

**IN THE SUPREME COURT  
STATE OF MISSOURI**

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IN RE:	)	
	)	
J. R. VICTOR,	)	Supreme Court #SC85972
	)	
Respondent.	)	

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**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**

Jack Robert (J. R.) Victor was admitted to Missouri's Bar in 1969. **App. 2.** Respondent offices in Springfield, Missouri. **App. 2.**

In 1996, Respondent accepted an admonition for violation of Rules 4-1.1, 4-1.3, and 4-1.4. Also in 1996, in a separate case, Respondent accepted an admonition for violation of Rule 4-1.3. In 1997, Respondent accepted an admonition for violation of Rules 4-1.3 and 4-1.4. Also in 1997, in a separate case, Respondent accepted an admonition for violation of Rule 4-8.4(b). **App. 15-17.**

In September of 2003, the Office of Chief Disciplinary Counsel filed an information against Respondent. The information alleged conduct in violation of Rules 4-1.3, 4-1.4, 4-1.16(d), and 4-8.4(d), arising out of Respondent's representation of Ralph and Wilta Walters. **App. 2-6.** Respondent answered the information. **App. 7-8.** The Office of Chief Disciplinary Counsel and Respondent thereafter agreed to a stipulation of facts to which both parties agreed to be bound. **App. 14-15.**

### **Stipulated Facts**

In December of 2001, Ralph and Wilta Walters consulted with Mr. Victor about representing them in a bankruptcy matter. **App. 14.** The Walters retained Respondent on May 1, 2002, paying him \$700.00 in advanced fees. **App. 14.**

With the information provided to him by the Walters, Respondent prepared the documents necessary to file a bankruptcy petition. Respondent had the documents

prepared by early June of 2002. **App. 14.** Although Respondent had advised the Walters that he would contact them when the paperwork was ready for their signatures, he failed to do so. **App. 14.**

In July of 2002, Respondent was diagnosed with congestive heart failure and was hospitalized. **App. 15.** Respondent conducted only a part time law practice between September 2002 and March 2003, but failed to advise the Walters of this change in his physical ability to handle their legal matter. **App. 15.**

The Walters faxed Respondent a letter on April 1, 2003, requesting the return of the \$700.00 they had paid him to proceed with their bankruptcy. **App. 15.** In mid-August of 2003, after the Office of Chief Disciplinary Counsel contacted Respondent about this matter, Respondent refunded the \$700.00 to the Walters. **App. 15.**

Respondent and the Office of Chief Disciplinary Counsel stipulated that Respondent's conduct, as set forth in the stipulated facts, constituted a violation of Rule 4-1.4. **App. 15.** The parties also stipulated that a public reprimand accompanied by a two year period of probation was the appropriate sanction to recommend to the Court. **App. 17-21.**

#### Stipulation Submitted to Disciplinary Hearing Panel

The foregoing stipulated facts and recommendation for discipline were submitted to the disciplinary hearing panel assigned to hear this matter. On April 9, 2004, the panel members met to review and consider the stipulation of facts, conclusion of law, and recommendation as to sanction. In a decision issued on April 21, 2004, the panel

accepted the stipulation of facts, agreed that the described conduct was in violation of Rule 4-1.4, and agreed to recommend to the Court the same sanction agreed to between Mr. Victor and OCDC. **App. 23-24.** This matter was filed with the Court on May 5, 2004. The Court ordered the matter briefed on May 25, 2004.

