IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
ELLE SULLIVANT,	)	**Supreme Court #SC92386**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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This action is one in which the Chief Disciplinary Counsel is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

I. OVERVIEW OF PANEL'S FINDINGS REGARDING ALLEGED PROFESSIONAL MISCONDUCT

Upon an evidentiary hearing held on a six-count Information, the disciplinary hearing panel found that Respondent Elle J. Sullivant was guilty of seven distinct instances of professional misconduct with respect to Respondent's law practice, all primarily occurring during a one-year span from February 2009 to January 2010. **App. 660-687**. By unanimous decision, and after finding Respondent guilty of the several instances of professional misconduct described below, the disciplinary hearing panel recommended that Respondent be suspended indefinitely with no leave to apply for reinstatement for three years. **App. 687**. The Office of Chief Disciplinary Counsel has accepted this panel's decision. **App. 689**. Respondent has rejected the panel's decision. **App. 688**.

The seven instances of professional misconduct found by the disciplinary hearing panel are as follows:

(a) Unauthorized Practice of Law During Period of Suspension

On February 2, 2009, Respondent became suspended from the practice of law in Missouri by Order of the Missouri Supreme Court pursuant to Rule 5.245. **App. 320-323**. Respondent obtained actual knowledge of the suspension on March 3, 2009. **App. 172 (Tr. 86-87)**. Respondent's license to practice law in Missouri was not reinstated until June 4, 2009. **App. 651**.

The disciplinary hearing panel found that Respondent engaged in the unauthorized practice of law in Missouri during the period of February 2, 2009 to June 3, 2009 in violation of Missouri Supreme Court Rules 4-5.5(b), 1.16(a)(1) and 6.05(c). **App. 661-663**. Respondent denied that her activities regarding state court matters constitute the practice of law, and further argued that the suspension did not restrict her authority to practice law in Missouri in connection with federal court litigation. **App. 103; 113-114**.

(b) Failure to Exercise Candor to a Judge During a Pretrial Conference

On May 28, 2009, Respondent participated in a pretrial conference with opposing counsel and the Honorable Marco Roldan concerning a civil lawsuit captioned as ***Kemper v. Rodgers***, Case No. 0816-CV02743, in the Circuit Court of Jackson County, Missouri. **App. 156-157 (Tr. 25-29); 310**. The case was scheduled for a bench trial to be held on the following Monday, June 1, 2009. **App. 296; 317**. Respondent actively participated by telephone in the pretrial conference. **App. 310**. At no time during the pretrial conference did Respondent advise Judge Roldan that she was suspended from the practice of law or that she had an impediment to proceeding to trial a few days later. **App. 158-159 (Tr. 33-36)**. On June 1, 2009, immediately before the scheduled start of the trial, Respondent advised Judge Roldan of the suspension. **App. 159 (Tr. 36)**.

The disciplinary panel found that Respondent violated Missouri Supreme Court Rule 4-3.3 (candor to the tribunal) by knowingly making a false statement of fact to Judge Roldan concerning readiness for trial and by knowingly failing to disclose legal

authority directly adverse to Respondent's ability to proceed to trial on June 1, 2009 on behalf of her client. **App. 668-669; 675-676**.

Respondent denies that the telephone call constituted a pretrial conference, and therefore claims she had no professional obligation to tell Judge Roldan about her situation until the commencement of the trial. **App. 101**.

(c) Prejudicial Failure to Disclose Suspension to Others

Respondent told virtually no one of her suspension. **App. 195-196 (Tr. 180-183)**. The disciplinary hearing panel found that the suspension was "public discipline" that should have been reported to the Western District of Missouri federal court under a specific local rule regarding discipline. **App. 672-673**. Respondent did not report the suspension to the federal court. **App. 198 (Tr. 192)**. Respondent continued to participate in federal court litigation in Missouri throughout the period of suspension. **App. 185-186 (Tr. 141-142)**. Respondent denied any duty to tell anyone about the suspension. The panel found that Respondent's failure to advise opposing counsel, clients, co-counsel, judges and others about the prohibition against practicing law in Missouri during the suspension was conduct prejudicial to the administration of justice in violation of Missouri Supreme Court Rule 4-8.4(d). **App. 674-675**.

(d) Commingling of Trust and Non-Trust Funds/Misuse of Trust Account

During the pendency of the complaint involving the above-described conduct, the OCDC undertook an investigation into Respondent's trust account for the year 2009,

following an overdraft reporting notice received by OCDC in January of 2010. **App. 214 (Tr. 256-257); 475-476**.

The disciplinary hearing panel found that, for several months from June 2009 to December 2009, Respondent had commingled trust funds and non-trust funds within the trust account by utilizing approximately $200,000 in earned attorney fees held in the trust account to pay family members, vendors, credit card companies and numerous other persons who did not have a lien on, or direct interest in, trust account funds. **App. 676-680**. Respondent claimed she did not know what "commingling" meant, but claimed that every creditor of her law practice should be paid from the trust account because they had a vested interest in the funds. **App. 210-212 (Tr. 240-248)**.

(e) Conduct Involving Dishonesty, Deceit, Fraud and Misrepresentation

On May 7, 2009, Respondent was ordered to pay a sanction of $12,500 by a federal judge, the Hon. Gary A. Fenner, in a civil case captioned as ***Arnold v. Chand/ADT***, 05-0607-CV-W-GAF (U.S. W.D.Mo.). **App 414-422; 423-424**. Payment of the sanction was ordered to be paid by June 7, 2009. **App. 423-424**. Respondent made a written representation in a motion submitted to Judge Fenner that Respondent had an "absolute inability" to pay the sanction. **App. 442-446**. In May 2009 Respondent received approximately $100,000 in attorney's fees following a settlement in a personal injury case. **App. 209 (Tr. 236); 449; 450**. In June 2009. Respondent received another $100,000 fee in an employment case. **App. 457; 459-463**. Accordingly, within two months after the representation to Judge Fenner concerning an "absolute inability to pay

the sanction," Respondent received approximately $200,000 in attorney fees. **App. 208 (Tr. 230-232); 457; 459-460; 462**.

Respondent claimed she had no way to anticipate receipt of these fees. **App. 206 (Tr. 224)**. However, the disciplinary hearing panel found the statement to Judge Fenner, and Respondent's failure to correct this statement, was conduct involving dishonesty, deceit, fraud or misrepresentation in violation of Missouri Supreme Court Rule 4-8.4(c). **App. 682-638**.

(f) Willful Disobedience of a Court Order to Pay the Sanction

In the three years since this professional obligation arose, Respondent has made no payment nor partial payment of the sanction. **App. 202 (Tr. 209)**. The panel found that Respondent's prolonged use of the trust account to hold non-trust funds as described above was part of a deliberate and intentional effort on Respondent's part to avoid paying the sanction. **App. 682-683**. The panel found that Respondent's failure to pay the sanction constituted willful disobedience of a court order. **App. 682-683**. Despite receipt of $200,000 in attorney fees during the month the sanction became due, Respondent adhered to the position that she could not financially afford to pay the sanction. **App. 202 (Tr. 209)**.

(g) Professional Incompetence and Lack of Thoroughness and Preparation

The disciplinary hearing panel determined that Respondent faces significant limitations in her ability to manage her law practice; that there are inadequate safeguards in place for her law practice; that medical complications and financial difficulties have

adversely affected her ability to represent clients; and that Respondent has lacked thoroughness and preparation reasonably necessary for representing clients. **App. 684-685**. Accordingly, the panel found that Respondent has violated Missouri Supreme Court Rule 4-1.1, and that her actions in representing clients have been prejudicial to the administration of justice in violation of Missouri Supreme Court Rule 4-8.4(d). **App. 685**.

II. DETAILED FACTUAL STATEMENT

Respondent Elle J. Sullivant was licensed as an attorney in Missouri in 1997. **App. 87**. For ten years from 2001 until 2011, Respondent has maintained a private law practice in Jackson County, Missouri as a sole practitioner under the name of The Sullivant Law Firm LC. **App. 168 (Tr. 72)**.

(a) Unauthorized Practice of Law During Suspension

Respondent did not file a Missouri state tax return for 2005 and 2006. **App. 173 (Tr. 90)**. The Missouri Department of Revenue reported this to the Missouri Supreme Court, pursuant to RSMo. § 484.053. **App. 318-319**. On November 7, 2008, Respondent received a letter from the Clerk of the Missouri Supreme Court describing the tax delinquency. **App. 222 (Tr. 283)**. The letter was identical in content to Exhibit 6, but

had a November 2008 date on it rather than the date of October 6, 2008.[1] **App. 170 (Tr. 79-81); 222 (Tr. 283)**. The letter from the Clerk of the Missouri Supreme Court advised Respondent that if she did not respond within thirty days as requested, her license to practice law would be subject to **"AUTOMATIC SUSPENSION"** pursuant to Missouri Supreme Court Rule 5.245. **App. 318-319**. The letter does not refer to the suspension as "administrative." **App. 318-319**. The letter concluded with the statement from the Clerk that "under Missouri statutes and Rules of this Court, **we will have no discretion whatsoever to delay or otherwise avoid the penalty provided for non-compliance.**" (emphasis added) **App. 318-319**.

Respondent read the letter and knew what it meant. **App. 171 (Tr. 83)**. Respondent did not respond to the letter. **App. 171 (Tr. 82)**. She did not respond to Thomas Simon, then serving as the Clerk of the Missouri Supreme Court. **App. 171 (Tr. 82)**. Respondent testified that she did not think she needed to comply with the letter. **App. 171 (Tr. 84)**. Despite the language of the letter and its citations to Rule 5.245 and RSMo. § 484.053, Respondent testified that she did not believe it was possible for her

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[1] Respondent was unable to produce a copy of the actual letter she did receive from the Clerk of the Missouri Supreme Court because she did not know where it was. **App. 169-170 (Tr. 77-78)**. Exhibit 6 was received in evidence without objection. **App. 175 (Tr. 98)**.

license to be suspended in this manner. She testified "never in a million years would I have dreamed that this would suspend my license." **App. 171 (Tr. 83)**.

Respondent spoke with her husband about the letter. **App. 171 (Tr. 84-85)**. Respondent relied upon information from her husband, a non-lawyer, in deciding to ignore the letter. **App. 171 (Tr. 84)**. Respondent now admits that she should have held the letter with more regard. **App. 222 (Tr. 284-285)**. She now admits that the letter was a huge "red flag" that something was going on. **App. 222 (Tr. 283)**. She admits that she should have checked into the situation with the Missouri Department of Revenue rather than discussing it with her husband. **App. 222 (Tr. 284)**.

By Order of the Missouri Supreme Court, Respondent's license to practice law in Missouri was suspended on February 2, 2009. **App. 320-323**. The Order states: "Pursuant to Supreme Court Rule 5.245, the names attached hereto are suspended as shown on the roll of attorneys maintained by the Clerk of this Court." **App. 320**. Respondent's name and bar number appeared on the list attached to the Order. **App. 323**. The Order does not refer to the suspension as being "administrative." **App. 320-323**. Respondent was not reinstated to practice law in Missouri until June 4, 2009, when the Missouri Supreme Court granted Respondent's Application for Reinstatement. **App. 651**. Respondent received actual knowledge of the suspension on March 3, 2009. **App. 172 (Tr. 86-87); 173 (Tr. 93)**.

Respondent understood that the suspension prevented her from practicing law in Missouri. **App. 535; 541-542**. She testified "I knew that the one thing that she [Legal

Ethics Counsel Sara Rittman] gave me is don't engage in the unauthorized practice of law." **App. 225 (Tr. 296)**. Respondent further understood that the suspension prevented her from submitting briefs and motions to a Missouri state court using her Missouri Bar Number. **App. 200 (Tr. 199) 538**.

Respondent admitted in her testimony before the panel that she does not have any way of knowing whether she practiced law in Missouri during February of 2009. **App. 178 (Tr. 110)**. Throughout the period of suspension, Respondent maintained a physical law office at a building in Independence, Missouri, where her name remained on the lobby directory, along with other lawyers and professionals. **App. 178-179 (Tr. 113-114)**. During the period of suspension, Respondent's name was still on the door outside of her particular office suite. **App. 537**. During the period of suspension, Respondent did not change her letterhead. **App. 180 (Tr. 118)**. During the period of suspension, Respondent's letterhead identified a Missouri office address and also contained a statement that Respondent was licensed in Missouri. **App. 179 (Tr. 117); 184 (Tr. 136); 386; 387-388**. During the suspension, Respondent did not withdraw as counsel of record in any state court case. **App. 181 (Tr. 124-125)**.

On March 18, 2009, Respondent caused a "Motion of Elle Sullivant to Set Aside Her Motion to Withdraw" to be filed in a case captioned as ***Sharp v. Farm-to-Market Bread Company***, Case No. 0816-CV05128, in the Circuit Court of Jackson County, Missouri. **App. 352-355**. The pleading was sent by facsimile transmission from Respondent's Missouri office directly to the division presiding over the case. **App. 360**.

The motion included Respondent's Missouri Bar Number and her Independence, Missouri office address. **App. 356-362**. The fax cover sheet accompanying the motion stated that Respondent was "licensed in Missouri." **App. 360**. Respondent did not indicate anywhere in the pleading or accompanying fax that her license to practice law in Missouri was suspended. **App. 356-362**. Thus, instead of withdrawing in a case as a result of the suspension, Respondent actually sought to undo a previous attempt to withdraw in a state court case. **App. 185 (Tr. 138); 356-362**.

Exhibit 18 is an example of how Respondent utilized her physical law office in Missouri from a remote location in Leesburg, Virginia. **App. 356-362**. Respondent is able to create legal documents and correspondence from her computer in Virginia, and direct that such documents be printed out at her office in Independence, Missouri. **App. 241 (Tr. 359)**. Respondent then arranged for a free-lance "paralegal" named Wes Sechtem (a disbarred former Missouri attorney) to take the documents off the printer at Respondent's office in Independence, sign Respondent's name to the pleading (without any indication of agency or authority so that it appears as Respondent's actual signature) and then arrange to have the pleading delivered to a Missouri court and Missouri opposing counsel. **App. 183 (Tr. 133); 184 (Tr. 135); 241 (Tr. 359); 356-362**.

On April 1, 2009, Respondent signed and filed with the Missouri Court of Appeals a "Motion for Rehearing And/Or to Transfer" in an appeal captioned as ***Doran v. ADT Security Services, Inc.***, Case No. WD 69225. **App. 342-351**. In the filing, Respondent provided her Missouri Bar Number, 46739, and her Missouri office address. **App. 349**.

However, Respondent did not indicate anywhere in the pleading that her license to practice law in Missouri was suspended. **App. 182 (Tr. 126-127); 342-351**. The motion contained extensive advocacy on behalf of Respondent's clients in challenging the underlying appellate opinion. **App. 342-351**. In the motion, Respondent claimed the opinion was in direct conflict with controlling case law and urged the Missouri Supreme Court to consider important issues raised in the appeal. **App. 342-351**.

During the period of suspension, Respondent engaged in trial preparation on behalf of the plaintiff in ***JS Construction v. Kool Nites Limousine***, Case No. 0816-CV00897, Circuit Court of Jackson County, Missouri. **App. 298-308**. In addition to trial preparation, on March 6, 2009, Respondent filed a Motion for Enforcement of Discovery with the Circuit Court. **App. 303**. On March 23, 2009, Respondent filed a reply in support of the motion. **App. 159-160 (Tr. 37-40); 303**. Shortly thereafter, Respondent provided a specific legal document, a records authorization, to opposing counsel so that it could be signed to resolve the motion. **App. 304**. On May 21, 2009, Respondent filed a supplemental designation of experts in the ***JS Construction*** case. **App. 304**.

The case was scheduled for a jury trial to occur on June 15, 2009. **App. 303**. When asked if she remained counsel of record for ***JS Construction*** in the case during the period of suspension, Respondent testified: "I do not know what that means, technically, I don't know. I don't know what you mean by that. . . . Did I tell them to get a new lawyer? No, I didn't." **App. 181 (Tr. 124)**. The trial judge presiding over the ***JS Construction*** case testified at the disciplinary hearing that Respondent's activities during the period of

March through May 2009 necessarily constituted the practice of law because the procedural rules require an attorney to perform those functions indicated on the docket sheet. **App. 160 (Tr. 40)**.

