

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
EDGAR E. LIM,) **Supreme Court #SC87849**
)
Respondent.)

INFORMANT'S REPLY BRIEF

OFFICE OF
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POINT RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT LIM BECAUSE HE VIOLATED THE RULE REQUIRING SURRENDER OF PROPERTY TO WHICH THE CLIENT IS ENTITLED AT TERMINATION OF THE REPRESENTATION (4-1.16(d)) IN THAT HE RETAINED THE LABOR CERTIFICATION; THE RULE PRECLUDING REVELATION BY A LAWYER OF INFORMATION RELATING TO A REPRESENTATION (4-1.6(a)) IN THAT HE REPORTED TO THE IMMIGRATION & NATURALIZATION SERVICE INFORMATION CONCERNING HIS FEE DISPUTE WITH THE FORMER CLIENT; THE RULE PROHIBITING USE BY A LAWYER OF INFORMATION RELATING TO A REPRESENTATION TO THE FORMER CLIENT'S DISADVANTAGE (4-1.9(b)) IN THAT HE USED THE FEE ISSUE TO PREJUDICE THE FORMER CLIENTS' STANDING WITH THE INS; AND THE RULE PROHIBITING A LAWYER FROM IMPLYING THAT HE PRACTICES IN A PARTNERSHIP UNLESS THAT IS THE FACT (4-7.5(f)) IN THAT IN 2004 HE HELD HIMSELF OUT AS PRACTICING IN A PARTNERSHIP WITH HIS DAUGHTER WHEN THE PARTNERSHIP WAS NEVER FORMED.

In re Bryan, 61 P.3d 641 (Kan. 2003)

Lawyer Disciplinary Board v. McGraw, 461 S.E.2d 850 (W.Va. 1995)

ABA/BNA Lawyers' Manual on Professional Conduct

Restatement (Third) of the Law Governing Lawyers

Rule 4-1.16(d)

Rule 4-1.6

Rule 4-1.9(b)

POINT RELIED ON

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS BECAUSE HE KNOWINGLY VIOLATED DUTIES TO HIS FORMER CLIENTS IN THAT HE SENT A DISPARAGING LETTER ALLEGING CONFIDENTIAL INFORMATION ABOUT THE CLIENTS TO A THIRD PARTY WITH THE INTENT TO HARM THEM.

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

In re Howard, 912 S.W.2d 61 (Mo. banc 1995)

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

ABA Standards for Imposing Lawyer Sanctions (1992 amendments)

Rule 4-1.6

Rule 5.16

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT LIM BECAUSE HE VIOLATED THE RULE REQUIRING SURRENDER OF PROPERTY TO WHICH THE CLIENT IS ENTITLED AT TERMINATION OF THE REPRESENTATION (4-1.16(d)) IN THAT HE RETAINED THE LABOR CERTIFICATION; THE RULE PRECLUDING REVELATION BY A LAWYER OF INFORMATION RELATING TO A REPRESENTATION (4-1.6(a)) IN THAT HE REPORTED TO THE IMMIGRATION & NATURALIZATION SERVICE INFORMATION CONCERNING HIS FEE DISPUTE WITH THE FORMER CLIENT; THE RULE PROHIBITING USE BY A LAWYER OF INFORMATION RELATING TO A REPRESENTATION TO THE FORMER CLIENT'S DISADVANTAGE (4-1.9(b)) IN THAT HE USED THE FEE ISSUE TO PREJUDICE THE FORMER CLIENTS' STANDING WITH THE INS; AND THE RULE PROHIBITING A LAWYER FROM IMPLYING THAT HE PRACTICES IN A PARTNERSHIP UNLESS THAT IS THE FACT (4-7.5(f)) IN THAT IN 2004 HE HELD HIMSELF OUT AS PRACTICING IN A PARTNERSHIP WITH HIS DAUGHTER WHEN THE PARTNERSHIP WAS NEVER FORMED.

Mr. Lim argues that he did not violate the rule requiring surrender of papers and property to the client upon termination of the representation (4-1.16(d)) because the labor certification eventually obtained by him for Mr. Krishnamurthy was not Mr. Krishnamurthy's property.¹ Respondent's argument misses the point. The issue is not who had superior property rights in the labor certification. The conduct that is ethically significant is Mr. Lim's threat to retain the certificate until he was paid. It is quite clear from Mr. Lim's November 3, 1997, letter that he intended to violate the rule, even if he was mistaken as to who actually owned the certificate. It is disingenuous for Mr. Lim to attempt to slide past the rule on the grounds that Mr. Krishnamurthy had no real property entitlement to the certificate anyway.

Mr. Lim belatedly maintains that he had advanced expenses to acquire the certificate, which made it all right to taunt his former client with its retention. If Mr. Lim actually advanced expenses to obtain the certificate, and if he invoiced those advanced expenses to the clients as he posits in his answer and brief, then surely he could have

¹ It is noted that the documents comprising Respondent Lim's appendix, from A4 through A20, appear in the record only by way of attachment to Respondent's answer. The answer, along with the information, were admitted as a group of exhibits at the outset of the hearing. **App. 81.** Respondent did not address the many allegations raised in his brief in either his own testimony or by offering witnesses or exhibits to corroborate the allegations raised in the answer and its attachments.

offered some documentary or testimonial evidence at hearing to support his claims, but he did not.

