IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
AL DON TROTTER,	)	**Supreme Court #SC93414**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

SAM S. PHILLIPS #30458
DEPUTY CHIEF DISCIPLINARY COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400
(573) 635-2240 (fax)
Sam.Phillips@courts.mo.gov

ATTORNEYS FOR 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

On March 20, 2008, Christina Miess (Miess) and her boyfriend Mark Barton (Barton) were stopped in traffic at a road construction site in Phelps County, Missouri when a tractor-trailer rig ran into the back of their car. Barton was driving Miess' car. Both Miess and Barton were seriously injured. Tragically, Miess' three daughters, riding in the back seat, were killed. Barton was the father of Miess' youngest daughter, Gabrielle. **App. 2-20**.

Miess and Barton were taken to a hospital in Rolla. The next day, Respondent Al Don Trotter (Trotter) met them at the hospital, having been invited by a relative of Miess. **App. 4**. Trotter visited with Miess and Barton; he later reported they agreed to retain him that day and they agreed to evenly split the proceeds of any recovery of any wrongful death claim for their daughter, Gabrielle. **App. 5; 110-111**. Miess was seriously injured and was taking hydrocodone, morphine, and other medications on March 21 and 22. She testified that she did not recall meeting with attorneys in the hospital. **App. 5; 24-25**. On the other hand, Barton and Trotter testified to Miess' coherence during hospital meetings on March 21 and 22, 2008. **App. 2-20; 46-48; 55**.

On March 22, one day after first meeting with Miess, Trotter brought fee agreements to the hospital. Miess and Barton signed the agreements. **App. 93-96**. Trotter also brought Respondent Michael Riehn (Riehn) and told Miess and Barton he would handle the case with Riehn's assistance. Trotter and Riehn were not in the same firm; each was a sole practitioner. **App. 2-20**. Trotter practiced in Monett and Riehn's

office is in Cassville. Since these incidents, Trotter has become the Lawrence County Prosecuting Attorney. **App. 110**.

Trotter's contingency fee agreements indicated nothing about whether expenses were to be taken before or after determining the 33⅓% fee. **App. 93-96; 99-100**. Neither Trotter nor Riehn later provided other writings addressing expenses. **App. 2-20**. Neither the fee agreements nor other writing addressed Riehn's participation in the cases. **App. 2-20**. No document described that Riehn would share a portion of any recovery or fee. But, the record of their case establishes frequent attorney-client communication between Riehn, Barton and Miess.

Trotter and Riehn viewed the accident scene and hired an investigator. **App. 99**. They determined that Barton could not be liable because when it was hit, the car was stopped per a construction crew flagman's direction. They also decided Barton's lack of a valid driver's license created no liability. **App. 5**.

The trucking company, Port City, paid the property damage claim for Miess' car. Ms. Miess was able to receive $22,500.00 from Port City within two months of the accident. **App. 101**. Port City then offered "the rest of its policy limits" (up to $2,000,000.00) "to settle all claims, including Miess' personal injury claim, Barton's personal injury claim, and the wrongful death claims for the three children." **App. 6**. That offer was rejected, at least in part, because Trotter and Riehn had developed a "negligent retention" theory to also make a claim against the company who had hired Port City to transport its goods, and they didn't want to go to trial against that company

(MARS) with an "empty chair" defendant (Port City) who had already settled. **App. 74-76; 101-102**.

Although Barton and Miess lived as a couple at the time they first met Trotter and Riehn, they did not live together following the accident and they split up within the next few months. **App. 13; 39; 100**. At one point Ms. Miess told Riehn that she felt entitled to a larger share than Barton of their daughter's wrongful death claim. At her request, Riehn told Barton that Miess would agree to a 60/40 split. Barton rejected it, insisting on a 50/50 split. Miess testified that Riehn didn't inform her of Barton's response until after she had fired him; Riehn testified, however, that he promptly provided Barton's response. **App. 39-44; 62-63**. The district court found that Riehn did not provide Barton's response until after she discharged him. **App. 6**.

