

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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**IN RE:**

**JAMES M. ROSWOLD,**  
  
**Respondent.**

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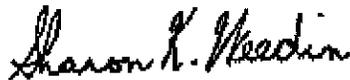
**Supreme Court #SC91893**

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**INFORMANT'S BRIEF**

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OFFICE OF  
CHIEF DISCIPLINARY COUNSEL



SHARON K. WEEDON #30526  
STAFF COUNSEL  
3335 AMERICAN AVENUE  
JEFFERSON CITY, MO 65109  
(573) 635-7400 - PHONE  
(573) 635-2240 - FAX  
[Sharon.Weedin@courts.mo.gov](mailto:Sharon.Weedin@courts.mo.gov)

ATTORNEY FOR INFORMANT

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**STATEMENT OF JURISDICTION**

Jurisdiction over this attorney discipline matter is established by Article V, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law and Mo. Rev. Stat. §484.040 (1994).

## STATEMENT OF FACTS

The following facts are taken from *In re Roswold*, 292 Kan. 136, 249 P.3d 1199 (2011) (per curiam).

In 1990, the Missouri Supreme Court admitted the Respondent to the practice of law. At that time, the Respondent began working for Deacy & Deacy in Kansas City, Missouri. In 1993, the Respondent left the Deacy firm and joined Copilevitz, Bryant, Grey & Jennings, P.C. At the Copilevitz firm, the Respondent began working for Mark Schmid. Mr. Schmid was licensed to practice law only in the state of Missouri. *In re Roswold*, 249 P. 3d at 1201.

In 1994, while employed by the Copilevitz firm, the Respondent sought and obtained a license to practice law in Kansas. The Respondent remained at the Copilevitz firm, working for Mr. Schmid until 1995. At that time, Mr. Schmid formed his own firm and the Respondent left the Copilevitz firm to work for Mr. Schmid as an associate. 249 P. 3d at 1201.

Thereafter, in 1999, the Respondent and Mr. Schmid formed a partnership, Schmid & Roswold, P.C. Throughout the time that they practiced together, their practice included personal injury, worker's compensation, and medical malpractice litigation. 249 P. 3d at 1201-1202.

On February 10, 2004, J.C. contacted Mr. Schmid regarding a potential medical malpractice case against four physicians, Johannes Heynes, Michael McCoy, James Fischer, and Craig Vosburgh. Mr. Schmid accepted the representation and agreed that the

firm would bring suit in Kansas against the four physicians in behalf of J.C. 249 P. 3d at 1202.

After agreeing to represent J.C., Mr. Schmid discussed the case with the Respondent. Mr. Schmid prepared the petition for the Respondent's signature. The Respondent reviewed and signed the petition. On March 18, 2004, the petition was filed in the Shawnee County District Court, case number 04C00393. The Respondent was the attorney of record in case number 04C00393. 249 P. 3d at 1202.

At no time during the pendency of case number 04C00393, did the Respondent apply for the limited admission of Mr. Schmid to the practice of law in Kansas for the purposes of representing J.C. pursuant to Supreme Court Rule 116. Even though he was not admitted to practice in Kansas, Mr. Schmid was lead counsel in J.C.'s case. The Respondent merely reviewed and signed pleadings for Mr. Schmid. 249 P. 3d at 1202.

In April, 2004, the Respondent received a letter from the court advising that case number 04C00393 had been placed on the court's docket for setting or dismissal on July 9, 2004, pending service, submission of a case management order, request for a scheduling conference, and/or the completion of discovery. 249 P. 3d at 1202.

On July 16, 2004, the court dismissed case number 04C00393 without prejudice. At that time, the Respondent and Mr. Schmid allowed the case to be dismissed because they had been unable to find and qualify a medical expert as to the quality of care provided by the physicians. 249 P. 3d at 1202.

On December 31, 2004, the Respondent refiled J.C.'s suit against the four physicians in the District Court of Shawnee County, Kansas, case number 05C00011.

Again, the Respondent reviewed and signed the pleadings. The Respondent was, likewise, the attorney of record in 05C00011. 249 P. 3d at 1202.

Again, at no time during the pendency of case number 05C00011, did the Respondent apply for the limited admission of Mr. Schmid to the practice of law in Kansas for the purposes of representing J.C. pursuant to Supreme Court Rule 116. Mr. Schmid continued to be lead counsel for J.C. and, practically speaking, did all the work on J.C.'s case. The Respondent merely reviewed and signed pleadings for Mr. Schmid. 249 P. 3d at 1202.

