IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	**)**	
	)	
W. SCOTT POLLARD,	**)**	**Supreme Court #SC88179**
	)	
Respondent.	**)**	

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Background and Disciplinary History

W. Scott Pollard (sometimes referred to herein as "Respondent") was licensed as an attorney in 1966. **App. 2**. Mr. Pollard practices in St. Louis County, Missouri. **App. 3**.

In September of 1994, the Missouri Supreme Court publicly reprimanded Mr. Pollard for violation of Rules 4-1.3 (diligence) and 4-1.4 (communication). **App. 3.** Mr. Pollard accepted an admonition issued in January of 2002 for violation of Rules 4-1.1 (competence), 4-1.3 (diligence), and 4-1.4 (communication). **App. 2**. Respondent accepted an admonition issued in April of 2002 for violation of Rules 4-1.3 (diligence), and 4-1.4 (communication). **App. 2**. Respondent accepted an admonition issued in August of 2003 for violation of Rules 4-1.3 (diligence), 4-1.4 (communication), and 4-8.1(b) (failure to cooperate with disciplinary authorities). **App. 2-3**.

Stanton Complaint (Count I)

On June 13, 2000, Paul Stanton consulted with Respondent concerning potential workers' compensation claims for carpal tunnel syndrome and an injury to his left knee. **App. 9**. Respondent took detailed notes of the visit and had Mr. Stanton sign two (2) blank Claim for Compensation forms. **App. 9**. Respondent's notes reflect that, according to Mr. Stanton, the carpal tunnel "came out about a year ago." The notes further reflect the name and address of a doctor that Mr. Stanton had seen for his carpal tunnel injury. Respondent's notes indicate that Mr. Stanton's knee injury occurred on April 17, 1998.

Sometime after the initial consultation Respondent began preparing the claim forms for Mr. Stanton's carpal tunnel and knee injuries. **App. 9**. It appears that the workers' compensation two year limitations period for Mr. Stanton's knee injury claim lapsed in April 2000, just two months prior to Mr. Stanton's initial consultation with Respondent. Mr. Stanton's potential carpal tunnel claim, however, was still conceivably a viable claim, as the injury manifested itself approximately a year before Mr. Stanton's June 13, 2000 consultation with Respondent. Thus the statute of limitations was due to expire in 2001.

After the June 13, 2000 consultation and continuing through February 2003, Mr. Stanton frequented Respondent's office to discuss his injury claims. **App. 9**. Respondent's client file for Mr. Stanton contains notes of Mr. Stanton's subsequent visits to Respondent's office on September 7, 2000; July 3, 2002; and February 11,

2003. During these visits, Respondent attempted to persuade Mr. Stanton to pursue a disability claim for his injuries rather than filing a workers' compensation claim. **App. 14**.

Respondent failed to file the Claim for Compensation form for Mr. Stanton's carpal tunnel syndrome prior to the expiration of the statute of limitations. **App. 14**. Respondent's file contains no notes indicating that he advised Mr. Stanton that he was not going to file the claim or that he advised Mr. Stanton of the impending statutes of limitations deadline. **App. 31**.

In or about early 2004, Mr. Stanton retained another attorney to represent him in pursuing a workers' compensation claim for his carpal tunnel syndrome. Mr. Stanton's new attorney advised him of the limitations problem but, nevertheless, filed a claim with the Division of Workers' Compensation. Mr. Stanton's employer, however, successfully raised the statute of limitations as a defense to his injury claim.

Menner Complaint (Count II)

Larry Menner, a California resident, retained Respondent to represent him in a matter concerning the probate of his father's estate. **App. 16**. Respondent mailed a fee contract to Mr. Menner. **App. 16**. The fee contract provided for a "non-refundable retainer fee" in the amount of $4,000.00 and an additional charge of $1,000.00 to be paid in advance for anticipated litigation costs. **App. 16**. On March 17, 2006, Mr. Menner signed and returned to Respondent the fee agreement along with a cashiers' check in amount of $5,000.00 representing the $4,000.00 non-refundable attorney's fee and $1,000.00 for anticipated litigation costs. **App. 16**.

Mr. Menner was aware that the statute of limitations was due to expire on the probate claim on June 26, 2006. During the first week of April 2006, Mr. Menner contacted the Probate Court concerning the status of the probate claim. Upon learning that Respondent had not filed any pleadings with the court, Mr. Menner forwarded a letter to Respondent on April 8, 2006, terminating the attorney-client relationship and requesting a full refund of his fees and costs previously deposited with Respondent. Mr. Menner also mailed the letter via Express Mail on April 10, 2006. **App. 16**.