Riehn and Trotter continued representing Miess and Barton from the day after their accident in March 2008 until August 2009. By that time, they had collected the $22,500.00 property damage claim and a smaller med-pay claim from the asphalt company whose construction zone included the accident site. And, they had received and rejected the policy limits offer from Port City. They had negotiated with the lawyers for the two fathers of Miess' other daughters to determine the relative shares that the other fathers (Miess felt they had not been actively involved in their daughters' lives) might receive in any settlement. **App. 85-86**. The parties had apparently agreed, albeit not in writing, that the claims for each daughter's death would be in three equal portions. **App. 86**. But, by the time Miess discharged Trotter and Riehn, they had not resolved the share each of the other fathers would receive, relative to Miess' share. **App. 104-106**.

MARS, the company alleged to have negligently hired Port City, rejected Trotter and Riehn's claims. So, in June 2009, Trotter and Riehn filed suit against MARS and Port City, on behalf of Christina Miess, in her personal injury and wrongful death claims. **App. 102-104**. Although Trotter and Riehn filed the suit in Phelps County Circuit Court, the case was removed to the United States District Court for the Eastern District of Missouri in mid July 2009. **App. 106**. That month, Miess told Riehn that she would not be emotionally able to withstand a trial. **App. 63**. She also told him that she did not want to be deposed. **App. 106-107**.

Ms. Miess asked Riehn for a copy of the fee agreements on August 14, 2009, a few days before discharging Trotter and Riehn. **App. 121**.

On August 16, 2009, Ms. Miess contacted Aaron Sachs, a Springfield attorney not affiliated with either Trotter or Riehn. She told Sachs that she was unhappy with their representation and wanted to retain him. **App. 7; 76-78**. Sachs met with her on August 17, 2009.

Later on August 17, Miess sent a notarized, faxed letter to Riehn, terminating their representation, notifying him that Miess had retained Sachs, and saying that Trotter and Riehn should have no further contact with her. Miess' letter also directed Riehn to send her file to Sachs "as soon as possible." **App. 90**.

Trotter and Riehn attempted to reach Ms. Miess, but she did not take their calls. **App. 107**. The next day, August 18, 2009, Riehn and Trotter sent a letter to Sachs, saying they would take no further action on the case; they refused to withdraw until they spoke directly with Ms. Miess. Their letter also asserted a lien for one third of the

outstanding offer by Port City and a lien against any claims against the driver or MARS. They asserted a claim for their advanced expenses. Finally, they said they continued to represent Mark Barton and intended to intervene in the pending suit on his behalf. **App. 91-92**.

On August 20, 2008, two days after receiving Ms. Miess' letter discharging them and after receiving a letter from Aaron Sachs indicating that he had been retained, Trotter and Riehn requested ethics advice from the Legal Ethics Counsel (LEC). The LEC responded by fax the next day: "Until the court allows you to withdraw, you represent the client. Therefore you have an obligation to continue communicating with your client until you are allowed to withdraw." **App. Rec. 129-130**.

Miess then filed a *pro se* motion to disqualify Trotter and Riehn. Trotter and Riehn filed a brief in opposition to her motion. The trial court, Judge Catherine Perry, granted Miess' motion, disqualifying Trotter and Riehn, and ordered them to deliver Miess' file to her within ten days. The fee agreements were also provided to Miess, after the court ordered them to deliver the file and agreements. **App. 121-123**.

Trotter and Riehn continued to represent Barton after Miess discharged them. But, in January 2010, Ms. Miess moved to disqualify them from representing Mr. Barton; they sought a second advisory opinion from the Legal Ethics Counsel. **App. 108; 128**. The LEC explained they would have a conflict "if any information was obtained in the course of the previous representation of Ms. Miess that could be used to her detriment in the wrongful death action. … Rule 1.9 prohibits you from using information you obtained while you were representing Ms. Miess adversely to her or in a manner that would be to

her disadvantage. It may be that you obtained information that she would not want disclosed or that could disadvantage her position including, but not limited to, her recovery in the wrongful death action. However, it may be to Mr. Miess' advantage to disclose or otherwise use such information." **App. 128**.

