

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)	
)	
RUSSELL E. TLUSCIK,)	Supreme Court #84096
)	
Respondent.)	

INFORMANT'S REPLY BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

SHARON K. WEEDIN #30526
STAFF COUNSEL
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

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POINT RELIED ON

IV.

**THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S
LICENSE TO PRACTICE BECAUSE RESPONDENT
KNOWINGLY VIOLATED RULE 4-8.1(b) IN THAT HE
REPEATEDLY DISREGARDED REQUESTS FOR
INFORMATION FROM DISCIPLINARY AUTHORITIES AND
FAILED TO COMPLY WITH THE BAR COMMITTEE'S
DIRECTIONS.**

In re Colson, 632 S.W.2d 470, 471 (Mo. banc 1982)

In re Littleton, 719 S.W.2d 772, 777-78 (Mo. banc 1986)

Rule 4-8.1(b)

ARGUMENT

IV.

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DIRECTIONS.**

Respondent's brief rubs salt in the wound. Points I and III of Informant's brief posit Respondent's misconduct for failing to keep his client, Ms. Pollard, reasonably informed and for failing to cooperate with disciplinary authorities, inter alia, by not providing Ms. Pollard or the circuit bar committee with any kind of accounting for how he may have earned the \$5,000 retainer fee she paid him. As acknowledged in Informant's brief, Respondent did produce a detailed, 14-page statement of the work he had done for Ms. Pollard, but the document was not produced until the day of the hearing before the Disciplinary Hearing Panel. The statement appears as Exhibit 9 in the record and was produced by Respondent near the end of the hearing. T. 122.

Now Respondent has fashioned a Statement of Facts refuting the evidence offered at the hearing as to his lack of communication by relying heavily¹ on the very document neither Ms. Pollard, the special representative, nor the circuit bar committee could get Respondent to produce until the disciplinary hearing was nearly over. Exhibit 9 details numerous communications between Respondent and his client not otherwise found in the record. Even if the factual record created by referring to Respondent's belatedly produced statement could be counted on as true, their use by Respondent in this fashion proves Informant's point that Respondent should be suspended for not producing the information sooner.

Informant does not, however, concede the factual reliability of Respondent's Statement of Facts. For example, Respondent produced Exhibit 7, a handwritten letter dated October 25, 1999, from himself to Ms. Pollard. The exhibit is important to Respondent's theory of the case, because it bolsters his contention that he was in frequent contact with Ms. Pollard and shifts the burden to his client by making it appear as though the reason he did not go forward with her case was because she did not respond to his request for an appraisal nor his invitation to come to his office to pick up her file. Ms. Pollard testified that she could not remember ever getting Exhibit 7, although Respondent got her to concede on cross-examination that it was possible she got it. T. 88-89, 92.

¹ Informant counted 60 citations to the record in Respondent's Statement of Facts.

Twenty-five of those citations, accounting for nearly all of the narrative found on seven out of thirteen pages of the Statement, cite almost exclusively to Exhibit 9.

Ms. Pollard was adamant that she had never seen the docket sheets that were presumably attached to Exhibit 7.

In support of Ms. Pollard's testimony that she never received Exhibit 7, her subsequent letters to Respondent make no mention of it, and, in fact, state she has heard nothing from him since his October 22, 1999, letter. **Exs. K, C-3** (letter dated July 19, 2000). On page fourteen of his Statement of Facts, Respondent states that Ms. Pollard acknowledged receiving the letter from him assuring her nothing funny was going on, "which was the October 25, 1999, communication with the docket sheet." In point of fact, the reference to "nothing funny going on" is in Respondent's October 22, 1999, letter to his client, Exhibit C-3 (letter dated October 22, 1999), which Ms. Pollard acknowledged receiving, not Exhibit 7, which she denied getting.

Respondent's citation of legal authority does not help his case. *In re Colson*, 632 S.W.2d 470, 471 (Mo. banc 1982) is a case where the "sole problem is one of neglect of the clients' business." Informant's brief states several times that but for Respondent's repetitive pattern of non-cooperation with disciplinary authorities, Respondent's case would likely have been resolved with an admonition. This is not a case of simple, one time, failure to communicate with a client. Respondent's knowing and repetitive failures to answer inquiries from disciplinary authorities, the disrespect he showed for the circuit bar committee's directions to give his former client her file and an accounting, and his last minute production of the requested information and file are the reasons why suspension is appropriate.

Suspension is an appropriate intermediate sanction where reprimand is insufficient to protect the public and maintain the integrity of the profession, and where this Court does not believe that the acts of a Respondent are such that he should not be at Bar. Suspension serves the dual purposes of discipline; it protects the public and maintains the integrity of the profession by deterring other members of the bar from engaging in similar conduct. Suspension also recognizes that while the focus of discipline is to achieve the purposes previously described, those purposes are inevitably achieved through punishment.

In re Littleton, 719 S.W.2d 772, 777-78 (Mo. banc 1986). Too often attorneys pay little heed to disciplinary authorities. Deterring other members of the bar is an entirely appropriate function of suspension, even though the purpose is "inevitably achieved through punishment." 719 S.W.2d at 778.

In short, Respondent's brief provides further support for Informant's recommendation that he be suspended. Respondent failed repeatedly to provide the information found in his Exhibit 9, then produced it after the point when its timely production could have cut short the disciplinary process, and now Respondent relies heavily on the information to refute Informant's evidence. As stated in Informant's brief, Respondent's contumacious noncompliance with Rule 4-8.1(b) should be sanctioned by suspension.

CONCLUSION

Respondent's violations of the communication and file return rules (4-1.4 and 4-1.16) would not merit license suspension. Because Respondent repeatedly, knowingly, and contumaciously disregarded reasonable requests for information from disciplinary authorities, which information he finally produced at the eleventh hour, Respondent should receive an indefinite suspension, with no leave to apply for reinstatement for six months in conformity with Rule 5.28.

Respectfully submitted,

OFFICE OF
CHIEF DISCIPLINARY COUNSEL

By: _____
Sharon K. Weedin #30526
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109
(573) 635-7400

ATTORNEYS FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2002, two copies of
Informant's Reply Brief have been sent via First Class mail to:

Russell Edmund Tluscik
Attorney at Law
6812 N. Oak, #1
Gladstone, MO 64118

Sharon K. Weedon

CERTIFICATION: SPECIAL RULE NO. 1(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 Special Rule No. 1(b);
3. Contains 1,316 words, according to Microsoft Word 97, 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