**IN THE SUPREME COURT**
**STATE OF MISSOURI**

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| **IN RE:** | **)** | |
| | **)** | |
| **LYLE L. ODO,** | **)** | **Supreme Court #SC93992** |
| | **)** | |
| **Respondent.** | **)** | |

# INFORMANT'S BRIEF


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## STATEMENT OF JURISDICTION

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. INTRODUCTION

By an Information initiated pursuant to Missouri Supreme Court Rule 5 in March 2013, Respondent Lyle Odo was charged with seven counts of professional misconduct, all primarily arising out of Respondent's representation of Chad Morrison. **App. 3-23**. Respondent represented Morrison from December 2, 2009 until May 11, 2011. **App. 276-277; 361**. A significant portion of the alleged misconduct occurred during the course of the attorney-client relationship.

However, when the attorney-client relationship was terminated on May 11, 2011 (**App. 361)**, Respondent filed a civil lawsuit against Morrison on May 20, 2011. **App. 369-394**. Morrison initiated this disciplinary complaint on or about June 23, 2011. **App. 271.** Informant charged Respondent with additional professional misconduct alleged to have occurred after the attorney-client relationship ended, based upon actions taken by Respondent against his former client, Morrison. **App. 3-23**. Informant alleged that such conduct was retaliatory in nature. Informant alleged that the misconduct persisted throughout the remainder of 2011 until January of 2013. **App. 9-17**.

The disciplinary hearing panel found that Respondent was guilty of professional misconduct with respect to five of the seven charges. **App. 624-628**. The panel recommended that Respondent be placed on probation. **App. 630**. The Chief Disciplinary Counsel rejected the panel's recommendation, and instead seeks a sanction of an actual suspension. **App. 650**.

An overview of the charges of professional misconduct as set forth in the Information, Respondent's position as set forth in his Answer to the Information, and the conclusions of the disciplinary hearing panel are as follows:

**Count I of Information:**

Alleged violation of Missouri Supreme Court Rule 4-1.8(a) regarding prohibited business transactions with a client by entering into a series of sixteen loan agreements with a client during the course of the attorney-client relationship.

**Respondent's Answer and Testimony at Close of Hearing:**

Respondent denied that he was guilty of such professional misconduct.

**Conclusion of Disciplinary Hearing Panel:**

Respondent violated Rule 4-1.8(a).

**Count II of Information:**

Alleged violation of Missouri Supreme Court Rule 4-1.8(e) regarding a prohibition on providing financial assistance to a client by paying for a client's medical treatment.

**Respondent's Answer and Testimony at Close of Hearing:**

Respondent denied that he was guilty of such professional misconduct.

**Conclusion of Disciplinary Hearing Panel:**

Respondent violated Rule 4-1.8(e).

**Count III of Information:**

Alleged violation of Missouri Supreme Court Rule 4-1.7(a)(2) for undertaking a representation of a client which gave rise to a concurrent conflict of interest.

**Respondent's Answer and Testimony at Close of Hearing:**

Respondent denied that he was guilty of such professional misconduct.

**Conclusion of Disciplinary Hearing Panel:**

Respondent violated Rule 4-1.7(a)(2).

**Count IV of Information:**

Alleged violation of Missouri Supreme Court Rule 4-1.6(a) regarding disclosure of client information by filing a lawsuit petition against the former client to recover unpaid attorney fees and which included twenty-one pages of exhibits containing extensive information relating to the representation.

**Respondent's Answer and Testimony at Close of Hearing:**

Respondent denied that he was guilty of such professional misconduct.

**<u>Conclusion of Disciplinary Hearing Panel</u>:**

Respondent did not violate Rule 4-1.6(a) because Respondent's belief that the petition and exhibits were necessary to establish a claim was not unreasonable.

**<u>Counts V and VI of Information</u>:**

Separate instances of alleged violations of Missouri Supreme Court Rule 4-1.9(a) for a conflict of interest arising from Respondent's representation of two clients against a former client in the same or substantially related matter.

**<u>Respondent's Answer and Testimony at Close of Hearing</u>:**

Respondent denied that he was guilty of such professional misconduct.

**<u>Conclusion of Disciplinary Hearing Panel</u>:**

Respondent violated Rule 4-1.9(a) in each instance.

**<u>Count VII of Information</u>:**

Alleged violation of Missouri Supreme Court Rule 4-8.4(d) involving conduct prejudicial to the administration of justice by (a) attempting to obtain former client's protected drug test results to defend against potential bar complaint and legal malpractice lawsuit; and (b) by taking retaliatory and harassing action directed against former client who fired Respondent and then initiated a bar complaint.

**<u>Respondent's Answer and Testimony at Close of Hearing:</u>**

Respondent denied that he was guilty of such professional misconduct.

