

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:** )  
 )  
**ERIC A. FARRIS,** ) **Supreme Court #SC94418**  
 )  
**Respondent.** )

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**INFORMANT'S BRIEF**

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INFORMANT

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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

### PROCEDURAL HISTORY

April 29, 2013	Information
May 29, 2013	Respondent's Answer to Information
June 10, 2013	Appointment of Disciplinary Hearing Panel
November 13, 2013	Informant's Motion to File Amended Petition
November 15, 2013	Respondent's Application for Continuance
November 15, 2013	Order Ruling on Pending Motions
November 18, 2013	DHP Hearing
June 26, 2014	DHP Decision
July 9, 2014	Rejection of DHP decision by Informant
July 21, 2014	Rejection of DHP decision by Respondent
August 25, 2014	Record Submitted

### THE SISSON REPRESENTATION

Mr. and Mrs. Sisson hired the Respondent on June 29, 2005 to represent them in a personal injury action. **App. 566-598.** The written contingent fee agreement provided that the Respondent would receive 40% of the recovery if a lawsuit was filed. **App. 593-594.**

Mrs. Sisson, who was 72 at the time of the hearing, had fallen at her place of employment and sustained extensive injuries. **App. 79; 80.** The case was submitted to mediation on September 7, 2010 and settled for \$197,500.00. **App. 602.** The settlement

proceeds, made payable to the Sissons and The Farris Law Group, were received by the Respondent on or about September 28, 2010. **App. 592.** The Sissons endorsed the settlement check and executed the release of the defendants on September 28, 2010. **App. 603-605.** The check was deposited to Respondent's IOLTA trust account on the same date. **App. 606.**

Skaggs Hospital had filed a Notice of Hospital Lien pursuant to Mo. Rev. Stat. Section 430.235 in the amount of \$114,604.31. **App. 600.** Mrs. Sisson understood that the Respondent was going to negotiate with the hospital to have the lien amount reduced; this would result in Mrs. Sisson receiving a larger amount of the proceeds. **App. 85; 113; 116.**

Mrs. Sisson began calling the Respondent in November 2010 to find out when she would receive her share of the settlement. **App. 88.** She kept a notebook and made a written entry each time she called the Respondent's office and the response she received when she called. **App. 658-665.** Her telephone call on December 15 was not returned by the Respondent. **App. 658-665; 89.** She called again on December 22; the Respondent did return the call and advised her the checks would be written by the end of the year. **App. 658-665; 89; 90.**

On January 3, 2011, Mrs. Sisson called Respondent's office and did not receive a return call. **App. 658-665.** On January 7, 2011 she called and was advised the checks would be written on "Friday or Monday". **App. 658-665; 90.** On January 11, 2011 she

called the office but no one answered. **App. 658-665.** On January 12, 2011 she went to Respondent's office and was told the Respondent was with a client. **App. 658-665.**

On January 13, 2011, the Sissons received a check written on Respondent's trust account for \$50,000.00. **App. 658-665; 90-91.**

Mrs. Sisson had an appointment with the Respondent to discuss the balance in his trust account on February 16, 2011; she was told by the Respondent that he would "let me know soon". **App. 91.**

Mrs. Sisson called Respondent's office on May 16, June 30, July 25, and August 25 and did not receive a return call from the Respondent. **App. 658-665; 92.** She went to his office on August 29 and left a message but got no response. **App. 658-665.** Her call on September 1 was not returned by the Respondent. **App. 658-665.** On September 7 she went to his office and was told by staff that she had to make an appointment; a staff member did call her to set up an appointment on September 14, but the staff called Mrs. Sisson "right back and cancelled it". **App. 93.**

Mrs. Sisson had an appointment with the Respondent on September 26; the Respondent told her he would get back to her "in two weeks". **App. 658-665; 93.** On October 17, 18 she called demanding a check and did not receive a return call from the Respondent. **App. 658-665; 94.** She had an appointment with him on Wednesday, October 19; the Respondent promised her he would get back to her on Friday. **App. 94-95.**

On that Friday, October 21, she went to Respondent's office and received a check for \$31,756.00. **App. 608-609.** Mrs. Sisson promptly deposited the check into her personal account. She received a notification from her bank, dated November 4, 2011, that the check was returned for insufficient funds. **App. 610; 97.**

Mrs. Sisson was upset and immediately called the Respondent's office on November 8 and made an appointment, but the Respondent cancelled the appointment. **App. 658-665.** Her calls on November 9, 10, and 11 were not returned by the Respondent. **App. 658-665; 99.**