Respondent's office received Mr. Menner's letter terminating the relationship on April 11, 2006. **App. 16-17**. On April 12, 2006, Respondent filed with the Probate Court a one page Application for Court Order for Rejection or Probate of Will. **App. 17**. Thereafter, Mr. Menner contacted Respondent and informed

Respondent that he had no authority to file the Motion since the attorney-client relationship had been terminated on April 11, 2006. Over the course of the next several weeks, Mr. Menner repeatedly requested the refund of the $5,000.00 paid for attorney's fees and advanced litigation expenses. **App. 17**. Respondent ultimately refunded the $1,000.00 advanced for costs and expenses. **App. 17**. At the disciplinary hearing on October 12, 2006, Respondent also refunded to Mr. Menner an additional $2,000.00 representing unearned fees. **App. 60**.

Unauthorized Practice of Law (Count III)

Prior to February 2005, Respondent was delinquent in his compliance with the Continuing Legal Education Requirements of Rule 15.05 of the Missouri Supreme Court Rules for the following reporting years: 2001-2002; 2002-2003; and 2003-2004. Respondent met his requirements for the reporting years 2001-2002 on February 1, 2005. Respondent eventually met his requirements for the reporting years 2002-2003 on February 15, 2005, and his requirement for the 2003-2004 reporting period on March 1, 2005. Prior to February 2006, Respondent was delinquent for the 2004-2005 reporting year. Respondent met the requirements for that reporting period on March 27, 2006.

Between August 2002 and February 2005, and between August 2005 and February 2006, Respondent continued to practice law in the State of Missouri and/or hold himself out as entitled to practice. **App. 31**.

Disciplinary Case History

In May of 2006, a two count Information was filed against Respondent W. Scott Pollard based upon a finding by Division I of the Region X Disciplinary Committee (the "Division I Disciplinary Committee") that probable cause existed to believe that Respondent was guilty of professional misconduct with respect to Mr. Stanton's complaint. The Information also included a count for Respondent's unauthorized practice of law due to his failure to comply with the Continuing Legal Education Requirements of Rule 15.05. Respondent filed an Answer on July 28, 2006. A disciplinary hearing panel ("DHP") was appointed and a hearing was scheduled for October 12, 2006.

On June 19, 2006, prior to Respondent's Answer to the Information pertaining to Mr. Stanton's complaint, the Division I Disciplinary Committee received the Larry Menner complaint. On July 20, 2006, the Division I Disciplinary Committee found that probable cause existed to believe that Respondent was also guilty of professional misconduct with respect to Mr. Menner's complaint. Respondent was later informed that the Division I Disciplinary Committee voted to issue an Information in the Menner case. Counsel for Informant notified Respondent of the pending Menner Information. Thereafter, Respondent and Informant engaged in discussions and negotiations in an attempt to reach an agreement as to the violations and appropriate discipline to resolve the pending complaints.

Just prior to the scheduled October 12, 2006, DHP hearing, Respondent and Informant, through a cooperative process of negotiation, reached an agreement to enter into a stipulation that resolved the factual basis for discipline for the Stanton and Menner complaints. The parties also stipulated that Respondent's conduct, with respect to his representation of Mr. Stanton, violated Rules 4-1.1 (competence), 4-1.3 (diligence), and 4-1.4 (communication), and that his conduct, with respect to his representation of Mr. Menner, violated Rules 4-1.5(a) (reasonableness of fees) and 4-1.16(d) (refunding unearned fee upon termination). Respondent and Informant further stipulated that Respondent's failure to comply with Rule 15.05 (continuing legal education requirements) was a violation of Rule 5.5(c) (unauthorized practice of law for failure to comply with Rule 15). Respondent and Informant agreed to recommend that Respondent be publicly reprimanded. **App. 35**.

On October 12, 2006, the morning of the DHP hearing, counsel for Informant filed a three count Amended Information to include the Menner complaint. **App. 12-19**. During the DHP hearing, Respondent orally admitted to the allegations pertaining to the Menner complaint in the Amended Information. **App. 59**. Counsel for Informant and Respondent orally advised the disciplinary hearing panel of the agreed and recommended sanction of a public reprimand.