**<u>Conclusion of Disciplinary Hearing Panel</u>:**

Respondent did not violate Rule 4-8.4(d). However, the panel would have found a violation of Rule 4-8.4(c) based upon "outrageous, unethical and possibly illegal" subterfuge in attempting to obtain a former client's drug test results, but a violation of such subsection of the Rule was not charged in the Information.

**App. 3-23, 24-34, 220-221, 418, 608-646**.

Respondent was licensed as an attorney in Missouri on September 6, 1975. **App. 3, 24**. His bar number is #24665. **App. 181 (T. 272)**. Respondent's license is currently active and in good standing. For all purposes relevant herein, Respondent is a sole practitioner in Platte City, Missouri, under the name of Lyle L. Odo, P.C. **App. 3, 24**. The address designated in Respondent's most recent registration with The Missouri Bar is 249 Main St., P.O. Box 378, Platte City, MO 64079. **App. 4, 24**; **App. 187 (T. 295)**.

Respondent is also licensed to practice law in Kansas. **App. 181 (T. 273)**. A companion bar complaint involving this matter was submitted to the Kansas Disciplinary Administrator's Office.[1] **App. 418.**

Chad Morrison was seriously injured in a vehicular accident on November 6, 2009, as a result of the negligence of another driver named Cummings. **App. 4, 24**. Morrison was a passenger in a vehicle driven by Lori Ferris, a co-complainant in this matter. **App. 4, 24**. The accident occurred in Atchison County, Kansas. **App. 4, 24**. As a result of the accident, Morrison sustained a fractured hip and was hospitalized for six days. **App. 4, 24**. Ferris was also injured in the accident. **App. 5, 24, 146.**

On December 2, 2009, Ferris and Morrison both executed a written attorney-client agreement with Respondent for legal representation of them regarding their respective injury claims arising out of the motor vehicle accident. **App. 276-277**.

There is no dispute that the underlying injury claims accrued under Kansas law as the place of the vehicle accident and resulting injury. Morrison and Ferris are residents of Kansas. **App. 89, 271, 272, 369**. However, Respondent's law firm is located in Missouri. **App. 369**. Since there was no lawsuit filed by Respondent with respect to the personal injury claims, virtually all work performed by Respondent relative to the injury claims occurred in Missouri. Other legal work performed by Respondent for Morrison involved legal proceedings before a Missouri tribunal. **App. 384**. Morrison and Ferris met with

[1] As of this date, there has been no disposition of the Kansas disciplinary complaint.

Respondent several times at Respondent's law office in Missouri. **App. 145.**

At all times between December 2, 2009, and May 11, 2011, there was an attorney-client relationship between Respondent and Chad Morrison. **App. 182**. Respondent represented Morrison on various legal matters, including a motion to modify child support (Circuit Court of Platte County, Missouri, Case No. 03CV82907-03) **App. 356-357**; a charge of non-payment of child support (Circuit Court of Platte County, Missouri, Case No. 08-AE-CR01762) **App. 358-359**; a municipal court matter in Tracy, Missouri, **App. 384**; preparation of a power of attorney **App. 385**; a social security disability claim **App. 85 (T. 15)**; and a personal injury claim **App. 386-387; 4, 24**. At all times between December 2, 2009, and January 2011, there was also an attorney-client relationship between Respondent and Lori Ferris, primarily concerning a personal injury claim. **App. 182, 386-387.**

## II. SIXTEEN SECURED LOAN TRANSACTIONS WITH CLIENTS (COUNT I, RULE 4-1.8(a))

From February 2010 to May 2011, Respondent supervised and arranged for sixteen separate loan transactions whereby Morrison borrowed approximately $28,000 while Morrison was Respondent's client. **App. 279-355.** These business transactions were secured loans, documented in each case by a "Note, Disclosure and Security Agreement" jointly executed by Morrison as the borrower and Ferris as guarantor or co-signer. **App. 279-355.** From February 2010 to December 2010, twelve of the loan transactions occurred while Ferris was Respondent's client. **App. 279-355**.

The total amount borrowed was $28,450. **App. 279-355.** At the time of the loans, Morrison was unemployed, unsophisticated, and financially desperate. **App. 91, 95**. Morrison needed to borrow money for living expenses and payment of a delinquent child support obligation. **App. 91, 183**.

"Kristen Nicole Properties, Inc." ("KNP") was identified as the lender under the loan documents. **App. 279-355.** Respondent's primary defense to the Rule 4-1.8(a) charge was that Respondent did not violate the rule because the loan documents reflect that KNP was the actual lending party. **App. 25, 189**. Moreover, Respondent suggested that applying Rule 4-1.8(a) to a situation where he personally was not the lender is a violation of Respondent's due process rights. **App. 37, 48**.

Respondent controlled the entire loan process. **App. 187, 190, 232**. Respondent selected the loan documentation. **App. 187**. Respondent prepared the loan agreements. Respondent was responsible for all of the content and provisions of the agreements. Respondent did this all on behalf of the lender, KNP. **App. 187**. Respondent also controlled KNP. **App. 184, 185, 188**.

