IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
JAMES MARSHALL CLAMPITT	)	**Supreme Court #SC95030**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

Jurisdiction over attorney discipline matters is established by Article 5, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040 RSMo 2000.

STATEMENT OF FACTS

Background

A disciplinary hearing was conducted on January 7, 2015, in Jefferson City, Missouri, on an Information charging Respondent with violation of Rules 4-8.4(a) and 4-8.4(c). Respondent was present and represented by Douglas Hennon. Informant was represented by Sharon K. Weedin. Informant's witnesses were Assistant Attorney General Monty Platz and Attorney Randal Owings. Respondent testified on his own behalf, as did his son, James A. Clampitt.

The panel issued its decision on March 20, 2015, concluding Respondent violated Rules 4-8.4(a) and 4-8.4(c). The panel recommended that the Court reprimand Respondent. Respondent accepted the panel's decision and sanction recommendation in a letter dated April 10, 2015. Informant rejected the decision in a letter dated April 28, 2015. The Record was thereafter filed with the Court pursuant to Rule 5.19.

Facts Underlying Disciplinary Case

Respondent James Marshall Clampitt was admitted to Missouri's Bar in 1999. Prior to becoming a lawyer, Respondent, who was 66 years old at the time of the hearing, worked several decades as the chief financial officer in hospitals located in several states. **App. 69 (T. 239)**. He holds an undergraduate degree in accounting and master's degrees in business administration and public policy, as well as a law degree. **App. 69 (T. 238)**. Respondent is a certified public accountant, but went on inactive status with that license in 2006. **App.69 (T. 237-238)**.

In 2007, Respondent joined the Brett, Erdel, Clampitt & Owings, P.C., law firm (firm) located in Mexico, Missouri. **App. 64 (T. 219)**. He worked primarily for his son, James A. Clampitt, who was a firm shareholder and held the position of firm manager. **App. 64-65 (T. 220-221).** The firm manager handled the day-to-day financial operations of the firm. **App. 32 (T. 89)**. James A. Clampitt delegated most of the work of the firm manager to Respondent. **App. 51 (T. 168).**

The firm had long had a Citibusiness Advantage MasterCard. The card had been issued in Brad Brett's name, but all the attorneys used it for making online, business-related purchases. **App. 33 (T. 93), 34 (T. 99-100).**

In February or March of 2010, Respondent went on the website of the credit card company that issued the firm's card in order to have additional cards issued to the other firm shareholders. **App. 65 (T. 222), 66 (T. 225).** Respondent, as the individual performing most of the actual functions of the firm manager, sought the individual cards to better allocate monthly card charges to the appropriate shareholder. The firm's practice was to deduct the business-related charges attributed to an individual attorney from that attorney's monthly gross proceeds. **App. 65-66 (T. 223-225).**

To obtain the additional cards, Respondent went to the online website for the existing Mastercard account and clicked on the icon for obtaining new cards. **App. 66 (T. 225-226).** He entered the three firm shareholders' (not including Brad Brett, inasmuch as a card with his name on it already existed) names, social security numbers, and personal addresses into the website so that three additional cards were issued to them.

App. 66 (T. 226), 74 (T. 258). None of the shareholders' personal income or financial information was required to obtain the additional cards. **App. 74 (T. 258)**. It was not his expectation in going to the Brett, Erdel Mastercard account site that personal credit cards would be issued to the shareholders. **App. 69 (T. 240)**. The three new cards reflected the Brett, Erdel name as well as the name of the shareholder. **App. 73 (T. 253).** One of the cards was issued in Respondent's son's name, James A. Clampitt.