After the DHP hearing, on October 18, 2006, Respondent and Informant's counsel submitted a Joint Stipulation of Facts, Joint Proposed Conclusions of Law, and Joint Recommended Discipline to the disciplinary hearing panel recommending the sanction of public reprimand. On November 13, 2006, the panel issued its

"Disciplinary Hearing Panel Decision," and concurred with the recommended sanction. **App. 39-49**.

The joint stipulation and recommendation for a public reprimand was filed with this Court on December 8, 2006. The Court activated a briefing schedule on January 30, 2007.

POINTS RELIED ON

I.

VIOLATIONS

RESPONDENT IS SUBJECT TO DISCIPLINE BY THIS COURT IN THAT:

A. RESPONDENT DEPRIVED PAUL STANTON OF HIS RIGHT TO FILE A WORKERS' COMPENSATION INJURY CLAIM WHEN HE NEITHER FILED STANTON'S CLAIM WITHIN THE STATUTES OF LIMITATIONS NOR REASONABLY ADVISED STANTON THAT HE WAS NOT GOING TO UNDERTAKE TO REPRESENT HIM ON THE WORKERS' COMPENSATION MATTER; ***(COUNT I);***

B. RESPONDENT CHARGED LARRY MENNER A FEE THAT WAS EXCESSIVE AND UNREASONABLE BECAUSE THE FEE FAILED TO REFLECT THE ACTUAL TIME AND LABOR EXPENDED ON THE MATTER; AND

(COUNT II);

C. RESPONDENT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW BY FAILING TO COMPLY WITH THE CONTINUING LEGAL EDUCATION REQUIREMENTS OF RULE 15.05.

(COUNT III).

In re Murphy, 732 S.W.2d 895 (Mo. banc 1987)

In re Maier, 664 S.W.2d 1 (Mo. banc 1984)

In re Lang, 641 S.W.2d 77 (Mo. banc 1982)

In re Shelhorse, *IV*, 147 S.W.3d 79 (Mo. banc 2004)

ABA/BNA Lawyers' Manual on Professional Conduct 31:401 (1997)

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4

Rule 4-1.5(a)

Rule 4-1.16(d)

Rule 4-5.5(c)

Rule 15.05

POINTS RELIED ON

II.

SANCTION

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT IN ACCORDANCE WITH THE JOINT RECOMMENDATION OF THE PARTIES BECAUSE, UNDER THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, PUBLIC REPRIMAND IS AN APPROPRIATE SANCTION FOR RESPONDENT'S NEGLIGENT FAILURE TO PRESERVE STANTON'S INJURY CLAIM *(COUNT I)*, RESPONDENT'S CHARGE OF AN UNREASONABLE AND EXCESSIVE FEE *(COUNT II)*, AND RESPONDENT'S UNAUTHORIZED PRACTICE OF LAW *(COUNT III).*

In re Donald Fasig, 444 N.E.2d 849 (Ind. 1983)

In Re Littleton, 719 S.W. 2d 772, 777 (Mo. banc 1986)

In re Shelhorse, IV, 147 S.W.3d 79 (Mo. banc 2004)

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

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.1

Rule 4-1.3

Rule 4-1.4

Rule 4-1.5(a)

Rule 4-1.16

Rule 4-5.5(c)

Rule 15.05(a)

ARGUMENT

I.

VIOLATIONS

RESPONDENT IS SUBJECT TO DISCIPLINE BY THIS COURT IN THAT:

A. RESPONDENT DEPRIVED PAUL STANTON OF HIS RIGHT TO FILE A WORKERS' COMPENSATION INJURY CLAIM WHEN HE NEITHER FILED STANTON'S CLAIM WITHIN THE STATUTES OF LIMITATIONS NOR REASONABLY ADVISED STANTON THAT HE WAS NOT GOING TO UNDERTAKE TO REPRESENT HIM ON THE WORKERS' COMPENSATION MATTER; ***(COUNT I);***

B. RESPONDENT CHARGED LARRY MENNER A FEE THAT WAS EXCESSIVE AND UNREASONABLE BECAUSE THE FEE FAILED TO REFLECT THE ACTUAL TIME AND LABOR EXPENDED ON THE MATTER; AND

(COUNT II);

C. RESPONDENT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW BY FAILING TO COMPLY WITH THE CONTINUING LEGAL EDUCATION REQUIREMENTS OF RULE 15.05.

(COUNT III).