The Respondent provided inter-office memos to him from his secretary, Karen Coignet; these reflect that Karen Coignet met Mrs. Sisson on February 16, 2011 to discuss the medical bills and returned calls to Mrs. Sisson on May 18, 2011; June 30, 2011; August 25, 2011, September 9, 2011, and October 18, 2011. **App. 578; 579; 580; 581; 582.**

The Respondent provided inter-office memos from himself to himself that he called Mrs. Sisson on November 9 and 10, and left a message, and talked to Mrs. Sisson on November 11, 2011. **App. 584; 585; 586.**

On November 15, 2011, Mrs. Sisson met with the Respondent and his wife, Elizabeth. **App. 99.** Either the Respondent or his wife told Mrs. Sisson they had "miscalculated" the amount due to her. **App. 100.** Respondent provided a Personal Injury Settlement Distribution Summary. **App. 827.** This document showed Skaggs Hospital had been paid \$66,360.42 as settlement of her outstanding medical bills and the

amount due to her was \$15,000.00. **App. 827.** Because of the payment to the hospital, the check she previously received was in error and therefore the funds were not in the account to cover the check. **App. 827; 100.**

In the Personal Injury Settlement Distribution Summary, Respondent agreed to reduce his attorney fees of \$79,000.00 by \$15,000.00 so his contingent fee was not more than her total recovery of \$65,000.00. **App. 140-141; 827.** This document reflects that Mrs. Sisson was to receive \$15,000.00 as her balance of the settlement proceeds. **App. 827.** Respondent then advised Mrs. Sisson that "their funds were low" and they would pay the \$15,000.00 in payments. **App. 100101.** Respondent executed a promissory note to the Sissons for \$15,000.00. **App. 100-101.** Mrs. Sisson was confused about the explanation and accounting; she did not "understand half of it". **App. 101.** Respondent did pay the \$15,000.00 over three or four months.

At this November meeting, Mrs. Sisson asked the Respondent if the "hospital had been taken care of". **App. 102.** The Respondent told her "not to worry about it". **App. 102.** The Distribution Summary provided to Mrs. Sisson reflected payment of the medical bills. **App. 827.**

Mrs. Sisson later discovered that her hospital bills had not been paid. **App. 104-105.** As of October 25, 2012, Skaggs Hospital had an outstanding balance of \$106,379.31. **App. 611-657; 106.** The purported check to Skaggs Hospital did not clear Respondent's trust account. **App. 596.**

Respondent testified he "firmly believed those funds were in the account" when he wrote the \$31,756.00 check to Mrs. Sisson and he was "mortified" when the check did not clear. **App. 402.** He testified that his wife, Elizabeth, told him she had written a check for \$66,360.42 to Skaggs Hospital to pay Mrs. Sisson's medical bills. **App. 596; 403;** this check caused the overdraft. **App. 596.**

Respondent further testified he did not know the \$66,360.42 to Skaggs Hospital had not cleared his trust account until he met with the Region XV Disciplinary Committee on November 27, 2012. **App. 409.** His wife had provided him the copy of the check to Skaggs he included in his response to the complaint. **App. 410.** He explained that the signature on this check was from a signature stamp of Respondent's signature and his wife knew where the stamp was located. **App. 473; 474.**

After the Sisson check was returned for insufficient funds, the Respondent did not reconcile or audit his trust account. **App. 472; 473.**

The Respondent blamed his wife for providing to him the bogus check to Skaggs Hospital and for misappropriating the funds. **App. 410; 513; 514.** Respondent characterized his wife as very "controlling". **App. 514.** He said she had gradually taken over the financial responsibilities of his law office and the law firm in general. **App. 521.** Respondent admitted that he authorized his wife to have greater control of his practice and make transfers between his office and trust accounts by telephone and internet banking. **App. 525; 532.**

## THE DAUGHENBAUGH REPRESENTATION

After the Office of the Chief Disciplinary Counsel received notice that the check to Mrs. Sisson caused an overdraft in the Respondent's IOLTA trust account, a financial audit was conducted by Kelly Dillon, an investigative examiner and paralegal with the Office of the Chief Disciplinary Counsel. The audit showed that settlement proceeds from Mr. and Mrs. Daughenbaugh's personal injury case were not properly distributed. **App. 196-197.**

The Daughenbaughs' personal injury claims were settled for \$90,000.00 plus expenses. **App. 819-822; 200.** A Settlement Agreement and Release was executed by the Daughenbaughs on September 9, 2010 and the proceeds deposited into Respondent's Trust Account on September 9, 2010. **App. 819-822.** Respondent wrote a check on his trust account for \$32,497.10 to the Daughenbaughs on September 24, 2010 representing their net recovery. A Personal Injury Settlement Distribution Worksheet was provided to the Daughenbaughs. **App. 824-825.** This worksheet reflects that \$11,847.41 was withheld from Gary Daughenbaugh's settlement to pay his medical bills and \$15,284.79 was withheld from Patricia Daughenbaugh's settlement to pay her medical bills. **App. 824-825.**