The trial court granted Miess' motion to disqualify them from representing Barton. **App. 8**.

After the case settled, disputes over the various attorneys' fees lingered. Judge Perry held hearings on the matters and issued a ruling February 8, 2012. **App. 2-20**. Her decision was based on her analysis of this Court's Rules of Professional Conduct, as they pertained to Trotter and Riehn's conduct. Judge Perry found that Trotter and Riehn had violated the rules in much the same manner as they now stipulate.

Mr. Trotter has been disciplined in the past, but the conduct in the instant case predates the earlier sanctions. His disciplinary history is noted here:

A. Admonition dated February 26, 2009, for violation of Rule 4-1.15 (Safekeeping Property), Rule 4-1.16(d) (Improper Withdrawal), and Rule 4-1.6(a) (Confidentiality).

B. Admonition dated July 23, 2009, for the violation of Rule 4-1.3 (Diligence) and Rule 4-1.4 (Communication).

C. Admonition dated September 2, 2009, for the violation of Rule 4-1.3 (Diligence) and Rule 4-1.4 (Communication).

D. Reprimand issued by the Missouri Supreme Court on March 6, 2012, in Case Number SC92307 for violation of Rule 4-1.3 (Diligence) and Rule 4-1.4 (Communication).

App. 116.

POINT RELIED ON

I.

THE COURT SHOULD PLACE MR. TROTTER ON PROBATION FOR VIOLATING RULES 4-1.5(c), 4-1.5(e), 4-1.7, AND 4-1.9 BECAUSE:

(A) HE HAS ADMITTED THOSE VIOLATIONS;

(B) A REPRIMAND IS THE APPROPRIATE BASELINE SANCTION FOR MR. TROTTER'S MISCONDUCT IN THIS CASE, UNDER THE ABA SANCTION STANDARDS AND GUIDANCE FROM PREVIOUS DECISIONS OF THIS COURT AND OTHERS; AND

(C) AGGRAVATING FACTORS (MR. TROTTER'S DISCIPLINARY HISTORY) ESTABLISH A NEED FOR A MORE SEVERE SANCTION INTENDED TO IMPROVE MR. TROTTER'S PRACTICE AND THEREFORE PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE PROFESSION.

In re Weier, 994 S.W.2d 554 (Mo. Banc1999)

In re Williams, No. SC93305 (Mo. banc October 1, 2013)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.4 (2008)

Rule 4-1.5 (2008)

Rule 4-1.7 (2008)

Rule 4-1.9 (2008)

Rule 4-1.16 (2008)

Rule 5.19

Rule 5.225

ARGUMENT

I.

THE COURT SHOULD PLACE MR. TROTTER ON PROBATION FOR VIOLATING RULES 4-1.5(c), 4-1.5(e), 4-1.7, AND 4-1.9 BECAUSE:

(A) HE HAS ADMITTED THOSE VIOLATIONS;

(B) A REPRIMAND IS THE APPROPRIATE BASELINE SANCTION FOR MR. TROTTER'S MISCONDUCT IN THIS CASE, UNDER THE ABA SANCTION STANDARDS AND GUIDANCE FROM PREVIOUS DECISIONS OF THIS COURT AND OTHERS; AND

(C) AGGRAVATING FACTORS (MR. TROTTER'S DISCIPLINARY HISTORY) ESTABLISH A NEED FOR A MORE SEVERE SANCTION INTENDED TO IMPROVE MR. TROTTER'S PRACTICE AND THEREFORE PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE PROFESSION.

In support of findings of professional misconduct, the Court can consider:

(a) The Federal District Court's findings of fact, issued in February 8, 2012; **App. 2-20**;

(b) the Respondents' admissions of fact and rule violations in their stipulations; **App. 115–136**.

