

IN THE SUPREME COURT OF MISSOURI
EN BANC

In re:

FREEMAN BOSLEY,

Respondent.

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Supreme Court No. 94121

BRIEF OF RESPONDENT

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JURISDICTIONAL STATEMENT

This is a lawyer discipline case. Therefore, as Informant's Brief states, this Court has jurisdiction over this case pursuant to the Court's inherent authority to regulate the Bar; Article V, Section 5 of the Missouri Constitution; Missouri common law; and Missouri Revised Statute § 484.040.

CASE SUMMARY

Respondent Freeman Bosley, Jr. has served the greater St. Louis community – with particular attention to its poor and underprivileged – as a lawyer and public servant for more than 30 years, all with a clean disciplinary history. During his three decades of Bar membership, Mr. Bosley has served as a staff attorney for Legal Services, helping the poor keep their utilities on. He was the first African-American Clerk of the Circuit Court for the City of St. Louis. He was the first African-American Mayor of the City of St. Louis, with accomplishments ranging from raising \$100 million to keep Trans World Airlines operating and \$33 million for the City’s reserve fund, to establishing the first gay partnership registry in Missouri, to helping tackle urban blight and gang violence.

In 1997, after his term as Mayor, Mr. Bosley entered private practice. Ultimately, he opened his own firm, Bosley & Associates LLC, which handles personal injury and other cases while providing countless hours of *pro bono* and “low bono” to those in need.

In 2012 and 2013, administrative shortcomings at Bosley & Associates caused the Office of Chief Disciplinary Counsel (OCDC) to receive notices that Mr. Bosley’s trust account was overdrawn. Four notices of overdrafts were issued relating to two checks. Mr. Bosley admitted his violations and began cooperating with the OCDC’s investigation, which uncovered additional problems with Mr.

Bosley's trust account. These problems, in turn, resulted in the ethics charges set forth in the Information, including charges Mr. Bosley violated Missouri Supreme Court Rules 4-1.3, 4-1.15, and 4-8.4(c).

Throughout this matter, including this litigation, Mr. Bosley has been fully cooperative with the OCDC. Mr. Bosley was always honest. There was no evidence of selfish motive. In fact, Mr. Bosley has stipulated to the charges of misconduct, a position he continues before this Court.

Mr. Bosley has also taken action to correct past problems and to avoid future problems. He has hired a new accountant, changed how he records and reconciles trust account transactions, and is even on the brink of merging his firm so that other lawyers can help him with administrative activities.

Mr. Bosley did not, however, resolve some issues related to his trust account prior to the December 2013 Hearing. Due to difficulties in locating the relevant client, in fact, one issue even remained open until January 8, 2014. This prevented Mr. Bosley from being able to satisfy the necessary conditions for him to enter a stipulation with Informant as to penalty he would receive, a stipulation that should have resulted in Mr. Bosley receiving a stayed suspension and probation. Instead, a hearing panel recommended that Mr. Bosley – although he has had a great career of public service and has never been disciplined before – should be suspended indefinitely, with right to apply only after two years.

Mr. Bosley now asks this Court to exercise its inherent power, and to examine *de novo* the penalty that he should receive. Mr. Bosley hopes this Court will then conclude that imposing at most a stayed suspension and probation on Mr. Bosley will be adequate to protect the public and the integrity of the Bar, and sanction him accordingly. A further explanation of all these points follows.

STATEMENT OF FACTS

Mr. Bosley agrees with and adopts Informant's Statement of Facts, except that – as signified by his filing under Missouri Supreme Court Rule 5.19 – Mr. Bosley disagrees with and rejects the Hearing Panel's findings and recommendations. (Record at 259) Mr. Bosley provides this Statement of Facts to expand upon and emphasize some aspects of his personal background and activities, as this information relates to mitigating factors discussed later in this Brief.