Respondent testified that in the process of applying for the additional cards, a pop-up box appeared on his computer advising that the newly named cardholders could be held responsible for the charges incurred. **App. 66 (T. 226).** Respondent testified that he thought the card issued with James A. Clampitt's name on it was his son's personal card because the pop-up box had said he could be responsible for paying the charges. **App. 66 (T. 226), 67 (T. 229, 231)**. The disciplinary hearing panel found Respondent's testimony regarding this issue not credible. **App. 247.**

After the new cards issued, one monthly credit card statement continued to be sent to the law firm office as it always had been. **App. 70 (T. 241).** Unlike before, the charges to the law firm account were separated out on the statement by cardholder name. The firm continued to pay the monthly statement total directly to the credit card company and deducted an attorney's charges from his monthly gross receipts. **App. 70 (T. 241).**

On June 13, 2010, while driving his SUV, James A. Clampitt hit and killed an individual riding a lawn mower. He left the scene of the accident. James A. Clampitt was found guilty by a jury in January of 2013 of the felonies of involuntary manslaughter

and leaving the scene of an accident. *In re Clampitt*, 10CH-CR00188. He was disbarred by order of the Court dated May 17, 2013. *In re Clampitt*, SC93351.

On June 21, 2010, the firm attorneys met to discuss the impact of the June 13 incident on the firm. The discussion became heated and eventually broke down. Later that day, James A. Clampitt advised several of the attorneys that he and his father, Respondent, would be leaving the firm. **App. 32-33 (T. 91-93).** It was their intent to start a new law firm in Mexico, Missouri.

After that meeting, Respondent approached James A. Clampitt about how they were going to purchase the items they would need to set up a new firm. Respondent was the financial planner, the one with the financial skills**. App. 222 (T. 23-24)**. He suggested to James A. Clampitt that they would use the Brett, Erdel credit card issued in James A. Clampitt's name to purchase what they needed to set up their own firm. **App. 222 (T. 24), 223 (T. 25).** Respondent told his son it would be like they were "setting ourselves as a client here in terms of setting up the firm, and we put them on the card. We pay them off with collections." **App. 225 (T. 33-34)**. The panel found this testimony by Respondent not credible. **App. 248.**

Respondent, or a subordinate at his direction, thereafter ordered items, such as software, legal forms, firm checks, and a down payment on a Clampitt Law Firm sign, needed to set up their new firm, charging the items to the Brett, Erdel card. **App. 69-70 (T. 240-241), 71 (T. 246-248).**

On July 21, 2010, James A. Clampitt and Randy Owings, one of the Brett, Erdel shareholders, were talking. Mr. Owings had been named firm manager in early June, before James A. Clampitt hit the man on the lawn mower. During this conversation, James A. Clampitt revealed to Owings that the law firm credit card had been used to pay for various products the Clampitts needed to establish their new firm. The July 21 conversation was the first notice to the Brett, Erdel shareholders that the Clampitts were charging items on the law firm card for use by them in establishing a new firm. **App. 35 (T. 101).**

In the days after July 21, after James A. Clampitt's statement regarding his use of the credit card, law firm shareholders and employees contacted the credit card company, sent items ordered by the Clampitts and delivered to the Brett, Erdel office back or refused delivery, and made clear to the Clampitts that they should stop using the card. **App. 35 (T. 101-102).**

James A. Clampitt was charged with several crimes arising out of his use of the Brett, Erdel credit card in June/July of 2010. *State v. Clampitt,* 12CH-CR00119; **App. 121-123.** He was found guilty in December of 2013 of one of the charges, fraudulent use of a credit device, after a two-day trial before a judge in Chariton County. **App. 124-241, 242-244.**

On the second day of James A. Clampitt's trial, after the State had rested, Respondent James M. Clampitt testified as a witness for his son. He testified that after June 21, when he and James A. Clampitt had communicated to the firm that they were

leaving the firm, he approached his son about how they were going to pay for things, such as computers and software, that they would need for the new law firm. He testified that he, as the financial planner, the one with the financial skills, suggested that they use the Brett, Erdel card. He testified that he considered the card to be James A. Clampitt's card because his name was on it and it was his understanding that James A. Clampitt was responsible for the card. **App. 222 (T. 23-24).**