**POINT RELIED ON**

**I.**

**THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT AND PLACE HIM ON PROBATION IN ACCORDANCE WITH THE TERMS STIPULATED TO BY THE PARTIES AND RECOMMENDED BY THE DISCIPLINARY HEARING PANEL BECAUSE THE RECOMMENDED SANCTION IS AN APPROPRIATE SANCTION IN THAT THE STIPULATED SANCTION, THE COURT'S ACCEPTANCE OF WHICH WOULD PROMOTE EFFICIENT PROCESSING OF DISCIPLINE CASES AND JUDICIAL ECONOMY, ADDRESSES THE TWO-FOLD PURPOSE OF ATTORNEY DISCIPLINE BY PUTTING RESPONDENT'S MISCONDUCT ON PUBLIC RECORD AND ALLOWING DISCIPLINARY AUTHORITIES TO MONITOR RESPONDENT'S PRACTICE TO FORESTALL FUTURE MISCONDUCT.**

*In re Wilson*, 391 S.W.2d 914 (Mo. banc 1965)

*In re Harris*, 890 S.W.2d 299 (Mo. banc 1994)

*In re Miller*, 568 S.W.2d 246 (Mo. banc 1978)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

Rule 4-1.4



Rule 5.225

Rule 5.33

## **ARGUMENT**

### **I.**

**THE SUPREME COURT SHOULD PUBLICLY REPRIMAND RESPONDENT AND PLACE HIM ON PROBATION IN ACCORDANCE WITH THE TERMS STIPULATED TO BY THE PARTIES AND RECOMMENDED BY THE DISCIPLINARY HEARING PANEL BECAUSE THE RECOMMENDED SANCTION IS AN APPROPRIATE SANCTION IN THAT THE STIPULATED SANCTION, THE COURT'S ACCEPTANCE OF WHICH WOULD PROMOTE EFFICIENT PROCESSING OF DISCIPLINE CASES AND JUDICIAL ECONOMY, ADDRESSES THE TWO-FOLD PURPOSE OF ATTORNEY DISCIPLINE BY PUTTING RESPONDENT'S MISCONDUCT ON PUBLIC RECORD AND ALLOWING DISCIPLINARY AUTHORITIES TO MONITOR RESPONDENT'S PRACTICE TO FORESTALL FUTURE MISCONDUCT.**

A public reprimand accompanied by imposition of a period of probation is a sound sanction, both conceptually and as a practical matter. Indeed, the ABA Standards for Imposing Lawyer Sanctions (1991 ed.) define "probation," in Rule 2.7 as follows:

Probation is a sanction that allows a lawyer to practice under specified conditions. Probation can be imposed alone or in conjunction with a reprimand or an admonition.

Every case is, of course, unique. Here, Mr. Victor's acknowledged violation of Rule 4-1.4 is not of such a degree of seriousness as to warrant the interruption of his license to practice law. Additionally, the misconduct is mitigated by illness (personal problems), a cooperative attitude toward the disciplinary process, and a lack of dishonest or selfish motive. The misconduct is aggravated by Mr. Victor's substantial legal experience and his significant prior disciplinary history of four admonitions for similar violations. As the ABA Standards state, in Rule 8.4, "An admonition is generally not an appropriate sanction when a lawyer . . . has engaged in the same or similar misconduct in the past." In cases like this one, where Respondent has multiple past admonitions, including two for violation of the same Rule (4-1.4) violated in this case, reprimand with probationary conditions is the appropriate sanction.

Reprimand with probationary conditions should not be excluded from the arsenal of sanctions available to disciplinary personnel, particularly in cases like this one, where the parties produced, through professional and cooperative negotiation, a stipulation of facts and recommended sanction conducive to the dual purposes of lawyer discipline. Both the Respondent lawyer and the disciplinary system reap a savings in time and resources by resolving cases by stipulation. Additionally, encouraging such resolutions furthers the aspirational goals of encouraging professionals to reach agreement and encouraging lawyers to accept responsibility for wrongdoing.

The Court's relatively "new" rule on probation, Rule 5.225, states in subpart (a) that "Probation shall be imposed for a specified period of time in conjunction with a suspension." Informant strongly urges that the Court not read this Rule as limiting the Court's power to impose probation only in conjunction with license suspension. There are many good reasons for not adopting such a restrictive reading of the rule. Rule 5 itself states, at Rule 5.33: "Nothing in this Rule 5 shall be construed as a limitation upon the powers of this Court to govern the conduct of its officers." The Court's power and right to discipline the licenses of its officers is inherent. *In re Wilson*, 391 S.W.2d 914, 917 (Mo. banc 1965). Further, Rule 5.225(a) does not necessarily proscribe the use of probation with anything other than suspension; rather, it specifies that when imposed in conjunction with a suspension, the suspension may be stayed in whole or part.