Early Background. Mr. Bosley is a lifelong resident of the City of St. Louis (Bosley Testimony, Record at 76) His grandfather helped create many community resources for African-American residents in the then-segregated city, including a grocery store, a health center, and a senior citizens community center. (*Id.* at 77) Mr. Bosley's father gained admission to the segregated DeVry Institute of Technology by claiming to be Puerto Rican, graduated, and became a repairman at an appliance store before ultimately entering City politics as a committeeman and now long-serving City alderman. (*Id.* at 78) Mr. Bosley's family has always emphasized community service. (*Id.*)

Law Practice at Legal Services. Mr. Bosley attended law school at St. Louis University, graduating in 1980. He then went to work at Legal Services of Eastern Missouri, but only after convincing the director that, under the Legal Services Act,

Legal Services should hire people like Mr. Bosley who were from the community that Legal Services was serving. (*Id.*) At Legal Services, Mr. Bosley helped poor people avoid having their utilities disconnected, and was involved in the adoption of the Cold Weather Rule, which even today prevents Missouri utilities from disconnecting customers' gas and electricity during periods of extreme cold. (*Id.* at 78-79)

Service as Circuit Court Clerk. In 1983, at the age of 28, Mr. Bosley became the first African-American Clerk of the St. Louis City Circuit Court. (*Id.*) In that role, Mr. Bosley continued to assist people from St. Louis's underprivileged communities, his community, often people sent to him by his grandfather. (*Id.*)

Service as Mayor of St. Louis. Mr. Bosley was elected Mayor of the City of St. Louis in 1993. (*Id.*) Some of his many and varied accomplishments are in a Commemorative Program introduced into the Record for this proceeding. (Record at 165-66) They include:

- Dealing with the "Great Flood of 1993," including obtaining more than \$3 million from HUD for impacted homeowners;
- Cleaning up and reviving City neighborhoods, including through demolition of vacant buildings and establishment of a Youth/Crime community task force;

- Completing the “North Side Shopping Center,” which brought a grocery store and Sears to the neighborhood;
- Increasing employment in the City by 7 percent;
- Bringing the NFL Rams to St. Louis;
- Adding \$33 million to the City’s reserve fund;
- Securing financing for a new City jail;
- Substantially improving employment opportunities for women and minorities in the City;
- Obtaining passage of sales taxes to improve infrastructure;
- Aggressively combating hunger and homelessness in the City, including serving as chair of the National Conference of Mayors Task Force on Hunger and Homelessness; and
- Creating the Forest Park Master Plan and a strategic Neighborhood Development Plan.

(*See id.* at 166) Mr. Bosley was also the first mayor to ride in the Pride Parade. (Bosley Testimony, Record at 80) He created the first gay partnership registry in Missouri. (*Id.*) Mr. Bosley helped create the Gateway Classic Sports Foundation, which provides scholarships to kids. (*Id.* at 81) Mr. Bosley was the first Mayor to create a three-year plan for paying City employees and police. (Record at 80) He

even helped raise \$100 million to keep Trans World Airlines (TWA) operating, and which brought the TWA headquarters – and 1000 jobs – to St. Louis. (*Id.*)

Continuing Service to the Community. Throughout his career, both in public and private practice, Mr. Bosley has continued to serve his community. Mr. Bosley helped raise \$300,000 for his church to get a parsonage. (*Id.* at 81) He has helped clients give food and cash cards to the poor at holidays. (*Id.*) Mr. Bosley receives as many as 20 calls a day at the office, 15 of whom are from people who want help and do not understand that Mr. Bosley is now in private practice. (*Id.* at 80) Mr. Bosley continues to help those people out. (*Id.*)

Notices of Trust Account Overdrafts. As Informant's Brief identifies and Mr. Bosley has stipulated, in February 2012 and again in March 2013 the bank holding Mr. Bosley's trust account, PNC Bank, issued two pairs of overdraft notices, four notices in total. (Joint Stipulation, Record at 128) The Office of Chief Disciplinary Counsel paralegal who handled the OCDC's investigation, Kelly Dillon, explained that a pair of notices resulted in each instance because the check was presented twice for payment. (Dillon Testimony, Record at 44-45).