The Respondent was paid \$30,000.00 in attorney's fees from several transfers from his trust account to his operating account between September 7, 2010 and September 20, 2010. **App. 200.** The clients were paid \$32,497.10 on September 29, 2010, leaving a balance of \$27,322.90 that should have remained in the trust account. **App. 201.**

The audit of Respondent's trust account revealed that no medical bills were paid on behalf of the Daughenbaughs. **App. 201.** As of the date of the audit on November 24, 2011, Respondent's trust account had a balance of \$3,053.63. **App. 201.** From September 7, 2010 (the date the Daughenbaughs' settlement was received) to November 24, 2011 (the date of the audit), the funds held from the Daughenbaughs' medical bills were disbursed for Respondent's benefit. **App. 201.**

### **FAILURE TO RESPOND TO THE OCDC**

On December 16, 2012, Kelly Dillon, a paralegal with the Office of the Chief Disciplinary Counsel, sent a letter to Respondent asking him for specific information regarding transactions in his trust account. **App. 666-667; 164.** The Respondent mailed his response to the request on January 7, 2013. **App. 668-669.**

The Respondent's response did not comply with the request for information in the following respects:

- A. No communications between the Respondent and Skaggs Hospital regarding Betty Sisson was provided; **App. 167.**
- B. No copies of expenses and payments regarding the Daughenbaugh case were provided; **App. 168.**
- C. No copies of expense receipts for the Sisson case were provided; **App. 168.**
- D. Only partial billing records to substantiate trust account withdrawals were received. **App. 169-170.**

Respondent's letter stated he would supplement his response, but he never filed supplemental documents. **App. 170.**

### **FILE RETENTION**

In that letter to Kelly Dillon dated January 7, 2013, Respondent stated:

- A. He could not locate the medical record file in the Sisson case; **App. 668-669;** and
- B. He could not locate the Daughenbaugh file. **App. 668-669.**

### **TRUST ACCOUNT**

The audit of Respondent's trust account at Ozark Mountain Bank covered the period from August 2, 2010 through April 29, 2013. **App. 670-700.** The audit revealed the following issues:

- A. Merchant service fees (credit card fees) were deducted from the trust account each month and Respondent did not reimburse the account for those fees. **App. 670-700; 178-179.**
- B. There were 111 transfers from the Respondent's trust account to his operating account totaling almost \$735,000.00 that did not reference the specific client funds used or fees earned to justify transfer to the operating account.
- C. The majority of the withdrawals from the trust account were in lump sum amounts, ranging from \$1,000.00 to \$20,000.00. **App. 812-817; 180.** Eighteen of the deposits were in the amount of \$9,999.99

so alert forms for transactions over \$10,000.00 would not be generated by the bank. **App. 812-817; 181.**

- D. Some deposits to the trust account were fees that were already earned. **App. 182.**
- E. Respondent's operating account had a cash reserve or line of credit provision: On October 25, 2010, a \$20,000.00 withdrawal from the trust account was used to pay \$10,019.42 on the cash reserve account (meaning Respondent's operating account was overdrawn) and the balance deposited to the operating account. Respondent failed to provide the records to document this transfer. **App. 812-817; 189.** On the date of this transfer, the cash reserve had reached its limit and the operating account was overdrawn. **App. 812-817; 189.**
- F. Withdrawals from the trust account were made in lump sums that coincided with the times Respondent's operating account was depleted or overdrawn. **App. 189.**

#### **THE DISCIPLINARY HEARING PANEL'S DECISION**

The Disciplinary Hearing Panel found the Respondent violated the following Rules of Professional Responsibility:

1. Rule 4-1.4 Communication for failing to promptly comply with Mrs. Sisson's reasonable request for information.

The Panel found "the failure to communicate resulted in a two year delay from the time Mrs. Sisson should have received information and was instead receiving excuses from Respondent. In that time there was not sufficient money in Respondent's trust account to pay the obligation on behalf of Mrs. Sisson." **App. 874.**

2. Rule 4-1.15(i) Safekeeping Property for failing to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

The Panel found that: "Respondent knowingly failed to maintain bills of Mrs. Sisson. He knowingly failed to negotiate with the health care providers. The money he kept in his trust account disappeared". **App. 874.**

As to the Daughenbaugh case, the Panel noted that the clients were "innocently uninformed that their settlement funds were not handled and processed properly". **App. 875.**

3. Rule 4-8.4 Misconduct for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Panel found that: Respondent's conduct in the Sisson case involved "dishonesty, fraud, deceit or misrepresentation by continuing to produce a series of various excuses for his

failure to account for the missing funds. He also produced a check to Skaggs Hospital on his trust account and claimed he attempted to pay Mrs. Sisson's hospital lien. In fact the check was never delivered to Skaggs or presented for payment."