Mr. Lim argues that his confidentiality obligations under Rule 4-1.6 should be limited to information obtained by him during the representation. Mr. Lim's argument is consistent with his lack of regard for the overriding duty of loyalty owed by lawyers to their clients, even former ones.

“Information a lawyer learns from or about a client during his or her representation of that client is presumed to be confidential by every state in the country. ... The ABA Model Rules of Professional Conduct ... broaden the scope of confidentiality to encompass all information concerning a client whether received before, during or after representation.” ABA/BNA Lawyers' Manual on Professional Conduct, 55:101 (emphasis added). Information acquired by a lawyer after the representation has ended is still confidential if it relates to the representation. See Restatement (Third) of the Law Governing Lawyers § 59 comment c. See also Comments to Missouri Supreme Court Rule 4-1.6 – Code Comparison: “Rule 1.6 thus imposes confidentiality on information relating to the representation even if it is acquired before or after the relationship existed” (emphasis added). In this case, the “information” was Mr. Lim's perception of his former clients as amoral swindlers, a perception he formed based on their alleged failure to pay him for his services. Mr. Lim's pre-termination letters to the Krishnamurthys would suggest that he formed this impression during the representation. But even if the information was acquired post representation, it would still be subject to

the confidentiality rule (4-1.6). Clearly the information related to the representation, and Mr. Lim was therefore constrained by Rule 4-1.6 from disclosing it.

The foregoing analysis also replies to Mr. Lim's Rule 4-1.9(b) argument. Mr. Lim's scathing assessment of his former clients' character was information he was not at ethical liberty to use to his former clients' disadvantage by reporting it to the Immigration & Naturalization Service.

Further, the fact that confidential information is publicly available or has been previously disclosed does not make it an exception to the confidentiality rule. See *In re Bryan*, 61 P.3d 641 (Kan. 2003); *Lawyer Disciplinary Board v. McGraw*, 461 S.E.2d 850 (W.Va. 1995). Mr. Lim's contention that the existence of a civil case brought by a former employer of the clients against them rid him of his duty to maintain confidentiality is simply contrary to the law.

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR SIX MONTHS BECAUSE HE KNOWINGLY VIOLATED DUTIES TO HIS FORMER CLIENTS IN THAT HE SENT A DISPARAGING LETTER ALLEGING CONFIDENTIAL INFORMATION ABOUT THE CLIENTS TO A THIRD PARTY WITH THE INTENT TO HARM THEM.

Disciplinary counsel concurred with the panel's recommendation of suspension with no leave to apply for reinstatement for six months. Mr. Lim's brief takes issue with the panel's recommendation on the grounds that other cases imposing suspension allegedly involved more egregious fact patterns than are present here. The two cases cited by Lim, *In re Howard*, 912 S.W.2d 61 (Mo. banc 1995) and *In re Littleton*, 719 S.W.2d 772 (Mo. banc 1986), both involve lawyers' inappropriate sexual advances toward clients, which is not an issue in the case at bar. Neither of the cases cited by Respondent involve violation of confidentiality rules or the rules regarding retention of property at the termination of representation. The cases Respondent cites offer little or no assistance in determining the appropriate sanction to be imposed in this case. Indeed, no Missouri discipline cases discussing the modern confidentiality rule (Rule 4-1.6) were discovered.

In the absence of Missouri cases involving remotely similar fact patterns, the ABA Standards for Imposing Lawyer Sanctions (1992 amendments) provide analytical assistance. Respondent's violation of a duty owed to his clients and his knowing, and arguably intentional, revelation of confidential information for the avowed purpose of harming the clients put this case squarely within Standard Rule 4.22. That rule provides that "Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client." Mr. Lim's unabashed avowal that he would do the same thing all over again only substantiates the need for a serious sanction in order to protect the public from future professional misconduct by Respondent.

Finally, in reply to Respondent's fourth point relied on, it is noted that, notwithstanding the statements in Respondent's brief to the contrary, lawyer disciplinary matters do not have as their purpose punishment of the attorney, but rather are for the purpose of protecting the public and maintaining the profession's integrity. *In re Kazanas*, 96 S.W.3d 803, 807-808 (Mo. banc 2003). Respondent was entitled to know the charges against him, and the information satisfied that obligation. The panel's decision, at **App. 68-69**, makes specific findings of fact relative to the charges of professional misconduct, just as Rule 5.16 requires. There is no merit to Respondent's claim that he has a further right to know how the recommendation of a "six-month suspension applies to the various ... violations." Respondent's brief at 41. Neither the

Rules nor any sense of due process require the enunciation of a separate discipline for each rule violation found by the panel or this Court.

CONCLUSION

Respondent Lim's vindictive conduct toward his former clients violated multiple Rules of Professional Conduct relating to maintaining confidentiality, avoiding conflict of interest, and protecting clients' interests. Suspension with no leave to apply for reinstatement for six months is the appropriate sanction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2006, two copies of Informant's Reply Brief and a diskette containing the brief in Microsoft Word format have been sent via First Class mail to:

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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 1,986 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.

Sharon K. Weedon