On October 23, 2006, the Respondent dismissed Dr. Heynes and Dr. McCoy because he had been unable to find an expert witness to establish their negligence. 249 P. 3d at 1202.

On April 30, 2007, Dr. Fischer filed a motion for summary judgment. On May 4, 2007, Dr. Vosburgh filed a motion for summary judgment. The motions were received by Schmid & Roswold, P.C. and were directed to Mr. Schmid. Mr. Schmid did not inform the Respondent that Drs. Fischer and Vosburgh had filed motions for summary judgment. Mr. Schmid intentionally concealed the motions from the Respondent. 249 P. 3d at 1202.

On May 24, 2007, Mr. Schmid wrote to J.C., mentioned the summary judgment motions, provided a detailed summary of the case status, and recommended settlement. Mr. Schmid, however, did not prepare responses to the motions for summary judgment. 249 P. 3d at 1202.

Thereafter, on July 13, 2007, the court issued a memorandum opinion and entry of judgment, granting the remaining defendants' unopposed motions for summary judgment and dismissing J.C.'s case against the remaining two physicians, Dr. Fischer and Dr. Vosburgh. Mr. Schmid did not inform J.C. or the Respondent that J.C.'s case had been dismissed. Mr. Schmid intentionally concealed the court's memorandum opinion and entry of judgment from the Respondent. 249 P. 3d at 1202.

In August, 2007, Mr. Schmid spoke by telephone with J.C. regarding her case. Mr. Schmid falsely told her that nothing had changed regarding the case prospects and he would see what he could do to get it resolved. 249 P. 3d at 1202-03.

On October 10, 2007, Mr. Schmid spoke with J.C. by telephone again. At this time, Mr. Schmid indicated that he believed that he could settle the case for approximately \$30,000. J.C. authorized Mr. Schmid to settle the case for between \$30,000 and \$35,000. 249 P. 3d at 1203.

On December 16, 2007, Mr. Schmid again spoke with J.C. by telephone. During that conversation, Mr. Schmid falsely informed J.C. that he had settled the case for \$32,500. 249 P. 3d at 1203.

On December 17, 2007, J.C. came to the offices of the Respondent and Mr. Schmid. Mr. Schmid presented J.C. with a settlement sheet. According to the settlement sheet, Mr. Schmid had advanced \$17,676.14 in expenses, Schmid & Roswold, P.C. was entitled to a fee of \$10,833.33, and J.C.'s net recovery was \$3,990.53. 249 P. 3d at 1203.

Mr. Schmid presented J.C. with a release and a trust account check in the amount of \$3,990.53, dated December 17, 2007. At no time, did the Schmid & Roswold, P.C.'s trust account have monies belonging to J.C. 249 P. 3d at 1203.

J.C. was not satisfied with the way in which the settlement proceeds were divided. As a result, she contacted Gary White, an attorney in Topeka, Kansas. Mr. White looked into the case for J.C. and learned that the last two remaining defendants in 05C00011 had been granted summary judgment in July, 2007. Mr. White informed J.C. of his findings. 249 P. 3d at 1203.

On December 21, 2007, J.C. contacted Mr. Schmid and informed him that she was very unhappy with the settlement and that she was considering filing a bar complaint. Mr. Schmid agreed to meet J.C. to discuss the matter further. 249 P. 3d at 1203.

On December 28, 2007, Mr. Schmid met with J.C. in Topeka, Kansas. At that time, Mr. Schmid provided a check to J.C. in the amount of \$10,833, the amount that he had previously claimed was his fee. 249 P. 3d at 1203.

On January 18, 2008, Mr. White wrote to J.C. concerning the assistance he had provided her and declining to represent her further. In the letter, Mr. White detailed the conduct of Mr. Schmid. Mr. White sent a copy of the letter to the Disciplinary Administrator. 249 P. 3d at 1203.

Throughout the time that Schmid & Roswold, P.C. represented J.C., the Respondent never met J.C. The Respondent failed to seek the limited admission of Mr. Schmid pursuant to Supreme Court Rule 116. Despite the fact that the Respondent was

attorney of record in both cases filed in the District Court of Shawnee County, Kansas, the Respondent did nothing to ensure that J.C. was adequately represented. 249 P. 3d at 1203.

Respondent Roswold engaged in a six year pattern of allowing Schmid to practice in Kansas involving approximately 10 other similarly situated cases. He neglected to track cases where he was attorney of record and failed to ensure that Schmid was admitted *pro hac vice* in Kansas cases. Respondent had completed a diversion agreement with Kansas disciplinary authorities regarding Schmid's handling of a Kansas workers compensation case before the J.C. case occurred. 249 P. 3d at 1207.