(c) the Disciplinary Hearing Panel's findings and conclusions;

(d) facts contained in the Record and Supplemental Record; and

(e) the Court's de novo application of the Rules of Professional Conduct.

Federal Court Findings

Informant initially charged Respondent with seven violations found by the District Court. When reaching a stipulation with Respondent, however, the charges were narrowed to those four violations Informant perceived to be key to the case. The remaining charges, where no stipulation exists, include the following allegations: that Respondent violated Rule 4-1.4 by failing to promptly deliver a copy of the contract agreement to Miess (COUNT I); that Respondent violated Rule 4-1.9 by continuing to represent Barton after Miess discharged him having confidential information about Miess' emotional capacity for trial (COUNT VI); and that Respondent violated Rule 4-1.16 by failing to promptly withdraw and deliver Miess' file to her when she tried to discharge him (COUNT VII).

In ruling on the attorney's dispute over fees, the Federal District Court reached findings of fact and conclusions of law based on her application of Missouri's Rules of Professional Conduct. If Respondent had not stipulated to violating rules of professional conduct in this case, Informant would have argued he was collaterally estopped from relitigating those findings, applying a 1997 opinion by this court , *In re Caranchini*, 965 S.W. 2d 910 (Mo. Banc 1997); *In re Carey*, 89 S.W.3d 477 (Mo. banc 2002). Under *Caranchini* and *Carey*, however, only the fact findings would not be subject to

relitigation; this Court reviews those findings of fact and makes its own independent determination as to whether the facts establish Rule 4 violations, *Caranchini*, 965 S.W.2d at 913-914.

Violations Admitted

Trotter admits violating the following Rules of Professional Conduct:

A. Trotter and Riehn worked under a contingency fee agreement between Miess and Trotter and violated Rule 4-1.5(c) by failing to include provisions in a contingent fee agreement with Miess stating: (a) the anticipated expenses to be deducted from the recovery, (b) whether the expenses were to be deducted before or after the contingent fee was to be calculated, and (c) which expenses Miess would be liable for, whether or not she prevailed.

B. Trotter violated newly revised Rule 4-1.5(e) by jointly representing Miess with Riehn without obtaining Miess' written consent to his association with Riehn. Though the rule requiring written consent came into effect only a few months prior to the date of the agreement, the representation was a violation.

C. Trotter violated Rule 4-1.7 by failing to obtain written consent as provided for by Rule 4-1.7(b)(4), concurrently representing Miess and Barton without obtaining informed consent, confirmed in writing by Miess of the potential conflict which would arise at the apportionment phase.

D. Trotter violated Rule 4-1.9 by continuing to represent Barton in his claims from the same accident after he was discharged by Miess, without obtaining informed consent, confirmed in writing by Miess, because as parents of one of the deceased children, Miess and Barton had potential competing claims at the apportionment phase.

By admission to four violations - involving rules relating to fees and conflicts - Respondent's guilt of professional misconduct is established. The remainder of the brief will address a fitting sanction.

ABA Sanction Analysis

Violations Related to Fee Agreements

Respondent's violations related to Rule 4-1.5(c) and 4-1.5(e) can be best addressed by a reprimand. When attorneys fail to present clear fee agreements, they create an inconvenience to clients; clear fee agreements that comply with Rule 4-1.5 reduce the likelihood of disputes over fees, and help eliminate unnecessary burden on both lawyer and client (or lawyer and co-counsel) to spend additional time and money to resolve the matter. To help prevent those problems, the Court imposes a few simple requirements on lawyers. Trotter and Riehn failed to comply with two of those requirements.

In some circumstances, including the underlying case that is the subject of this disciplinary matter, trial courts resolve fee disputes. Frequently, lawyers who fail to comply with the Rules or who prepare ambiguous fee agreements are faced with an unsympathetic court. Following common-sense rules of construction, ambiguities are

often resolved against the attorney who drafts the fee agreements. In the underlying case, Judge Perry declined to award expenses to Trotter and Riehn, because they had not included a required explanation as to how and when expenses would be calculated. She did allow them to retain 8% of the amount recovered by Ms. Miess. **App. 2; 19-20**.