There have been and are no client or third party complaints against Mr. Bosley. (*Id.* at 57) The disciplinary investigation resulted solely from the overdraft notices.

Trust Account Improprieties. Upon receiving the overdraft notices, the OCDC contacted Mr. Bosley and ultimately opened an investigation into Mr. Bosley's trust account practices. This investigation uncovered a number of issues beyond the overdrafts, including:

- Mr. Bosley deposited fees that he had already earned – and that he should have put in his firm's operating account – into his trust account (Dillon Testimony, Record at 57);
- Mr. Bosley paid certain expenses, primarily practice-related expenses, out of his trust account (*Id.*);
- Sometimes Mr. Bosley issued payment too quickly to clients, before the funds constituting those payments had actually been received by the bank holding Mr. Bosley's trust account (*Id.* at 59); and
- Sometimes Mr. Bosley used cashier checks to pay clients (including because the clients did not have bank accounts), a practice disfavored by the OCDC. (*Id.* at 58)

Of note, Mr. Bosley always paid his clients on time; in fact, as suggested above, sometimes he made the payments to clients a bit too quickly, without waiting for the funds to actually reach his account. (Dillon Testimony, Record at 59) (indicating that Mr. Bosley's problem generally did not include withholding money from clients).

Mr. Bosley's Full Cooperation with OCDC. Mr. Bosley fully and candidly cooperated with the OCDC Investigation. The OCDC paralegal Ms. Dillon testified that Mr. Bosley was “always forthcoming” in his responses to the OCDC. (Dillon Testimony, Record at 57) There was no evidence of dishonesty. (*Id.*) No evidence of selfish motive. (*Id.*)

Mr. Bosley concurred with Ms. Dillon's testimony that he has cooperated with the OCDC to the best of his ability. (Bosley Testimony, Record at 81) He was honest with the OCDC and forthcoming with information. (*Id.* at 82) Mr. Bosley also recognizes that the charges against him are “very serious,” and that he “made mistakes” and “need[s] to fix those mistakes.” (*Id.* at 81)

Stipulations before Hearing Panel. As part of his cooperation with the OCDC, Mr. Bosley filed an Answer that conceded all allegations in the Information. (Record at 26-28) Mr. Bosley also entered a Stipulation with the Informant as to the facts of the case (Record at 168-78), and – if he could have timely corrected all outstanding issues relating to payments owed clients or third parties – would have stipulated to a sanction, a stayed suspension with probation. (Record at 205-06)

Hearing. In light of the various Stipulations, presentation and examination of witnesses at the Hearing on December 9 was understandably expected to be somewhat limited. (*See, e.g.*, Record at 42 (Mr. Bosley's counsel states, “[W]e've

stipulated to the facts, and so there's not going to be a whole lot of testimony.”)) The only two witnesses called were the OCDC paralegal Ms. Dillon and Mr. Bosley himself. Examinations and cross-examinations by counsel were also relatively limited. Mr. Bosley's counsel cross-examined Ms. Dillon for 16 transcript pages (*Id.* at 56-60), and Informant's counsel examined Mr. Bosley two separate times for a total of about 9 transcript pages. (*Id.* at 70-71, 82) Further, Mr. Bosley presented three letters regarding his character (*Id.* at 161-64), but did not call any of the literally scores of witnesses who would have testified live about Mr. Bosley's character and reputation and all that Mr. Bosley has done for the St. Louis community.