The facts and ethical violations have been agreed to by stipulation. The parties stipulated that Respondent's failure to preserve Stanton's workers' compensation injury claim violated the basic duties of competence, diligence and communication owed to client. The parties further stipulated that the $4,000.00 fee charged to Mr. Menner was excessive and unreasonable, in violation of Rules 4-1.5(a) (reasonableness of fees) and 4-1.16(d) (refunding unearned fee upon termination). The parties stipulated further that Respondent engaged in the unauthorized practice of law by failing to comply with the continuing legal education requirements for reporting years 2001-2002, 2002-2003, 2003-2004, and 2004-2005.

A. Respondent failed to file Stanton's claim within the statutes of limitation and also failed to advise Stanton that he was not going to undertake to represent him on the Workers' Compensation Claim.

(Count I).

Failure to file a client's lawsuit in time to avoid the running of a statute of limitations has been called a "classic form of neglect." ABA/BNA Lawyers' Manual

on Professional Conduct 31:401 (1997). A client implicitly trusts his lawyer to protect his claim from being barred by a statute of limitations. Mr. Stanton clearly entrusted his workers' compensation to Respondent. After the initial consultation, and over the course of nearly two years, Mr. Stanton frequented Respondent's office to discuss his injury claims. Over the course of this time, Respondent failed to reasonably inform and communicate to Mr. Stanton that he was neither going to file the workers' compensation claim nor undertake to represent him in this matter. Respondent neither reasonably communicated to Mr. Stanton the impending statute of limitations deadline applicable to his injury claim. Respondent's file is completely devoid of any letter of non-representation or any written correspondence informing Mr. Stanton of the limitations statute applicable to his injury. Respondent's neglect deprived Mr. Stanton of the ability to timely consult with other counsel, ultimately resulting in the time bar of Mr. Stanton's right to pursue his injury claim.

Respondent could have preserved Mr. Stanton's claim with minimal cost or effort. The Division of Workers' Compensation imposes no filing fee for a Claim of Compensation and, Respondent's file contained a nearly completed Compensation Claim form which was even executed by Mr. Stanton. Accordingly, Respondent could have filed the Compensation Claim (or instructed Mr. Stanton to do so) at no cost to him or Mr. Stanton.

Respondent's neglect in failing to file the claim prior to the expiration of the statute combined with his failure to reasonably communicate to Mr. Stanton the statute of limitations date and his refusal to undertake the representation of this

matter, resulted in serious injury to his client. Mr. Stanton did not receive any compensation for his injury claim, which was permanently extinguished by Respondent's lack of diligence.

B. Respondent's $4,000.00 nonrefundable retainer fee was excessive and unreasonable. (Count II).

Rule 4-1.5(a) requires that any fee charged to a client must be reasonable. The factors taken into account when determining the reasonableness of a fee include, *inter alia*, the time and labor required, the skill required to perform the legal service and results obtained. See, Rule 4-1.5(a). Rule 4-1.16(d) is clear that upon termination of representation, any fees not earned must be refunded to the client, without regard to the characterization of the fee, i.e., a non-refundable fee.

In this case, Respondent mailed Mr. Menner a fee agreement which provided for payment of a nonrefundable retainer in the amount of $4,000.00 and $1,000.00 for anticipated costs. After learning that Respondent had not filed any pleadings with the probate court and, within nineteen days of his retention of Respondent, Mr. Menner sent via facsimile and overnight mail, a letter terminating Respondent's services and requesting the return of the $5,000.00. Respondent refunded to Mr. Menner the $1,000.00 advanced costs but failed to refund any of the "nonrefundable" retainer fee until after the commencement of disciplinary proceedings.

Respondent's retention of the $4,000.00 resulted in Respondent retaining fees that were not reasonably earned, in violation of Rules 4-1.5(a) and 4-1.16(d). The

retention of the $4,000.00 fee, after being terminated resulted in an excessive fee. Respondent agreed that the retained fee failed to reflect the actual time and labor Respondent expended on the probate matter and the results obtained as Respondent filed a brief one-page Motion with the court that was denied. Respondent's client file contained evidence of little else that was done in the prosecution of Mr. Menner's probate claim. Respondent's failure to refund to Mr. Menner that portion of the advanced payment of attorney's fee which had not been earned by Respondent upon termination of representation was professional misconduct in violation of Rules 4-1.5(a) and 4-1.16(d). See e.g., *In re Murphy*, 732 S.W.2d 895 (Mo. banc 1987); *In re Maier*, 664 S.W.2d 1 (Mo. banc 1984); *In re Lang*, 641 S.W.2d 77 (Mo. banc 1982); *In re Pendergast*, 525 S.W.2d 341 (Mo. banc 1975).