**POINT RELIED ON**

**THE SUPREME COURT SHOULD IMPOSE THE SAME DISCIPLINE IMPOSED BY THE KANSAS SUPREME COURT BECAUSE RESPONDENT HAS NOT SHOWN, ON THE BASIS OF THE KANSAS RECORD, THAT A LESSER MISSOURI SANCTION IS WARRANTED IN THAT ACTUAL SUSPENSION IS THE APPROPRIATE MISSOURI SANCTION IN A CASE OF MULTIPLE RULE VIOLATIONS ESTABLISHING A PATTERN OF NEGLECT OF DUTIES OWED TO CLIENTS.**

*In re Veach*, 287 S.W. 2d 753 (Mo. banc 1956)

*In re Storment*, 823 S.W. 2d 227 (Mo. banc 1994)

*In re Crews*, 159 S.W. 3d 355 (Mo. banc 2005)

**ARGUMENT**

**THE SUPREME COURT SHOULD IMPOSE THE SAME DISCIPLINE IMPOSED BY THE KANSAS SUPREME COURT BECAUSE RESPONDENT HAS NOT SHOWN, ON THE BASIS OF THE KANSAS RECORD, THAT A LESSER MISSOURI SANCTION IS WARRANTED IN THAT ACTUAL SUSPENSION IS THE APPROPRIATE MISSOURI SANCTION IN A CASE OF MULTIPLE RULE VIOLATIONS ESTABLISHING A PATTERN OF NEGLECT OF DUTIES OWED TO CLIENTS.**

Introduction

On July 18, 2011, disciplinary counsel filed an information pursuant to Rule 5.20 advising the Court that the Kansas Supreme Court had disciplined Respondent Roswold for professional misconduct. The Kansas Supreme Court suspended Respondent's license for one year, but ordered that Respondent could apply for reinstatement after six months with the written approval of the Kansas Disciplinary Administrator (Kansas disciplinary counsel). Missouri disciplinary counsel recommended that this Court suspend Respondent's license with no leave to apply for reinstatement for six months. As a special condition for reinstatement, Informant recommended that Respondent be required to show that he had been reinstated to the Kansas Bar.

In response to the show cause order issued by the Court, Respondent asked the Court to impose a lesser sanction than that recommended by Informant; for example, a reprimand or stayed suspension. Informant thereafter filed a reply to the response.

On October 4, 2011, the Court ordered the matter briefed.

Respondent Roswold does not openly dispute the conclusiveness of the Kansas Supreme Court's adjudication of his misconduct. His response to the show case order should not be allowed to achieve by indirection that which he cannot gain by direct attack. The Kansas Supreme Court found that Mr. Roswold himself violated multiple rules of professional conduct. The rules in question are virtually identical to their Missouri counterparts. There are no differences in Missouri and Kansas disciplinary jurisprudence sufficient to deviate from the discipline imposed by the Kansas Supreme Court.

#### Brief History of Missouri Reciprocal Discipline

The genesis for Missouri "reciprocal discipline" jurisprudence is the case of *In re Veach*, 287 S.W. 2d 753 (Mo. banc 1956). There, the Missouri Supreme Court disciplined Mr. Veach, licensed in both Missouri and Illinois, after the Illinois Supreme Court suspended him for misconduct committed in Illinois. Judge Eager's opinion in *Veach* is a rich source for information about reciprocal discipline.

There were two counts in the case filed in Missouri against Veach. One was based on alleged misconduct that occurred in Missouri and was not part of the Illinois case. Count II was based on the Illinois Supreme Court's order of suspension. Inasmuch as the instant case is predicated entirely on another supreme court's disciplinary opinion, it is to the portion of *In re Veach* dealing with the effect of the Illinois court's decision that attention will be directed.

There was no Missouri Supreme Court reciprocal rule in 1956 when *In re Veach* was decided. The lack of rule was, the Court said, wholly immaterial, as the Court has inherent power to discipline those persons enrolled as members of Missouri's Bar. 287 S.W. 2d at 758.