On or about Tuesday, May 26, 2009, Respondent notified opposing counsel in the case captioned as ***Kemper v. Rodgers,*** Case No. 0816-CV02743, in the Circuit Court of Jackson County, Missouri, of Respondent's intent to take the deposition of the opposing party at 7:30 a.m. on Monday, June 1, 2009, just immediately prior to the scheduled 9:00 a.m. start of the trial in the matter. **App. 295-297**. Respondent testified that the duration of the suspension prevented her from attempting to depose the opposing party any sooner than 1½ hours prior to the commencement of the trial. **App. 191 (Tr. 164)**. The opposing attorney filed a written Motion to Quash the deposition. **App. 295-297**.

On Thursday, May 28, 2009, Respondent actively participated in a pretrial conference conducted by Judge Marco A. Roldan in the ***Kemper*** case. **App. 156-157 (Tr. 25-29)**. Although Respondent participated by telephone rather than being physically present at the courthouse, Judge Roldan characterized the nature of Respondent's involvement in the conference as an appearance by Respondent. **App. 157 (Tr. 28-29)**. Judge Roldan testified that it is his view that lawyers who participate in pretrial conferences in his judicial division are engaged in the practice of law. **App. 158 (Tr. 30)**. Judge Roldan would not have allowed a non-lawyer to handle the pretrial conference because "I have to have the attorneys that are going to try the case, that are going to be involved in the case to handle the issues that I'm going to be discussing in

that pretrial conference." **App. 158 (Tr. 30-31)**. Judge Roldan heard statements from both sides on the Motion to Quash, including argument from Respondent. **App. 157 (Tr. 27); 158 (Tr. 32-33)**.

Respondent admits to practicing law during the entire period of suspension with regard to four lawsuits that were pending in a federal court: ***Arnold v. ADT/Chand***, 05-CV-00607-GAF (U.S. W.D.Mo.); ***Wallace v. DTG***, Appeal No. 08-1474 (U.S. 8th Cir.); ***U.S. v. Jenkins***, Appeal No. 08-2287 (U.S. 8th Circuit); and ***U.S. v. $63,990.87 in U.S. Currency***, 07-CV-00057 (U.S. W.D.Mo.). **App. 94-101; 185-186 (Tr. 141-142); 363-381; 400-406**. At the disciplinary hearing, Respondent admitted that she did business in Missouri during that time on these federal cases. **App. 188 (Tr. 150)**. In all such cases, Respondent submitted pleadings and correspondence utilizing her Missouri Bar Number and her Missouri office address without any indication of her suspension from the practice of law by the Missouri Supreme Court. **App. 382-383; 384-385; 386; 387-388; 389-396; 397-399; 442-446; 456**. In the ***Arnold*** case, on March 11, 2009, Respondent scheduled depositions to occur at her office in Independence, Missouri on April 13, 2009. **App. 382-383; 384-385**.

Respondent testified as follows:

Q. Were you using your Missouri office during this period of time to practice law in federal court matters?

A. Yes. I don't know if I was physically there. With technology it's amazing, and this is all done electronically so I don't have to

> physically be there, but for practical purposes I have to say yes, because that technically was my office. I lived in Washington, D.C., at the time and was spoiled by electronics that allowed me to do work there.

App. 188 (Tr. 151).

On May 1, 2009, Respondent submitted a Motion for Attorney fees in the ***Wallace*** appeal claiming a right to attorney fees under the Missouri Human Rights Act, RSMo. § 213.111. **App. 389-396**. In the motion, Respondent requested fees at a rate of $250 per hour for work performed from March 11, 2009 to April 28, 2009. **App. 396**. On May 11, 2009, Respondent sent a letter to opposing counsel in ***Wallace*** reminding counsel of her attorney's lien. **App. 456**. On May 28, 2009, Respondent contacted Sara Rittman, Missouri Legal Ethics Counsel, regarding a fee dispute[2] with co-counsel in the ***Wallace*** case. **App. 324-329**. Respondent was asking for information about a Missouri bar program to help resolve fee disputes between counsel. **App. 324-329**. On June 3, 2009, Respondent filed a reply brief in the **Wallace** appeal seeking recognition of an attorney lien arising under a Missouri statute. **App. 397-399**.

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[2] Respondent characterizes the dispute as a "knock-down drag-out" with co-counsel. **App. 227 (Tr. 304)**.

On April 2, 2009 Respondent called Sara Rittman, Missouri Legal Ethics Counsel, with a question about whether the suspension would affect Respondent's ability to practice law in the federal courts.[3] **App. 324-329**. When Ms. Rittman attempted to return the call, Respondent's cell phone mailbox was full and would not receive any more messages. **App. 329**. Shortly after April 3, 2009, Ms. Rittman and Respondent did actually speak. **App. 176 (Tr. 105)**. Ms. Rittman conveyed the message to Respondent not to do anything that could be construed as the unauthorized practice of law. **App. 176-177 (Tr. 105-107); 593-594**. Ms. Rittman advised Respondent to research this issue. **App. 176-177 (Tr. 105-107)**. Other than that, Ms. Rittman did not have any influence upon Respondent's subsequent actions. **App. 177 (Tr. 107)**. "My conduct, my actions were my own decision." **App. 177 (Tr. 106)**. At the disciplinary hearing, Respondent was unable to cite any cases she reviewed in 2009 to come to a reasoned opinion that she was permitted to practice law in a Missouri federal court during the period of suspension. **App. 199 (Tr. 196-197)**.

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[3] Respondent did not seek any advice from a federal court ethics counsel, believing that "every lawyer in the state of Missouri" is permitted to make a "freebie" call to Missouri Legal Ethics Counsel, Sara Rittman. **App. 176-177 (Tr. 104-105)**.

(b) Failure To Exercise Candor To A Judge

Jackson County Circuit Court Judge Marco Roldan testified at the disciplinary hearing that he expects lawyers to be truthful and candid with him regardless of whether he is conducting business in chambers or in the courtroom. **App. 157-158 (Tr. 29-30)**. Judge Roldan expected Respondent to be candid and truthful during the pretrial conference that occurred on May 28, 2009. **App. 158 (Tr. 33)**. The matter was going to be a number one bench trial setting for the following Monday morning, June 1, 2009 (four days after the pretrial conference). **App. 158 (Tr. 32-33); 159 (Tr. 36); 317**.

At the pretrial conference, neither side requested a continuance of the trial. **App. 158 (Tr. 33)**. Judge Roldan testified that the tenor of the pretrial conference lead him to believe that everyone was ready for trial. **App. 158 (Tr. 33)**. Respondent showed no hesitancy to go forward with the trial. **App. 158 (Tr. 33)**. Judge Roldan testified "Everybody said, Fine, we'll be there Monday morning and ready to go for trial." **App. 158 (Tr. 33)**. Respondent did not contact Judge Roldan or his office at any time after the pretrial conference. **App. 164 (Tr. 55-56)**. Judge Roldan testified; "I have no recollection of anyone ever contacting me until Monday morning." **App. 165 (Tr. 58)**. "No one informed my staff that this trial was not going." **App. 165 (Tr. 59)**.

On Monday morning, June 1, 2009, Judge Roldan was in his courtroom expecting the trial to go forward. **App. 159 (Tr. 36)**. Judge Roldan asked the attorneys to come back to chambers, and it was at this point that Respondent disclosed for the first time that she was suspended. **App. 159 (Tr. 36)**. Judge Roldan continued the trial so as to not

prejudice Respondent's client. **App. 159 (Tr. 36)**. However, Judge Roldan also acknowledged that the continuance may have prejudiced the opposing party and opposing counsel. **App. 159 (Tr. 36-37)**. "There is always some prejudice in a situation where you come up on Monday morning prepared to go to trial and all of a sudden something has happened and you do not go forward." **App. 159 (Tr. 36-37)**.

Judge Roldan testified that Respondent was not truthful and candid with him during the pretrial conference with regard to the important issue of the standing of her law license. **App. 158-159 (Tr. 33-34)**. Judge Roldan would have expected Respondent to have addressed the subject of her suspension during the pretrial conference. **App. 159 (Tr. 34-35)**. Judge Roldan testified that he would have entertained a private, confidential meeting with Respondent prior to the pretrial conference to discuss the standing of her law license. **App. 159 (Tr. 35)**.

Respondent testified as follows:

> Q. Why didn't you just go to Judge Roldan in March or April or even the first part of May and ask to chat with him privately about your situation?

A. I didn't think I needed to and nor did my rules require me to do so. I was told -- it was just paperwork.[4] It was just waiting for people to process paperwork. We had no idea it would take this long.

App. 195 (Tr. 178).

(c) Prejudicial Failure To Disclose Suspension To Others

Respondent was embarrassed by the suspension. **App. 196 (Tr. 182-183)**. She testified that "I was not wanting to go out and share to the general public that I allowed this to occur." **App. 196 (Tr. 183)**. Prior to June 1, 2009, Respondent did not tell any other attorney that she was suspended. **App. 196 (Tr. 183)**. She did not send letters to clients advising of her suspension. **App. 195 (Tr. 181)**. Respondent did not tell her co-counsel in the ***Wallace*** case, with whom she was having a dispute about division of attorney fees, of the restriction on her ability to practice law in Missouri. **App. 195-196 (Tr. 179-183)**. She did not disclose the suspension in the context of her motion to undo a prior attempt to withdraw the ***Sharp v. Farm-to-Market*** case. **App. 195-196 (Tr. 179-183); 356-362**.

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[4] The "paperwork" is the tax compliance letter received from the Missouri Department of Revenue on May 19, 2009 and the Application for Reinstatement filed with the Missouri Supreme Court on May 20, 2009. **App. 330-336**.

Q. Can you think of one judge that you disclosed that you were suspended?

A. Well, I don't know whether or not I actually advised Judge Gillis. My recollection was I did tell him because there was a hearing set in the matter sometime late April and I could not appear at the hearing, and I think at that time I advised the division that not only could I not appear, but that I could not file a formal request for a continuance. So I do believe I contacted Judge Gillis. As far as any other cases, I'm not aware of any other case that would have been affected by the administrative suspension during that time period.

Q. And you contacted Judge Gillis after he set aside your Motion to Withdraw?

A. I didn't know that at the time. I can only assume that to be true. I don't know.

Q. Can you name any attorney that you told you were suspended during this period of time?

A. My dear -- I don't even know if I told my best friend. I don't know. I told my opposing counsel.

Q. You're talking about Mr. Hall –

A. Yes.

Q. -- on May 29th?

A. Yes.

Q. Prior to that or prior to anything outside of this Kemper vs. Rodgers case, did you tell any other attorney in the city that you were suspended?

A. I don't think so, but I wouldn't know.

Q. Did you send any letters to any of your clients telling them you were suspended?

A. No, I did not. I don't know if I sent letters, no.

App. 195 (Tr. 179-181).

Local Rule 83.6(b)(1) of the United States District Court for the Western District of Missouri provides: "Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action." **App. 407-413**. Respondent did not report her suspension to anyone within the Western District of Missouri federal court. **App. 198 (Tr. 192)**.

Q. Weren't you worried about the way that the Missouri Supreme Court disciplinary system, which is basically this system here, would view your practice of law in federal court?

A. Are you asking me if I was worried about it?

Q. Uh-huh.

A. I don't know if I would use the word "worry." No, I wasn't worried about it. I certainly wanted to make sure I was doing what I thought was appropriate.

Q. Did anyone give you an opinion that you did not need to report the tax suspension to the federal court?

A. No, nor does one exist.

Q. Is it true, then, that you recognized Rule 83.6 as an issue; you called Sara Rittman about it; you went ahead and practiced law in federal court matters anyway without receiving any opinion from any ethics expert; is that correct?

A. I didn't need an opinion. Okay. Did I do that without receiving an official opinion from the Ethics Counsel? Yes, I did. I practiced in federal court without receiving an ethics opinion, yes.

App. 198 (Tr. 191-192).

(d) Commingling/Trust Account Misuse

Respondent testified that since establishing a trust account in 2001, she never "really thought about the trust account." **App. 214 (Tr. 255)**. "I don't know if I ever paid much attention to the workings of a trust account." **App. 214 (Tr. 256)**. Respondent testified that she does not know what "commingling funds" means. **App. 212 (Tr. 248)**. In ten tears of having a trust account, Respondent has never heard of IOLTA. **App. 209 (Tr. 235-236)**.

On November 7-8, 2008, Respondent attended a Practice Management Course called "Getting Your Law Practice on Track" commonly known as "ethics school." **App. 200 (Tr. 200); 652-659**. On the morning of November 8, 2008, Respondent attended a portion of the program called "Trust Account No No's and Must Do's." **App. 201 (Tr. 202-203); 652-659**. The agenda for the session included topics on fiduciary responsibilities and segregation of funds. **App. 652-659**.

> Q. And you're not sure if you learned anything about trust accounting at the ethics school that you attended in St. Charles, Missouri, in November of 2008?
>
> A. And I'm sorry, I wish I -- I don't remember the -- I don't remember the CLE.

App. 214 (Tr. 256).

Approximately seven months later, on June 1, 2009, Respondent deposited a check for $284,962.07 into her IOLTA trust account at Bank Midwest, representing a settlement payment from a Kansas personal injury lawsuit. **App. 206 (Tr. 224); 449; 450; 459; 462**. The client's portion of the settlement was not paid to the client, Jean Dunn, until June 24, 2009. **App. 210 (Tr. 240); 460**. Before the client received the settlement proceeds, Respondent disbursed over $94,000 to Respondent's own creditors directly from trust account funds, apparently believing that Respondent's creditors had a "vested interest" in the settlement proceeds. **App. 210 (Tr. 240); 459-463**. Respondent testified: "If there was -- on here, every check written I wrote and it was a direct expense of my

office, everything that was here. I paid off every person that had said we owe you money, you haven't paid us, you haven't paid us. I paid that off." **App. 212 (Tr. 249)**.

Respondent testified these creditors were "screaming" for payment:

Q. Why didn't you just pay your business expenses out of your business operating account?

A. Because after a bill collector calls you week after week, month after month wanting money, I wanted the bills paid. I wanted it out. In fact, I don't even know when I paid myself. It would have been after all of these checks were written to all the people who had been calling me wanting their money. I waited till they were all paid before I took my money. So I wanted to get them the money the fastest way I could. . . . I wanted to pay the creditors. I wanted them to quit calling me, and I wanted to get them money.

App. 213 (Tr. 250-251).

Respondent testified by deposition as follows:

Q. Why didn't you just transfer all the money into your operating account and pay all of these items other than the attorney's fees from your operating account?

A. The main reason was at the time I didn't think that there was anything wrong with how I had done it. But, two, the reason I did it that way is because people were screaming at me. Everyone had a

vested interest of when the money was going to come in, and I got it to them as quick as I could. I wired money, I transferred money, I sent money out the second I could. And that's just how I elected to do it. I did it all within the first 30 days of receiving the payment, believed that they were proper third parties and paid them immediately.

Q. Wouldn't it have been just as quick to transfer the money from your trust account after the funds had cleared into your operating account and written a check from there? I mean, that's –

A. I don't know, maybe. I didn't really think about that at the time. In hindsight, if you asked me now if I would have not had this investigation because I would have transferred it over, I would have said I would have erred on the side of caution. At the time I believed that these people had a vested interest in the case that they had financed, and I believed that they needed to be paid immediately before I was paid.

Q. And they had a vested interest in the case because they worked on the case?

A. Because they financed the case and worked on the case.

A619-620.

Specifically, before the client received her settlement proceeds on June 24, 2009, the following sums were disbursed from Respondent's trust account directly to Respondent's creditors:

Date	Amount	Payee/Type of Account
June 8, 2009	$7,940.96	Chase (credit card payment)
June 8, 2009	$6,891.98	FIA Card Services (credit card payment)
June 8, 2009	$699.94	AT&T (cell phone account payment)
June 9, 2009	$26,820.85	Chase (credit card payment)
June 9, 2009	$7,734.13	Business Card (credit card payment)
June 9, 2009	$7,472.16	Discover (credit card payment)
June 9, 2009	$982.83	CitiFi Retail (credit card payment)
June 10, 2009	$8,057.16	Bank of America (credit card payment)
June 10, 2009	$2,520.34	Scott Sullivant (Respondent's husband)
June 10, 2009	$10,057.20	Gymboree Visa (credit card payment)
June 10, 2009	$8,188.54	Intrust Bank (credit card payment)
June 11, 2009	$3,917.58	Scott Sullivant (Respondent's husband)
June 16, 2009	$9,024.14	SWBYPS (payment for advertising)
June 16, 2009	$1,256.05	SWBYPS (payment for advertising)
June 23, 2009	$700	Phyllis Mast (Respondent's Aunt)

App. 459-463.