In that regard, Respondent testified as follows:

*Q. Were you the incorporator of Kristen Nicole Properties, Inc.?*

*A. Yes, sir.*

*Q. Are you the registered agent of Kristen Nicole Properties, Inc.?*

*A. Yes, sir, I'm the registered agent of the corporation.*

*Q. And you were the registered agent in 2010 and 2011?*

*A. That's a true statement, sir.*

*Q. Are you the president of Kristen Nicole Properties, Inc.?*

*A. Yes, sir.*

*Q. Have you always been the president of Kristen Nicole Properties, Inc.?*

*A. That's correct, sir.*

*Q. Are you the only officer of Kristen Nicole Properties, Inc.?*

*A. That's correct, sir.*

*Q. Have you been the only officer Kristen Nicole Properties has ever had?*

*A. Yes, sir.*

*Q. Are you the chairman of the board of directors of Kristen Nicole Properties, Inc.?*

*A. Yes, sir.*

*Q. Are you the only board member Kristen Nicole Properties has ever had?*

*A. Yes, sir.*

*Q. As an officer and director of Kristen Nicole Properties, Inc., were you under fiduciary duties to the corporation?*

*A. Yes, sir.*

*Q.*	*And Kristen Nicole Properties, Inc. is a for profit corporation; is that correct?*

*A.*	*That's correct.*

*Q.*	*And as an officer and director of Kristen Nicole Properties, Inc., you had the fiduciary obligation to maximize the profitability of the company for the benefit of the shareholders; is that correct?*

*A.*	*I -- I -- I'm sure that that question deserves a responsive answer in the yes but I -- I don't practice enough corporate law to know, but I would agree with that statement, yes, sir.*

**App. 184 (T. 286), App 185 (T. 287-288)**

* * *

*Q.*	*Was Kristen Nicole Properties incorporated in 1994?*

*A.*	*Yes, Kristen Nicole Properties, Inc. was incorporated June 10, 1994.*

*Q.*	*And Kristen Nicole Odo is your daughter; is that correct?*

*A.*	*That's correct, sir.*

*Q.*	*The company was named for her?*

*A.*	*Yes, sir.*

*Q.*	*What year was Kristen Nicole Odo born?*

*A.*	*She was born in 1984.*

*Q.*	*So when you formed Kristen Nicole Properties, Inc., your daughter* *was ten years old; is that correct?*

*A.* *That's correct, sir.*

*Q.* *And at that time she obviously had no ownership interest in the corporation; is that correct?*

*A.* *That's correct, sir.*

*Q.* *Who did own the company when it was incorporated?*

*A.* *Lyle Odo owned the corporation at the time it was incorporated.*

**App. 185 (T. 289-290)**

* * *

*Q.* *Did Kristen Odo, your daughter, have any involvement in the 16 loan transactions?*

*A.* *No, sir.*

**App. 188 (T. 302)**

* * *

*Q.* *Is the principal place of business of Kristen Nicole Properties, Inc., 249 Main Street, Platte City, Missouri?*

*A.* *Yes, sir.*

*Q.* *And that's also the principal place of business of your law office?*

*A.* *Yes, sir.*

*Q.* *Is the phone number for Kristen Nicole Properties, Inc. the same phone number for your law firm?*

*A.* *Kristen Nicole Properties, Inc. -- yes, that's true.*

*Q.* *Okay. Is the fax number for Kristen Nicole Properties, Inc. the same fax number for your law firm?*

*A.* *Yes, sir.*

*Q.* *Is the email -- what is the email address for Kristen Nicole Properties, Inc.?*

*A.* *Kristen Nicole Properties, Inc. does not have an email address.*

*Q.* *Take a look, if would you at Exhibit 3.*

*A.* *Well, sorry. I use my law office or my LOdo@uniteone.net. I stand corrected.*

**App. 187 (T. 295-296)**

**(Exhibit 3, KNP Letterhead: App. 278)**

* * *

*Q.* *Did you personally sign each and every one of the 16 loan payments to Chad Morrison?*

*A.* *Did I sign loan payments?*

*Q.* *Yeah, I mean the checks.*

*A.* *Yes.*

*Q.* *Are you an authorized signatory on the Kristen Nicole Properties, Inc. checking account?*

*A.* *Yes.*

*Q. Do you control the checking account?*

*A. Yes.*

*Q. Take a look, if you would please, at Exhibit 6. Is that your signature on that check?*

*A. Yes, that's my signature.*

*Q. Did you personally supervise each of the 16 loan transactions?*

*A. I don't understand that question.*

*Q. Were you personally involved in each of the 16 loan transactions?*

*A. As the manager of Kristen Nicole Properties, Inc., yes, sir.*

*Q. And no one else on behalf of Kristen Nicole Properties, Inc. was involved in any of these 16 loan transactions; is that correct?*