Even long before probation was formalized in a Rule, this Court combined reprimands with "conditions," or probation, as the particular case called for it. In *In re Harris*, 890 S.W.2d 299, 302 (Mo. banc 1994), the Court publicly reprimanded the respondent and also "ordered that respondent submit to such programs of law office management as shall be directed by the disciplinary counsel's office and shall provide disciplinary counsel's office with such reports of progress of treatment for his emotional condition as that office shall require." In *In re Miller*, 568 S.W.2d 246 (Mo. banc 1978) (per curiam), the Court issued a public reprimand in conjunction with a list of specific directives with which the lawyer had to comply for a period of two years. In *In re Schiff*, 542 S.W.2d 771 (Mo. banc 1976), the Court reprimanded the respondent and placed him on probation, with specific conditions, for two years. And while the respondent in *In re*

*Kopf*, 767 S.W.2d 20 (Mo. banc 1989), was reprimanded with no added conditions, Judge Blackmar, in a concurring opinion, expressed reservations about the adequacy of reprimand alone when the conduct did not merit an “interruption of the respondent’s practice.” “Perhaps we should have a probationary period for lawyers with the respondent’s problems [neglect of client’s business], with supervision and visitation by the local Bar Committee.” 767 S.W.2d at 24 (Blackmar, J., concurring).

The disciplinary system has evolved to the time when “conditions,” couched in a term of probation, can be sculpted to fit the source of a particular lawyer’s misconduct. When a lawyer’s misconduct does not merit suspension or disbarment, but the same misconduct has shown itself repeatedly in the lawyer’s practice, a reprimand, with conditions that can be monitored during a period of probation, is the sanction best suited to meet the goals of protecting the public and preserving the integrity of the profession. The availability of a flexible range of sanctions is also conducive to resolving disciplinary cases by stipulation. A lawyer’s cooperative attitude toward disciplinary proceedings is a factor identified in the ABA Standards as one to be considered in mitigation of sanction. Rule 9.32(e), ABA Standards for Imposing Lawyer Sanctions (1991 ed.). Mr. Victor, disciplinary counsel, and the three members of the Disciplinary Hearing Panel all agreed to recommend to the Court a public reprimand with conditions to be monitored over a two year period of probation. The recommended sanction would allow the Office of Chief Disciplinary Counsel to monitor identified areas of concern. Should Respondent violate the conditions of probation, disciplinary counsel would have the discretion to initiate disciplinary proceedings. The sanction recommended herein is a

good one both for the lawyer, who has demonstrated willingness to cooperate and work with disciplinary authorities, and for the public and profession, because it addresses the public policy concerns underlying attorney discipline. The Court is urged to accept the recommended sanction.

## **CONCLUSION**

Mr. Victor has a history of four prior admonitions, two of which include violations of Rule 4-1.4, the same Rule violated in this case. A public reprimand alone, for what is concededly not conduct meriting suspension or disbarment, would be an appropriate sanction. Even more appropriate, and of more prophylactic benefit to the public, is a reprimand with conditions to be met during a period of probation. The recommended sanction would provide an educational benefit to Respondent and a monitoring benefit for the public. Respondent has agreed to the stipulated sanction, and the disciplinary hearing panel recommended it to the court as well. The Court, without question, has the inherent authority to order the recommended sanction, and the Office of Chief Disciplinary Counsel urges it to do so.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, two copies of  
Informant's Brief have been sent via First Class mail to:

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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 84.06b);
3. Contains 2,181 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. Weedin



## **APPENDIX**