Respondent testified that she could have "easily put the money in my [operating] account and then written the checks." **App. 211 (Tr. 244)**. Of the payments to third parties described above, no one ever told Respondent that they wanted money directly from the trust account and no one ever asserted a lien or interest in the trust account. **App. 210 (Tr. 241)**. Respondent testified "I was not made aware of any direct lien on my trust account." **App. 211 (Tr. 245)**. Respondent produced no document at the disciplinary hearing demonstrating an agreement to pay a creditor out of the funds in her trust account. **App 210 (Tr. 240-241)**.

On June 19, 2009, Respondent wrote a check for $7,200 to Summit. **App. 462**. On June 24, 2009, the Summit check was returned for insufficient funds in the account. **App. 460**. Fortunately for the client, the payment of the client's portion of the settlement had been wired out of the account earlier in the day on June 24, 2009 **before** the $7,200 check had been presented to the account. **App. 460**. Had the Summit check been presented to the trust account a few hours earlier, a full payment of the client's proceeds would not have been possible on June 24, 2009. **App. 460**.

The trust account balance was down to less than $5,000 as of June 26, 2009. **App. 460**. However, on June 29, 2009, Respondent deposited into the trust account approximately $100,000 in attorney fees that had already been earned in the ***Wallace*** case. **App. 208 (Tr. 230); 417; 460**. The $7,200 check to Summit that had previously been returned for insufficient funds was paid from the deposit of earned attorney fees from ***Wallace***. **App. 460**. To the extent that Summit should have been paid from the

trust account out of the ***Dunn*** settlement proceeds as a case expense, Summit was in fact paid from the attorney fees Respondent earned in the ***Wallace*** case. **App. 460**. On June 29, 2009, a payment of $193.50 from the trust account was paid to the KCMO Municipal Court on behalf of a client, Adam. **App. 460; 463**. There is no corresponding deposit into the trust account on behalf of Adam. **App. 459-463**. Respondent advanced Adam's court fine to the Municipal Court out of the fees earned in the ***Wallace*** case.

On July 1, 2009, Respondent paid $1,175 from the trust account to Weston Sechtem. **App. 464; 466**. Weston Sechtem is a disbarred former attorney in Missouri who now serves as a free-lance "paralegal." **App. 184 (Tr. 135)**. Respondent claimed that Sechtem provided legal research for the ***Dunn*** case. **App. 211 (Tr. 242); 616-617**. On July 3, 2009, Respondent paid $9,300 in cash to a consultant, Drennon, who also performed consulting work on the ***Dunn*** case. **App. 617-618**. To the extent that Sechtem and Drennon should have been paid from the trust account out of the ***Dunn*** settlement as case expenses, they were in fact paid from the attorney fees Respondent earned in the ***Wallace*** case. **App. 459-464; 466**.

In August 2009, Respondent paid another $15,462.36 to her credit card companies from funds in the trust account. **App. 467-468**. Beginning August 26, 2009 until January 2010, Respondent made a series of eleven transfers from the client trust account to Respondent's business operating account, totaling $32,410, along with a few other payments from trust account funds to Respondent's creditors (Chase, WF Fin Bank and Progressive Direct Insurance). **App. 458-476**.

Despite the above evidence, Respondent declined to admit a violation of Rule 4-1.15(c):

> Q. So you're not willing to admit on this record that you violated Rule 4-1.15(c) with respect to the handling of your trust account?
>
> A. I'm not willing to admit on the record that I engaged -- no, I'm not willing to admit it on the record.
>
> Q. And you want the panel to make that decision rather than having you concede that?
>
> A. Well, gosh, that sounds terrible to give them that role, but I feel one way, you feel different and, thank God, they're here to make a decision.

App. 219 (Tr. 276).

During this period from June 1, 2009 to January 20, 2010, there were only two deposits into the trust account, the ***Dunn*** settlement payment and the ***Wallace*** attorney fee payment. **App. 458-476**. By January 20, 2010, the balance in the trust account was down to less than $100. **App. 475**. The trust account overdraft that triggered the OCDC investigation occurred as follows **App. 215-217 (Tr. 258-266)**: Prior to January 25, 2010, Respondent provided two signed, blank trust account checks to her 80-year old mother-in-law (who is not a lawyer) in case someone needed access to Respondent's trust account while Respondent was in Virginia. Karl Jennings, a lawyer who shared office space with Respondent but who had no formal affiliation with Respondent, obtained the

trust account check.[5] Mr. Jennings then submitted the check to the Independence Municipal Court to take care of a traffic matter for a client. **App. 477**. The client had not advanced any money for deposit into the trust account. On January 26, 2010, the check was presented to the bank and paid, which brought the trust account balance down to a negative balance. **App. 475-476**. A day later, a check in the amount of $64.33 payable to the United States Post Office was presented against the trust account, and was paid by the bank, bringing the trust account balance down to -$152.33. **App. 475-476; 478**.

While Respondent admitted that there is a problem giving unsupervised access to trust account checks, Respondent subsequently made her mother-in-law a signatory on the trust account. **App. 216 (Tr. 262); 219 (Tr. 275)**. Respondent's husband, Scott Sullivant, testified about a former employee of Respondent's law firm who had misappropriated money from the firm's business operating account. **App. 251 (Tr. 392)**. Respondent's husband testified "let's just say that internal control mechanisms weren't there to handle that." **App. 251 (Tr. 392)**. Mr. Sullivant further testified that the employee could have fraudulently signed trust account checks as well. **App. 257 (Tr. 417)**.

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[5] Respondent's testimony is unclear as to how Karl Jennings obtained a blank trust account check with Respondent's signature already on it.

Exhibit 49 is another example of a situation leading to an overdraft of the trust account. **App. 217 (Tr. 266-268); 479-480; 635-640**. In September 2010, Respondent received a settlement check made jointly payable to her and to the client, Brian Harrison. Respondent endorsed her signature on the reverse of the check. She then mailed the instrument to Mr. Harrison with instructions that he should sign it and that he (rather than Respondent) should deposit the check because Respondent was not in town. Respondent is not sure she provided Mr. Harrison with a deposit slip for her trust account. Mr. Harrison deposited the check into Respondent's operating account instead of the trust account. When Respondent attempted to pay the settlement proceeds to Mr. Harrison from the trust account, there were not sufficient funds in the trust account to cover the check. Apparently, Respondent did not verify the balance in the trust account **before** disbursing a check from the trust account. The result created a **third overdraft on Respondent's trust account in fifteen months**.

(e) Conduct Involving Alleged Dishonesty, Deceit And Misrepresentation

Respondent represented the plaintiffs in a federal court employment discrimination lawsuit captioned as ***Arnold v. Chand /ADT***, 05-0607-CV-W-GAF, in the United States District Court for the Western District of Missouri, the Hon. Gary A. Fenner presiding. **App. 363-381**. The ***Arnold*** case had been pending since July 2005. **App. 363-381**. In February 2009, the defendants' counsel filed a discovery motion and sanctions pursuant to Fed.R.Civ.P. 37. **App. 363-381**. On March 31, 2009, Judge Fenner granted that portion of the motion seeking to compel discovery, and he further ordered:

> "If Plaintiffs fail to correct their discovery deficiencies by [April 15, 2009], Plaintiffs and Ms. Sullivant will be assessed a fine of $100 per day beginning on April 16, 2009 and continuing until all interrogatories or document requests are fully answered or produced. Ms. Sullivant and Plaintiffs are further ORDERED to pay Defendants' reasonable expenses in preparing the pending Motion in the amount of $10,988."

App. 422.

On May 1, 2009, Respondent filed a Motion to Withdraw in the ***Arnold*** Case. **App. 442-446**. In the motion, Respondent stated the following:

> [I]n addition, neither, the undersigned [Respondent] or the Plaintiffs can afford sanctions or fines, a factor this court could have considered in deciding what, if any, sanctions would be appropriate.
>
> The undersigned [Respondent] is not able to pay any sanctions or fines. Plaintiffs' counsel is prepared to submit her confidential financial records once the court rules upon counsel's accompanying request to submit the documents in camera, to demonstrate counsel's absolute inability to pay the sanctions or fines imposed.

App. 443-444.

On May 7, 2009, Judge Fenner granted Respondent's motion to withdraw, and further ordered:

> IT IS FURTHER ORDERED that accrual of the $100.00 per day sanction . . . terminated on May 1, 2009. . . . Accordingly, the total amount due under this sanction is $1,500. Ms. Sullivant and Plaintiffs are jointly and severally liable for this amount and $10,988 in attorneys' fees previously assessed against them in this Court's March 31, 2009 Order.
>
> IT IS FURTHER ORDERED that Ms. Sullivant and/or Plaintiffs must remit payment in the amount of $12,488 ($1,500 + $10,988) to Defendants within thirty days from the date of this Order.

App. 423-424.

After entry of the Order of May 7, 2009, Judge Fenner retained jurisdiction of the case for several months. **App. 363-381**. While a judgment in the case was entered July 17, 2009 followed by a Notice of Appeal, there were a number of docket entries and activities at the district court level through November 2009. **App. 363-381**. The sanction was upheld on appeal to the 8th Circuit Court of Appeals in an opinion handed down December 2010. **App. 425-435**.

In the weeks following the initial sanctions order dated March 31, 2009, there were two developments which would have financial impact upon Respondent. First, on April 17, 2009, Respondent received a Judgment from the 8th Circuit Court of Appeals in the ***Wallace*** case that affirmed that the plaintiff, Terri Wallace, had prevailed on a jury verdict. **App. 455**. Accordingly, Respondent would be entitled to a recovery of attorney fees for her representation of Ms. Wallace. **App. 389-396; 455**. Respondent had a

written contingency fee contract with Ms. Wallace which granted Respondent 45% of all funds collected in the case. **App. 456**. Second, on or about April 16, 2009, Respondent received a memorandum opinion from the trial judge in the ***Dunn*** case denying a defense motion for a new trial and upholding a $309,000 trial judgment in favor of Respondent's client, Jean Dunn. **App. 451-454**. Respondent also had a written agreement with Ms. Dunn providing for a fee of 45% of all sums recovered following a trial. **App. 450**.

Throughout the month of May 2009, the 8th Circuit ruling in ***Wallace*** resulted in Respondent's attention to the attorney fees recoverable in the case. **App. 207-208 (Tr. 228-230)**. For instance, on May 1, 2009 (the same day Respondent claims that her records will demonstrate "an absolute inability" to pay the $12,500 sanction), Respondent filed a motion seeking $4,000 in attorney fees for work performed on the ***Wallace*** appeal. **App. 389-396**. On May 11, 2009 Respondent sent a letter to all counsel in the ***Wallace*** case as a reminder of her attorney lien and 45% contingency fee contract. **App. 456**. On May 28, 2009, Respondent contacted Legal Ethics Counsel, Sara Rittman, Esq., regarding a fee dispute arising in the ***Wallace*** case. **App. 324-329**.

The ***Dunn*** insurance company check is dated May 21, 2009. **App. 449**. It was the result of a compromise reached after the April 16, 2009 memorandum decision. Sometime between April 16th and May 21st, Respondent negotiated a settlement with defense counsel to avoid an appeal. **App. 208 (Tr. 231)**. The check was received by Respondent and deposited on June 1, 2009. **App. 459-463**. The check had cleared by June 4, 2009. **App. 459; 462**.

On or before June 4, 2009, Respondent received about $100,000 in good funds for attorney fees from the ***Dunn*** payment (which includes $6,000 paid to Respondent's husband). **App. 459-463**. Respondent had the financial ability by the June 7, 2009 due date to satisfy the $12,500 sanction in full. **App. 459-463**. Respondent did not advise Judge Fenner or opposing counsel as to her ability to satisfy the sanctions obligation and took no action to correct or modify the May 1, 2009 representation regarding her financial records. **App. 239 (Tr. 353)**. Additionally, on June 29, 2009, Respondent received another fee payment of about $100,000. **App. 460**. Respondent did not advise Judge Fenner or opposing counsel in the ***Arnold*** case about this money either. **App. 239 (Tr. 353)**. The payment cleared, and Respondent began to draw on it right away. **App. 460-463**.

On July 7, 2009 Respondent had a balance of over $85,000 in the trust account. **App. 464**. Over the next few months, the vast majority of the remaining $85,000 ***Wallace*** fees was either transferred to Respondent's business operating account in several installments or used to pay Respondent's credit cards and insurance premiums. **App. 458-476**. Although Respondent's withdrawal from the ***Arnold*** case was permitted on May 1, 2009, Respondent attempted to re-enter her appearance in the case on August 18, 2009. **App. 363-381**. The purported entry of appearance was not allowed at that time due to a lingering concern about a conflict of interest. **App 363-381**. At the time Respondent attempted to re-enter her appearance on August 18, 2009, there was nearly

$50,000 in earned attorney fees left in Respondent's trust account, four times the amount of the sanctions order. **App. 467-468**.

On August 18-19, 2009, the following exchange occurred between Respondent and her opposing counsel in the ***Arnold*** case, Patrick Hulla:

> August 18, 2009 Hulla e-mail to Respondent:
>
> As you will recall, you represented to Judge Fenner that you were unable to afford sanctions and fines imposed on you and your clients. . . . To date, the sanctions have not been paid and your purported conflict has therefore not been mitigated making today's entry of appearance curious. Moreover, it appears you do, in fact, have disposable income that you are choosing to use for travel for Gerry Spence's birthday party instead of paying the sanctions ordered by the Court. Please help me understand these inconsistent positions.
>
> August 19, 2009 Respondent's response to e-mail:
>
> "Pat, You are a jerk."

App. 439. On the day that Respondent called Mr. Hulla a "jerk" for inquiring about the payment of sanctions, Respondent held nearly $50,000 of her own money in the trust account. **App. 467-468.**

On September 21, 2009 Respondent did satisfactorily re-enter the ***Arnold*** lawsuit. **App. 363-381**. On that date, Respondent still had $22,882.49 of her own money (derived from attorney fees earned in the ***Wallace*** case) in the trust account, almost twice as much

as the amount due from the sanctions order. **App. 470**. Upon re-entering the case on September 21, 2009, Respondent took no corrective action to advise Judge Fenner and opposing counsel that she did in fact have the financial wherewithal to pay the sanctions order out of funds being held in the trust account. **App 239 (Tr. 353); 363-381**.

(f) Willful Disobedience Of Order To Pay Sanction

The sanctions payment was due June 7, 2009. **App. 423-424**. While a stay was requested, nothing in the May 7, 2009 order stayed the obligation to pay the sanctions. **App 423-424**. Respondent produced no document showing that the obligation had been stayed. **App 213-214 (Tr. 253-254)**. No supersedeas bond was posted while the matter was on appeal. **App. 213-214 (Tr. 253-254)**.

The testimony demonstrates that Respondent experienced severe financial difficulty in 2009, 2010 and 2011. Nevertheless, from June 1, 2009 to December 2009, there was a continuously available running balance of funds derived from earned attorney fees left on deposit in Respondent's trust account that could have been used to satisfy the $12,500 sanction obligation. **App. 458-476**. Respondent elected to pay other creditors, her husband, her aunt and a disbarred former attorney from the trust account and also elected to make a series of transfers from the trust account to her operating account, rather than to remit the $12,500 payment to the defendant in the ***Arnold*** case. **App. 458-476**.

Respondent testified that "I believed in my heart and my soul that it [the sanctions order] was wrong and that I was going to appeal it." **App. 232 (Tr. 324)**. "I was livid,

sick as a dog in my heart and soul about the events that had occurred in that case, and I had strong convictions about what had occurred and I was not doing well with that and I requested to withdraw from the case. I felt like my personal feelings about the circumstance were getting in the way or could potentially get in the way . . ." **App. 218 (Tr. 271)**.

Respondent denied that it was her practice to make it as difficult as possible for anyone to collect from her. **App. 204 (Tr. 217)**. However, about six months prior to the sanctions order, Respondent stated the following to an attorney who had initiated a claim for legal malpractice against Respondent:

> "Make no mistake about it, I maintain the might of many, and I will not back down from fear of threatened litigation. Instead I will fight you every step of the way, making it more difficult than ever for you to recover one cent from me. I will fight this thing with my last breath, a tract (sic) I am well known for in the courtroom . . . ."

App. 447-448.

Respondent did not set aside any funds out of the $200,000 in attorney fees received in ***Dunn*** and ***Wallace*** in June 2009 to satisfy the sanctions order. **App. 213 (Tr. 251)**. Respondent testified in her deposition in December 2010 (one week before the sanction was upheld on appeal):

Q. Well, why didn't you take some money out of your trust account in June of 2009 and set it aside for potential payment of the sanctions order?