Sanctions for disciplinary cases involving attorneys' failure to comply with the provisions of Rule 4-1.5 are addressed in ABA Standard 7.3:

> Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system.

In isolated and lesser cases, admonition is appropriate. ABA Standards for Imposing Lawyer Sanctions (1991 ed.), Standard 7.4.

Violations Related to Conflicts: Knowing or Negligent

Under the oft-cited ABA Sanction Standards, breaches of the rules related to conflicts are addressed in Section 4.3:

> Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

ABA Standard 4.32.

> Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will

adversely affect another client, and causes injury or potential injury to a client.

ABA Standard 4.33.

Under those standards, a key factor is the level of intent exercised by the lawyer when determining the existence of a conflict that might require a waiver. Trotter and Riehn appear to have sincerely believed they were not engaging in an improper conflict of interest by, first, representing both Miess and Mark Barton and, second, continuing to represent Barton after Miess discharged them. In both instances, they failed to seek written informed consent from Miess. They explained that other lawyers often represent drivers and passengers in actions against other drivers. And, they initially analyzed the conflict over apportionment of the unified wrongful death of Miess and Barton's mutual daughter, Gabrielle, as being triggered only after an award had been reached. **App. 64**. Under their initial analysis, even after settlement, the conflict would be triggered only if Barton and Miess then disagreed as to the division of the proceeds.

Ms. Miess told Riehn she would accept a 60/40 split with Barton but not a 50/50 split. Although Riehn testified that he promptly told Miess, the district court found that he did not tell her until after she ended their representation. In either event, it appears that Trotter and Riehn wrongly analyzed potential conflicts and saw no need to seek informed written consent from Miess. Early in the representation, Miess and Barton seemed to share mutual goals and wanted to present a unified front, **App. 67**, but a review of the Court's Comments to Rule 1.7 might have helped Trotter and Riehn properly analyze the conflicts. Comment 22 indicates the need to obtain informed

consent of *future* conflicts. And, Comment 29 provides additional guidance to attorneys of multiple clients who become antagonistic. If not before, as soon as Barton and Miess broke up and reported differing perspectives on apportionment, Trotter and Riehn should have recognized the likelihood of an actual conflict at the apportionment stage. They should have reconsidered the importance of seeking written informed consent. Rule 4-1.7, Comment 29.

The ABA Sanction Standards not only suggest consideration of the level of intent, but also potential and actual injury to clients. ABA Standard 3.0(c). Miess and Barton eventually agreed to a 50/50 split, after Trotter and Riehn were removed from both representations. **App. 31-32**.

The evidence does not support a finding that Trotter and Riehn understood the conflicts and resisted obtaining waivers with the intent of self-benefit. Consequently, the Black Letter and Commentary to ABA Standard 4.3 both support a reprimand as a baseline sanction in this case. Two excerpts from the Commentary may be helpful:

> … In a multiple representation situation, the court in *Gendron v. State Bar of California*, 35 Cal. 3d 409, 673 P.2d 260, 197 Cal. Rptr. 590, (1983), imposed a public reprimand on a public defender who neglected to obtain written waiver of conflict forms from three defendants who were jointly charged with robbery.

ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

> Courts also impose reprimands in cases of subsequent representation. For example, in *In re Drendel*, M.R. 1708 (Ill. 1975), a lawyer represented a

client in a divorce suit against his wife, but the parties reconciled before the hearing and the case was dismissed. About 18 months later, he represented the wife in a divorce action against the husband, but this suit was also dismissed.