Despite the somewhat truncated nature of the Hearing, the lawyers serving as Hearing Panel Officers conducted extensive examinations of Ms. Dillon and Mr. Bosley. They questioned Ms. Dillon for more than 30 transcript pages, (Record at 60-69), and Mr. Bosley for more than 25 transcript pages (*Id.* at 82-90). The Hearing Panel Chair also objected to a question to Mr. Bosley from his counsel as leading. (*Id.* at 75)

Media Presence at Hearing. The Hearing was conducted before a reporter and a photographer from Missouri Lawyers Media and a reporter from the *St. Louis Post Dispatch*. (See, e.g., Record at 37 (the request for Missouri Lawyers Media to attend hearing); *id.* at 41-43 (discussing the presence of reporters and a

photographer.) The Hearing and Hearing Panel Decision received prompt, prominent coverage in both the legal and general press. This coverage has caused Mr. Bosley to lose at least one significant client.

Delays in Correcting Trust Account Errors. Through the investigative process, the OCDC's Ms. Dillon and Mr. Bosley identified approximately thirteen client matters where Mr. Bosley had not made appropriate payments to third parties, or had failed to pay residual amounts (after third-party liens were satisfied) to clients. (*See, e.g.*, Information, Record at 5-10)

At the time of the Hearing on December 9, 2013, eight of those matters still remained unresolved in whole or in part. (*See, e.g.*, Respondent's Submission of Proposed Findings of Fact and Conclusions of Law, Record at 203) The largest unresolved payment was for \$6,270.89. (Record at 217) The smallest was \$51.00. (Record at 220)

At the end of the December 9 Hearing, by agreement of the parties, the record was left open until December 27 with the hope and expectation that Mr. Bosley could fully and finally resolve the remaining issues. Unfortunately, due to the winter holidays (and related business closures and client travel), the extreme cold and icy weather in late 2013 and early 2014, and unexpected difficulties in locating individuals owed money, a couple payments were not made until later in December 2013, and the final payment – \$143.50 to client CW – was not made

until January 8, 2014, the first day that CW could be located. (*See* Receipt, Record at 224)¹ These delays prevented Mr. Bosley and the Informant from entering the anticipated stipulation regarding the penalty that Mr. Bosley should receive, which the parties had agreed would be an indefinite suspension with right to reapply in one year, stayed pending two years of probation. (Record at 205; *see also* Record at 231-40 (the anticipated terms of that probation).)

Hearing Panel's Decision. Absent a stipulation as to penalty, the Hearing Panel recommended an indefinite suspension with right to reapply in twenty-four months. (Decision at 12, Record at 256) This suspension was not stayed. (*Id.*)

Mr. Bosley exercised his right to reject this recommendation under Rule 5.19, triggering briefing and argument before this Court. (Record at 259)

¹ Throughout December 2013, Mr. Bosley attempted to locate CW by calling telephone numbers and visiting the two residences where information indicated CW resided. These efforts failed. But Mr. Bosley did learn CW worked as a public school crossing guard. Mr. Bosley then delivered the check to CW on January 8, 2014, the first day of school after the holiday break, extended due to bad weather.

POINT RELIED ON

- I. CONSISTENT WITH THIS COURT’S PRIOR RULINGS, A STAYED SUSPENSION WITH PROBATION IS ADEQUATE AND APPROPRIATE HERE TO PROTECT THE PUBLIC AND THE INTEGRITY OF THE BAR.

In re Coleman, 295 S.W.3d 857 (Mo. 2009)

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

ARGUMENT

I. CONSISTENT WITH THIS COURT’S PRIOR RULINGS, A STAYED SUSPENSION WITH PROBATION IS ADEQUATE AND APPROPRIATE HERE TO PROTECT THE PUBLIC AND THE INTEGRITY OF THE BAR.

The aims of the Missouri lawyer discipline are “to protect the public and maintain the integrity of the legal profession,” not to punish the lawyer. *In re Coleman*, 295 S.W.3d 857, 869 (Mo. 2009). Mr. Bosley has stipulated to the conduct charged. Accordingly, the only issue before this Court should be what penalty this Court should impose on Mr. Bosley – in other words, what penalty is necessary and appropriate to protect the public and maintain the integrity of the Bar.