Veach raised arguments against the merits of the Illinois judgment and opinion, including criticism of the discipline imposed. In holding that "on the present record the judgment and opinion of the Illinois Supreme Court constitutes and is a sufficient ground for disciplinary action by this court," the Court cited the United States Supreme Court case of *Selling v. Radford*, 243 U.S. 46, 37 S. Ct. 377, 61 L.Ed. 585 (1917), as well as numerous other state supreme court decisions. *Veach*, 287 S.W. 2d at 258-59. The Court said:

The judgment appears to us to be one entitled to full faith and credit in so far as it finally adjudicates that in Illinois the respondent was guilty of the misconduct with which he was charged. Such being true, we cannot, in any sense, permit that issue to be relitigated here. Such a judgment is only subject to attack for: (1) lack of jurisdiction over the subject matter; (2) failure to give due notice to the defendants; and (3) fraud in the "concoction" of the judgment. [citations omitted] None of these grounds appears here; and Respondent appeared and contested the Illinois proceedings.

We cannot and will not reinvestigate the merits of those charges.

287 S.W. 2d at 759. Just as Mr. Veach had participated in and contested the Illinois proceedings, Mr. Roswold appeared and contested the Kansas disciplinary case. Mr. Roswold is not entitled to relitigate and argue anew his self-perceived lack of complicity in his partner's misconduct, an argument that inappropriately deflects attention from the many Kansas findings of fact concerning Roswold's own misconduct. The Kansas Supreme Court's decision and sanction rested on Mr. Roswold's misconduct, not just misconduct that was attributed to him through his partnership with Schmid.

The solid policy reasons underlying recognition of a sister state's disciplinary adjudication are eloquently explained in *Veach*.

We cannot escape the general conviction that a lawyer who has, after fair and adequate hearing, been suspended for professional misconduct in a sister state, should not be permitted to practice in Missouri while he remains so suspended, if the ground of his suspension is also a ground for disciplinary action here. If one has been guilty of conduct inconsistent with the standard expected of lawyers as officers of the court, it should make no difference whether the acts were committed on this side or the other side of a theoretical fence. There are no territorial boundaries in cases of such

misconduct. The wrong and the guilt is within the person himself, and he carries it with him; he cannot be mentally and professionally pure in Missouri and impure in Illinois. To hold otherwise would make a mockery of disciplinary proceedings where an attorney has practiced back and forth across state lines.

*Veach*, 287 S.W. 2d at 759. With the proliferation of dual (or more) state licensures, the policies enunciated in *Veach* are even more relevant today than in 1956.

#### Sanction in a Reciprocal Discipline Case

The *Veach* decision did not go so far as to compel imposition of the same sanction as was imposed by the court in which the disciplinary case originated. *Veach* recognizes that the Missouri Supreme Court may “consider what effect we shall give such a judgment here” and that distinctions can be drawn on the degree of the offense and the extent of the punishment. 287 S.W. 2d at 759. Indeed, the Court reiterated in *In re Stormont*, 823 S.W. 2d 227, 230 (Mo. banc 1994), that the Court makes its own independent judgment as to the fitness of the members of its bar, even in a reciprocal case. See *Attorney Grievance Comm. Of Maryland v. Whitehead*, 390 Md. 663, 890 A. 2d 751 (2006) (overview of states’ approaches to sanctions in reciprocal discipline cases).

Accordingly, the Court has occasionally imposed a sanction different than the one imposed by the originating state. In the cases of *In re Weiner*, 530 S.W. 2d 222 (Mo. banc 1975) and *In re Weiner*, 547 S.W. 2d 459 (Mo. banc 1977), the Court ordered an evidentiary hearing by a special master on Respondent’s claim that newly discovered

evidence supported his assertion that the Ohio Supreme Court got his case wrong, then in the later case rejected the special master's findings after hearing, and concluded that no Missouri discipline was appropriate. It should be noted that both *Weiner* decisions included strong dissents by judges who cited *Veach* for the proposition that the sister state's judgment, absent fraud or due process concerns, is not subject to reinvestigation or redetermination.

In *In re Storment*, 873 S.W. 2d 227 (Mo. banc 1994), the Respondent was disbarred by this Court, whereas the Illinois Supreme Court had suspended Storment from the practice for two years for the same conduct. The Missouri Court disbarred because "[d]isbarment is appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information." 873 S.W. 2d at 231. Likewise, the Court increased the discipline in *In re Wiles*, 107 S.W. 3d 228 (Mo. banc 2003) from a Kansas censure (reprimand) to an indefinite suspension with leave to apply for reinstatement after six months, stayed for a one year period of probation. The increased Missouri sanction was requested by disciplinary counsel because of Wiles' extensive prior Missouri disciplinary history of admonitions.