C. Unauthorized Practice of Law. (Count III).

Finally, it is undisputed that Respondent was not in compliance with Rule 15.05 between August 2002 and February 2005, and between August 2005 and February 2006. Informant and Respondent stipulated that Respondent violated Rule 4-5.5(c) by not complying with Rule 15.05(a) in that Respondent failed to timely complete and/or report the requisite fifteen (15) credit hours of accredited programs or activities for reporting years 2001-2002, 2002-2003, 2003-2004, and 2004-2005, and practiced law during those periods. Respondent's failure to comply with continuing legal education requirements is professional misconduct. *In re Shelhorse*, *IV*, 147 S.W.3d 79 (Mo. banc 2004).

ARGUMENT

II.

SANCTION

THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT IN ACCORDANCE WITH THE JOINT RECOMMENDATION OF THE PARTIES BECAUSE, UNDER THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS, PUBLIC REPRIMAND IS AN APPROPRIATE SANCTION FOR RESPONDENT'S NEGLIGENT FAILURE TO PRESERVE STANTON'S INJURY CLAIM (COUNTI), RESPONDENT'S CHARGE OF AN UNREASONABLE AND EXCESSIVE FEE (COUNT II), AND RESPONDENT'S UNAUTHORIZED PRACTICE OF LAW (COUNT III).

In determining an appropriate penalty for misconduct, the Court considers the gravity of the attorney's misconduct, as well as any mitigating or aggravating factors that tend to shed light on the attorney's moral and intellectual fitness, as an attorney.

In re Stanley L. Wiles, 107 S.W. 3d 228 (Mo. banc 2003), see also, ABA Standards for Imposing Lawyer Sanctions, (1991 ed.), Rule 3.0.[1]

Mr. Pollard's neglect in failing to preserve Mr. Stanton's claim violated the basic duties of competence, diligence and communication. The disciplinary investigation produced no evidence from which to infer any mental state for Mr. Pollard's failure to preserve Mr. Stanton's workers' compensation claim other than negligence. In the absence of a showing of intentional misconduct, the ABA Standards for Imposing Lawyer Sanctions (1991 ed.) (the "ABA Standards"), as a general proposition, anticipate a lower level of sanction for cases presenting a less culpable mental state. Therefore, absent other circumstances, i.e., the presence of

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[1] Rule 3.0 reads: "In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

(a) the duty violated;

(b) the lawyer's mental state, and

(c) the actual or potential injury caused by the lawyer's conduct; and

(d) the existence of aggravating or mitigating factors."

specified mitigating and aggravating factors, the ABA Standards typically recommend admonition or reprimand in cases of negligent violation of a rule. As shown below, an analysis of the aggravating and mitigating factors in this disciplinary matter, supports the jointly recommended discipline of a public reprimand as the most appropriate sanction for Respondent's misconduct.

Mr. Stanton sustained a serious injury due to Mr. Pollard's negligent failure to properly ensure that his claim was preserved. Mr. Stanton's right to recover for his injury from his employer was extinguished. Employing the analysis recommended by the ABA Standards, and implemented by this Court, upon consideration of the aggravating and mitigating factors, public reprimand, per either Rule 4.43[2] or Rule 4.53(b) [3] of the ABA Standards, is the most applicable sanction for Mr. Pollard's violations.

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[2] Rule 4.43 of the ABA Standards reads: "Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client: Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client."

[3] Standard Rule 4.53 reads: "Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to provide competent

representation to a client: Reprimand is generally appropriate when a lawyer (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client."

Under the ABA Standards, applicable aggravating factors which may be considered when evaluating appropriate sanctions applicable to Respondent's misconduct include: prior disciplinary offenses, a pattern of misconduct, and substantial experience in the practice of law. See, ABA Standards, Rule 9.22(a), (c), and (i). Since his license to practice law in 1966, Mr. Pollard was issued three admonitions between January 2002 and August 2003. During this time, Mr. Pollard was admonished three times for diligence violations, two times for violations of communication, and once for a competence violation. Mr. Pollard also received a public reprimand in 1994 for diligence and communication violations.