Mr. Bosley understands and admits that the charges against him – which charges he has also admitted – involve “very serious” misconduct. (Bosley Testimony, Record at 81) Mr. Bosley further admits and understands that the issues surrounding his trust account were significant and relatively pervasive. (*Id.*) This helped make it difficult for Mr. Bosley and Ms. Dillon to properly sort out and make restitution to clients in a timely fashion.

Although the admitted violations are very serious, Mr. Bosley believes that the appropriate sanction would be a stayed suspension and probation, with enough

monitoring and other protections to ensure that Mr. Bosley does not for any reason mishandle trust account funds or records in the future. Eight reasons support this:

1) Mr. Bosley admits and has acted to fix his mistakes.

The first reason why Mr. Bosley should receive only a stayed suspension is because Mr. Bosley has recognized his errors and deficiencies, and has modified his practice and continues to modify his practice to better ensure proper operation of his trust account. Mr. Bosley believes all clients and third parties who might have been harmed by his past trust account mismanagement have been made whole, at least on or before January 8, 2014. Starting prior to his hearing, Mr. Bosley also took steps to improve his process for handling client and third-party funds. Mr. Bosley has received additional guidance on trust account management and has hired an accounting firm to assist with the financial operations of his firm, including trust account activities. (Bosley Testimony, Record at 71) He has adopted a more effective client ledger system. (*Id.* at 72) He has also changed the type of checkbooks he was using so that the check books are more distinct (brown for the trust account, black for the operating account); so that Mr. Bosley can better keep the checkbooks in his possession; and so that he can retain carbons of checks written. (*Id.*) Mr. Bosley also now undertakes weekly reconciliations of his trust account. (*Id.* at 73)

Furthermore, since the December 2013 hearing, while continuing and building upon the practices described above, Mr. Bosley has also entered negotiations to join his law practice in partnership with another law practice, a non-Missouri law firm that has an excellent track record and will handle most or all of the business operations of the two firms. Mr. Bosley anticipates this partnership will be finalized soon, likely before oral argument. Mr. Bosley then expects this other firm will take the lead in day-to-day operation of his trust account, of course under the supervision of Mr. Bosley and the other attorneys.

2) Adequate conditions of probation can be fashioned to protect the public and Bar.

Second, Mr. Bosley is requesting probation, and expects that OCDC and the Court can fashion adequate terms for probation to protect the public and integrity of the Bar. “[P]robation is the appropriate punishment when the conduct can be corrected and the attorney’s right to practice law needs to be monitored or limited rather than revoked.” *Coleman*, 295 S.W.3d at 871 (citing *ABA Standards for Imposing Lawyer Sanctions*, Standard 2.7, Probation, Commentary). Under Rule 5.225, this Court and the Office of Chief Disciplinary Counsel have broad discretion to impose controls to ensure that Mr. Bosley and his practice are operating appropriately. Mr. Bosley was prepared to enter stipulated terms of probation prepared by the Informant had he been able to resolve all outstanding

trust account issues before the Record closed. (*See* Respondent's Submission of Proposed Findings of Facts and Conclusions of Law, Record at 205-06) Mr. Bosley would certainly be willing to comply with such additional safeguards as the Court or Informant may deem appropriate to ensure the public and integrity of the Bar are protected. Further, both Mr. Bosley and the OCDC agree that Mr. Bosley has been fully cooperative to date. (*See, e.g.*, Dillon Testimony, Record at 57; Bosley testimony at 81)

3) Mr. Bosley acted without dishonesty or selfish motive.

As a third basis for a stayed suspension, Mr. Bosley acted without dishonesty or selfish motive. The OCDC paralegal Ms. Dillon testified Mr. Bosley was always forthcoming, cooperative, and acting without selfish motive:

Question: You indicated in dealing with Mr. Bosley that he was always forthcoming with you?

Ms. Dillon: Correct.

Question: Did you ever see any dishonesty there?

Ms. Dillon: No, I did not.

Question: Did you ever see Mr. Bosley acting with any sort of selfish motive?