While the Court's inherent authority to do otherwise is not disputed, it generally orders the same discipline as that imposed by the jurisdiction in which the case originated. This is the outcome that should most often occur if the ABA's Model Rules

for Lawyer Disciplinary Enforcement is followed.<sup>1</sup> The model rule anticipates a procedure wherein the identical discipline is imposed in a reciprocal discipline case

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<sup>1</sup> Subsection D of Rule 22 of the Model Rules for Lawyer Disciplinary Enforcement reads as follows:

- D. Discipline to be Imposed.** Upon the expiration of [30] days from service of the notice pursuant to the provisions of paragraph B, this Court shall impose the identical discipline. . . unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:
- 1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
  - 2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
  - 3) The imposition of the same discipline by the court would result in grave injustice; or
  - 4) The misconduct established warrants substantially different discipline in this state.

...

unless the party seeking a different sanction demonstrates, upon the face of the record on which the discipline is predicated, that another discipline is appropriate.

Imposition of consistent sanctions in reciprocal discipline cases advances the strong public protection policies underlying Rule 4 and the attorney discipline system. See Rule 4-8.5, Comment 1. Certainly exceptions to imposition of identical sanctions will occur, but exceptions should be rare. For example, the *Storment* Court declined to suspend as had the Illinois Supreme Court upon concluding that Mr. Storment acted with the intent to deceive, i.e., that his “active role transcends failure to remedy.” 873 S.W. 2d at 231. The *Wiles* Court upped the sanction ante owing to Wiles’ extensive Missouri disciplinary history, which was apparently missing from the Kansas Supreme Court’s sanction analysis.<sup>2</sup>

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If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of this same discipline is not appropriate.

<sup>2</sup> If the conduct that was sanctioned in the originating state does not violate a Missouri rule, then it has been Informant’s practice to not seek reciprocal discipline for the infraction from this Court. For example, Kansas requires that a written contingent fee contract advise the client of his or her right to have the fee contract reviewed for

## Sanction Analysis - Roswold

In analyzing what sanction is appropriate to impose in this Rule 5.20 case, focus should be fixed on the fact that the Kansas client, referred to in *In re Roswold*, 292 Kan. 136, 249 P. 3d 1199 (per curiam) (2011), as “J.C.,” was Respondent Roswold’s client. It is repeated three times in the Kansas Supreme Court’s statement of facts that Respondent at no time applied for the limited admission of Mr. Schmid to the practice of law in Kansas for the purposes of representing J.C. *Roswold*, 249 P. 3d at 1202 (paragraphs 7 and 11), 1203 (paragraph 25). Respondent Roswold was J.C.’s only attorney of record throughout the Kansas state court proceedings. Notwithstanding that Respondent’s non-Kansas licensed partner, Schmid, performed nearly all representational activities in Kansas on J.C.’s behalf (aside from reviewing and signing pleadings), the only attorney representing J.C., so far as the Kansas judicial system was aware, was Respondent Roswold. The fact that Roswold, not Schmid, was J.C.’s only attorney of record is important. “Law firms don’t represent clients; lawyers do.” *Strong v. Gilster Mary Lee Corp.*, 23 S.W. 3d 234, 240 (Mo. App. 2000).

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reasonableness by the court having jurisdiction over the case. KRPC 1.5(d) (e). Missouri’s analogous rule does not grant a right to a reasonableness review of contingency fee contracts, so obviously no such notice is required in Missouri. See Rule 4-1.5 (c). But see *Kentucky Bar Assn. v. Trainor*, 277 S.W. 3d 604. (Ky. 2009) (Kentucky Supreme Court imposes reciprocal discipline for attorney’s failure to provide a type of notice required by Ohio rules, but not in Kentucky rules.).

Respondent Roswold was personally responsible, not merely guilty by association with a crooked partner, for the following misconduct committed during Respondent's representation of J.C.: lack of competence (KRPC 1.1; Missouri Rule 4-1.1) (Roswold did nothing to ensure J.C. was being adequately represented), lack of diligence (KRPC 1.3; Missouri Rule 4-1.3) (Roswold took no active role in J.C.'s representation), lack of communication (KRPC 1.4(a); Missouri Rule 4-1.4(a))(Roswold never even met personally with or communicated directly with J.C. and was thereby unaware of Schmid's malfeasance toward his client), failure to put contingency fee contract in writing (KRPC 1.5(d); Missouri Rule 4-1.5 (c)), failure as a partner to ensure the partnership had in effect measures to conform Schmid's compliance to the Rules of Professional Conduct (KRPC 5.1(a); Missouri Rule 4-5.1(a)), his responsibility as Schmid's partner for Schmid's actions in that he knew of Schmid's conduct at a time when its consequences could have been avoided or mitigated but failed to take reasonable remedial action (KRPC 5.1(c)(2); Missouri Rule 4-5.1(c)(2)),<sup>3</sup> assisting Schmid in