*A. Other than Mr. Morrison and Ms. Ferris as a co-signer, correct.*

*Q. Okay. But no one else on behalf of Kristen Nicole Properties was involved in these loan transactions?*

*A. That's correct.*

**App. 187 (T. 296-298)**

**(Exhibit 6, Loan Proceeds Check: App. 360)**

* * *

*Q. Who, on behalf of Kristen Nicole Properties, selected the loan documentation?*

*A. Lyle Odo as attorney at law did that, sir.*

*Q. Okay. Are you the lawyer for Kristen Nicole Properties, Inc.?*

*A. I am.*

**App. 187 (T. 298)**

* * *

*Q. With respect to Exhibit X, Mr. Odo, which is a series of corporate resolutions, were these resolutions signed contemporaneously with the loan transactions as they occurred or were they signed later on in time on a different date?*

*A. Those -- may I look at that exhibit --*

*Q. Yes.*

*A. -- so I can look? I believe that Exhibit X were generated and signed on the dates that they are recorded on each and every page, not later than the date it was signed.*

*Q. Did you have a meeting of the board of directors with respect to each resolution?*

*A. Yes, sir.*

*Q. And that was a meeting with yourself?*

*A. Yes, sir.*

*Q. Okay. No one -- no one else was involved in that meeting?*

*A. Correct.*

*Q. And as a result of that, you prepared a resolution for each one of* *the loan transactions on each date of the loan as reflected in Exhibit X?*

*A. Yes, sir.*

**App. 232 (T. 475-476)**

**(Exhibit X, KNP Corporate Resolutions: App. 581-596);**

* * *

*Q. Do you control Kristen Nicole Properties, Inc. as its only officer and director?*

*A. Yes, sir.*

**App. 188 (T. 302)**

* * *

*Q. Did you use the name and account of Kristen Nicole Properties to accomplish these 16 loan transactions?*

*THE WITNESS: Did I personally?*

*Q. Well, I'm asking the person who's testifying whether the person who's testifying here today intentionally used the name and account of Kristen Nicole Properties, Inc. to accomplish these transactions?*

*A. Yes.*

**App. 189 (T. 303-304)**

* * *

*Q. And when you talk about the decision of the corporation, are you* *referring to the decision of Lyle Odo president and board of direct – a member of the board of directors of Kristen Nicole Properties, Inc.?*

A. *Yes, sir.*

Q. *And you understand that a corporation can only act through its authorized agents and officers; is that correct?*

A. *That's correct.*

Q. *And with respect to Kristen Nicole Properties, you were the only authorized officer; is that correct?*

A. *Yes, sir.*

Q. *And when we talk about the decisions and actions of the corporation, we're talking about the decisions and actions of Lyle Odo; is that correct?*

A. *As the officer of the corporation, yes, sir.*

**App. 190 (T. 309)**

Each of the sixteen loan agreements contained the following provision: "To secure the obligations of this Loan Agreement, I give you [KNP] a security interest in the Property described below: Sufficient portion of the proceeds of an injury claim against Alan Cummings which occurred November 6, 2009 to satisfy this note." **App. 279**. The security interests directly affected the amount of settlement proceeds Morrison would receive from his personal injury claim. It is not clear from the documents whether the loans intended to create a lien upon the proceeds of Ferris' injury claims as well as Morrison's proceeds. **App. 190-191**.

Respondent had actual knowledge of the security interest feature of the loan documents. Respondent testified as follows:

*Q. Did anyone on behalf of Kristen Nicole Properties instruct you to take a security interest in your client's settlement proceeds?*

*A. Lyle Odo, on -- as a corporate officer and director of Kristen Nicole Properties, deemed it prudent to take this security interest in settlement proceeds because Mr. Morrison was not working.*

*Q. Did Lyle Odo, as a lawyer for Chad Morrison, deem that prudent as well?*

*A. On Mr. Morrison's behalf?*

*Q. Yes.*

*A. I -- yes, as Mr. Morrison's attorney, I deemed it prudent because Kristen Nicole Properties would not have loaned the money Mr. – with Mr. Morrison had he not.*

**App. 191 (T. 314).**

The loan documents provided that interest would accrue on the funds loaned to Morrison at a rate of 180% per annum for the first month and 38% per annum thereafter. **App. 194, 279**. Respondent admitted that the interest rate was usurious and violated Missouri law. **App. 195**. The loan documents also charged Morrison with a nonrefundable "processing" fee of $75 per loan, totaling $1,200 for the sixteen loans. **App. 193, 279**.