Ms. Dillon: No.

(Dillon Testimony, Record at 57) This testimony was not challenged by Informant on redirect, nor was it challenged by the Hearing Panel in its 30 transcript pages of questions directed to Ms. Dillon. Mr. Bosley, meanwhile, likewise testified that had been and intended to continue being cooperative and truthful with the OCDC. (Bosley Testimony, Record at 81-82) Thus, there was no evidence to the contrary upon which the Hearing Panel could reasonably base its own adverse conclusion, although admittedly the Hearing Panel did reach such a conclusion. (*Cf.* Decision at 10-11, Record at 255-56)²

² The Hearing Panel Decision contains two additional errors not supported by the Record. First, the Hearing Panel claims that Mr. Bosley “admits in his Answer he misappropriated client funds for his own personal use.” (Decision at 10, Record at 254, emphasis omitted) Mr. Bosley’s Answer does not contest allegations in the Information, but Mr. Bosley’s Answer also does not contain any express admission of misappropriation. In fact, the Answer does not even contain a version of the word “misappropriate.” Second, there is no “begrudging admission” that Mr. Bosley misused client funds on pages 179-83 of the Hearing Transcript, as the Hearing Panel Decision indicates. (Decision at 11, Record at 255) Rather, those pages actually contain an express denial from Mr. Bosley intentionally misused client funds. (*See* Bosley Testimony, Record at 84-85). In his testimony, Mr. Bosley concedes that client funds may have been used for other purposes, but there

4) Mr. Bosley has done a great deal for the Community and the Legal Profession.

Fourth, although the Hearing Panel Decision is silent on this point, Mr. Bosley has generally had a positive impact on the public, the Profession, and its reputation. As discussed at greater length in his Statement of Facts, Mr. Bosley has spent his entire life at the Bar helping others. He began practice as a Legal Services lawyer, helping those who faced exposure to the elements and physical harm because they could not pay their utilities. (Bosley Testimony, Record at 78-79) Then Mr. Bosley entered public service and served as the Circuit Court Clerk and Mayor of St. Louis. (*Id.*) Even now, he continues to add his community and the underprivileged. (*Id.*)

Mr. Bosley has not used his public offices to make himself wealthy. Rather, as Clerk, he kept busy trying to help all seniors, the poor, and the underprivileged that his grandfather and others sent his way. (*Id.*) As Mayor, Mr. Bosley aided virtually all aspects of the community. Mr. Bosley stood up for disadvantaged groups, such as providing the domestic partnership registry. (*Id.* at 80) Mr. Bosley helped pushed through efforts that helped reduce crime, improve employment and infrastructure, improve the City jail, and assist homeowners after the Great Flood

is no indication of an improper intent nor is there an admission that the funds were used for Mr. Bosley's purposes, as opposed to a client's. (*Cf.* Record at 85)

of 1993. (*Id.* at 80; *see also* Commemorative Program, Record at 166) Mr. Bosley even helped with efforts that the community supported but for which he lacked personal zeal, such as bringing the NFL Rams to St. Louis. (Bosley Testimony, Record at 80) Such matters are properly considered as mitigating factors under *ABA Standards for Imposing Lawyer Sanctions*, Standard 9.32(g), evidence reflecting on Mr. Bosley's character and reputation, and should weigh in favor of a stayed suspension, a lesser penalty than the Hearing Panel has suggested.

5) The Court has further clarified its own Rules since Mr. Bosley's mistakes.

Sixth, since the time of Mr. Bosley's mistakes, this Court has only continued to take steps to clarify lawyers' obligations with regard to their trust accounts. Missouri Supreme Court Rules 4-1.145 through 4-1.155 – adopted effective July 2013 – provide much clearer guidance on how lawyers can and should operate their trust account funds. The new Rule 4-1.15 (a) provisions relating to deposits and disbursements, for example, would provide lawyers in the future with better guidance than Mr. Bosley had when he was acting (and making mistakes) prior to the adoption of these new Rules. Such guidance should be more effective to protect the public and improve the Bar than imposing a severe sanction upon Mr. Bosley.