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<sup>3</sup> Respondent Roswold asserts in his response to the show cause order that his partner Schmid successfully hid his malfeasance from Roswold for years, suggesting that Roswold did all he could to mitigate his partner's malfeasance as soon as he became aware of it. Yet, the Kansas Supreme Court adopted the hearing panel's statement that Roswold "stipulated that he violated KRPC 5.1(c) (2). As such, the Hearing Panel concludes that the Respondent had comparable managerial authority and he knew of Mr.

practicing law in Kansas when Schmid was not authorized to do so (KRPC 5.5(b); Missouri Rule 4-5.5 (a)), and knowingly assisting Schmid in violating the Kansas rules by allowing Schmid to meet with, advise, and otherwise represent J.C. in Kansas litigation (KRPC 8.4 (a); Missouri Rule 4-8.4(a)).

While acknowledgement of Roswold's primary responsibility for his Kansas sanctioned conduct is important, it is equally important for the Missouri Supreme Court to take into consideration that Respondent Roswold admitted his violations of the rules during oral argument before the Kansas Supreme Court and during his Kansas disciplinary hearing. 249 P. 3d at 1209. This Court's case of *In re Carachini*, 956 S.W. 2d 910 (Mo. banc 1997) precludes Roswold from relitigating the facts found in the course of the Kansas disciplinary process. Offensive non-mutual collateral estoppel applies because the following four factors are present: 1) the issue of Mr. Roswold's violation of identical rules of professional conduct is the same in both the Missouri and Kansas disciplinary cases, 2) the Kansas disciplinary case was on the merits, 3) Mr. Roswold was a party in his Kansas disciplinary case, and 4) Roswold was represented and had a full and fair opportunity in the Kansas disciplinary case to litigate the facts. The *Caranchini* case leaves to this Court the conclusion whether Respondent's conduct constitutes violation of Missouri rules. Here, however, Mr. Roswold has admitted that he violated the Kansas rules, which are virtually identical to Missouri's rules.

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Schmid's conduct at a time when its consequences could have been avoided or mitigated." 249 P. 3d at 1204.

## Comparison of Missouri and Kansas *Pro Hac Vice* Rules

While the relevant Kansas and Missouri Rules of Professional Conduct involved in the two states' disciplinary proceedings are virtually identical, the Kansas and Missouri *pro hac vice* rules are concededly different. Whether that difference merits a lower disciplinary sanction in Missouri is questionable. The *pro hac vice* rules are set forth in the appendix. Two aspects of the two states' rules are of particular relevance to this case: the point at which the application or motion to practice *pro hac vice* must be filed, and the role of the resident, or "designated attorney," in the process.

Missouri's Rule 9.03 provides that a visiting attorney, i.e., an attorney not licensed by the Missouri Bar but licensed and in good standing in another state's bar, may practice here in a particular case under certain conditions. The visiting attorney "shall file with his or her initial pleading" a statement satisfying the conditions for admission *pro hac vice*. Thus, Missouri requires that the statement requesting admission *pro hac vice* be filed with the initial pleading by the visiting lawyer.

The Kansas rule, by contrast, requires that the motion to practice in a particular case be filed by a member of the Kansas Bar "as soon as reasonably possible but no later than the date the out-of-state attorney files any pleading or appears personally." Thus,

the Kansas rule requires that the motion be filed by a Kansas attorney of record “as soon as reasonably possible.”<sup>4</sup>

The other difference in the two states’ *pro hac vice* rules that merits discussion is the description of the role each state anticipates its resident or designated attorney will play in the case. The Kansas rule requires the Kansas attorney of record to be “actively engaged in the conduct of the case; shall sign all pleadings, documents, and briefs; and shall be present throughout all court and administrative appearances.” The Missouri rule states, with respect to the local, designated attorney, that he or she must have an office in Missouri and “shall enter an appearance as an attorney of record.” The differing approaches toward the role of “local counsel” may, at first blush, appear to favor the argument raised by Respondent in his response to the show cause order. Closer analysis, however, suggests otherwise.