A. Why would I do that? I don't believe it's true. I don't understand why I -- I don't even understand why you would ask me that. I don't know why I would do it, and -- because as far as I'm concerned, the fact that it's on appeal means that I am not legally entitled to pay it, and if that changes then I will act accordingly. As we stand here today, I'm not legally entitled to pay it nor am I going to plan for some potential liability or potential payout.

Q. But it seems to me that when there's a sanctions order, when that is effectively a judgment against you, why did you not honor that potential judgment even if it's on appeal and pay people like Wes Sechtem? I mean, why --

A. Because those people deserved their money, in my opinion. I have, and I'm trying not to get emotional, I have very strong feelings about this sanction. And I think that -- I think that we have to remember, just because it's in a court and just because it's sanctions does not mean that it's absolutely right. That's why we have Appellate Court. That's why we have the Supreme Court. So the fact is, and I hope you consider the possibility that Judge Fenner was wrong in what he

> did, and I firmly believe that. So why in the world would I set aside money that I don't have to pay a potential future sanction that may come out? That makes no sense to me, so I didn't do it nor do I think I should have done it or was required to do it.

App. 627-629.

The sanction was upheld on appeal sixteen months ago. **App. 425-435**. To date, Respondent has made no payment of the sanction order. **App. 202 (Tr. 209)**.

(g) Professional Incompetence and Lack of Thoroughness and Preparation

Respondent testified "I give 100 percent plus to my clients and my caseload." **App. 284 (Tr. 524)**. "For 17 years I have given, what I feel like, everything to my clients to be a lawyer." **App. 284 (Tr. 524-525)**. "I don't think I've lied, cheated, and stole." **App. 284 (Tr. 524-525)**. "I think that, by and large, my clients are happy." **App. 284 (Tr. 527)**. However, later in her testimony, Respondent acknowledged "Yes, I have had clients–I have had clients that have been unhappy with my representation and have placed it in writing." **App. 285 (Tr. 529)**.

At the time the Information was filed in this matter, there were two legal malpractice lawsuits pending against Respondent initiated by her former clients, Mr. Herzog and Mr. Benton. **App. 217 (Tr. 269)**. Mr. Benton's legal malpractice claim was settled by Respondent's malpractice insurance company for a confidential amount. **App. 217-218 (Tr. 269-270); 234 (Tr. 330)**. Respondent is now uninsurable with respect to

her ability to obtain professional malpractice insurance. **App. 217 (Tr. 268-269); 234 (Tr. 330-331); 240 (Tr. 354)**.

Respondent acknowledged a third set of potential malpractice claims arising out of her handling of the ***Arnold*** matter. **App. 442-446**. In her motion to withdraw in the ***Arnold*** matter, Respondent admitted the plaintiffs had a "viable cause of action for negligence" against Respondent "for acts and omissions which have prevented them the use of an expert in the litigation all the while exposing them to significant financial liability." **App. 442-446**. Respondent further admitted in connection with the ***Arnold*** case that further representation could potentially cause Respondent to violate rules of conduct requiring diligence and professional competence. **App. 442-446**.

The record shows two other cases besides ***Arnold*** which were involuntarily dismissed during the course of Respondent's representation. **App. 481-482; 486-487**. In ***Bradley v. Commerce***, 09-1084-CV-W-FJG, United States District Court for the Western District of Missouri, on August 10, 2010 the case was dismissed for failure to comply with the orders of the court. **App. 486-487**. In ***U.S. v. $63,990.87 in U.S. Currency***, the claim of Respondent's client was dismissed involuntarily in October 2009 for failure to comply with discovery orders. **App. 481-482**.

After Respondent permanently moved from Missouri to Virginia in 2008, Respondent has attempted to manage her Independence, Missouri law practice remotely from her home. **App. 168 (Tr. 71); 241 (Tr. 359)**. Respondent commutes to the Kansas City area once a month, and would stay for a few days at a time. She testified "I'm

physically in the building a week out of every month, Monday through Thursday." **App. 219 (Tr. 274)**.

In 2009, Respondent sought to withdraw from three cases in five months, citing to difficulties in her law practice:

(1) ***Sharp v. Farm to Market***: "The move to Washington, D.C. has compromised [Respondent's] ability to adequately participate in prosecuting this case and in fully communicating with [Respondent's client]." **App. 361**.

(2) ***Arnold v. ADT***: Respondent cited financial difficulties[6] as grounds for the motion to withdraw. **App. 442-446**.

(3) ***U.S. v. $63,990.87 in U.S. Currency***: Respondent stated that the client's inability to compensate her "is affecting other areas of my practice. . . . Due to my financial position and the inability of claimant to pay me, I cannot continue to effectively represent Ms. Jenkins." **App. 484**.

For most of the time between 2008 and 2011, Respondent did not employ any office assistants. **App. 168 (Tr. 72)**. When Respondent did employ an assistant, it

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[6] Respondent's financial situation has not improved. Respondent testified that in June 2011 she and her husband were facing foreclosure on the house for which they paid $670,000. Testifying in June 2011, Respondent stated "I'm going bankrupt. We have no money."

turned out the assistant had embezzled money from the office. **App. 251 (Tr. 392)**. Respondent did not have a system to safeguard against this problem. **App. 251 (Tr. 392)**. Respondent's move to Virginia caused her Missouri professional corporation to be without a designated registered agent. **App. 217 (Tr. 268)**. Although Respondent's office was staffed on a sporadic, part time basis, her letterhead did not reflect that she was available "by appointment only." **App. 219 (Tr. 274)**.

Respondent had difficulty preparing for the disciplinary hearing on her own behalf. Respondent was served with an Information on February 1, 2010. Respondent proceeded *pro se* for at least half of the 18-month duration of this disciplinary proceeding. Respondent had three months to prepare for trial after her counsel had withdrawn. **App. 116-117**. Respondent sent an-email to the presiding office of the disciplinary panel five days before the hearing, conceding that Respondent had not adequately prepared for the hearing. **App. 132**. A second day of hearing was scheduled for July 12, 2011. **App. 145; 242 (Tr. 365)**. A Notice of Hearing was sent to Respondent by US mail on June 30, 2011. **App. 145; 281 (Tr. 513-514)**. Respondent concedes that she marked the wrong date on her calendar and did not retrieve her mail (which included the hearing notice) until July 11, 2011. **App. 217 (Tr. 267); 258 (Tr. 421); 288 (Tr. 540)**.

Respondent characterizes her style of lawyering as being a "rebel" and a "warrior." **App. 228 (Tr. 309)**. The evidence demonstrates an acrimonious dispute[7] with co-counsel in the ***Wallace*** case over a division of attorney fees, as well as a rather combative relationship with opposing counsel in the ***Arnold*** matter. **App. 227 (Tr. 304); 232 (Tr. 324)**. Respondent acknowledges "I don't play nicely, but I don't think I have to play nicely to do my job. So opposing counsel at times don't like me." **App. 286 (Tr. 534)**.

Respondent also acknowledged "I have had some judges unhappy with me. Yes, I have." **App. 285 (Tr. 529)**. In addition to the events described above with state court Judge Marco Roldan and federal court Judge Gary Fenner, Respondent has had other problems with judges. Judge Montgomery in Miami County, Kansas entered a sanction order against Respondent, then held Respondent in contempt because she missed a debtor exam regarding the sanctions order, and then put Respondent in jail for two hours. **App. 285 (Tr. 529-530)**. Judge Vano, a trial judge in Johnson County, Kansas, entered an involuntary dismissal without prejudice of a personal injury lawsuit handled by Respondent because Respondent failed to attend a pretrial conference. **App. 285-286 (Tr. 531-532)**. The dismissal was set aside only upon the condition that Respondent was required to have co-counsel in the case. **App. 286 (Tr. 532)**. In a federal case, Western

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[7] The dispute was described by Respondent as a “knock-down drag-out.” **App. 222 (Tr. 304)**.

District of Missouri Judge Scott O. Wright became angry at Respondent during a "behind-the-scenes knock-down drag-out." **App. 286-288 (Tr. 535-540)**. Judge Wright ordered Respondent off the case and told her not to step anywhere near the client. **App. 288 (Tr. 540)**.

III. ALLEGED DELAY AND OBSTRUCTION OF THE DISCIPLINARY PROCEEDING AND OTHER AGGRAVATING FACTORS

In its written decision, the disciplinary hearing panel found the following aggravating factors:

(a) Respondent has refused to acknowledge the wrongful nature of her conduct in that Respondent refuses to accept the fact that she should not have been practicing law during the period of time her license was suspended and exhibited a very aggressive and negative attitude and demeanor during the hearing.

(b) Respondent has refused to acknowledge the wrongful nature of her conduct in that she commingled personal funds with her trust account fund and exhibited a very aggressive and negative attitude and demeanor during the hearing on this matter; and

(c) Respondent exhibited an indifference to making restitution in that Respondent refused to pay sanctions that were imposed against her by a Federal Judge.

App. 685.

Informant's First Amended Information was served upon Respondent on March 11, 2010. **App. 22**. Respondent failed to file an answer to the amended information for over five months. By e-mail to Respondent dated July 23, 2010, the presiding officer of the disciplinary hearing panel requested Respondent's answer within three weeks. **App. 57**. Respondent promised to have an Answer filed by August 13, 2010. **App. 58**. Respondent's Answer was served on August 19, 2010, when counsel first entered an appearance on behalf of Respondent. **App. 60-85**.

On March 4, 2011, Respondent's counsel indicated that a withdrawal would be forthcoming, and requested that the hearing be scheduled no sooner than 60 days out to allow Respondent adequate time to obtain new counsel and be up to speed in the case prior to hearing. **App. 115**. On March 18, 2011, Respondent's counsel sought formal leave to withdraw. Respondent filed no objection to the withdrawal. **App. 116-117**. Informant raised no objection to the withdrawal nor to the request for a sixty-day period so that Respondent could adequately prepare for an evidentiary hearing.

Approximately sixty days after the Motion for Leave to Withdraw in this matter, the presiding officer set a hearing on the First Amended Information for June 22, 2011. **App. 120-121**. That allowed more than ninety days after the withdrawal for Respondent to either obtain substitute counsel or proceed *pro se* at the hearing.

On June 20, 2011 – two days before the scheduled hearing date – Respondent filed a Motion for Continuance of the evidentiary hearing and conceded she had not adequately prepared. **App. 122-134**. Informant opposed the continuance request. **App.**

135-136. The presiding officer denied the continuance on June 21, 2011. **App. 137-141**. On June 21, 2011, the day before the noticed date of hearing, Respondent sent a document to the presiding officer purporting to request the Missouri Supreme Court for an injunction seeking to prevent the First Amended Information from proceeding to hearing.[8] **App. 142-144**. Additionally, Respondent's notice purported to strike the presiding officer from participating in the panel. **App. 142-144**. The assignment of panel members, including the presiding officer, had been in place for almost one year prior to this purported request. On the date of the hearing, Respondent consumed much of the disciplinary hearing panel's time with a lengthy "proffer" of Respondent's procedural concerns. **App. 152-154 (Tr. 7-17)**.

Respondent's testimony was often contradictory and inconsistent with the unambiguous and plain content of documentary evidence. One such instance involved whether or not there was an actual court order requiring Respondent to place the ***Wallace*** payment into her trust account:

> A. The second thing is, two, there was a fee dispute with regards to one of the fees, and I did not know when I was going to be given it. **We**

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[8] The current record does not show whether Respondent actually filed such a request with the Missouri Supreme Court.

had a direct order from the federal Court of Appeals[9] **telling us to deposit it into trust accounts** until the agreement between the parties was worked out. . . . .

Q. Did you say there was a court order for you not to disburse that money from your trust account?

A. No. I said that the Court said, You two are in a dispute. If you can't work it out, you need to deposit the money to the Court. That's what was told. So we elected not to deposit it to the Court and instead, while we worked it out, placed it in our own trust accounts.

Q. And was this some sort of written directive from the Court or --

A. It was a written order from the federal Court of Appeals that said -- the opposing side tried to use it against us and say those two are bickering about their fees, so why don't we not pay them anything. The federal Court of Appeals said, We're not going to do that, but what we are going to do is we're going to give direction and we are going to tell them if they can't work this dispute out amongst each other, they need to deposit the money with the Presiding Judge of the

[9] Respondent offered no such direct order into evidence.

Western District, at which time my co-counsel said to me, I would rather not do that. I would rather not while we work out the deal.

Q. And so from that, are you saying that you didn't do what the Court had asked or you did do what the Court had asked?

A. **The Court said, If you were unable to reach an agreement, you can deposit it into the Court. My counsel said, Let's reach an agreement. Let's deposit it into our trust accounts until we decide if this is ultimately what we're going to do.** So we did follow the court order. We worked it out.

(emphasis added). **App. 208-210 (Tr. 232-238)**.

Another such exchange involved whether Respondent actively participated in a phone conference with Judge Roldan.

Q. Did you actively participate in the phone conference with Judge Roldan?

A. I did not. I don't call it a phone conference. I returned a phone call to a division.

Q. So you object to the use of the term "phone conference"?

A. I do.

Q. Was it a phone call?

A. I returned a phone call.

Q. Did you actively participate in that call?

A. I listened to everything that he wanted to tell us. He wanted -- yes, everything he wanted to tell us.

Q. Did you actively participate in the phone call?

A. I'm going to say that I don't know what you mean by "actively participate."

Q. Did Judge Roldan make inquiries of you during your phone conference?

A. He didn't make any inquiries of me. My client had already told us there was a bench trial. He did tell us what time his division went to lunch. No, did not make any inquiries of me.

Q. Did you answer any of his inquiries?

A. He didn't make any of me.

Q. Let me have you look at Exhibit 4 if you would, please.

A. Can we take a quick break?

Q. May I finish my questions regarding the Exhibit 4?

A. Okay. Go ahead.

MS. LEONARD: Ms. Sullivant, are you getting sick?

THE RESPONDENT: No, I just -- I'll be fine. I'll be fine.

MS. LEONARD: All right.

Q. (By Mr. Odrowski) Exhibit 4 is your response that you provided to the Office of Chief Disciplinary Counsel; correct?

A. Yes. Yes.

Q. Okay. Let me direct your attention to page 2 of that response, the first sentence of the fourth full paragraph. Can you read that into the record, please.

A. No, but I don't have it in front of me. If you want to read it into the record, I have no objection.

Q. "I do admit that I did actively participate in this call." Did I read that correctly?

A. I stipulate that it says what it does.

Q. Okay.

A. Yes.

Q. And reading further in the last paragraph on page 2 of the letter, **"During the call, Judge Roldan did make several inquiries of me on whether I agreed with his decision, such as the number of jurors requested. I did answer each of these inquiries."**

21. Did I read that correctly?

A. Yes. If that's what it says, that's what it says.

Q. Moving into the third paragraph, last sentence. "In short, I was caught by surprise **I would be actually participating in a pretrial conference** when I telephoned the division."

A. That is true.

Q. **So it was an actual participation in a pretrial conference? Can we agree on that?**

A. **No, we don't.** No. Okay. I'm going to try not to get emotionally upset about this. No one told me it was a pretrial conference. I was returning a phone call to a message saying, Please call Judge Roldan's division. When I got on the phone, I was patched back into chambers where Judge Roldan began to tell me that he was going out of town and he wanted to make sure these issues -- he told us what time they broke for lunch. I will not agree that that was a pretrial conference. I'm sorry, I respectfully disagree with that.

Q. Okay. Paragraph 2 of page 2 of your response, "I agree with the complaint that on May 28th, 2009, I ended up participating in a phone conference that was in chambers and off the record." Did I read that correctly?

A. Okay.

Q. Did I read that correctly?

A. Your question is to me did you read the document correctly? Yes. I don't know. I'm not following you. But if you want, you can read the whole document into the record now and we can see if you're reading it correctly.

Q. Did you tell Ms. Weedin it was a phone conference?

A. I don't know if I told Ms. Weedin it was a phone conference. If that's what the letter says, that's what I said.

Q. Well, which is the truth, what you told Ms. Weedin or what you're telling us today?

A. Are you suggesting I'm lying or that's the deal? The fact of the matter is, I don't know what you call it. I don't know what you call it when you return a phone call and then later someone tells you, Oh, by the way, that's a pretrial conference, because in my opinion, on my calendar I didn't have any pretrial conference scheduled, and when I went to the circuit clerk and looked at my case, there wasn't any pretrial conference scheduled. So the fact of the matter is, I don't care what you call it in the letter and I don't care what we call it today.