In connection with the loan process, Respondent did not request loan applications from either client nor did he otherwise consider their credit history. **App. 94, 134, 144, 184**. Respondent required his client, Lori Ferris, to execute the loan agreements as a guarantor or co-signer even though the loan proceeds were not paid to her. **App. 144**. Respondent did not rely upon Ferris' creditworthiness or employment income as a means of repayment of the loans. **App. 94, 134, 144, 184.** Ms. Ferris testified that it was not fair that she had to sign the loans but she did not think she had a choice. **App. 145 (T. 250-254)**. The terms of loan agreements were not negotiable by the clients. **App. 94, 95, 98, 195-196**. Respondent did not give his clients an opportunity to alter the terms of the loan agreements. **App. 94, 95, 145, 195-196**.

The loan agreements give the lender control over the personal injury claim. **App. 280-282**. The secured creditor was authorized to do anything necessary to protect its interest in the proceeds. **App. 280-282.** Morrison was required to keep books and records about the proceeds of the personal injury claim and to give the secured creditor access to such information. **App. 280-282.** Morrison was required to provide the secured creditor with all documents, reports and all other information related to the proceeds. **App. 280-282.** Morrison was prohibited from transferring the injury claim proceeds without the creditor's written consent. **App. 280-282.** Morrison was required to protect the proceeds against competing claims. **App. 280-282.** Morrison was required to use the injury proceeds only for personal, family or household purposes. **App. 280-282.** Morrison was required to waive all exemptions associated with the proceeds. **App. 280-282.**

The loan documents are not clear as to whether Ferris granted a security interest in favor of Respondent in the proceeds of her separate injury claim. **App. 190-191**. The loan documents are not clear as to whether they matured on demand or upon a stated maturity date. **App. 192, 279**. The loan documents are not clear as to whether the security interests in the proceeds of the injury claim were to be governed by Missouri's Uniform Commercial Code as an Article Nine security interest. **App. 191**.

Other than the loan agreements themselves, Respondent provided no separate written disclosure of the transactions nor a written summary or explanation of the loan terms or risks of the transactions to the clients. **App. 94, 145, 189, 197, 235**.

For each loan transaction, Respondent left Morrison and Ferris sitting alone in one room at his law office, and then went back to another room to hold a private meeting of the Board of Directors of KNP. **App. 232**. Then Respondent prepared and signed a specific corporate resolution for each loan transaction, all before coming back to the room to close the loan in person with Morrison and Ferris. **App. 232**. Respondent did not provide the corporate resolutions to the borrowers. In the eighty pages of loan documents, there is not a single sentence describing the relationship between Respondent and KNP. **App. 279-355**.

Morrison did not understand Respondent's relationship to KNP. **App. 94**. Morrison testified:

*Q.* *At the time of the loans in 2010 and 2011, did you have any idea about who managed the affairs of Kristen Nicole Properties, Inc.?*

*A.* *No, I didn't have any idea.*

**App. 94 (T. 52)**

* * *

*Q.* *At the time of these loans in 2010 and the first part of 2011, did you have any idea who Kristen Nicole Properties, Inc. was?*

*A.* *No idea.*

*Q.* *Did you know that Mr. Odo was – was involved somehow in arranging the loans for you?*

*A.* *I -- I knew he was involved in arranging them. I felt I – I understood that Kristen Nicole Properties just trusted him to help make their loans I -- I guess.*

*Q.* *Did you have a sense as to whether Mr. Odo was representing you as your lawyer in the loan transactions or whether he was representing Kristen Nicole Properties or whether he was just a neutral party?*

*A.* *I believe he was representing me in -- in the loans. He was speaking to me as my attorney as to what documents I'm signing not, you know leading me the right way, not steering me somewhere where I shouldn't be.*

**App. 94 (T. 50-51)**

The clients were not advised in writing of the desirability of seeking the advice of independent legal counsel with respect to the transactions. **App. 94, 145**. Likewise, the clients were not given a reasonable opportunity to seek the advice of independent legal counsel before signing the loan documents. **App. 94, 145.** The clients testified as follows:

*Q.* *Were you given an opportunity to seek independent counsel before you signed the loan agreements?*

*A.* *No. We went through it so fast.*

*Q.* *Did Mr. Odo ever tell you, you know, you probably ought to have a lawyer look at these before you sign them?*

*A.* *No.*

*Q.* *Do you recall signing any waiver of any conflict of interest with respect to the loan transactions?*

*A.* *No.*

**App. 145 (T. 253)**

* * *

*Q.* *Did Mr. Odo suggest to you that you should hire an independent attorney to look over the loan papers?*

*A.* *No, he didn't. Once again, I believed he was my attorney...*

**App. 94 (T. 52)**

Respondent claimed that he went through the loan documents with Morrison and

Ferris as their attorney. Respondent testified:

> *Q. Is it your testimony that in going through the terms of the loan documents, you went through the loan documents with Chad Morrison and Lori Ferris at -- both as their attorney and also as an officer and director of Kristen Nicole Properties, Inc.?*
>
> *A. Yes, that's a true statement.*

**App. 192 (T. 315)**

* * *

> *Q. Okay. Did you, in fact, represent Mr. Morrison and Miss Ferris in regards to the loan documents themselves as you were going through the loan documents?*
>
> *A. I sat down with Mr. Morrison and Miss Lori Ferris and I-- yes, the answer's yes.*