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<sup>4</sup> Respondent Roswold read the foregoing language to mean he was not required to seek his partner Schmid’s admission *pro hac vice* until there had been a court appearance in the case. 249 P. 3d at 1208. The Kansas Supreme Court rejected that interpretation, noting that Roswold’s reading of the rule allowed his partner Schmid to participate in Kansas depositions, other pretrial matters with opposing Kansas counsel, and mediation, all without notice to Kansas courts and opposing counsel that Schmid was not licensed in Kansas. Tellingly, according to the Kansas court’s opinion, this practice ultimately aided Schmid in withholding and concealing information about the case from Roswold.

*Pro hac vice* rules exist for the protection of the public. A nonresident attorney is prohibited from practicing law in Missouri except as provided in Rules 4-5.5, 9.02, 9.03, or 9.04. Supreme Court Rule 9.01. Mr. Schmid's conduct in Kansas, just as it would have been in Missouri if Schmid had been licensed only in Kansas and his conduct had occurred in Missouri, was the unauthorized practice of law. If the tables were turned, Schmid would have been required to sign the petition and file his statement seeking *pro hac vice* admission with the petition. His failure to do so would have made his (hypothetical) active representation of J.C. in Missouri depositions, pretrial discussions with opposing Missouri counsel, and mediation, the unauthorized practice of law. See *Strong v. Gilster Mary Lee Corp.*, 23 S.W. 3d 234, 239 (Mo. App. 2000).

This Court prohibits the unauthorized practice of law to protect the public from the provision of services by those not legally qualified to perform them. *Haggard v. Division of Employment Security*, 238 S.W. 3d 151, 154 (Mo. banc 2007). Similarly, the Kansas Supreme Court noted that the purpose of the Kansas *pro hac vice* rule is to "protect the public by ensuring familiarity with state law and local practices. . . . Without admission *pro hac vice*, out-of-state attorneys appearing in Kansas courts, or actively participating in pretrial proceedings such as depositions or mediations, would be engaged in the unauthorized practice of law." *In re Roswold*, 249 P. 3d at 1208.

Both states' *pro hac vice* rules exist to protect the public from the unauthorized practice of law. Missouri's rules, while not expressly requiring the active participation of Missouri local counsel in all Missouri representational activities, instead requires the non-

Missouri Bar licensed attorney seeking to practice in a particular Missouri case to apply for and obtain *pro hac vice* admission with the filing of his or her initial pleading, thereby preempting the sort of practice that, apparently, had become commonplace in Schmid and Roswold's practice.

That practice, if the states' names are reversed, would be this. Schmid and Roswold are both licensed in Kansas; Roswold is also licensed in Missouri. Schmid meets with a Missouri resident and agrees to file a medical malpractice or some other case for the client in Missouri. Schmid drafts a petition, has Roswold review and sign it (the only attorney's signature on the petition is Roswold's), and then the petition is filed in Missouri state court. Roswold thereafter knowingly disregards his professional responsibilities concerning Schmid's unlicensed practice of law in that he knows that Schmid (and not Roswold) regularly meets with and advises Missouri clients and signs notices to take Missouri depositions, all the while knowing that only Schmid would appear for the depositions. Roswold never meets or communicates with his Missouri client, fails to monitor what Schmid is doing with his client's case, fails to put his client's contingency fee contract in writing, and fails to take mitigating action after learning of his partner's misconduct. Roswold had previously entered into a diversion agreement with Missouri disciplinary authorities regarding Schmid's handling of a Missouri workers compensation case and was aware of a lawsuit filed against the Schmid and Roswold firm

as a consequence. Further, the record shows that Roswold had engaged in similar practices with Schmid in 10 Missouri cases over a six year period.<sup>5</sup>

Even though differences exist in the states' *pro hac vice* rules, Missouri would not have condoned the unauthorized practice of law by Schmid that occurred in this case. Likewise, Roswold's knowing participation in Schmid's unauthorized practice, combined with his personal violation of multiple rules of professional conduct in the course of his representation of client J.C., more than support the disciplinary sanction imposed by the Kansas Supreme Court.

#### Other Alleged Differences in Missouri and Kansas Rules

##### Do Not Justify Lower Sanction

Respondent argues in his response to the show cause order that other reasons (aside from the differing *pro hac vice* rules) exist to support a lower sanction. For example, Respondent states that Missouri law does not impose a duty to supervise a senior lawyer. In point of fact, both states' rule 5.1(c)(2) read the same. That subsection of rule 5.1 makes a lawyer in a firm responsible for a partner's (without mention of seniority) misconduct if the lawyer "knows of the conduct at a time when consequences

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<sup>5</sup> Again, "Missouri" and "Kansas" have been switched in this paragraph for illustrative purposes.

can be avoided or mitigated but fails to take reasonable remedial action.”<sup>6</sup> Again, Respondent admitted violation of this rule during the Kansas disciplinary proceeding.