Respondent's testimony on the second day of his son's trial was the first time the prosecutor in the case, Monty Platz, became aware that it was Respondent's idea to use the Brett, Erdel card. **App. 17-18 (T. 32-34).** At the time of Respondent's testimony, the statute of limitations for filing charges for fraudulent use of a credit device against James M. Clampitt had run. **App. 18 (T. 34).**

After James A. Clampitt was found guilty of fraudulent use of the law firm's credit card, the State communicated with the law firm's shareholders about what the State's recommendation for punishment in *State v. Clampitt* should be. As the victim of the crime, the firm's input was sought. The Brett, Erdel shareholders communicated that they would like the Clampitts to sign a letter of apology to the firm, they wanted restitution paid to the firm in the amount of $6,711.38, and they wanted the Clampitts to take down the Clampitt Law Office sign hanging in front of their office, located on a main thoroughfare in Mexico. Half the cost of the sign had been charged to the Brett, Erdel card. **App. 36 (T. 105-106, 108).**

The Clampitts paid $6,711.38 to Brett, Erdel in a check that was delivered to the firm in early February of 2014. **App. 36 (T. 107).**

James M. Clampitt signed a letter written to two of the Brett, Erdel shareholders. The letter states:

> Dan and Randy:
>
> Both of us want to apologize to you for our actions in using the firm's credit card to make purchases of signage and equipment for the law office we were opening in Mexico in 2010. What we did was wrong and undeserved. We ask you to forgive us.
>
> We are sorry for the economic loss you suffered as well as any embarrassment we caused you.

Respondent's signature was notarized when he signed it on February 3, 2014. **App. 245.**

POINT RELIED ON

I.

THE SUPREME COURT SHOULD SANCTION RESPONDENT BECAUSE HE VIOLATED RULE 4-8.4(a) IN THAT HE KNOWINGLY ASSISTED OR INDUCED HIS SON IN THE FRAUDULENT USE OF A CREDIT CARD AND BECAUSE HE VIOLATED 4-8.4(c) IN THAT HE ACTIVELY PARTICIPATED IN HIS SON'S FRAUDULENT ACTIVITIES.

Supreme Court Rule 4-8.4(a)(c)

POINT RELIED ON

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR A MINIMUM OF SIX MONTHS BECAUSE HE KNOWINGLY AND FRAUDULENTLY PARTICIPATED IN HIS SON'S COMMISSION OF A FELONY IN THAT IT WAS RESPONDENT'S IDEA TO USE THE FIRM CREDIT CARD AND RESPONDENT ACTUALLY PLACED MANY OF THE ORDERS USING THE CREDIT CARD.

In re Donaho, 98 S.W.3d 871 (Mo. banc 2003)

In re Cupples, 979 S.W.2d 932 (Mo. banc 1998)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

ARGUMENT

I.

THE SUPREME COURT SHOULD SANCTION RESPONDENT BECAUSE HE VIOLATED RULE 4-8.4(a) IN THAT HE KNOWINGLY ASSISTED OR INDUCED HIS SON IN THE FRAUDULENT USE OF A CREDIT CARD AND BECAUSE HE VIOLATED 4-8.4(c) IN THAT HE ACTIVELY PARTICIPATED IN HIS SON'S FRAUDULENT ACTIVITIES.

Respondent James M. Clampitt violated Supreme Court Rule 4-8.4(a) by knowingly assisting or inducing James A. Clampitt in his fraudulent use of Brett, Erdel's credit card. It is settled fact that James A. Clampitt was found guilty, beyond a reasonable doubt, of fraudulent use of Brett, Erdel's credit device. By his own testimony at his son's criminal trial, Respondent James M. Clampitt has admitted originating the idea of using the Brett, Erdel credit card and suggesting its use in buying what was needed to set up the new firm. Further, he admitted in his apology letter to Brett, Erdel that what he did was wrong and undeserved.