**App. 876.**

In the Daughenbaugh case, the Panel found Respondent's conduct dishonest or fraudulent. **App. 876.**

4. Rule 4-8.1 Bar Admission and Disciplinary Matters for failing to respond to a lawful demand for information from a disciplinary authority.

The Panel found the disciplinary authority requested a complete copy of his expense receipts and communication with Skaggs Hospital and he failed to do so. **App. 876.**

5. Rule 4-1.15(m) Safekeeping Property for failing to securely store a client's file for ten years after completion of the representation.

The Panel found Respondent failed to maintain the Sisson and Daughenbaugh files. **App. 877.**

6. Rule 4-1.15 Safekeeping Property for misappropriation of funds of clients.

The Panel found: Respondent misappropriated funds of his clients. Respondent repeatedly transferred funds from the trust account to his operating account, where those funds were used for personal/non-business expenditures. He also

transferred funds to at least one other account he owned, without any designation or record attributing the transfer for a particular client, file or billing, and improperly paid credit card "merchant service fees" from the trust account without proper reimbursement. **App. 878.**

### **AGGRAVATING FACTORS**

Informant presented evidence on the following aggravating factors:

1. Prior Disciplinary History.

The Respondent received an Admonition on February 18, 1998 for violating Rules 1.4, 1.16(d) and 8.4(d). **App. 828-829.**

2. Pattern of Misconduct.

The facts in the Sisson and Daughenbaugh cases show a pattern of withholding funds from settlements to pay medical bills, failing to pay those medical bills, and misappropriating the funds for personal use. In referring to the Daughenbaugh case, the Panel stated "the fact that this additional misuse of clients' money in Respondent's trust account so closely mirror the Sisson situation seriously concerns the Panel". **App. 875.**

3. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency.

The Respondent failed to provide documentation regarding his communication with the medical providers. **App. 167-168.**

The Panel found that Respondent intentionally failed to comply with rules or orders of the disciplinary agency. **App. 877.**

4. Submission of false evidence, false statements or other deceptive practices during the disciplinary process.

In his response to Mrs. Sisson's complaint, the Respondent submitted a copy of a purported check to Skaggs Hospital for payment of Mrs. Sisson's medical bills. **App. 596.**

The Panel was not impressed by Respondent's explanations for the misappropriation of funds and found "his testimony generally questionable and often bordering on the disingenuous. **App. 879.**

5. Refusal to acknowledge wrongful nature of the act.

The Respondent did express that he was "sorry to them (the Sissons) that this happened" (T.400) and apologized to Mrs. Sisson immediately before the hearing. **App. 512; 153.**

The Panel found that "Respondent does not seem to express any sincere acknowledgement of the least wrongdoing or

need for any corrections in his practice, nor offered any evidence of the same other than laying blame on others".

**App. 879.**

6. Substantial experience in the practice of law.

The Respondent graduated from the University of Missouri School of Law in 1994 and has been actually engaged in the practice of law since then. **App. 374.**

7. Indifference to Making Restitution.

The Respondent had not made any restitution to Mrs. Sisson nor offered to Mrs. Sisson that he would do so. **App. 154.**

Respondent testified he had applied to cash out his whole life insurance policy to apply toward restitution but this application was only submitted within the month before the disciplinary hearing. **App. 512.**

The Panel found the Respondent had "made no firm offer of full restitution to either Mrs. Sisson or the Daughenbaughs.

**App. 879.**

### **MITIGATING FACTORS**

Respondent presented evidence on the following mitigating factors:

1. Respondent's Physical Disability.

Dr. Mohamed Bakry treated the Respondent for a "near fatal pulmonary emboli" in November, 2010. **App. 277.** He was hospitalized for "a week or so" and was advised to "stay out of the office at least two weeks" at that time. **App. 289-290.**

2. Respondent's Character and Reputation.

Respondent called ten witnesses who were former or current clients. All testified that Respondent handled their case with professionalism and hoped that the Respondent would continue to practice law and represent them. **App. 284; 299-303; 309; 322; 336; 341; 349; 356; 361.** Several witnesses testified that Respondent's reputation in the community was "excellent" **App. 286,** "trustworthy" **App. 312,** "highly respected" **App. 324,** "very good" **App. 336,** "well organized, good attorney with good ethics" **App. 341,** and "professional and competent". **App. 370.**

3. Respondent's Personal or Emotional Problems.

Respondent placed the blame for the misappropriations on his wife, who was "very controlling" during their marriage. **App. 514.** Respondent filed criminal charges against his wife for misappropriation of funds one week before the disciplinary hearing. **App. 506-507.** In the fall of 2011, Respondent's

son began suffering from seizures that were stressful to Respondent; this additional stress enabled his wife to control the financial aspects of his office. **App. 516.** The Panel found that Respondent's attempt to "blame the trust account problems on his wife or stuff" was not a mitigating factor.