Even if Respondent had not admitted violation of KRPC 5.1(c)(2), the Kansas court takes pains to explain it found Respondent knowingly disregarded his professional responsibilities toward J.C., and was not merely negligent, as the Kansas hearing panel had determined. The Kansas Supreme Court cited the following factors in support of its conclusion that Respondent’s mental state was knowing, not negligent. Respondent:

(1) knew Schmid was meeting with, advising, and representing J.C. in her Kansas lawsuit when Schmid was not authorized to practice law in Kansas and not admitted *pro hac vice* by the district court; (2) knowingly assisted Schmid in the unauthorized practice of law by signing notices to take depositions that only Schmid planned to attend; and (3) knew about a prior problem relating to Schmid’s representation of clients in a Kansas-based case. As to this latter point, the record reflects Respondent entered into a diversion agreement with the Disciplinary Administrator regarding Schmid’s handling of a Kansas workers compensation case and was aware there was a civil lawsuit against Respondent’s law firm

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<sup>6</sup> It is not disputed that Roswold and Schmid were equal partners (and had been since 1999) in their firm.

concerning the same incident. This knowledge coincided with respondent's representation of J.C. We further note the panel found there were approximately 10 other cases involving circumstances similar to those in J.C.'s case, which led the panel to conclude that Respondent engaged in a pattern of misconduct spanning a 6-year time period. We agree with that conclusion. 249 P. 3d at 1207.

The Kansas court's conclusion is similar to this Court's discussion of mental state in *In re Crews*, 159 S.W. 3d 355 (Mo. banc 2005). In *Crews*, the Court could not say that Mr. Crews intentionally deceived his clients. The Court could and did conclude that Mr. Crews' knowing failures to perform duties owed to his clients, and the consequent harm to the clients, warranted suspension. 159 S.W. 3d at 361.

Mr. Roswold knew that Schmid had engaged in a pattern of representing Kansas clients in a way that was contrary to Kansas rules and injurious to clients. He had previously completed a diversion agreement with Kansas disciplinary authorities regarding his partner's representation of a Kansas client. There was record evidence that approximately ten other cases involving circumstances similar to those in J.C.'s had occurred in Kansas over a six year time period. 249 P. 3d at 1205, 1207. "Suspension is generally appropriate when a lawyer knowingly fails to provide services for a client, or engages in a pattern of neglect, and thereby causes injury or potential injury to the client." *In re Frank*, 885 S.W. 2d 328, 334 (Mo. banc 1994). The Kansas Supreme

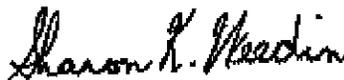
Court's conclusion that Respondent acted knowingly is amply supported by the Kansas court's decision and is in accord with Missouri law.

**CONCLUSION**

Respondent has not, and cannot, from the face of a record developed with his full notice and participation, show cause why this Court's sanction should be less than an actual suspension. Missouri law supports actual suspension in a case of multiple rule violations establishing a pattern of neglect of duties owed to clients. Respondent should be suspended with no leave to apply for reinstatement for six months. Informant further recommends that, as a special condition for reinstatement pursuant to Rule 5.28(b)(3), Respondent be required to provide proof that he has been reinstated to practice law in Kansas and is in good standing with that state's bar.

Respectfully submitted,

ALAN D. PRATZEL #29141  
Chief Disciplinary Counsel



By: \_\_\_\_\_  
Sharon K. Weedon #30526  
Staff Counsel  
3335 American Avenue  
Jefferson City, MO 65109  
(573) 635-7400 - Phone  
(573) 635-2240 - Fax

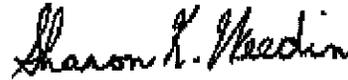
ATTORNEY FOR INFORMANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17 day of November, 2011, two copies of Informant's Brief and a CD containing the Brief in PDF format have been sent via First Class United

-Mail, postage prepaid, to:

Michael Patrick Downey  
7700 Forsyth Blvd.  
Suite 1800  
St. Louis, MO 63105-1847



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Sharon K. Weedin

**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 6,169 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Trend Micro Anti-Virus software was used to scan the disk for viruses and that it is virus free.



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Sharon K. Weedin

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