Standard 9.33, Commentary, ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

Guidance from Missouri Decisions

Most reported conflicts cases in Missouri involve attorneys who attempt a selfish gain. In those cases, the misconduct often includes other serious violations, such as dishonesty or sexual harassment. A 2002 decision, *In re Carey*, 89 S.W.3d 477 (Mo. Banc 2002), did involve a significant conflict between past and current clients, but also included findings that the lawyer testified falsely in a hearing about the conflict. Carey was suspended. In 1995, an attorney's abuse of his position to attempt to take sexual advantage of a client, along with a completely separate false statement that a judge was improperly influenced in making a ruling, resulted in a suspension. *In re Howard*, 912 S.W.2d 61 (Mo. Banc 1995).

A 1999 contested discipline case offers support for a reprimand in this case. In that case, the Court found that the attorney had violated Rules 4-1.7 and 4-1.8 by failing to disclose his personal financial stake in a corporate vendor to his client, a partnership of doctors formed to purchase or lease the same equipment from that corporate vendor. *In re Weier*, 994 S.W.2d 554 (Mo. Banc1999). In that case, even when his clients asked, Attorney Weier failed to disclose his stake. Judge White, writing for the majority, rejected the arguments - of the Chief Disciplinary Counsel and a dissenting judge - for a

suspension. Weier was reprimanded upon consideration of these mitigating factors: his 32 year career without complaint; his "excellent reputation"; his full disclosure and cooperation with disciplinary authorities; and the "absence of serious harm." The majority relied on ABA Standard 4.33 in imposing the reprimand. *Weier*, 994 S.W.2d at 558. Separate opinions, written by Judge Limbaugh and Special Judge Lowenstein also provide thoughtful discussions of the intent analysis in conflicts cases and the application of ABA Standard 4.32 and 4.33.

Finally, a very recent order issued by the court in a contested conflicts case may also be helpful. On October 1, 2013, the Court reprimanded an attorney for violating Rule 4-1.8. *In re Williams*, No. SC93305 (Mo. banc October 1, 2013).

In contrast to those cases, the conflicts in the instant case, that is, the Respondents' decision to represent both Barton and Miess in a wrongful death case without informed consent about a potential conflict at the apportionment stage, and to continue to represent Mr. Barton after being discharged by Ms. Miess without her informed consent, are in the nature of competing client interests.

Guidance from Other Jurisdictions

A non-exhaustive review of other jurisdiction's sanctions in conflicts cases supports the standards indicated in the ABA Standards 4.32 and 4.33. It seems that conflicts cases often end in suspension or disbarment when the attorney intentionally chooses personal interest over client's interests. On the other hand, discipline cases involving conflicts between attorneys' multiple clients often result in reprimand.

In 2004 the Montana Supreme Court reprimanded an attorney for violating Rule 1.7. That attorney withdrew from representing a long-time client after learning that client was a potential defendant in a wrongful death action brought by a new client. Quoting an earlier federal court case in Ohio, the Montana court noted, "A firm may not drop a client like a hot potato, especially if it is in order to keep happy a far more lucrative client." *In re Johnson*, 84 P.3d 637 (Mt. 2004) quoting from *Picker International, Inc. v. Varian Associates, Inc.* (N.D. Ohio 1987) 670 F.Supp. 1363, 1365.

The New Hampshire Supreme Court, in 2009, censured an attorney who represented both driver (A) and his passenger (B) in a personal injury case against another driver (C) even after learning that his client, driver (A) was likely partially responsible, but had changed his story. *In re Shillen's Case*, 818 A.2d 1241 (N.H. 2003). The New Hampshire court relied on ABA Standard 4.33 and imposed a public censure, after finding neither aggravating nor mitigating circumstances. *Shillen's* at 1248. (For a similar case with a similar result, see the following Montana opinion: *In the Matter of Marra*, 87 P.3d 376 (Mt. 2004)).