**App. 215 (T. 410)**

## III. CONCURRENT CONFLICT OF INTEREST (COUNT III, RULE 4-1.7(a))

Respondent testified that he went through the loan documents with Morrison and Ferris as the borrower's attorney **and also** as the officer, director and lawyer for the lender. Respondent testified:

> *Q. Is it your testimony that in going through the terms of the loan documents, you went through the loan documents with Chad Morrison*

*and Lori Ferris at -- both as their attorney and also as an officer and director of Kristen Nicole Properties, Inc.?*

*A. Yes, that's a true statement.*

**App. 192 (T. 315)**

* * *

*Q. Okay. Did you, in fact, represent Mr. Morrison and Miss Ferris in regards to the loan documents themselves as you were going through the loan documents?*

*A. I sat down with Mr. Morrison and Miss Lori Ferris and I-- yes, the answer's yes.*

**App. 215 (T. 410)**

*** * ***

*Q. Who, on behalf of Kristen Nicole Properties, selected the loan documentation?*

*A. Lyle Odo as attorney at law did that, sir.*

*Q. Okay. Are you the lawyer for Kristen Nicole Properties, Inc.?*

*A. I am.*

**App. 187 (T. 298).**

Informant alleged that Respondent held a personal interest in the lending relationship. During the relevant period at issue, Respondent served as the lawyer for Morrison and Ferris. **App. 356-359**. However, at the same time Respondent also served as the lawyer for KNP in connection with the administration of the loans. **App. 364-365**. Moreover, Respondent had a personal interest in the administration and enforcement of the loans as the sole officer and director of KNP with a duty to maximize profits for the shareholder. **App. 185, 363.** Respondent is a father who desired to leave an inheritance to his daughter who was the namesake of KNP. **App. 232**.

Kristen Nicole Odo, Respondent's daughter and namesake for the lending company, did not testify at the hearing on her father's behalf. There was no evidence that Kristen Odo held any **specific** interest in the actual repayment of these sixteen loan transactions. There is no evidence she even knew about the loans. **App. 188**. The only reason Kristen Odo was a shareholder in KNP is for estate planning purposes in the event of Respondent's death. **App. 232**. There was no evidence that Kristen Odo even saw any of the $34,000 proceeds paid by Morrison to repay the loans. In fact, when Morrison made a $34,000 payment to pay off the loans, he was instructed to make the payment jointly payable to Respondent's law firm as well as KNP. **App. 415, 420**. There have not been any distributions to Kristen Odo during her ownership of the company. **App. 236 (T. 491)**.

There is no evidence that Kristen Odo played any role in the correspondence sent to Morrison regarding the loan accounts. **App. 362–365, 448-449**. Respondent sent these letters all on his own without shareholder input. **App. 188**. Respondent unilaterally controlled enforcement and collection of the loans without the input or consent of his daughter.

Respondent recognized that the lending relationship and the attorney-client relationship could ripen into a conflict whereby he could no longer continue the dual representation. Respondent testified:

> *Q.* *If it came to a point during your representation of Mr. Morrison that you felt that it was appropriate, for whatever reason, for Kristen Nicole Properties to call any of the notes or take any legal action on any of the notes, what would you have done?*
>
> *A.* *I would have, as an attorney at law, immediately withdrawn. I would have withdrawn from all of Mr. Morrison's cases.*

**App. 230 (T. 471).**

There is no writing by which the clients could have given their informed consent to a waiver of a concurrent conflict of interest concerning Respondent's personal interests or dual representation of both creditor and debtor. **App. 198**.

## IV. FINANCIAL ASSISTANCE TO A CLIENT

## (COUNT II, RULE 4-1.8(e))

From Respondent's own funds, during the course of the representation, Respondent paid various bills for medical treatment received by Mr. Morrison. **App. 471-474**.[2]

[2] Exhibit 28 (**App. 471-474**) was excluded from evidence by the presiding officer of the disciplinary hearing panel. At the hearing, Informant made a request pursuant to Rule 73.01 to have the exhibit taken and recorded pursuant to Rule 73.01. **App. 218-219**.

Respondent twice paid $500 each for Mr. Morrison's epidural treatments to relieve his pain. **App. 52, 403**. Respondent admits that such payments were for actual medical treatment received by Mr. Morrison. **App. 217.**

This issue was also considered by a District Court judge in Kansas, who found that "Mr. Odo did pay certain medical bills contrary to the Kansas Code of Professional Responsibility and these will be deducted from his fees and expenses approved by this Court. (See Rule 1.8(e))."[3] **App. 399**. With respect to this ruling of the Kansas judge, Respondent testified:

*Q. Now, Judge Bednar signed Exhibit 13 as a sitting judge of the District Court of Atchison County, Kansas, correct?*

*A. Correct.*

*Q. And are you unwilling to accept Judge Bednar's finding as to those payments?*

*A. I am willing to accept Judge Bednar's findings with respect to the Kansas Code of Professional Responsibility, Rule 1.8(e). If that is identical to Missouri Rule 1.8(e), I don't know.*

*Q. Okay. But if -- if it is identical, do you accept Judge Bednar's finding*

---

[3]Morrison is a Kansas resident. Morrison's bodily injuries arose in Kansas. The epidurals were administered in Kansas. Respondent paid the $1,000 to a Kansas physician. **App. 471-474**. Respondent is also licensed in Kansas. **App. 181**.