Q. Are you having any difficulty calling it a phone conference?

A. I don't care what you call it. You can call it anything you want. What the meaning is, I will respectfully disagree.

Q. Do you deny that you actively participated in the phone call?

A. I stipulate to everything already in there. If it says I participated in the phone call, I did participate in the phone call.

MS. LEONARD: Ms. Sullivant, I hate to interrupt. Did you just say you stipulate to what is set forth in that document?

THE RESPONDENT: Yes, I stipulate this is what this document says. At the time that I wrote the response, this in good faith was how I felt the events transpired.

(emphasis added). **App. 193-194 (Tr. 171-176)**.

Another exchange involved whether Judge Fenner had stayed the obligation to pay the sanction:

Q. Didn't Judge Fenner order you to remit the $12,000 within 30 days of his order of May 7th?

A. I requested a stay in Judge Fenner's case from that order, and then I also appealed it. So at the time that you're talking about, the case had been stayed and was pending with the Court of Appeals. So I did not make any decision not to pay the bill. What I did do is what I had the best resources available, and that was request the judge that he stay it until I could get review from an appellate court, and then I appealed the decision, which I believed was what option I had at the time.

Q. Did Judge Fenner enter an order staying your obligation to pay that -- to remit that money to the defendant in the case?

A. I don't remember the exact terminology of what the May 9th order said. It said something to the effect of this portion of it is going to

be held until they find ulterior (sic) counsel. I don't know. Whatever the order said.

Q. And other than that, you have no document that any federal judge or the 8th Circuit Court of Appeals actually stayed your obligation to make that payment?

A. I am under the impression I filed a stay, which was granted for a review to review this – these decisions. In fact, my motion that you showed them was a specific request to not only withdraw, but to stay payment so that everybody could get new counsel so that I could withdraw, so that we could get appellate review.

Q. Well, I understand what you requested. I'm asking did anyone grant your request?

A. I thought that Judge Fenner had granted my request for a stay and, in fact, put it as a footnote that he was going to wait or -- I think it was the footnote 2 at the bottom.[10]

App. 213 (Tr. 251-252).

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[10] Footnote 2 of the sanctions order provides that an ongoing per day fine could be reinstated after new counsel is retained if discovery issues continued.

Another instance where Respondent's testimony differed from unambiguous documentary evidence was whether Respondent contacted Sara Rittman regarding Respondent's federal license:

Q. Okay. And looking at the text of Ms. Rittman's notes for the phone call of April 2nd, 2009, do you have any reason to dispute her comments about the subject matter of the phone call?

A. I don't see where she puts the subject matter of the phone call.

Q. Okay. Well, I guess my question is, do you see the words beginning with "I did have a couple Q's"? Do you see that paragraph?

A. Yes.

Q. So it ends, ". . .that is my Q." Do you see that?

A. Yeah.

Q. Do you have any dispute with the words that she has used in the text?

A. "Q's"? Is that what you're asking me, do I dispute "Q's"?

Q. No, just that entire paragraph. Did she accurately reflect the substance of the phone message you left for her?

A. As I've already indicated, Sara Rittman is our Chief Ethics Counsel. I have no reason to dispute anything that she would write. I would think and feel safe knowing that she would put exactly what had transpired. I don't have any disputes with any of this.

Q. Okay. And so you were calling Sara Rittman regarding your federal license?

A. No.

Q. Isn't that what it says in the first line?

A. It says, I have a couple of questions for you, the first of which is my federal license.

Q. Okay. So you were asking her about your federal license?

A. Yes --

Q. Okay.

A. -- I was.

App. 176 (Tr. 102-104).

POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE THE PREPONDERANCE OF EVIDENCE ESTABLISHES THAT RESPONDENT IS GUILTY OF NUMEROUS INSTANCES OF PROFESSIONAL MISCONDUCT, AS FOLLOWS:

(A) FOLLOWING AN ORDER OF SUSPENSION FROM THE MISSOURI SUPREME COURT, RESPONDENT ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW IN VIOLATION OF RULES 4-5.5(b), 4-1.16(a)(1) AND 6.05(c) FROM FEBRUARY 17, 2009 UNTIL JUNE 3, 2009, BY:

(i) MAINTAINING AN OFFICE AND OTHER SYSTEMATIC AND CONTINUOUS PRESENCE IN MISSOURI FOR THE PRACTICE OF LAW;

(ii) HOLDING HERSELF OUT TO THE PUBLIC AND OTHERWISE REPRESENTING THAT SHE IS AUTHORIZED TO PRACTICE LAW IN MISSOURI DURING THE SUSPENSION;

(iii) FAILING TO WITHDRAW FROM REPRESENTATION OF MISSOURI CLIENTS DURING THE SUSPENSION; AND

(iv) ENGAGING IN ACTIVITIES CONSIDERED TO CONSTITUTE THE PRACTICE OF LAW IN MISSOURI DURING THE SUSPENSION, INCLUDING REPRESENTATION OF CLIENTS IN FEDERAL COURT MATTERS;

(B) RESPONDENT VIOLATED RULE 4-3.3 BY FAILING TO AFFIRMATIVELY DISCLOSE THE SUSPENSION TO A TRIAL JUDGE AT A PRETRIAL CONFERENCE HELD FOUR DAYS BEFORE A TRIAL WAS TO BEGIN AND BY KNOWINGLY MAKING A FALSE STATEMENT OF FACT TO THE JUDGE CONCERNING READINESS FOR TRIAL AND BY KNOWINGLY FAILING TO DISCLOSE LEGAL AUTHORITY DIRECTLY ADVERSE TO HER ABILITY TO PROCEED TO TRIAL WHILE SUSPENDED;

(C) RESPONDENT ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d) BY FAILING TO ADVISE OPPOSING COUNSEL, CLIENTS, CO-COUNSEL, JUDGES AND OTHERS ABOUT RESPONDENT'S PROHIBITION AGAINST PRACTICING LAW IN MISSOURI DURING THE SUSPENSION.

(D) RESPONDENT FAILED TO KEEP HER PROPERTY SEPARATE FROM THE PROPERTY OF CLIENTS AND THIRD PARTIES IN VIOLATION OF RULE 4-1.15(c) IN THAT FOR SEVERAL MONTHS FROM JUNE 2009 TO DECEMBER 2009, RESPONDENT COMMINGLED TRUST FUNDS AND NON-TRUST FUNDS WITHIN RESPONDENT'S CLIENT TRUST ACCOUNT BY UTILIZING $200,000 IN EARNED ATTORNEY FEES HELD IN THE TRUST ACCOUNT TO PAY FAMILY MEMBERS, VENDORS, CREDIT CARD COMPANIES AND NUMEROUS OTHER PERSONS WHO DID NOT HAVE A LIEN ON, OR PROPERTY INTEREST IN, SUCH FUNDS.

(E) RESPONDENT VIOLATED RULE 4-3.3 AND RULE 4-8.4(c) IN THAT ON MAY 1, 2009 RESPONDENT KNOWINGLY MADE A FALSE WRITTEN REPRESENTATION TO A FEDERAL JUDGE THAT RESPONDENT HAD AN "ABSOLUTE INABILITY" TO PAY A $12,500 SANCTION IN THAT TWO WEEKS EARLIER RESPONDENT HAD SUCCESSFULLY LITIGATED TWO CONTINGENCY FEE CASES THAT RESULTED IN $200,000 IN ATTORNEY FEES RECEIVED BY RESPONDENT IN MAY AND JUNE 2009

AND RESPONDENT FAILED TO TAKE AFFIRMATIVE ACTION TO CORRECT THE MISREPRESENTATION UPON RECEIPT OF SUCH FEES;

(F) RESPONDENT VIOLATED RULE 4-3.4(c) AND ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d) BY HER WILLFUL DISOBEDIENCE OF AN ORDER BY A FEDERAL JUDGE TO PAY A $12,500 SANCTION; AND

(G) RESPONDENT HAS VIOLATED RULE 4-1.1 AND HER REPRESENTATION OF CLIENTS HAS BEEN PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4.-8.4(d) IN THAT RESPONDENT IS UNFIT TO PRACTICE LAW IN MISSOURI IN LIGHT OF NUMEROUS CIRCUMSTANCES, INCLUDING: (i) SEVERE FINANCIAL DIFFICULTIES EXPERIENCED BY RESPONDENT; (ii) THREE VIABLE LEGAL MALPRACTICE CLAIMS AGAINST RESPONDENT IN 2009; (iii) THE DIFFICULTIES FACED BY RESPONDENT INHERENT IN ATTEMPTING TO OPERATE A MISSOURI LAW PRACTICE REMOTELY FROM A PERMANENT RESIDENCE IN VIRGINIA; (iv) RESPONDENT'S LACK OF

PREPARATION AND THOROUGHNESS; AND (v) A PATTERN OF COMBATIVE RELATIONSHIPS WITH JUDGES AND MEMBERS OF THE BAR.

In re Reza, 743 S.W.2d 411 (Mo. 1988)

In re Coleman, 295 S.W.3d 857 (Mo. banc 2009)

In re Carey, 89 S.W.3d 477 (Mo. banc 2002)

In re George Spencer Miller, SC91026 (Mo banc. Order dated January 12, 2011)

Rule 4-1.0(f)

Rule 4-1.1

Rule 4-1.8(e)

Rule 4-1.15

Rule 4-1.16(a)(1)

Rule 4-3.4(c)

Rule 4-5.3

Rule 4-5.5

Rule 4-8.4(d)

Rule 5.245

Rule 5.27(b)

Rule 6.05

RSMo §347.030

RSMo §484.010

W.D.Mo Local Rule 83.6(b)(1)

Fed.R.Civ.P. 37

II.

IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION, THE COURT SHOULD SUSPEND RESPONDENT'S LAW LICENSE FOR AN INDEFINITE PERIOD OF NO LESS THAN THREE YEARS BECAUSE:

(A) RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT INVOLVING DECEIT AND DISHONESTY;

(B) SUSPENSION IS THE BASELINE STANDARD UNDER THE ABA STANDARDS;

(C) THE EXISTENCE OF NUMEROUS AGGRAVATING FACTORS AND ABSENCE OF MITIGATING CIRCUMSTANCES BOLSTER THE APPROPRIATENESS OF SUSPENSION; AND

(D) RESPONDENT PRESENTS A GRAVE RISK OF HARM TO THE PUBLIC THAT CANNOT BE ADDRESSED BY SUPERVISION OR OVERSIGHT OF RESPONDENT'S LAW PRACTICE.

In re Coleman, 295 S.W.3d 857 (Mo. banc 2009)

In re Reza, 743 S.W.2d 411 (Mo. 1988)

In re Carey, 89 S.W.3d 477 (Mo. banc 2002)

In re Madison, 282 S.W.3d 350 (Mo banc 2009)

Rule 4-1.1

Rule 4-1.15

Rule 5.225

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE THE PREPONDERANCE OF EVIDENCE ESTABLISHES THAT RESPONDENT IS GUILTY OF NUMEROUS INSTANCES OF PROFESSIONAL MISCONDUCT, AS FOLLOWS:

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(ii) HOLDING HERSELF OUT TO THE PUBLIC AND OTHERWISE REPRESENTING THAT SHE IS AUTHORIZED TO PRACTICE LAW IN MISSOURI DURING THE SUSPENSION;

(iii) FAILING TO WITHDRAW FROM REPRESENTATION OF MISSOURI CLIENTS DURING THE SUSPENSION; AND

(iv) ENGAGING IN ACTIVITIES CONSIDERED TO CONSTITUTE THE PRACTICE OF LAW IN MISSOURI DURING THE SUSPENSION, INCLUDING REPRESENTATION OF CLIENTS IN FEDERAL COURT MATTERS;

(B) RESPONDENT VIOLATED RULE 4-3.3 BY FAILING TO AFFIRMATIVELY DISCLOSE THE SUSPENSION TO A TRIAL JUDGE AT A PRETRIAL CONFERENCE HELD FOUR DAYS BEFORE A TRIAL WAS TO BEGIN AND BY KNOWINGLY MAKING A FALSE STATEMENT OF FACT TO THE JUDGE CONCERNING READINESS FOR TRIAL AND BY KNOWINGLY FAILING TO DISCLOSE LEGAL AUTHORITY DIRECTLY ADVERSE TO HER ABILITY TO PROCEED TO TRIAL WHILE SUSPENDED;

(C) RESPONDENT ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d) BY FAILING TO ADVISE OPPOSING COUNSEL, CLIENTS, CO-COUNSEL, JUDGES AND OTHERS ABOUT RESPONDENT'S PROHIBITION AGAINST PRACTICING LAW IN MISSOURI DURING THE SUSPENSION.

(D) RESPONDENT FAILED TO KEEP HER PROPERTY SEPARATE FROM THE PROPERTY OF CLIENTS AND THIRD PARTIES IN VIOLATION OF RULE 4-1.15(c) IN THAT FOR SEVERAL MONTHS FROM JUNE 2009 TO DECEMBER 2009, RESPONDENT COMMINGLED TRUST FUNDS AND NON-TRUST FUNDS WITHIN RESPONDENT'S CLIENT TRUST ACCOUNT BY UTILIZING $200,000 IN EARNED ATTORNEY FEES HELD IN THE TRUST ACCOUNT TO PAY FAMILY MEMBERS, VENDORS, CREDIT CARD COMPANIES AND NUMEROUS OTHER PERSONS WHO DID NOT HAVE A LIEN ON, OR PROPERTY INTEREST IN, SUCH FUNDS.

(E) RESPONDENT VIOLATED RULE 4-3.3 AND RULE 4-8.4(c) IN THAT ON MAY 1, 2009 RESPONDENT KNOWINGLY MADE A FALSE WRITTEN REPRESENTATION TO A FEDERAL JUDGE THAT RESPONDENT HAD AN "ABSOLUTE INABILITY" TO PAY A $12,500 SANCTION IN THAT TWO WEEKS EARLIER RESPONDENT HAD SUCCESSFULLY LITIGATED TWO CONTINGENCY FEE CASES THAT RESULTED IN $200,000 IN ATTORNEY FEES RECEIVED BY RESPONDENT IN MAY AND JUNE 2009

AND RESPONDENT FAILED TO TAKE AFFIRMATIVE ACTION TO CORRECT THE MISREPRESENTATION UPON RECEIPT OF SUCH FEES;

(F) RESPONDENT VIOLATED RULE 4-3.4(c) AND ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d) BY HER WILLFUL DISOBEDIENCE OF AN ORDER BY A FEDERAL JUDGE TO PAY A $12,500 SANCTION; AND

(G) RESPONDENT HAS VIOLATED RULE 4-1.1 AND HER REPRESENTATION OF CLIENTS HAS BEEN PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d) IN THAT RESPONDENT IS UNFIT TO PRACTICE LAW IN MISSOURI IN LIGHT OF NUMEROUS CIRCUMSTANCES, INCLUDING: (i) SEVERE FINANCIAL DIFFICULTIES EXPERIENCED BY RESPONDENT; (ii) THREE VIABLE LEGAL MALPRACTICE CLAIMS AGAINST RESPONDENT IN 2009; (iii) THE DIFFICULTIES FACED BY RESPONDENT INHERENT IN ATTEMPTING TO OPERATE A MISSOURI LAW PRACTICE REMOTELY FROM A PERMANENT RESIDENCE IN VIRGINIA; (iv) RESPONDENT'S LACK OF

PREPARATION AND THOROUGHNESS; AND (v) A PATTERN OF COMBATIVE RELATIONSHIPS WITH JUDGES AND MEMBERS OF THE BAR.

A preponderance of evidence presented to the disciplinary hearing panel establishes multiple instances of professional misconduct, as follows:

Unauthorized Practice of Law

Respondent was suspended by written Order of the Missouri Supreme Court on February 2, 2009. Three months earlier, Respondent received a letter from the Missouri Supreme Court warning of the suspension. The warning in the letter of an "**AUTOMATIC SUSPENSION**" together with the admonition that there will be "no discretion whatsoever to delay or otherwise avoid the penalty provided for non-compliance" could not have described the consequences any more clearly. Any reasonably competent lawyer who read the letter should have anticipated the suspension even before February 2009.

Assuming that Rule 5.27(a) applies to the suspension, the effective date of the suspension was February 17, 2009. Respondent obtained actual knowledge of the suspension on March 3, 2009. The evidence in this case shows a deliberate indifference on Respondent's part to defy the restriction imposed by the suspension. This is not a situation where a lawyer received some misguided ethics advice nor a situation where a lawyer was confused about the requirements of the law. The evidence shows that Respondent was not only aware of the suspension as of March 3, 2009, but also fully

understood its consequences, i.e. that the suspension prohibited Respondent from engaging in any activity that could be construed as the unauthorized practice of law.

