, like the court itself, an agency or instrument to advance the ends of justice. He serves as a priest in the temple of justice, and if he be false to his vows, then justice itself is imperiled, if not entirely thwarted. He has the property, and sometimes the liberty and the very life, of his client in his safekeeping; and so jealously does the law regard the relation of attorney and client that it puts communications between the two in much the same privileged category as communications between husband and wife. The future of the nation depends very largely upon the maintenance of justice pure and undefiled; and the conduct of the lawyer must support and create confidence in the public mind in the administration of justice, and not be of a character to bring reproach upon the legal profession or to alienate the favorable opinion which the public should entertain concerning it. Failing in this, it is not only within the power, but it is the duty, of the court to remove the lawyer who is false to his trust from the ranks of the profession to the end that the courts, the administration of justice, and the public at large may be protected against him.

H--- S---, *Supra*, 69 S.W. 2d at 327

The facts in *H--- S---* required the disbarment of the attorney. They included bribery and obtaining false statements of and by police officers to further the business of the attorney. *Id.*, 325-26.

The facts in the case at bar do not rise to the level of suspension or disbarment of Respondent, but, rather, suggests a public reprimand. *Elliott, supra; In re: Randall B. Kopf*, 767 S.W. 2d 20, (Mo. 1989); *In re: Thomas P. McBride*, 938 S.W. 2d 905 (Mo. 1997); *In the Matter of George H. Miller*, 568 S.W. 2d 246 (Mo. banc 1978); *In re: Allen I. Harris*, 890 S.W. 2d 299 (Mo. 1994).

The key issues in the above cases, as they relate to discipline, are that Respondent “did not seek personal gain by his actions and there was no irreparable harm to the clients.” *Kopf, supra*, 23, *citations omitted*. Judge Rendlen articulates the standard as follows:

Turning to the consideration of the appropriate sanction, we are mindful that the purpose of discipline is not to punish the attorney, but to protect the public and maintain the integrity of the legal profession. This court has held that disbarment should be reserved for those cases in which it is clear that respondent is one who should not be at Bar. We have also stated that for isolated instances of misconduct *or clearly inappropriate acts with minimal harm to the client, a reprimand may be more appropriate*. Although respondent’s breach of duty should not be trivialized, it is apparent from the record that the harm to the clients was minimal.

Kopf, supra, 23.

Judge Blackmer, in *Kopf*, at page 24, suggests, “I am not persuaded that the public interest would be served by an interruption of the respondent’s practice.”

The above guidelines should be applied to Respondent. Respondent should be publicly reprimanded for his actions in the case at bar.

Should this Court disagree with Respondent that public reprimand is the appropriate discipline, the Respondent suggests to this Court the course of action followed in *In re: Stanley L. Wiles*, 107 S.W. 3d 228 (Mo. 2003). The Court in *Wiles*, found that a reprimand was insufficient to ensure the protection of the public. Therefore, the Court suspended the attorney’s license to practice indefinitely, with leave to apply for reinstatement after six months. However, the suspension was stayed for one year and the attorney was placed on probation with appropriate conditions. *Id.*, 229.

Respondent, in the case at bar, meets the requirements of probation in that he is “unlikely to harm the public during the period of probation and (he) can be adequately supervised.” *Id.* Further, Respondent “has not committed acts warranting disbarment.” *Id.*

CONCLUSION

Respondent joins in the Informant's request to publicly reprimand Respondent as a sufficient discipline for the acts committed by Respondent. However, Respondent disagrees that his plea of guilty in this case adversely reflects upon his honesty, trustworthiness or fitness to act as a licensed attorney in this state.

Respectfully submitted,

By: _____
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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2008, two copies of Respondent's brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

Alan D. Pratzel
Chief Disciplinary Counsel

Sharon K. Weedin
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109

Attorneys for Informant

Timothy R. Cisar

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 1920 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

Timothy R. Cisar