*as a court of record in the State of Kansas?*

*A. Yes, because that was a finding of the court and a final judgment.*

**App. 217 (T. 415)**

**(Exhibit 13, Judge Bednar's Order of Apportionment: App. 395-406).**

Respondent also paid $4,079 for an MRI on Morrison's behalf. **App. 472**. Respondent's Amended Answer characterizes this payment as a payment of "medical evaluation" rather than for "medical treatment." **App. 52**. However, in his testimony Respondent admitted that the $4,079 payment was for his client's "medical treatment." **App. 217 (T. 417)**. The payment for medical treatment also included a charge for a pharmaceutical analgesic administered to Morrison. **App. 217**.

From February 2010 until May 9, 2011, Respondent made sixteen payments to Morrison, totaling approximately $28,000. **App. 56-57**. The proceeds were used by Morrison for his household and living expenses and for payment of his child support obligation. **App. 91, 183**. Respondent was aware that these payments would be used by Morrison for personal purposes. **App. 91, 183.** Respondent was aware of Morrison's child support obligations. **App. 91, 183.** Respondent was aware that Morrison intended to use the money for living expenses and child support payments. **App. 91, 183.** Morrison testified:

*Q. You may have answered this, but what did you use the loan proceeds for?*

*A. To pay my child support, to pay for counseling sessions, doctor's* *appointments, gas money, our monthly living expenses, everything that we needed money for that we couldn't obtain because couldn't work.*

Q. *Did the loans assist you financially?*

A *Yes, they did.*

**App. 96 (T. 58)**

Respondent testified:

Q. *Did you have any idea what Mr. Morrison was using the loan proceeds for?*

A. *Yes, sir.*

Q. *What was your idea of what he was using the loan proceeds for?*

A. *It wasn't my idea, sir. Mr. Morrison told me what he was using the Loan proceeds for.*

Q. *And what was that?*

A. *Mr. Morrison said that he was using some of the loan proceeds to pay child support.*

Q. *Is it fair to say that he discussed using the loan proceeds for just day-to-day living expenses?*

A. *Yes, that's fair to say, sir.*

**App. 183 (T 281-282).**

## V. DISCLOSURE OF CLIENT INFORMATION

## (COUNT IV, RULE 4-1.6(a))

On May 11, 2011, Morrison terminated Respondent's legal representation by written letter. **App. 361**. Counts I, II, and III of the Information described above relate to conduct occurring during the attorney-client relationship, while Counts IV, V, VI and VII described below relate to events occurring after the termination of the legal representation.

On May 20, 2011 Respondent filed a civil lawsuit in the Circuit Court of Platte County, Missouri against Morrison to collect attorney fees from the various legal matters handled by Respondent. **App. 369**. The case was captioned as *Lyle Odo P.C. v. Chad Morrison*, Case No. 11AECV01722 ("*Odo v. Morrison*"). **App. 369**. The Petition in *Odo v. Morrison* was prepared, signed and filed by Respondent. **App. 203, 373**. The Petition was five pages in length but also included twenty-one pages of exhibits. **App. 369-394**.

Respondent did not seek to file the Petition under seal. **App. 203**. Once filed, the Petition was available at the courthouse for unrestricted public viewing. Respondent admitted that filing the Petition would constitute a "disclosure" of information and that the filing of a Petition with a court would "reveal" information. **App. 203-204**. A large portion of the information set forth in the Petition, including the attachments to the Petition, contained information relating to Respondent's representation of a former client. **App. 369-394**; **App. 100-103**. The Petition contained numerous allegations and several exhibits detailing private, personal and confidential information about Morrison, largely including information obtained by Respondent during the course of the attorney-client relationship.

**App. 369-394**; **App. 100-103.**

The disciplinary hearing panel found that the documents included “detailed activity logs showing everything [Respondent] did” on behalf of his former clients. **App. 618**. The panel also found that “the disclosures made by Respondent's attachment of billing records as an exhibit to his petition” contained “potentially sensitive” information “related to the representation.” **App. 634**. When the Petition was filed, Morrison's personal injury claim was still pending. The Petition contained a substantial amount of information relating to Respondent's representation of Morrison regarding the then pending personal injury claim. **App. 369-394**; **App. 100-103.**

Morrison did not provide any consent for Respondent to reveal the information related to the subject matter of the legal matters Respondent had handled on Morrison's behalf. **App. 103 (T. 85).**

Respondent testified that it was his practice in a collection matter to attach an itemized statement to the pleading. **App. 204 (T. 363-364)**.