The mitigating factors, however, must also be properly considered. In mitigation, Mr. Pollard is now sixty-five years of age. He is approaching retirement and thus, winding down his practice. Further, he has had an extensive career in Missouri as an attorney. Mr. Pollard has been licensed in Missouri since 1966 and, for most of those years, has warranted no discipline. During his nearly forty years of practice, Respondent has received only three admonitions. In addition, the public reprimand previously issued was issued more than twelve years ago. See, ABA Standards, Rule 9.32(m).[4] Further, there has been no evidence of dishonesty or

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[4] Rule 9.32 (i) reads: "Factors which may be considered in mitigation. Mitigating factors include:

...

(m) remoteness of prior offenses."

selfish motive and Mr. Pollard made restitution in the Menner matter to rectify his conduct. See, ABA Standards, Rule 9.32(b) and (d).[5] Moreover, Mr. Pollard has freely acknowledged his errors, both in the joint stipulation and in his dealings with Informant's counsel. And, Informant would be remiss in not emphasizing that Mr. Pollard has cooperated with Informant and the Office of Chief Disciplinary Counsel throughout this case to reach a resolution consistent with the goals of attorney discipline. See, ABA Standards, Rule 9.32(e).[6] The mitigating factors, when properly weighed, support that a public reprimand is the appropriate sanction. See, *In Re Littleton*, 719 S.W. 2d 772, 777 (Mo. banc 1986) (reprimand is appropriate

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[5] Standard Rule 9.32 reads: "Factors which may be considered in mitigation. Mitigating factors include:

...

(b) absence of dishonest or selfish motive;

. . .

(d) timely good faith effort to make restitution or to rectify consequence of misconduct."

[6] Rule 9.32(e) reads: "Factors which may be considered in mitigation. Mitigating factors include:

. . .

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings."

where the attorney's breach of discipline is an isolated act and does not involve dishonest, fraudulent or deceitful conduct on the part of the attorney).

Similarly, the appropriate sanction applicable to Respondent's excessive charge of attorney's fees and unauthorized practice of law is a public reprimand under ABA Standards, Rule 7.0. Absent aggravating or mitigating factors, a public reprimand is an appropriate sanction when the lawyer engages in the violation of standards owed to the profession, where the lawyer's conduct does not rise to the level of intentional abuse and causes little or no injury to a client, the public or the legal system. Duties owed to the profession include charging excessive or improper fees and the unauthorized practice of law. See, ABA Standards, Rule 7.0.

Respondent's excessive non-refundable retainer fee charged to Mr. Menner resulted in no injury to Mr. Menner, the public or the legal system. Nor is there any evidence of intentional abuse on the part of Respondent. In fact, Respondent refunded Mr. Menner's full $1,000.00 advanced for litigation costs and, presented a cashier's check in the amount of $2,000.00 at the DHP hearing representing a refund of fees not reasonably earned in his representation of Mr. Menner. Hence, a public reprimand is appropriate for this misconduct. See, ABA Standard 7.3[7], see

[7] Rule 7.3 of the ABA Standards reads: "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."

also, *In re Donald Fasig*, 444 N.E.2d 849 (Ind. 1983) (court imposed a public reprimand where lawyer improperly entered into a contingency fee agreement in a criminal matter).

Finally, this Court has previously held that public reprimand is an appropriate sanction for failure to comply with continuing legal education requirements. See, *In re Shelhorse, IV*, 147 S.W.3d 79 (Mo. banc 2004)(imposing a public reprimand where respondent failed to comply with the continuing legal education requirements of Rule 15). It has been stipulated that, prior to February 2005, Respondent was delinquent in his compliance with the Continuing Legal Education Requirements of Rule 15.05 for the reporting years 2001-2002, 2002-2003, and 2003-2004 and that prior to February 2006, Respondent was delinquent for the 2004-2005 reporting year. By March 27, 2006, however, Respondent had filed the reports necessary to bring himself into compliance.

In accordance with the foregoing analysis, public reprimand is an appropriate sanction to discipline Mr. Pollard for his misconduct while addressing the concerns of protecting the public and preserving the integrity of the legal profession.

CONCLUSION

After careful investigation of the facts and due consideration of all the information that factors into lawyer sanction analysis, the Office of Chief Disciplinary Counsel has, with Respondent's concurrence, reached a stipulated resolution of the pending complaints. For the reasons set forth herein, the Court is urged to implement the sanction recommended by the Office of Chief Disciplinary Counsel and the Respondent. The Office of Chief Disciplinary Counsel recommends that the Court publicly reprimand Respondent as more particularly set forth in the Joint Recommended Discipline.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2007, two copies of Informant's Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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O'Fallon, MO 63366

_____
Carl Schaeperkoetter

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 4,487 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Carl Schaeperkoetter

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