**App. 875.**

#### 4. Remedial Efforts.

The Respondent testified he was now in control of the accounting in his office. **App. 517.** He acquired the ABA Guide to Lawyer Trust Accounting and is reviewing the IOLTA rules. **App. 517.** He has made some effort to make restitution in the form of applying to cash out his whole life insurance policy. **App. 512.** However, this application was only submitted within the months before the disciplinary hearing. **App. 512.**

### **DISCIPLINARY HEARING PANEL'S RECOMMENDATION**

The Disciplinary Hearing Panel recommended that Respondent's license be suspended indefinitely with no leave to apply for reinstatement for six months. Both the Informant and the Respondent rejected the DHP recommendation as to sanction.

**POINT RELIED ON**

**I.**

**RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT  
BECAUSE:**

- A. HE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING, MISAPPROPRIATION, SAFEKEEPING PROPERTY, DECEIT, MISREPRESENTATION, AND COMMUNICATION IN HIS HANDLING OF CLIENT AND THIRD PARTY FUNDS IN BOTH THE SISSON AND DAUGHENBAUGH MATTERS; AND**
- B. HE ENGAGED IN DECEIT, DISHONESTY AND MISREPRESENTATION BY PRESENTING FALSE EVIDENCE TO THE OCDC; AND**
- C. HE FAILED TO COOPERATE WITH THE DISCIPLINARY AUTHORITY'S INVESTIGATION; AND**
- D. HE FAILED TO RETAIN HIS CLIENT FILES IN ACCORDANCE WITH THE TEN YEAR REQUIREMENT IMPOSED BY THE RULES OF PROFESSIONAL CONDUCT.**

Rule 4-1.15, Rules of Professional Conduct

Rule 4-8.4(c), Rules of Professional Conduct

Rule 4-8.4(d), Rules of Professional Conduct

Rule 4-8.1, Rules of Professional Conduct

**POINT RELIED ON**

**II.**

**DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT VIOLATED THE SAFEKEEPING PROPERTY RULES, MISAPPROPRIATED CLIENT AND THIRD PARTY FUNDS, ACTED DECEITFULLY AND DISHONESTLY TOWARD HIS CLIENTS, THE OCDC AND THE DISCIPLINARY HEARING PANEL AND FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT BECAUSE:**

**A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION; AND**

**B. THE COURT HAS RULED THAT ATTORNEYS WHO STEAL MONEY AND ENGAGE IN DISHONEST AND DECEITFUL CONDUCT SHOULD BE DISBARRED.**

*In re Mendell*, 693 S.W.2d 76 (Mo. banc 1985)

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

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

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

**ARGUMENT**

**I.**

**RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT  
BECAUSE:**

**A. HE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING, MISAPPROPRIATION, SAFEKEEPING PROPERTY, DECEIT, MISREPRESENTATION, AND COMMUNICATION IN HIS HANDLING OF CLIENT AND THIRD PARTY FUNDS IN BOTH THE SISSON AND DAUGHENBAUGH MATTERS; AND**

**B. HE ENGAGED IN DECEIT, DISHONESTY AND MISREPRESENTATION BY PRESENTING FALSE EVIDENCE TO THE OCDC; AND**

**C. HE FAILED TO COOPERATE WITH THE DISCIPLINARY AUTHORITY’S INVESTIGATION; AND**

**D. HE FAILED TO RETAIN HIS CLIENT FILES IN ACCORDANCE WITH THE TEN YEAR REQUIREMENT IMPOSED BY THE RULES OF PROFESSIONAL CONDUCT.**

A lawyer owes his clients the utmost in good-faith and the highest loyalty and devotion to his clients’ interests. “The relation between attorney and client is highly fiduciary and of a very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith” on the part of the attorney. *In re Oliver*, 285 S.W.2d

648, 655 (Mo. banc 1956). The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when a lawyer engages in deceitful conduct that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer. See Introduction, Rule 5.0, ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

The record evidence in this case overwhelmingly supports a finding that Respondent repeatedly breached his duty of good faith and fidelity to his clients, mishandled and misappropriated client and third party funds, and acted deceitfully and dishonestly towards his clients and the OCDC.

