

**IN THE SUPREME COURT
STATE OF MISSOURI**

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

RESPONDENT'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

Respondent adopts the Statement of Facts contained in Informant's brief, as supplemented herein.

In December of 2001, Ralph and Wilta Walters consulted with Mr. Victor about representing them in a bankruptcy matter. **App. 3, 14.** The Walters were advised that the fee for handling their matter would be \$750.00 and that no action would be taken on their behalf until the total fee plus the filing fee had been paid. **App. 3.** 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 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.**

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, if Respondent did not want to proceed with their matter. **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.**

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.**

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 Littleton, 719 S.W.2d 772 (Mo. banc 1986)9

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Rule 4-1.4.....8, 9,10

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.

The parties have stipulated that Mr. Victor violated Rule 4-1.4 by failing to advise the Walters that their bankruptcy petition had been prepared or that he was having health problems. **App. 15.** Respondent is in agreement with the argument set forth in Informant's brief that a public reprimand accompanied by imposition of a period of probation is an appropriate sanction under the facts of this case.

This Court has reserved disbarment for persons clearly unfit to practice law; reprimands have been used for isolated acts not involving dishonest, fraudulent, or deceitful conduct. *In re Littleton*, 719 S.W.2d 772, 777 (Mo. banc 1986). Respondent strongly agrees with the assessment in Informant's brief at page 9 that "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." Respondent does not seek to absolve himself of responsibility for neglecting to advise the Walters that their bankruptcy petition had been prepared based on the fact that he had not been fully paid, even though the Walters were advised no action would be taken on their behalf until the total fee plus the filing fee had been paid. **App. 3.** (When a party admits in an answer that an allegation in a petition is true, it is deemed to be a judicial admission and the admitted fact is deemed true.

Stroup v. Leopard, 981 S.W.2d 600, 604 (Mo.App. W.D. 1998))

This is not a case where the Walters inquired about the status of their petition and were misled or ignored. At all times the Walters knew that they had not been contacted (as Mr. Victor had said he would) and that the petition had not been signed or filed. While the failure of the clients to inquire of Mr. Victor as to the status of their petition does not exonerate Respondent for his failure to contact them, the Walters, knowing that they had not been contacted, might have sought

information about their case. Stated otherwise, reported cases of violations of Rule 4-1.4 have usually involved an attorney's failure to respond to client inquiries or the disappearance of the attorney entirely.

Mr. Victor's acknowledges prior disciplinary history of four admonitions, including two for violation of the same Rule (4-1.4) violated in this case. However none of those were cases where the work had been done, but Mr. Victor simply failed to notify his clients to come in and sign a petition that had already been prepared.

For reasons set forth in Informant's Brief, the proposed sanction of public reprimand with a period of probation monitored by the Office of Chief Disciplinary Counsel is appropriate under circumstances of this case.

CONCLUSION

A public reprimand with conditions to be met during a period of probation, for what is Informant concedes is not conduct meriting suspension or disbarment, would be an appropriate sanction. 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 Respondent urges it to do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2004, two copies of Respondent's Brief have been sent via First Class mail to:

Sharon K. Weedin
Staff Counsel
3335 American Avenue
Jefferson City, MO 65109

Attorney for Informant

Richard D. Bender

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 1,375 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That AVG 6.0 Anti-Virus System was used to scan the disk for viruses and that it is virus free.

Richard D. Bender