Last year, 2012, the Minnesota Supreme Court reprimanded (and placed on probation) an attorney who represented both a borrower and her real estate agent against the same individual lender - in usury actions. The real estate agent was also a borrower with the same lender. The lender counterclaimed against the real estate agent for the agent's role in arranging the mortgage through the agent's mortgage company. The attorney sought informed consent to continue representing both the borrower and the real estate agent but only the borrower signed the waiver. Attorney was disciplined for

continuing to represent both. Like Trotter and Riehn, that attorney resisted the trial court's analysis that a conflict existed. Unlike Trotter or Riehn, the Minnesota attorney continued to deny the existence of the conflict during disciplinary proceedings. Finding the Minnesota attorney's lack of insight and remorse an aggravating factor, the Court reprimanded him and placed him on probation. *In re Disciplinary Action Against Kalla*, 811 N.W.2d 573 (Minn. 2012).

In 2004 the Louisiana Supreme Court imposed a "deferred" three month suspension against an attorney who represented several family members in a will contest. The attorney and one of the siblings settled the contest with the approval of all clients but divided the settlement proceeds without input from the other siblings. The attorney had failed to obtain informed consent from the other siblings to assist their brother in deciding how the proceeds should be distributed. Two judges dissented because they would have imposed a reprimand. Another judge dissented and would have dismissed the case. *In re Hoffman*, 883 So.2d 425 (La. 2007).

Aggravating and Mitigating Circumstances

In mitigation, Trotter and Riehn sought clarification from the LEC when confronted with Ms. Miess' termination and with her later Motion to Disqualify them from representing Mark Barton. And, they have both cooperated with the disciplinary investigation. Finally, they have accepted Judge Perry's findings by acknowledging their misconduct in their stipulations

Mr. Trotter's disciplinary history aggravates. Although his conduct in the instant case predates much of his earlier discipline, his disciplinary history outweighs those

mitigating factors noted above. In order to protect the public and maintain the integrity of the profession, a step-up from this Court's 2012 reprimand is appropriate. And, monitoring is necessary. Mr. Trotter is now a full time prosecutor, so he is unlikely to have the same difficulties that led to this disciplinary matter or his earlier matters, involving safekeeping client property, improper withdrawal, confidentiality breach, diligence, and communication. For those violations, he was admonished three times in 2009 and reprimanded by this Court in 2012 (SC92307).

Both ABA Standard 2.7 and Missouri Supreme Court Rule 5.225 address the use of probation. Frankly, little guidance can be found in ABA Standard 2.7. On the other hand, Rule 5.225 creates some helpful guidelines. Under that Rule, Mr. Trotter seems eligible for probation because he has not committed acts warranting disbarment, he is not likely to harm the public, he can be adequately supervised, and his continued practice will not cause his practice or the profession to fall into disrepute. Rule 5.225.

Despite his new role as a prosecutor, the OCDC and Mr. Trotter agree that he should be monitored. The agreement includes several conditions intended to improve his practice and protect the public. Those conditions, attached to the stipulation, include such items as:

- monitoring;
- quarterly reporting;
- compliance with the Rules of Professional Conduct;
- continued education with the Missouri Association of Prosecuting Attorneys;

- continued education in ethics issues;
- continued education in law practice management; and
- practice under the tutelage of an approved mentor.

CONCLUSION

Informant asks the Court to enter an order:

(a) finding Mr. Trotter guilty of the violations as agreed in the Stipulation;

(b) describing those violations as set out in the Stipulation;

(c) placing him on probation under Rules 5.19 and 5.225;

(d) imposing conditions of probation as provided in the Terms and Conditions attached to the Stipulation; and

(e) requiring him to pay costs and fees in accordance with Rule 5.19(h).

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel

By: _____

Sam S. Phillips #30458
Deputy Chief Disciplinary Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400 – Phone
(573) 635-2240 – Fax
Sam.Phillips@courts.mo.gov

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2013, a true and correct copy of the foregoing was served via the electronic filing system pursuant to Rule 103.08 on:

Jeffrey M. Bauer
415 E. Chestnut Expressway
Springfield, MO 65802

Attorney for Respondent

Sara Rittman
1709 Missouri Blvd., Suite 2, #314
Jefferson City, MO 65109

Attorney for Respondent

Sam S. Phillips

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 5,226 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Sam S. Phillip

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