6) Prior precedent support a stayed suspension for the mistakes Mr. Bosley admits having made.

Missouri law and precedent provide a sixth basis supporting imposition of a stayed suspension. Imposition of a stayed suspension with two-years' probation is consistent with Missouri Supreme Court precedent, for example *In re Coleman*, 295 S.W.3d 857 (Mo. 2009), and *In re Wiles*, 107 S.W.3d 228 (Mo. 2003). In the *Coleman* case, the respondent had a prior discipline history and was cited for numerous ethical violations, including misuse of his trust account. Specifically, Mr. Coleman – like Mr. Bosley – sometimes left his own money in his trust account and wrote checks for business or other expenses directly out of the trust account. In addition, like Mr. Bosley, Mr. Coleman did not keep adequate records or ledgers for his trust account that identified deposits made. Based upon these facts, the Court found that Mr. Coleman's conduct justified the suspension of Mr. Coleman's license to practice law without leave to reapply for one year, but stayed the suspension and imposed probation.

In *In re Wiles*, 107 S.W.3d 228 (Mo. 2003), meanwhile, this Court imposed a stayed suspension upon a lawyer as reciprocal discipline after that lawyer had been censured by the Kansas Supreme Court. The misconduct found in Kansas included operating a personal injury practice without a trust account, and issuing payment to a client (from the lawyer's operating account) through a check denied

for insufficient funds. *See In re Wiles*, 58 P.3d 711 (Kan. 2002). This Court imposed the greater sanction of a stayed suspension because Wiles had 2 prior admonitions in Kansas and 11 prior admonitions in Missouri. Mr. Bosley, meanwhile, has never been disciplined before this case.

Consistent with *Coleman* and *Wiles*, this Court has imposed probation and a stayed suspension for trust account violations in numerous recent cases. Over the last three years, there have been more than a dozen cases where a lawyer received a stayed suspension and probation for violating Rule 4-1.15 and other rules. Recent such cases include: (1) *In re Tate*, Case No. S93822 (Mo. Dec. 24, 2013) (violation of Rule 4-1.15 and Rule 4-8.4(d)); (2) *In re Carter*, Case No. SC93739 (Mo. Nov. 26, 2013) (violation of Rules 4-1.15 and Rules 4-1.8 and 4-8.4(c)); (3) *In re McGee*, Case No. SC93568 (Mo. Oct. 1, 2013) (violation of Rule 4-1.15 and Rules 4-1.9 and 4-8.1); (4) *In re Dotson*, Case No. SC93042 (Mo. Jan. 29, 2013) (violation of Rule 4-1.15 and Rule 4-8.4(c) and (d)); (5) *In re Thompson*, Case No. SC93025 (Mo. Dec. 21, 2012) (violation of Rule 4-1.15 and Rule 4-1.5); (6) *In re Peetz*, Case No. SC92968 (Mo. Dec. 18, 2012) (violation of Rule 4-1.15 and Rule 4-8.4(c)); (7) *In re Butler*, Case No. SC92781 (Mo. Sept. 25, 2012) (violation of Rule 4-1.15 and Rule 4-8.4(c) and (d)); (8) *In re Jamison*, Case No. SC92683 (Mo. Aug. 3, 2012) (violation of Rule 4-1.15 and Rule 4-5.3); (9) *In re Briegel*, Case No. SC92516 (Mo. May 29, 2012) (violation of Rule 4-1.15 and Rules 4-1.2, 4-1.3,