The Disciplinary Hearing Panel found not credible Respondent's testimony at the disciplinary hearing that he thought the card was James A. Clampitt's card and that he did not, therefore, knowingly violate the rule. Respondent has degrees in accounting, business administration, and law, and was a certified public accountant for many years. He personally obtained the additional Brett, Erdel cards (including the one with James A.

Clampitt's name on it) by going to the page reflecting the firm's existing Mastercard account and clicking on the icon for additional cards. He provided no personal financial information for the shareholders - - just their names, social security numbers, and addresses. The newly issued cards reflected the firm name as well as the shareholder's name. After the new cards issued, the billing statements continued to be sent to the firm and paid by the firm. It defies credulity that Respondent could reasonably have believed the card issued under the circumstances described by Respondent in his own testimony was a personal credit card that James A. Clampitt was at liberty to use as he thought appropriate. It is far more reasonable to conclude, in accordance with Respondent's own testimony at his son's criminal trial, that Respondent originated the idea of using what he knew was the Brett, Erdel card to charge what they needed to set up their new office. The panel concluded and the evidence overwhelmingly establishes that Respondent knowingly assisted James A. Clampitt in his commission of the felony.

Respondent also violated Rule 4-8.4(c), i.e., engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, by his active participation in the fraudulent activity. The uncontroverted evidence established that Respondent himself, or subordinates at his direction, used the law firm's credit card to pay for products ordered for the new firm. Without the knowledge or consent of the Brett, Erdel shareholders (other than his son), Respondent knowingly used the credit of the firm to acquire products necessary to establish a business that would be competing with Brett, Erdel for clients in the Mexico, Missouri, legal market. Respondent's "good intentions" regarding

his son's ability to reimburse the firm for the credit card charges do not obviate his misconduct.

ARGUMENT

II.

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR A MINIMUM OF SIX MONTHS BECAUSE HE KNOWINGLY AND FRAUDULENTLY PARTICIPATED IN HIS SON'S COMMISSION OF A FELONY IN THAT IT WAS RESPONDENT'S IDEA TO USE THE FIRM CREDIT CARD AND RESPONDENT ACTUALLY PLACED MANY OF THE ORDERS USING THE CREDIT CARD.

Disciplinary counsel's sole disagreement with the disciplinary hearing panel's decision was with the panel's sanction recommendation. The panel recommended a reprimand; disciplinary counsel believes a period of actual suspension is compelled by Respondent's knowing or intentional fraud and dishonesty. Respondent testified at his son's criminal trial that it was he who suggested to his son that they use the firm credit card to purchase the items they needed to set up their competing law firm, i.e., that the son's felonious conduct was in fact Respondent's idea. The evidence also showed that it was Respondent, or someone responding to his directions, who placed the orders or made the purchases using the credit card. James A. Clampitt was found guilty of the felony of fraudulent use of a credit device; Respondent admitted to facts that would have supported the same charge against him if the statute of limitations had not already run. Of course,

the fact that Respondent was never criminally prosecuted for his conduct does not preclude consideration of the conduct in a disciplinary proceeding. See *In re Storment*, 873 S.W.2d 227 (Mo. banc 1994).

In determining a sanction, the Missouri Supreme Court looks at its own precedent and the ABA Standards for Imposing Lawyer Sanctions. The Standards provide a framework for analyzing sanction determinations:

1) What ethical duty was violated?

2) What was the lawyer's mental state?

3) What was the extent of the actual or potential injury?

4) Are there aggravating or mitigating circumstances?

Respondent James M. Clampitt violated a duty he owed the general public to maintain his person integrity. He did so knowingly, as he, an accountant with extensive business experience, urged his son to use his employer's credit card to purchase items to set up a competing business, without the employer's knowledge or permission.

The harm, or damages, were ultimately quantified at $6,711.00. The non-monetary harm to the shareholders, such as the extensive hours spent investigating the facts, and testifying in both criminal and disciplinary proceedings, has not been quantified, but is considerable.