The Sisson Representation. With regard to the Sisson representation, the personal injury case settled for \$197,500.00 and Respondent deposited the settlement proceeds into his trust account on September 28, 2010. Skaggs Hospital held a statutory lien on the settlement proceeds in the amount of \$114,604.31. The Sissons understood that Respondent would attempt to negotiate with the hospital to have the lien amount reduced so that they would receive a larger amount of the settlement.

Mrs. Sisson began calling Respondent in November 2010 to find out when she would receive her share of the settlement. After numerous phone calls and unsuccessful attempts to contact Respondent, the Sissons received a \$50,000 check on January 13, 2011, representing only a portion of their share of the settlement proceeds.

Over the course of the following months, Mrs. Sisson continued her mostly unsuccessful attempts to contact Respondent to determine when she and her husband

would receive the balance of their money. Finally, on October 21, 2011, some thirteen months after Respondent had taken possession of the Sissons' settlement funds, Respondent delivered another check to Mrs. Sisson in the amount of \$31,756.00. That check bounced.

In order to cover-up his mishandling and misappropriation of the Sisson settlement proceeds, Respondent told Mrs. Sisson at a November 15, 2011 meeting that he had "miscalculated" the amount due her and that he had paid Skaggs Hospital \$66,360.42 in settlement of its lien on the case. He provided her with a Personal Injury Settlement Distribution Summary reflecting the payment to the hospital. **App. 827.** As a result, Respondent represented to Mrs. Sisson that she was only entitled to an additional distribution payment of \$15,000.00. Respondent, however, stated that he was unable to pay her even this reduced amount because "their funds were low" and that he would pay her in installment payments. He executed a promissory note to Mrs. Sisson and paid the \$15,000.00 to her over a three or four month period.

Respondent's entire explanation of what happened to the settlement proceeds was a lie. Mrs. Sisson later discovered that the Skaggs Hospital bill had not been settled and paid by the Respondent. As of October 25, 2012, she owed Skaggs Hospital an outstanding balance of \$106,379.31. The purported check to Skaggs Hospital never cleared Respondent's trust account.

Respondent continued his ruse in his responses to the OCDC's investigation of the overdraft of his trust account. Thus, he asserted that the reason for that the October 2011

check to Mrs. Sisson had bounced was due to a “miscommunication” with his office staff and was caused by the fact that Skaggs Hospital had previously been issued a check in “full accord and satisfaction” of its lien. Respondent even provided the OCDC with a copy of the check to Skaggs Hospital to document his purported payment. Respondent further claimed that he was unaware of the payment to Skaggs Hospital when he issued the check for \$31,756.11 to Mrs. Sisson.

Subsequently, the OCDC conducted a routine audit of Respondent’s trust account. The audit reflected that the purported check to Skaggs Hospital had never been presented for payment against Respondent’s trust account. In addition, as of November 4, 2011, Respondent’s trust account only contained \$3,053.63, an amount insufficient to hold the funds that Respondent was required to hold on behalf of the Sissons.

On November 27, 2012, the OCDC directed Respondent to provide a complete copy of all expenses, receipts and communications with Skaggs Hospital regarding the Sisson matter. Respondent failed to comply with the directive, stating that he was unable to locate the Sisson file.

The record evidence clearly demonstrates that Respondent’s conduct violated the following Rules of Professional Conduct: Rule 4-1.15(i) (Safekeeping Property) in that Respondent failed to promptly deliver to the Sissons and third parties (i.e., Skaggs Hospital) any funds that the Sissons and third parties were entitled to receive;

- a. Rule 4-1.15 (Safekeeping Property) in that Respondent misappropriated the Sissons’ funds;

- b. Rule 4-8.4(c) (Misconduct) in that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation;
- c. Rule 4-1.4 (Communication) for failing to promptly respond to Mrs. Sisson's reasonable requests for information;
- d. Rule 4-8.1 (Bar Admission and Disciplinary Matters) in that Respondent failed to respond to a lawful demand for information from the OCDC;
- e. Rule 4-1.15(m) (Safekeeping Property) for failing to securely store the Sissons' client file for ten years after completion of their representation; and
- f. Rule 4-8.4(d) (Misconduct) in that Respondent engaged in conduct prejudicial to the administration of justice.

The Daughenbaugh Representation. As stated supra, the OCDC conducted an audit of Respondent's trust account as part of its investigation of the Sisson complaint. The audit revealed that on September 7, 2010, Respondent deposited \$91,410.60 into his trust account on behalf of his clients, Glen and Patricia Daughenbaugh. The deposit represented settlement proceeds from the Daughenbaughs' personal injury claims.