The conclusion that Respondent was not authorized to practice law in Missouri is easily established. As stated in the introductory jurisdictional statement above, a person's authority to practice law in Missouri derives from the Missouri Supreme Court. The Missouri Supreme Court has the inherent authority to regulate lawyers and the practice of law within the physical boundaries of this state. ***In re Zink***, 278 S.W.3d 166, 169 (Mo. 2009).

As a corollary to this fundamental aspect of our profession, the Missouri Supreme Court is also empowered to place restrictions upon a lawyer's authority to practice law. Rule 5.245 regarding suspension as a result of a tax delinquency is an example of such a restriction. The Order dated February 2, 2009 stated that "the names attached hereto [which specifically included Respondent] are suspended as shown on the roll of attorneys." Rule 5.245 is no less of a suspension than the suspension envisioned by Rule 5.21, Rule 5.24 or Rule 5.19(e). A suspension is a suspension is a suspension. Any practice of law in this state while suspended is "unauthorized."

Unlike suspensions for CLE and bar dues delinquencies, following a suspension for tax delinquency a lawyer must (a) file a written Petition for Reinstatement with the Missouri Supreme Court; and (b) obtain an Order of Reinstatement, ***before*** the lawyer is allowed to resume his or her law practice in this state. Nowhere in Rule 5.245 nor the Order dated February 2, 2009 does the Court classify a tax suspension as "administrative"

or "non-disciplinary" or any other term connoting anything other than an indefinite **prohibition** on the practice of law. Tax suspensions are disciplinary in nature. This point was recently driven home by a recent Order from this Court in ***In re George Spencer Miller***, SC91026, stating:

> On December 21, 2010, Respondent George Spencer Miller was placed on probation. Subsequently, on January 12, 2011, this Court entered an order suspending Respondent George Spencer Miller from the practice of law because of his failure to prove the payment of taxes due the State of Missouri. **Such orders are not administrative orders** and have the effect of terminating any probation entered previously. (emphasis added).

(App. 690).

Rule 5.28(h) does provide for "retroactive reinstatement" following a suspension under Rule 5.245. There is no rule or published opinion from this Court further explaining the retroactive effect of the reinstatement following a tax suspension. However, it is clear that "retroactive reinstatement" should not be used as a shield to immunize a lawyer against a charge of unauthorized practice of law. The retroactive nature of the reinstatement is best viewed as a means to protect a client against the lawyer's misconduct. In other words, a petition signed and filed by a suspended attorney on the day before the statute of limitations expires is cured by the retroactive reinstatement of the attorney so that the client is not harmed by the suspension. Retroactivity does not permit a blind eye to professional misconduct committed by

Respondent during the period of suspension. In ***In re Reza***, 743 S.W.2d 411, 414 (Mo. 1988), the Court determined that it is professional misconduct for a lawyer to continue to engage in the practice of law while under some form of suspension, even if the lawyer later becomes reinstated.

Respondent appropriately contacted Legal Ethics Counsel about the ethical consequences of the suspension. Ms. Rittman gave Respondent two pieces of sound wisdom: (a) **DO NOT** engage in activities that could be construed as the practice of law; and (2) **DO** conduct legal research on what types of activities constitute the practice of law. Respondent appears to have done enough research to know that appearances in a Missouri court and the submission of motions, pleadings and the like to a Missouri court were strictly prohibited.

Respondent deliberately failed to heed the wisdom in signing and filing the Motion for Rehearing in the ***Doran v. Chand*** appeal. Respondent's conduct in ***Sharp v. Farm to Market*** is the exact opposite of what she should have done. Instead of seeking to withdraw from the representation of Mr. Sharp because of the suspension, Respondent actually sought to undo a previous attempt to withdraw. Significantly, in a motion to withdraw submitted to a federal court, Respondent cites directly to Rule 4-1.16(a)(1), which requires a lawyer to withdraw where representation will result in a violation of the rules of professional conduct. Respondent is not unfamiliar with the Rules of Professional Conduct. She even attached a copy to her motion to withdraw. Yet, during the

suspension, Respondent did not seek to withdraw in any state court action to avoid engaging in the unauthorized practice of law.

The evidence shows that Respondent was caught "red-handed" engaging in the practice of law in Missouri state courts, particularly in the cases of ***Doran v. Chand; Sharp v. Farm-to-Market; Kemper v. Rodgers;*** and ***JS Construction v. Kool Nites***. The docket summaries and the pleadings filed in these cases unmistakably show that Respondent was engaged in the practice of law during the relevant time frame. ***Kemper*** and ***JS Construction*** were set for trial in June 2009. While this Court is the ultimate arbiter of what constitutes the practice of law, the trial judge who presided over two of the above mentioned actions testified as to his opinion that the nature of Respondent's activities in each of those cases, particularly those in the weeks leading up to the trial, necessarily constituted the practice of law. Informant concurs in the conclusion by Judge Roldan regarding the nature of Respondent's pretrial activities.

This Court has provided guidance as to what constitutes the practice of law. *See* ***In re First Escrow***, 840 S.W.2d 839 (Mo banc 1992); ***In re Thompson***, 574 S.W.2d 365 (Mo. banc 1978); ***In re Mid America Living Trust Association, Inc.***, 927 S.W.2d 855 (Mo. banc 1996); *See also* ***Strong v. Gilster Mary Lee Corp.,*** 23 S.W.3d 234 (Mo. App. 2000) (Teitelman, J) (practice of law includes activities involved in the application of legal knowledge and legal skill and the assertion of legal rights and claims).

Additionally, from a practical standpoint, R.S.Mo. § 484.010 provides a useful corollary with respect to defining the practice of law:[11]

> **484.010**. 1. The "practice of the law" is hereby defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.
>
> 2. The "law business" is hereby defined to be and is the advising or counseling for a valuable consideration of any person, firm, association, or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any

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[11] Because the judiciary is the sole arbiter of what constitutes the practice of law, such statutes merely act in aid of this Court's regulation of the practice of law and cannot supersede or detract from the power of the judiciary to define and control the practice of law. ***Hargis v. JLB Corp.***, 357 S.W.3d 574 (Mo. banc 2011). Nonetheless, this Court has used these statutory definitions of the practice of law as a reference point for determining the scope of the practice of law. *See also* ***Eisel v. Midwest BankCentre***, 230 S.W.2d 335, 338 (Mo. banc 2007); ***Hulse v. Kriger***, 247 S.W.2d 855 (Mo. Banc 1952).

> paper, document or instrument affecting or relating to secular rights or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to obtain or securing or tending to secure for any person, firm, association or corporation any property or property rights whatsoever.

The Kansas Supreme Court has adopted a useful framework for the scope of permitted activities during the period of suspension:

> [T]he better rule is that an attorney who has been disbarred or suspended from the practice of law is permitted to work as a law clerk, investigator, paralegal, or in any capacity as a lay person for a licensed attorney-employer if the suspended lawyer's functions are limited exclusively to work of a preparatory nature under the supervision of a licensed attorney-employer and does not involve client contact. Any contact with a client is prohibited. Although not an inclusive list, the following restrictions apply: a suspended or disbarred lawyer may not be present during conferences with clients, talk to clients either directly or on the telephone, sign correspondence to them, or contact them either directly or indirectly.

In re Wiles, 210 P.3d 613, 618 (Kan. 2009).

Respondent was savvy enough to recognize that the suspension potentially affected participation in federal court litigation on behalf of clients. However, Respondent never came to a reasoned opinion about the practice of law in connection

with federal court matters. Rather, Respondent deliberately continued to practice law on federal court matters in defiance of the suspension order. Respondent does not shy away from the allegation that she practiced law in connection with federal court matters during the entire period of the suspension. Respondent admits that these activities constitute the practice of law. However, Respondent appears to argue that such activities were not "unauthorized." Respondent holds certificates of good standing from federal courts which suggest that Respondent was admitted to practice in the U.S. Western District of Missouri and the 8th Circuit Court of Appeals.

Supreme Courts from other states have uniformly found that the practice of law by a lawyer whose license has been suspended from the state Supreme Court is strictly prohibited, even where the lawyer's law practice is exclusively devoted to federal court litigation. ***In re Reinstatement of Mooreland-Rucker***, 237 P.3d 784 (Ok. 2010); ***Office of Disciplinary Counsel v. Marcone***, 855 A.2d 654 (Pa. 2004); ***Matter of Perello***, 386 N.E.2d 174 (Ind. 1979) (attorney suspended from the practice of law in Indiana engaged in unauthorized practice of law when maintaining law office for purposes of federal practice); ***Atty Grievance Comm. of Md. v. Harris-Smith***, 737 A.2d 567 (Md. 1999) (attorney maintaining an office and advising clients for practice of federal and non-Maryland law constituted the unauthorized practice of law).

While the federal judiciary can regulate conduct within the walls of its own courthouses, the federal system cannot interfere with the right of the Missouri Supreme Court to regulate the practice of law everywhere else within the boundaries of this State.

"While a state may not impinge upon a federally conferred right to practice law within a federal court, a state's compelling interests in regulating and controlling the general practice of law within its boundaries have not been surrendered." ***In re Reinstatement of Mooreland-Rucker***, 237 P.3d 784 (Ok. 2010).

The soundness of the application of this rule in the present case is underscored by various circumstances arising in this matter. For instance, while the record contains several pleadings submitted to the federal courts by Respondent, each of the pleadings identify Respondent by a Missouri Bar Number issued by this Court and contain an office location in Missouri. Respondent used that office location to conduct depositions in federal court litigation. The cause of action at issue in the ***Wallace*** case actually arose under the Missouri Human Rights Act, R.S.Mo. § 213.010 *et seq*. It is important to note that when ethics questions arose concerning Respondent's "federal license" and a fee dispute with co-counsel, Respondent did not contact a federal court ethics center. Rather, Respondent contacted Missouri Ethics Counsel appointed by this Court for guidance and information. When a question arose regarding Respondent's fee in the ***Wallace*** case, Respondent was quick to point out a fee agreement signed by a Missouri client and an attorney lien arising under a specific Missouri statute. When Respondent sought to withdraw from the ***Arnold*** case, her motion to withdraw cites to four separate sections of the Rules of Professional Conduct set forth in Missouri Supreme Court Rule 4. Respondent even attached copies of the relevant sections of Missouri Supreme Court Rule 4 to the motion.

From the authorities cited above, it is clear that Respondent engaged in the unauthorized practice of law in Missouri in violation of Rule 4-1.16(a)(1) and Rule 6.05, with respect to state court litigation and federal court litigation.

Respondent did not change her letterhead nor did she alter her law practice as a result of the suspension. Throughout the suspension, Respondent's letterhead identified Respondent as being admitted in Missouri. The letterhead identified a Missouri office address. By continuing to use her Missouri Bar Number throughout the period of suspension, Respondent further held herself out to the public as being admitted to practice law in Missouri. Respondent continued to have a presence in Missouri through the combination of physical office space in Independence, Missouri that she visited a few days a month and also through the unique manner of using a paralegal located in Missouri to handle matters on behalf of Respondent while Respondent was physically located in Virginia. Supervising a paralegal and delegating tasks to him necessarily involves the practice of law because only a duly admitted attorney is permitted to direct the activities of a paralegal located in Missouri. See Rule 4-5.3 and Comment 2 to Rule 4-5.5. Respondent's law office continued to be identified as such in the building lobby, and her name continued to appear on the door of her office in Independence, Missouri during the period of suspension.

In short, Respondent has violated Rule 4-5.5(b) throughout the duration of the suspension by maintaining an office or other systematic and continuous presence in

Missouri for the practice of law and by holding herself out to the public as authorized and admitted to practice law in Missouri during the suspension.

Dishonesty, Deceit and Lack of Candor Towards a Tribunal

(i.) "Absolute Inability" to Afford a $12,500 Sanction

The evidence shows a disturbing tendency on the part of Respondent to engage in dishonesty and deceit directed towards the judiciary. On May 1, 2009 Respondent filed a written motion with the federal court intended to persuade Judge Fenner not to impose a monetary sanction of $12,500 against Respondent. Respondent claimed she had the "absolute inability" to pay the sanction. Respondent's representation of her financial status was not truthful. Respondent's knowledge of this falsehood can be inferred from the circumstances. Rule 4-1.0(f).

The ***Dunn*** case was settled and concluded sometime between April 16, 2009 and May 21, 2009 when the settlement check was cut. The check was deposited on June 1st. Bank records show the funds became good on June 4, 2009. The $12,500 payment was due June 7th. Upon receipt of good funds, Respondent did not correct her earlier misrepresentation to Judge Fenner.

The anticipation of the ***Wallace*** fee also weighed heavily on Respondent's mind during May 2009. The fee was the subject of a motion dated May 1, 2009 seeking $4,500 in attorneys as the prevailing party on appeal in the ***Wallace*** case. This was the same day as her claim of an "absolute inability" to pay the sanction. The fee was the subject of a letter dated May 11, 2009 to opposing counsel asserting an attorney lien. On May 22,

2009, Respondent contacted Legal Ethics Counsel to discuss an issue with respect to attorney fees in the ***Wallace*** case. These events demonstrate that receipt of fees in ***Wallace*** became imminent on April 17, 2009, once the 8th Circuit made its ruling upholding the underlying portion of the verdict. Respondent received a check for nearly $100,000 for earned attorney fees on June 29, 2009, less than two months after claiming an "absolute inability" to afford payment of the $12,500 sanction.

Respondent appears to claim that on May 1, 2009 she had no way to anticipate actual receipt of these fees in the coming weeks. The panel did not find Respondent's position to be credible. Respondent knew full well that she had just prevailed in two substantial contingency fee cases two weeks earlier. She may not have had $12,500 in the bank on May 1, 2009 when she made the representation to Judge Fenner. However, Respondent knew on May 1, 2009 that she would be receiving over $200,000 in attorney fees in a matter of weeks.

(ii.) "Ready for Trial"

Nearly simultaneous to these events, Respondent found herself in another situation in front of a different judge where she chose the path of deceit and dishonesty. On May 28, 2009, Respondent actively participated in a pretrial conference before the Hon. Marco Roldan, concerning a trial scheduled for the following Monday, June 1, 2009. Instead of advising Judge Roldan that she was suspended by Order of the Missouri Supreme Court, Respondent gave the judge the impression that everything was ready to go for a Monday morning trial. When the judge later learned that Respondent was suspended but stood

mute as to this fact at the time of the pretrial conference on May 28, 2009, the judge understandably felt that Respondent failed to exercise the required level of truthfulness and candor to a tribunal.

(iii.) Candor Towards a Tribunal/Questions of Honesty

As stated in ***In re Carey***, 89 S.W.3d 477, 498 (Mo. banc 2002):

> Misrepresentation to the court is an affront to the fundamental and indispensable principle that a lawyer must proceed with absolute candor towards the tribunal. In the absence of that candor, the legal system cannot properly function. ***Caranchini***, 956 S.W.2d at 919-20. Honesty and integrity are chief among the virtues the public has a right to expect of lawyers. Any breach of that trust is misconduct of the highest order and warrants severe discipline. (citation omitted).

Furthermore, "[q]uestions of honesty go to the heart of fitness to practice law." ***In re Disney***, 922 S.W.2d 12, 15 (Mo. banc 1996). "Misconduct involving subterfuge, failing to keep promises, and untrustworthiness undermine public confidence in not only the individual but in the bar." *Id.*

"'Candor' means to treat a subject with fairness, impartiality, and to be outspoken, frank, and veracious, and is synonymous with other terms describing morality." ***In re Discipline of Dorothy***, 605 N.W.2d 493, 509 (S.D. 2000). Respondent's statement to Judge Fenner and her conduct towards Judge Roldan do not live up to this standard of candor.

Respondent's misrepresentation to Judge Fenner and her failure to take corrective action upon receipt of good funds before the date by which the sanctions payment was due violates Rule 4-3.3 and 4-8.4(c). Likewise, Respondent's active participation in the pretrial conference with Judge Roldan and her statements indicating a readiness for trial the following Monday despite actual knowledge of the suspension is a separate instance of a violation of Rule 4-3.3 and Rule 4-8.4(c). *See* ***In re Franco***, 66 P.3d 805, 810 (Kan. 2003) (Missouri lawyer who misrepresented his status to practice law to a particular judge violated Rule 4-3.3(a)(1)); ***In re Alcorn***, 41 P.3d 600, 611 (Az. 2002) (recognizing that Rule 3.3 can be violated by a lawyer's evasiveness and silence).