Consideration is given to aggravating and mitigating factors. The following aggravating factors, among those listed in the Standards, are found present in this case. Respondent had a dishonest or selfish motive (he wanted to get the new firm up and

running on short notice and the Clampitts, apparently, lacked the credit to obtain what they needed). He engaged in a pattern of misconduct (many items ordered from different vendors over several days). He had substantial experience in the practice of law (at least 10 years at the time of the misconduct). He engaged in illegal conduct.

The Court should also take into account the fact that the disciplinary hearing panel specifically found that Respondent's hearing testimony was, in two areas, not credible, i.e., that his testimony was not truthful. **App. 247, 248**. This Court has noted that an attorney's lack of veracity in any part of a disciplinary proceeding taints his overall credibility. *In re Donaho*, 98 S.W.3d 871, 874 (Mo. banc 2003) ("This Court regards dishonesty before a disciplinary committee to be especially egregious."); *In re Waldron*, 790 S.W.2d 456, 461 (Mo. banc 1990) ("Respondent's lack of veracity with respect to any part of the proceeding necessarily taints his credibility with respect to the entire proceeding.")

In mitigation, it is noted that Respondent has no prior disciplinary history and was experiencing personal problems at the time of the misconduct: his 87-year old father had recently died, his teenage granddaughter was pregnant, and his son had been involved in a fatal collision.

Finally, Respondent Clampitt's payment of restitution should not be accorded much mitigating weight. It was paid on the cusp of James A.'s punishment hearing and only after Brett, Erdel requested restitution as a consideration for the State not to recommend a prison term. The ABA Sanctions specifically provide that forced or

compelled restitution be given neither aggravating or mitigating consideration. Standard Rule 9.4(a).

The disciplinary hearing panel recommended that the court reprimand Respondent, stating that the "public does need to be 'protected' from the Respondent. The parties should have attempted to reach a proposed disposition based on stipulated facts. We suspect that factors outside of Respondent's control (i.e., his son's hubris and his former law firm's active participation in settling a score) contributed to this matter not being resolved short of a day long hearing." **App. 255.**

In rejecting the panel's recommendation of reprimand, disciplinary counsel respectfully notes that Respondent is a highly educated individual holding a law license issued by this Court. He is responsible to the Court for his own misconduct, quite apart from either his son's misconduct or the speculative motivation underlying his misconduct. He is also answerable for the harm his misconduct has caused the integrity of the profession.

Reprimand is not an appropriate sanction where an attorney's conduct involves deceit or dishonesty. *In re Donaho*, 98 S.W.3d 871, 875 (Mo. banc 2003); *In re Cupples*, 979 S.W.2d 932, 936-37 (Mo. banc 1998). The *Cupples* case is particularly relevant to the determination of sanction in this case because it also involved an acrimonious departure of a lawyer from a firm. Cupples had joined a firm on an "of counsel" basis, but was found to have maintained a separate office and worked on client files he never revealed to the firm. Cupples argued that no discipline, or at most a reprimand, was

appropriate for his conduct, which he pointed out had not harmed any clients. This Court rejected Cupples' analysis, noting suspension was appropriate for his dishonesty, deceit, and misrepresentation. A period of actual suspension is the appropriate sanction for Respondent's fraudulent, dishonest conduct.

CONCLUSION

Respondent James Marshall Clampitt violated Rules 4-8.4(a) and 4-8.4(c) when he originated the idea of using a credit card, without the cardholder's knowledge or permission, to purchase items not authorized by the cardholder. Respondent then personally ordered many items using the card to pay for the purchases. Respondent's fraudulent and dishonest conduct should be sanctioned by suspension of his license with no leave to apply for reinstatement for a minimum of six months.

Respectfully submitted,

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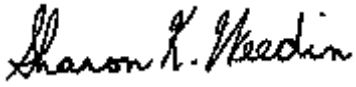
Chief Disciplinary Counsel



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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2015, the Informant's Brief was sent to Respondent's counsel via the Missouri Supreme Court e-filing system to:

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CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 3,827 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Sharon K. Weedin
_____
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