On September 29, 2010, Respondent paid the Daughenbaughs the sum of \$32,497.10. Respondent retained a total of \$27,132.20 in his trust account in order to pay the Daughenbaughs' medical bills.

The OCDC audit of Respondent's trust account revealed that no medical bills were paid from the settlement proceeds and that the Daughenbaughs received none of the settlement proceeds retained by the Respondent. On November 4, 2011, however,

Respondent's trust account contained only \$3,053.63, an amount insufficient to hold the funds that Respondent was required to hold on behalf of his clients.

On November 27, 2012, the OCDC directed Respondent to provide it with a complete copy of all expenses and payments regarding the Daughenbaugh representation. Respondent failed to comply with the request, stating that he was unable to locate the Daughenbaugh file.

The OCDC's audit resulted in findings that Respondent had commingled client funds from his trust account with his personal funds in his law firm operating account. In addition, the audit revealed that Respondent paid court costs using his personal or business credit card even though he had collected those costs in advance from his clients. Respondent was directed to provide the OCDC with his credit card records, but failed to comply with this directive.

The record evidence clearly demonstrates that Respondent's conduct violated the following Rules of Professional Conduct:

- a. Rule 4-1.15(i) (Safekeeping Property) in that Respondent failed to promptly deliver to the Daughenbaughs and third party medical providers any funds that the Daughenbaughs and third parties were entitled to receive;
- b. Rule 4-1.15 (Safekeeping Property) in that Respondent misappropriated the Daughenbaughs' funds;
- c. Rule 4-8.4(c) (Misconduct) in that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation;

- d. Rule 4-8.1 (Bar Admission and Disciplinary Matters) in that Respondent failed to respond to a lawful demand for information from the OCDC;
- e. Rule 4-1.15(m) (Safekeeping Property) for failing to securely store the Daughenbaughs' client file for ten years after completion of their representation;  
and
- f. Rule 4-8.4(d) (Misconduct) in that Respondent engaged in conduct prejudicial to the administration of justice.

The record evidence overwhelmingly supports the Panel's findings and conclusions that Respondent violated the above referenced rules and should be subject to discipline by this Court.

## ARGUMENT

### II.

**DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT VIOLATED THE SAFEKEEPING PROPERTY RULES, MISAPPROPRIATED CLIENT AND THIRD PARTY FUNDS, ACTED DECEITFULLY AND DISHONESTLY TOWARD HIS CLIENTS, THE OCDC AND THE DISCIPLINARY HEARING PANEL AND FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT BECAUSE:**

**A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION; AND**

**B. THE COURT HAS RULED THAT ATTORNEYS WHO STEAL MONEY AND ENGAGE IN DISHONEST AND DECEITFUL CONDUCT SHOULD BE DISBARRED.**

In determining the appropriate sanction for attorney misconduct, this Court historically relies on several sources. First and foremost, the Court applies its own standards to maintain consistency, fairness and ultimately, to accomplish the overriding goal of protecting the public and maintaining the integrity of the legal profession. Those standards are written into law when the Court issues opinions in attorney discipline cases. *In re Kazanas*, 96 S.W.3d 803, 806 (Mo. banc 2003).

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.).

The Court also considers as advisory the recommendation of the Disciplinary Hearing Panel who heard the case. In this instance, the Panel made appropriate findings of fact and conclusions of law, but recommended only an indefinite suspension with no leave to apply for reinstatement until after 6 months. Informant rejected the Panel's recommended sanction as deficient given the serious ethical violations present in this case.

The prior opinions of this Court in attorney discipline cases support disbarment in this case. Absent significant mitigating circumstances that are not present in this case, the Court has generally disbarred attorneys who misappropriated client or third party funds. Thus, in 1985, the Court disbarred an attorney for taking \$500 off the top of an \$8,000 settlement he had reached for a client. *In re Mendell*, 693 S.W.2d 76 (Mo. banc 1985). See also: *In re Mentrup*, 665 S.W.2d 324 (Mo. banc 1984); *In re Maier*, 664 S.W.2d 1 (Mo. banc 1984); *In re Witte*, 615 S.W.2d 421 (Mo. banc 1981).

More recently, the Court disbarred an attorney who stole, not from his clients but from his law partners. Noting that mitigating factors were present, the Court found that “certain acts by attorneys so impugn the integrity of the legal system that disbarment is the only appropriate means to restore public confidence in it. Some acts ... may indicate such a lack of respect for the law ... that disbarment may be warranted.” *In re Kazanas*, 96 S.W.3d 803, 809 (Mo. banc 2003), citing *In re Frick*, 694 S.W.2d 473, 480 (Mo. banc 1985).