Prejudicial Non-Disclosure of Suspension

Respondent decided not to tell anyone about the suspension. She did not disclose it to any judge or client, nor to her co-counsel or opposing counsel. Keeping the suspension a secret is contrary to Rule 5.27(b). While the non-disclosure to Judge Roldan described above is more egregious, the failure to disclose the suspension to anyone was also prejudicial to the administration of justice in violation of Rule 4-8.4(d).

Clients had a right to know, particularly the two clients whose trials were scheduled to take place in June 2009. Co-counsel, including the attorney with whom Respondent was having a "knock-down drag-out" regarding a division of attorney fees, had a right to know. A portion of the fees sought by Respondent in the context of the ***Wallace*** dispute were derived from work performed during the period of suspension.

Opposing counsel had a right to know, particularly the appellees' attorney in the ***Doran v. ADT*** appeal. Due to the strict time frames for post-handdown motions, counsel for the appellees could well have moved to strike the motion for rehearing and/or transfer had they known the motion was signed and submitted by an attorney stricken from the roll of admitted attorneys in Missouri.

Judges had a right to know of the suspension. Had Respondent advised Judge Fenner in early March that Respondent was suspended, Judge Fenner may well have exercised judicial leniency towards Respondent's clients in the Arnold matter instead of imposing the sanction against the parties on March 31, 2009.

The failure to disclose the suspension is also contrary to a local rule of the Western District of Missouri federal court. W.D.Mo. Local Rule 83.6(b)(1), requires a lawyer to affirmatively advise the Clerk of the Court of any instance of "public discipline." **App. 472**. As shown in the ***George Spencer Miller*** case cited above, a tax suspension is disciplinary. **App. 690**. Accordingly, Respondent's tax suspension constitutes "public discipline." A tax suspension is something much more significant than a mere administrative bump in the road. Respondent was obligated to report her tax suspension to the Western District of Missouri under Local Rule 83.6. Respondent's failure to do so was prejudicial to the administration of justice in violation of Rule 4-8.4(d).

Willful Disobedience of a Court Order

Respondent did not just lie about not being able to afford the $12,500 sanction, Respondent deliberately refused to obey the order in secret defiance of Judge Fenner. From June 4, 2009 until at least November 2009, Respondent continuously had the financial ability to pay the sanction in full. The trust account records show that from June 2009 to November 2009, there was a running balance of available funds well in excess of the sanction belonging directly to Respondent which had been derived from the ***Dunn*** and/or ***Wallace*** attorney fees. Of course, neither Judge Fenner nor opposing counsel in the ***Arnold*** matter had access to Respondent's trust account records to fully appreciate Respondent's dishonesty and defiance.

Respondent deliberately chose not to pay the sanction nor even set aside funds to pay the sanction pending the outcome of the appeal. Instead, Respondent made payments in preference to creditors, family members, and even a disbarred lawyer, all of whom she deemed more worthy recipients. When opposing counsel perceived Respondent's ability to fly to Jackson Hole, Wyoming for a birthday party was a bit inconsistent with her prior plea of poverty, Respondent sent off a terse e-mail calling the lawyer a "jerk" with no further explanation of her financial circumstances. On the date of the e-mail, Respondent was hiding over $50,000 of her own property in the trust account.

Respondent's strong feelings about the propriety of the sanctions order do not excuse her refusal to abide by the direct order of Judge Fenner. Respondent's testimony underscores the extreme defiance of the professional obligation:

I was livid, sick as a dog in my heart and soul about the events that had occurred in that case, and I had strong convictions about what had occurred and I was not doing well with that and I requested to withdraw from the case. I felt like my personal feelings about the circumstance were getting in the way or could potentially get in the way . . .

* * *

Q. Well, why didn't you take some money out of your trust account in June of 2009 and set it aside for potential payment of the sanctions order?

A. Why would I do that? I don't believe it's true. I don't understand why I -- I don't even understand why you would ask me that. I don't know why I would do it, and -- because as far as I'm concerned, the fact that it's on appeal means that I am not legally entitled to pay it, and if that changes then I will act accordingly. As we stand here today, I'm not legally entitled to pay it nor am I going to plan for some potential liability or potential payout.

Q. But it seems to me that when there's a sanctions order, when that is effectively a judgment against you, why did you not honor that potential judgment even if it's on appeal and pay people like Wes Sechtem? I mean, why --

A. Because those people deserved their money, in my opinion. I have, and I'm trying not to get emotional, I have very strong feelings about this sanction. And I think that -- I think that we have to remember, just because it's in a court and just because it's sanctions does not mean that it's absolutely right. That's why we have Appellate Court. That's why we have the Supreme Court. So the fact is, and I hope you consider the possibility that Judge Fenner was wrong in what he did, and I firmly believe that. So why in the world would I set aside money that I don't have to pay a potential future sanction that may come out? That makes no sense to me, so I didn't do it nor do I think I should have done it or was required to do it.

Respondent denied that it was her practice to make it as difficult as possible for anyone to collect from her. However, about six months prior to the sanctions order, Respondent stated the following to an attorney who had initiated a claim for legal malpractice against Respondent:

> Make no mistake about it, I maintain the might of many, and I will not back down from fear of threatened litigation. Instead I will fight you every step of the way, making it more difficult than ever for you to recover one cent from me. I will fight this thing with my last breath, a tract (sic) I am well known for in the courtroom . . . .

Under the circumstances, Respondent's failure to pay the sanction was willful and deliberate and in defiance of a valid order from a federal judge which was subsequently upheld on appeal. Respondent's defiant conduct in this regard is a violation of Rule 4-3.4(c) and 4-8.4(d). ***Cf. People v. Huntzinger***, 967 P.2d 160 (Colo. 1998) (failure to pay attorney fee sanction is a violation of Rule 3.4(c)); ***State ex rel. Oklahoma Bar Assoc. v. Braswell***, 975 P.2d 401 (Ok. 1998) (failure to pay over attorney fee as ordered by judge violated Rule 3.4 (c)).

While the sanctions order was appealed to the 8th Circuit by a Notice of Appeal filed July 22, 2009 (after Respondent had already diverted $150,000 of the $200,000 in earned attorney fees to other preferred creditors and family members instead of the ***Arnold*** defendant), the notice of appeal by itself does not demonstrate an open refusal to comply with a court order based upon an assertion that no valid obligation exists. On its face, the sanctions order was authorized by Fed.R.Civ.P. 37. It was reviewed on appeal under an abuse of discretion standard. The appellate opinion suggests that Respondent believed the sanction was unjust. Nothing in the 8th Circuit opinion suggests a claim by Respondent that no valid obligation to pay a sanction could have existed. Despite the issuance of a mandate on January 4, 2011 by the 8th Circuit upholding the sanction, Respondent still has made no attempt at payment towards the professional obligation.

Commingling/Trust Account Misuse

The $285,000 check from the ***Dunn*** settlement was deposited into an IOLTA trust account on June 1, 2009. Respondent's attorney fee from the ***Dunn*** settlement was

approximately $100,000. The settlement check became good funds on June 4, 2009. Respondent did not make a lump-sum transfer of the $100,000 attorney fee to a business operating or other personal account. Instead, over the next three weeks, Respondent paid out the $100,000 directly to her credit card companies, family members, vendors and other personal or business creditors from funds drawn on the client trust account maintained by Respondent.

These recipients did not have a direct property interest in, or lien upon, the funds held in the trust account. No one told Respondent that they have a direct claim to the trust funds. No one asserted a lien on any of the proceeds. Respondent produced no document demonstrating an agreement to pay a creditor from the trust account. Respondent unilaterally decided to pay her creditors, vendors and family members from the trust account.

There were a total of fifteen payments. All of these persons received payment between June 4, 2009 and June 23, 2009 **before** the client, Jean Dunn, received a $140,000 wire transfer on June 24, 2009 as the client portion of the settlement. Within hours (perhaps minutes) after the client received the settlement proceeds, the trust account became overdrawn and a trust account check for $7,200 bounced. A few days later, Respondent deposited another $100,000 into the trust account. These were fees earned in the ***Wallace*** case. The trust account was not an appropriate account to place attorney fees earned in ***Wallace*** as no one other than Respondent had a claim to the proceeds.

Respondent made sporadic disbursements of the $100,000 ***Wallace*** fees over the next six months, again using the trust account primarily to pay business and/or personal creditors. On several occasions, Respondent transferred a portion of the ***Wallace*** fees into a business operating or other account until virtually all of the $100,000 was depleted in January 2010. During this period of time, there were no other deposits into the trust account (other than interest credited to the account, which in turn was swept out of the account on a regular basis).

On January 25, 2010, there was $86.55 left in the trust account. This was money directly traceable to the ***Wallace*** fees. The final $86.55 was used to cover a check to the Independence Municipal Court, in payment of a municipal court fine on behalf of a client named Nguyen. There was no corresponding deposit into the trust account on behalf of Nguyen.[12] The payment caused the trust account to become overdrawn a second time in seven months.

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[12] In June 2009, Respondent paid $193.50 out of the ***Wallace*** proceeds in the trust account to cover a municipal court fine for a client named Adam. There was no corresponding deposit into the trust account to cover Adam's fine. It is improper for a lawyer to give financial assistance to a client for the purpose of advancing or paying municipal fines assessed to the client. Rule 4-1.8(e).

As shown by the above, Respondent failed to keep her property--earned attorney fees--separate from her clients' property. Respondent commingled money in the trust account from the ***Dunn*** settlement. Likewise, Respondent should have deposited the ***Wallace*** attorney fees directly into the operating account to avoid commingling. In misusing the trust account to pay creditors, family members and other vendors, Respondent has compromised the integrity of the trust account.

Unless a rare exemption applies, a lawyer is required to have an IOLTA trust account. Rule 4-1.15(k). Rule 4-1.15(c) envisions an account designated as a "client trust account" **not** a "credit card payment account." The IOLTA trust account has one and only one purpose: to hold and/or deliver funds belonging to clients and other third parties who have a direct property interest in the funds. Thus, the sole purpose of the trust account is to enable the separation of a lawyer's own funds and the funds of a client.

Respondent is guilty of the same type of misconduct found in ***In re Coleman***, 295 S.W.3d 857, 862-866 (Mo banc 2009). A use of the trust account for a personal or business purpose other than to hold client/third party property is a misuse of the trust account, and necessarily violates Rule 4-1.15(c). *Id*. As in ***Coleman***, the evidence here "is a classic example of prohibited commingling of attorney and client funds." *Id*. at 867.

The manner in which Respondent used the trust account violates 4-1.15(c) as a result of the commingling of proceeds and as a result of a general misuse of the trust account for a purpose not authorized by Rule 4-1.15.

It is no defense to the commingling and misuse of the account that numerous creditors were screaming for payment. Furthermore, an electronic transfer of good funds in one lump sum from the trust account to a business operating account on June 4, 2009 would not have significantly delayed anybody's payment. It is also no defense that Respondent thought that these creditors had a vested interest in the settlement proceeds. Sharing attorney fees with non-lawyers under the belief that they had a "vested interest" in the proceeds of the litigation would in itself violate 4-1.5(e) and comes dangerously close to "champerty and maintenance," an improper and unlawful practice described in ***Schnabel v. Taft Broadcasting***, 525 S.W.2d 819 (Mo. App. 1975).

Lack of Professional Competence/Unfit to Practice Law in Missouri

Respondent has violated Rule 4-1.1 by her lack of thoroughness and preparation in representing client matters. Several clients (Jenkins-Watts, Bradley, Dunn, and the Arnold plaintiffs) have had their lawsuit claims involuntarily dismissed under Respondent's watch, primarily for delinquencies in pretrial matters. In the ***Dunn*** case, the lawsuit was re-instated only upon the condition that Respondent associate with co-counsel for the remainder of the litigation. Such is a clear sign that Respondent is not competent to handle litigation by herself without the participation of co-counsel.

In the ***Kemper v. Rodgers*** case, Respondent had not taken the deposition of the opposing party prior to trial. So instead of advising the trial judge of the suspension and seeking a continuance in the interests of her clients, Respondent noticed up a deposition on less than one week’s notice for 7:30 a.m. on a Monday morning, 1 ½ hours before the

scheduled commencement of the trial. Waiting until the date of trial to take a party's deposition generally does not indicate the type of thoroughness and preparation envisioned by Rule 4-1.1.

Respondent sought to withdraw from representation of three clients (Sharp, Jenkins-Watts, and the Arnold plaintiffs) in five months, each time citing personal difficulties as grounds for withdrawal. Respondent's motion to withdraw in the ***Arnold*** matter all but admits that Respondent is unable to competently and diligently handle the rigors of litigation, particularly federal court litigation.

Respondent was sued twice for legal malpractice in 2009, and acknowledged a third viable claim for malpractice held by the ***Arnold*** plaintiffs. At least one legal malpractice claim was settled for a confidential payment to the former client. As a result of these claims, Respondent is not insurable for professional liability. Without such insurance, Respondent poses an even greater risk to the public.

Respondent was unprepared for the disciplinary hearing in this matter, despite a period of 18-months from the time the proceeding was initiated until it was fully tried. Five days before the hearing was set to commence, Respondent filed a motion to continue the case, conceding that she was not adequately prepared. The motion was denied, and the first day of hearing occurred as scheduled. A second day of hearing was scheduled one month later. Respondent failed to correctly note the hearing date on her calendar, which appears to have resulted in her being unprepared again.

Respondent failed to file her own state tax return for several years. When she received a written warning on behalf of this Court of an automatic suspension arising from this delinquency, she failed to heed the instruction. These shortcomings do not bode well for Respondent's ability to handle paperwork and meet deadlines. We all have to file tax returns (or at least an extension) on an annual basis. A litigator does not have to be a tax expert. However, even a litigator should ensure that his or her personal affairs conform to the requirements of the law. ***Missouri Rules of Professional Conduct, Preamble: A Lawyer's Responsibilities*** ¶ 5. In short, Respondent's inability to take care of her own legal interests suggests that she is not competent to handle the legal affairs and legal paperwork of others, especially federal court litigation where strict adherence to deadlines is expected.

There are a few key contributing factors at the root of Respondent's law practice management/professional competence problems. One is the inherent difficulties in managing an active Missouri law practice remotely from Virginia. Being physically present at the law office one week a month (Monday through Thursday) is not adequate to ensure continual compliance with Rule 4 for a litigator with an active law practice in the Kansas City metropolitan area. Problems have arisen that required Respondent's physical presence in Missouri. Trust account checks were improperly tendered to a municipal court, government office and a client simply because Respondent recklessly delegated authority over the trust account. Respondent now has given her 80-year-old mother-in-law who lives in Jackson County, Missouri (but is a non-lawyer) check-writing

authority over the Missouri trust account, a dangerous practice and certainly not an improvement to safeguard the trust account.

Respondent employs no office support staff. Her primary means of assistance from a law office standpoint has been Wes Sechtem, a free-lance paralegal who was disbarred by this Court in 2002. Respondent has given Mr. Sechtem her authority to sign her name to various letters and court filings. There are several documents admitted into evidence in the record where Wes Sechtem has signed "Elle Sullivant" without specifically signifying his authority to do so. Upon permanently relocating to Virginia in 2008, Respondent's Missouri limited liability company has been without an actual Missouri resident agent. Respondent has not attempted to correct this to bring her law firm into compliance with R.S.Mo. § 347.030.

A second element of professional incompetence and unfitness to practice law is the financial difficulty and lack of financial responsibility. The financial difficulties have created substantial problems with the trust account, which not only have resulted in prohibited commingling, but also have caused Respondent to deliberately violate a court order to pay a discovery sanction. Although no further process has issued, Respondent is essentially in contempt of court.

Faulty trust accounting has also caused Respondent to advance municipal court fines for clients, a practice prohibited by Rule 4-1.8(e). Even when Respondent lived in Missouri, Respondent had an employee embezzle funds from the operating account

because there were not adequate financial safeguards in place. There was testimony that the trust account was equally vulnerable.

A third aspect of Respondent's law practice that makes her unfit to practice law in Missouri is a pattern of combative relationships with opposing counsel, co-counsel and members of the judiciary. One judge held Respondent in contempt and ordered her to jail. Another judge sanctioned Respondent $12,500. A third judge got so angry with Respondent that he ordered her off the case and directed her not to step foot near the client. Obviously, a fourth judge felt so concerned about Respondent's professional misconduct involving lack of candor and truthfulness that he felt duty-bound to report the situation to OCDC. The evidence also reveals a "knock-down drag-out" fight between Respondent and co-counsel over attorney fees, and an uncivil and unprofessional demeanor by Respondent towards opposing counsel in the ***Arnold*** case.