4-1.4, 4-8.1, and 4-8.4(c) and (d)); (10) *In re Swischer*, Case No. 92336 (Mo. May 29, 2012) (violation of Rule 4-1.15 and Rules 4-1.3, 4-1.4, 4-1.5, 4-3.2, 4-5.3, 4-8.1, and 4-8.4(d)); (11) *In re Harry*, Case No. SC92209 (Mo. Jan. 31, 2012) (violation of Rule 4-1.15 and Rules 4-1.1, 4-1.3, and 4-1.4(a)); (12) *In re Koenig*, Case No. SC91685 (Mo. Oct. 25, 2011) (violation of Rule 4-1.15 and Rules 4-1.3, 4-1.4, and 4-8.4(c)); (13) *In re Pawloski*, Case No. SC91152 (Mo. May 17, 2011) (violation of Rule 4-1.15 and Rule 4-8.4(c)); and (14) *In re Blum*, Case No. SC90312 (Mo. Sept. 1, 2009) (violation of rules 4-1.15 and 4-1.3, 4-1.4, 4-1.8, 4-1.16, and 4-8.1).

Mr. Bosley is eligible for probation under Missouri Supreme Court Rule 5.225 because: (a) he is unlikely to harm the public during a period of probation and he can be adequately supervised; (b) he is able to perform legal services and is able to practice law without causing courts or profession to all into disrepute; and (c) he has not committed acts warranting disbarment. Further, in many of the dozen or so cases cited above, the Rules violations cited suggest potential harm to the disciplinary process, the Bar's reputation, or client's matters not present here. Accordingly, Mr. Bosley should receive what these lawyers received (a stayed suspension), not more.

7) Mr. Bosley has no prior discipline, and this discipline arises solely from the overdraft notices, not client complaints.

As the seventh and final basis for a stayed suspension, this is the first discipline Mr. Bosley will ever receive. Other than the trust account issues giving rise to this case, which Mr. Bosley admits are serious, Mr. Bosley has maintained himself and his practice for more than thirty years in a manner that poses no peril to the public or the Bar. Mr. Bosley has never been disciplined before, and even these proceedings originated only due to overdraft notices, not client or third-party complaints. Mr. Bosley also believes all clients and third parties who might have been harmed by his past trust account mismanagement have now been made whole.

In several cases cited above – including notably this Court’s decisions in both *Coleman* and *Wiles* – the lawyer facing discipline received only a stayed suspension, despite having a significant prior disciplinary history. In *Wiles*, the Court indicates the respondent had previously received 11 admonitions in Missouri and 2 in Kansas. 107 S.W.3d at 229. In *Coleman*, the respondent had previously been admonished twice and publicly reprimanded once. 295 S.W.3d at 870. In *In re Devkota*, Case No. SC51604 (Mo. Oct. 4, 2012), meanwhile, the lawyer had previously had an interim suspension and stayed suspension imposed. Yet in each of these cases, the lawyer was able to continue practicing with a stayed suspension

and probation. Mr. Bosley believes he should incur a similar penalty, not the more severe penalty the Hearing Panel has suggested without citation to any precedent.

For these seven reasons, Mr. Bosley ask this Court to conclude that a stayed suspension and probation, with terms deemed appropriate by the Court, would be adequate to protect the public and the integrity of the Bar.

REQUEST FOR ORAL ARGUMENT

Mr. Bosley believes that oral argument is appropriate for this case. The standard setting for a lawyer discipline case, allowing fifteen minutes of argument per side, should be sufficient.

WHEREFORE, respondent Freeman Bosley, Jr. requests that this Court accept his Stipulation as to misconduct committed and impose at most an indefinite suspension with right to reapply after twelve months, but stay that suspension and place Mr. Bosley on probation for a period and on such terms as this Court deems appropriate; require Mr. Bosley to pay the appropriate disciplinary fee and court costs awardable to Informant under Rule 5; or grant Mr. Bosley any further relief that this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via the Court's electronic case filing system, on this 24th day of June, 2014, to:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03. It was drafted using Microsoft Word. The font is Times New Roman, proportional 14-point font, which includes serifs. The brief complies with Rule 84.06(b) in that it contains 5769 words and 551 lines.

Dated: June 24, 2014

By: /s/ Michael P. Downey