Most recently, the Court extensively addressed the issue of misappropriation and conversion of client funds by a lawyer in 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 correct 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 factually distinguishable from *Belz*. Respondent did not suffer from any mental disability that caused him to dishonestly misappropriate his client funds.

In addition, Respondent did not self-report his conduct. To the contrary, he failed to communicate with his clients regarding the status of funds that he held on their behalf. Moreover, Respondent has failed to make restitution to his clients and has failed to pay the third parties whose funds he was holding on behalf of his clients. Thus, none of the unique mitigating circumstances existing in the *Belz* case is present in this case.

Under this Court's prior opinions, disbarment is the appropriate discipline for Respondent's professional misconduct.

The ABA Guidelines support disbarment in this case. This Court has often relied on sanction guidelines developed by the ABA's Center for Professional Responsibility. *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994). The ABA Standards for Imposing Lawyer Sanctions (1991 ed), consider the following primary questions:

- (1) What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?)
- (2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?)
- (3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?) and
- (4) Are there any aggravating or mitigating circumstances?

ABA Standards: Theoretical Framework, p. 5.

The ABA Standards "assume that the most important ethical duties are those obligations which a lawyer owes to clients." Application of the ABA Standards requires

the user to initially analyze the first three questions and then, only after a baseline sanction is apparent, to consider aggravating and mitigating circumstances. ABA Standards, Preface: Methodology, p. 3. The drafters intentionally rejected an approach, however, that focused only on a lawyer's intent. Instead, they recognized that sanctioning courts must consider not only the attorney's intent and damage to his clients, but also the damage to the "public, the legal system and the profession." ABA Standards, Preface: Methodology, p. 3.

Having considered this background, the application of these ABA Standards to the case at bar must start with Standard 4.11: **Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.** ABA Standard 4.11. That standard must be the starting point because mitigating and aggravating circumstances are only considered after a baseline standard is determined. And, that standard must be the baseline because the admitted and uncontroverted evidence is that Respondent made conscious choices and took specific action to convert and misappropriate the funds of his clients to his own use. Respondent failed to deliver such funds to his clients or to the deserving third parties and has, even to this day, failed to do so. Respondent's acts and omissions caused actual injury to his clients and to third parties within the meaning of ABA Standard 4.11.

Suspension, which is discussed as a baseline sanction in ABA Standard 4.12, is not applicable in this case because Respondent did not merely commingle his own money

with client and third party funds; instead, he intentionally took and spent his clients' money out of his trust account and used it to pay his personal expenses.

Under the ABA Standards, once a baseline is established, aggravating and mitigating circumstances should be considered. The aggravating circumstances evident in the instant case and found to be present by the Disciplinary Hearing Panel include:

**9.22(b) Dishonest or Selfish Motive**

Respondent siphoned trust account funds belonging to his clients or third parties into his operating account and paid personal expenses with the funds.

**9.22(f) Submission of False Evidence**

Respondent submitted false statements and false evidence to try to cover up the abuse of the trust account when he produced a check to Skaggs Hospital that was never tendered.

**9.22(i) Substantial Experience in the Practice of Law**

Respondent was licensed as an attorney in Missouri on September 30, 1994.

**9.22(j) Indifference to Making Restitution**

The Panel correctly noted that years have passed and the remainder of the clients' money is unaccounted for. The money has not been paid to the clients or to their medical providers and is not in the Respondent's trust account.

The Panel rejected Respondent's attempt to mitigate his conduct by blaming his spouse for the missing clients' funds or to establish through the testimony of former clients that he discharged his duties to them faithfully. **App. 878-879.** Specifically, the

Panel stated, “[t]he Panel is not impressed with the explanation offered by Respondent, and finds his testimony generally questionable and often bordering on the disingenuous.”

Id.

**CONCLUSION**

Respondent engaged in professional misconduct involving communication, safekeeping property, deceit and misrepresentation in his handling of client and third party funds in the both the Sisson and Daughenbaugh matters. The presence of aggravating factors, including (i) a dishonest, selfish and deceitful motivation driving his actions, (ii) the submission of false evidence, (iii) substantial experience in the practice of law, and (iv) an indifference to making full restitution to those injured by his actions, require disbarment.

Respectfully submitted,

OFFICE OF CHIEF DISCIPLINARY  
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**ATTORNEY FOR INFORMANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of September, 2014, the Informant's Brief was sent through the Missouri Supreme Court e-filing system to:

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**Respondent**



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Alan D. Pratzel

**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 7,075 words, according to Microsoft Word, which is the word

processing system used to prepare this brief.



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Alan D. Pratzel