As explained below, Respondent's demeanor in this disciplinary proceeding was disruptive and unprofessional. As noted by the disciplinary hearing panel in this matter, the professional misconduct has been aggravated by Respondent's improperly aggressive and negative attitude and demeanor. Similarly, such style of practice rarely serves the interests of clients.

A fourth component of the professional incompetence and lack of fitness at issue in this case is simply Respondent's fundamental misunderstanding of what is required to be a lawyer. While Respondent attended most of the "ethics school" program in 2008, Respondent "just does not get it." More ethics education and law practice management

assistance will not correct the deficiencies in Respondent's competence, civility and trustworthiness identified herein. As found by the panel, Respondent's representation of clients has been prejudicial to the administration of justice in violation of Rule 4-8.4(d) in that Respondent is simply unfit to practice law in Missouri and her representation of clients has harmed clients, opposing parties and opposing counsel and the interests of the judiciary.

ARGUMENT

II.

IN ORDER TO PROTECT THE PUBLIC AND MAINTAIN THE INTEGRITY OF THE LEGAL PROFESSION, THE COURT SHOULD SUSPEND RESPONDENT'S LAW LICENSE FOR AN INDEFINITE PERIOD OF NO LESS THAN THREE YEARS BECAUSE:

(A) RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT INVOLVING DECEIT AND DISHONESTY;

(B) SUSPENSION IS THE BASELINE STANDARD UNDER THE ABA STANDARDS;

(C) THE EXISTENCE OF NUMEROUS AGGRAVATING FACTORS AND ABSENCE OF MITIGATING CIRCUMSTANCES BOLSTER THE APPROPRIATENESS OF SUSPENSION; AND

(D) RESPONDENT PRESENTS A GRAVE RISK OF HARM TO THE PUBLIC THAT CANNOT BE ADDRESSED BY SUPERVISION OR OVERSIGHT OF RESPONDENT'S LAW PRACTICE.

The dual purposes of this proceeding is to protect the public and maintain the integrity of the profession. ***In re Coleman***, 295 S.W.3d 857, 869 (Mo. 2009). These

interests can only be served by removing Respondent from the practice of law in Missouri for a substantial period of time. A reprimand would not further any interest in this matter. Moreover, probation is not feasible and would not curb the problems highlighted by the evidence in this matter.

The most serious of the misconduct in the present case are the two separate instances of dishonesty and lack of candor towards two judges. "Misconduct involving subterfuge, failing to keep promises, and untrustworthiness undermine public confidence in not only the individual but in the bar." ***In re Disney***, 922 S.W.2d 12, 15 (Mo. banc 1996). "Misrepresentation to the court is an affront to the fundamental and indispensable principle that a lawyer must proceed with absolute candor towards the tribunal." ***In re Carey***, 89 S.W.3d 477, 498 (Mo. banc 2002). "Honesty and integrity are chief among the virtues the public has a right to expect of lawyers. Any breach of that trust is misconduct of the highest order and warrants severe discipline." *Id*.

Suspension is the baseline sanction for dishonesty towards a judge. The ***ABA Standards For Imposing Lawyer Sanctions*** ("ABA Standards") apply to Missouri attorney disciplinary proceedings. ***In re Cupples***, 979 S.W.2d 932, 937 (Mo. 1998); ***In re Coleman***, 295 S.W.3d 857, 869 (Mo. 2009). Section 6.12 of the ABA Standards provides as follows:

> Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and

causes injury or potential injury to a party in a legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Despite active participation during the pretrial conference with Judge Roldan, Respondent knew that she would be unable to proceed to trial on the following Monday morning. Yet she withheld material information regarding her status as a Missouri lawyer. She gave the trial judge the impression that the parties were ready for trial. The situation was exacerbated by the charade of scheduling a deposition the morning of trial.

Despite actual knowledge of two hugely successful outcomes on verdicts obtained by Respondent in the same week in mid-April 2009, two weeks later on May 1, 2009 Respondent falsely misrepresented to Judge Fenner that she had an "absolute inability" to pay a $12,500 sanction. To make matters worse, Respondent failed to correct the misstatement upon receipt of $200,000 in attorney fees in June 2009. Had Respondent so chosen, Respondent had the absolute financial ability to pay the sanction by the due date of June 7, 2009.

The injury and potential injury in these two situations is undeniable. In the ***Kemper v. Rogers*** case, the parties, particularly the opposing defendant and his counsel, suffered prejudice by preparing for a trial that did not occur as scheduled. Similarly, the deceit and lack of candor adversely affected the legal proceeding, causing the trial judge to continue the matter and rearrange his trial schedule. Eleventh hour continuances of trial settings have and will virtually always prejudice one side or another, sometimes even both parties in a lawsuit. In the ***Arnold*** case, the opposing party was prejudiced by the

misrepresentation in that until realizing that Respondent had enough money to fly to a resort location in Jackson Hole, Wyoming for a birthday party in August 2009, Respondent's opposing counsel took Respondent at her word that she could not afford to pay the sanction. As a practical matter in many cases where a debtor pleads poverty, the creditor, not wanting to throw good money after bad, decides not to pursue collection of a debt where the obligor is unlikely to have sufficient financial means.

The deceit did not involve a representation about Respondent's clients. Respondent was not trying to protect a client. In each instance, the dishonesty involved some aspect of Respondent's personal circumstances. Any time a lawyer's authority to practice law is at issue or where a lawyer injects some personal circumstance into the litigation process, a judge is entitled to expect complete honesty from the lawyer. Requests for continuances, requests for attorney fee awards, requests to withdraw and other types of motions and relief are often based upon an attorney's representations about facts of which only the attorney knows the truth. The judicial system will be impaired if lawyers are free to play fast and loose with the truth in these situations. In short, when lawyers lie to judges to advance their own personal interests, the integrity of the legal process will necessarily suffer.

An indefinite suspension of no less than three years will protect the judiciary and the entire legal process from Respondent's demonstrated inability to truthfully disclose personal information.

Suspension is also the baseline sanction for most of the other misconduct found by the panel. Suspension is warranted for commingling of trust funds under ABA Standard 4.12: "Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." Here the potential injury is very real. The client, Jean Dunn, came within hours of having her settlement proceeds misdirected and misappropriated in payment of Respondent's creditors. A few hours after the client's proceeds were transferred out of the trust account, another check presented to the account was dishonored for insufficient funds.

In essence, Respondent temporarily misappropriated tens of thousands of Ms. Dunn's settlement proceeds from June 4, 2009 to June 24, 2009. Ms. Dunn, the actual beneficiary of the settlement deposit of $284,962.07, deserved to be the initial beneficiary of the funds prior to any payment from the trust account to Respondent's creditors. Had a check to Ms. Dunn bounced instead of a payment to one of Respondent's creditors, this would be a disbarment case.

Even where no client money has been misappropriated, the obligation to segregate client funds and a lawyer's personal funds (Rule 1.15) is best viewed as a duty owed to each client. The ABA Standards use three mental states: intent, knowledge and negligence. ***In re Coleman***, 295 S.W.3d 857, 869 (Mo. banc 2009). The facts in the present case suggest something more blameworthy than mere negligence with regard to the use of the trust account. Under the circumstances of the present case, "knowledge" is

the most applicable of the three mental states recognized in the ABA Standards. "Knowledge is shown when the lawyer acted with conscious awareness of the nature or attendant circumstances of his or her conduct but without the conscious objective or purpose to accomplish a particular result." ***In re Coleman***, 295 S.W.3d 857, 870 (Mo. banc 2009). In ***Coleman***, the Missouri Supreme Court found that Mr. Coleman's use of the trust account to pay personal expenses was "knowing conduct." *Id*.

Commingling of trust funds warrants a suspension. ***In re Coleman***, supra; *See also* ***In re Forge***, 747 S.W.2d 141 (Mo. banc 1988) (six-month suspension for mishandling trust funds); ***In re Barr***, 796 S.W.2d 617 (Mo. banc 1990) (mishandling of trust funds warranted 6-month suspension); ***In re Phillips***, 767 S.W.2d 16 (Mo. banc 1989) (commingling warranted one-year suspension); ***In re Houchens***, 555 S.W.2d 24 (Mo banc 1977).

The unauthorized practice of law is a violation of a duty owed to the profession. By a preponderance of the evidence, the evidence shows that Respondent's mental state was "knowing" with regard to the unauthorized practice of law. Accordingly, ABA Standard 7.2 is most applicable: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client to the public, or the legal system." *See* ***In re Reza***, 743 S.W.2d 411, 414 (Mo. 1988) (six-month suspension for unauthorized practice of law).

The willful disobedience of a court order, such as Respondent's refusal to pay the sanction while she had enough money in the trust account from earned attorney fees, also warrants suspension under ABA Standard 6.22: "Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party, or interference or potential interference with a legal proceeding." Obviously, Respondent's refusal to pay the sanction has cost the defendant in the ***Arnold*** case $12,500. Respondent was clearly aware of the sanction and she clearly controlled the timing, amounts and payees of over $200,000 in earned attorney fees deposited into the trust account. Thus, a "knowing" mental state is inferred from the circumstances.

Finally, suspension is directed by ABA Standard 4.52 regarding professional competence. Respondent's acknowledgment of professional incompetence is selective. When she desires to withdraw from a particular case, Respondent cites to Rule 4-1.1 and says she is required to withdraw. Or she will cite to personal circumstances such as living in Virginia or having financial or medical difficulties in seeking leave to withdraw. Respondent acknowledges in writing that one set of clients have a viable malpractice case against her.

However, when appearing before the disciplinary panel Respondent touted her record as having happy clients. The evidence shows the hyperbole of the statement. The evidence also shows that judges from various jurisdictions (Missouri state court, Kansas state court, Missouri federal court) have had concerns about Respondent's professional capabilities. One judge ordered her off a case and told her not to step foot near the client

again. Another judge threw Respondent in jail for contempt. Another judge required Respondent to retain co-counsel for a case. Despite all of these incidents, Respondent continues to operate a Missouri law practice.

The evidence demonstrates that Respondent is aware that this type of behavior is not acceptable, yet she has refused to conform her litigation practice to the standard required by Rule 4-1.1. Above all else, Respondent has not demonstrated the level of competence required of a federal court practitioner. A suspension will allow Respondent an opportunity to regroup and refocus the future areas of practice best suited for her.

Respondent is not eligible for probation under Rule 5.225. First, since Respondent has now permanently relocated to Virginia and no longer has a Missouri office nor a Missouri presence, monitoring and supervision is simply not feasible.

Moreover, protracted involvement in the disciplinary system has not deterred Respondent from re-offending. The tax suspension did not deter Respondent from engaging in the unauthorized practice of law. Investigation into the circumstances of the ***Kemper v. Rodgers*** pretrial conference did not deter Respondent from extreme misconduct with the trust account. Respondent's response dated July 14, 2009 to Judge Roldan's complaint did not resonate enough with Respondent to compel her to come clean with Judge Fenner and opposing counsel in the ***Arnold*** case. Nor did it have any effect on Respondent's desire to keep her professional "house" in order. Respondent allowed her trust account to go overdrawn on **three separate occasions** since the morning of June 1, 2009 when Respondent finally admitted to Judge Roldan that she had

been under a disciplinary suspension. The most recent trust account problem occurred in September 2010, some eight months after Respondent was served with the initial Information in this matter. With so many separate instances of professional misconduct, it is likely that Respondent would harm the public during a period of probation. In particular, dishonesty and deceit simply cannot be cured by probation. Moreover, this Court would be sending a dangerous message, causing the courts and profession to fall into disrepute, if Respondent were allowed to continue to practice law. Respondent has had her chance to turn her law practice around during a term of suspension. Respondent is not deserving of another chance.

Significantly, Respondent's refusal to acknowledge any form of misconduct in the face of serious allegations and serious evidence against her does not bode well for the cooperation and respect of disciplinary authorities needed for successful completion of probation. The disciplinary hearing panel was quite vocal in its findings that Respondent's overall demeanor in this proceeding was very negative and counter-productive. Even the most patient probation monitor should not have to encounter this type of attitude and demeanor. A lawyer deserves probation when he or she is remorseful, wants to improve, and just needs some extra training and education. Respondent has already attended ethics school in November 2008, with no improvement in her law practice management and professional capabilities. Probation should be reserved for a lawyer that truly wants to "get their law practice on track." That is not the case here.

The overwhelming weight of aggravating factors (the lack of compelling mitigating evidence) not only bolsters the sanction of suspension, but also demonstrates that a lengthy suspension is necessary for the protection of the public. The following aggravating factors are present in this case:

- Dishonest or Selfish Motive. The series of payments to Respondent's creditors and family members out of the trust account in disregard of the professional obligation imposed by Judge Fenner was patently fueled by a selfish and dishonest motive. The misrepresentation to Judge Fenner is obviously motivated by Respondent's desire to avoid payment, likely because Respondent was so angered by the ruling that it clouded her actions. The failure to tell anyone, most notably Judge Roldan, about the suspension was to protect Respondent from embarrassment and to preserve a false public reputation. None of these things served the clients' interests.
- A pattern of misconduct. The commingling, misuse of the trust account, and trust account overdraft were not isolated. They demonstrate a pattern from June 2009 to September 2010 of a failure to safeguard the integrity of the account. The lack of candor to the tribunal also follows a pattern. On May 1, 2009, Respondent misrepresented her financial ability to Judge Fenner, and continued to hide money in her trust account until at least November 2009. On May 28, 2009, Respondent misrepresented her professional standing as a Missouri lawyer to Judge Roldan. Throughout

March, April and May 2009, Respondent deliberately sat quiet about her suspension and did not tell anyone.

- Multiple Offenses. The disciplinary hearing panel correctly found seven distinct instances of professional misconduct.
- Bad Faith Obstruction of the Disciplinary Proceedings. Respondent's delay in this proceeding, her eleventh hour request for a continuance, her attempt to remove the panel chair, the evasiveness of her testimony and her inability to concede facts demonstrated by clear documentary evidence obstructed this proceeding. The panel made an express finding in this regard. This Court does not tolerate this type of obstruction. *See* ***In re Madison***, 282 S.W.3d 350 (Mo banc 2009). *See also* ***In Re Snyder***, 35 S.W.3d 380 (Limbaugh, j. concurring).
- Refusal to acknowledge wrongful nature of conduct. Though given numerous opportunities to do so, not once in two days of hearing did Respondent acknowledge any violation of the Missouri Rules of Professional Conduct. Respondent instead forced the panel to deliberate on the evidence and set out at length extensive findings and conclusions regarding several instances of professional misconduct.
- Substantial Experience in the Practice of Law. At the time of the misconduct, Respondent had practiced law for about twelve or thirteen years. Respondent maintained her own a trust account for over eight years,

but claims to have not ever given the account much thought. Respondent's experience even included "ethics school" which failed to result in improvement to professionalism and law practice management.

- Indifference to Making Restitution. Obviously, each time Respondent transferred some of the $200,000 in attorney fees out of her trust account to her creditors, family members and operating account, Respondent was in conscious disregard of the professional obligation imposed by Judge Fenner to pay a $12,500 sanction to her opposing party. Respondent has yet to make a payment on the sanction imposed against her, despite the outcome of the appeal.

CONCLUSION

Respondent engaged in multiple instances of professional misconduct involving lack of professional competence; failure to safeguard client property and misuse of a client trust account; dishonesty, fraud, deceit and lack of candor; willful disobedience of a court order; the unauthorized practice of law; and conduct prejudicial to the administration of justice. This misconduct and the attendant aggravating circumstances warrant a severe disciplinary sanction for the protection of the public and the preservation of the integrity of the profession. Informant respectfully requests that this Court:

(a) find that Respondent violated Rules 4-1.1; 4-1.15(c); 4-1.16(a); 4-3.3(a); 4-3.4(c); 4-5.5(b); 4-8.4(c) and (d); and 6.05(c);

(b) suspend Respondent's license to practice law for an indefinite period of time, but for no less than three years; and

(c) tax all costs in this matter to Respondent, including the $1,000 fee for suspension, pursuant to Rule 5.19(h).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2012, a true and correct copy of the foregoing was served on Respondent via the electronic filing system pursuant to Rule 103.08:

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_____
Kevin J. Odrowski

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(c);

3. Contains 24,565 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

4. That Trend Micro software was used to scan the document for viruses and that it is virus free.

Kevin J. Odrowski

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