## VI. FORMER CLIENT CONFLICT OF INTEREST

### A. COUNT V, *RULE 4-1.9(a)*

### *FEBBO v. MORRISON*

Upon discharging Respondent from further legal representation in May 2011, Morrison hired another attorney. **App. 90 (T. 33)**. Morrison's injury claim was settled in the latter half of 2011. **App. 103 (T. 85)**. In connection with the settlement, Morrison, through his new counsel, filed an action to apportion the settlement proceeds between disputed liens and Morrison's share of recovery. **App. 103 (T. 85)**. The action was filed in the District Court of Atchison County, Kansas on October 24, 2011, captioned as *Morrison v. Cummings et al.*, Case No. 2011CV123. **App. 395-406**.

Among the alleged liens pertinent to this matter is an alleged lien for chiropractic services. **App. 407**. In or about November 2011, Respondent decided that Dr. Theresa Febbo, a chiropractor, should hire Respondent to assert a lien claim on her behalf as to Morrison's settlement proceeds. **App. 211 (T. 394)**. Thus, it is undisputed that in *Morrison v. Cummings* Respondent appeared on behalf of Dr. Theresa Febbo, D.C. to assert a $3,100 chiropractor's lien against his former client. **App. 211 (T. 394).** Respondent represented Dr. Febbo in such proceeding from at least November 2011 until the case was decided in December 2011. **App. 211 (T. 394).**

The interests of Mr. Morrison and Dr. Febbo were materially adverse at all times in connection with the *Morrison v. Cummings* lawsuit. Morrison had an interest in disputing the lien and not having any portion of his personal injury settlement proceeds paid over to Dr. Febbo and Dr. Febbo had an interest in enforcing the alleged lien so as to obtain full payment of her bill without further legal action or collection activity.

Morrison's new counsel objected to Dr. Febbo's claim of a lien on the personal injury settlement proceeds. On December 2, 2011, Judge Bednar of the Atchison County, Kansas District Court in *Morrison v. Cummings* denied the lien claim of Dr. Febbo asserted by Respondent against his former client. **App. 395-406**. The court found that Respondent had presented no authority that would grant Dr. Febbo an interest in the proceeds of the settlement. **App. 404**. The written lien authorization signed by Morrison was held not to be enforceable in Kansas. **App. 404, 407.** Dr. Febbo did not appeal this ruling. Dr. Febbo received no money from the *Morrison v. Cummings* action. In his written ruling, Judge Bednar stated: "The actions of both parties, plaintiff and Mr. Odo, demonstrate less than clean hands in appearing in court and making their arguments." **App. 404**.

The subject matter of Respondent's representation of Dr. Febbo was a claim for a lien for unpaid bills for chiropractic treatment and evaluation concerning Morrison's bodily injuries arising out of the motor vehicle accident in November 2009. **App. 407-410; App. 105 (T.93-99); App. 209 (T.384-385).** The subject matter of Respondent's former representation of Morrison was also Morrison's bodily injuries arising out of the same motor vehicle accident. **App. 276-277; App. 366-368.**

Respondent referred Morrison to Dr. Febbo for chiropractic treatment. Morrison testified:

*Q. Okay. Next I'd like to turn to your relationship with Dr. Febbo --*

*A. Uh-huh.*

*Q. -- we talked about at length. When did the name -- can you recall The first conversation which the name of Dr. Febbo came up? When did you first hear her name?*

*A. When Mr. Odo called me one day and told me that he would like For me -- me, us, me and Lori, to go see his chiropractor, that he Believes* *she could help us with both my injury claim and my disability claim. So we went and I – we started going to see her.*

*Q.* *Was it your understanding that you were seeing Dr. Febbo in order for Dr. Febbo to treat you and alleviate your symptoms or to evaluate your condition for purposes of the litigation?*

*A.* *I understood it was to treat – treat my condition and -- and she said she goes to court at times; to help me -- help me -- us with the pain and help Mr. Odo with my disability.*

**App. 133, 134 (T. 208-209).**

Dr. Febbo's treatment of Morrison arose out of the injuries he received in the motor vehicle accident. Respondent testified:

*Q.* *Okay. Take a look at the verification of Exhibit 15, and paragraph 3 says that "the treatment of defendant was necessary due to the Injuries defendant sustained in a motor vehicle collision." Do you agree with that statement?*

*A.* *Yes, sir.*

**App. 209 (T. 384-385).**

**(Exhibit 15, Febbo Petition: App. 408-410).**

In addition to chiropractic treatment, Dr. Febbo also provided a chiropractic evaluation of Morrison for purposes of litigation, including Morrison's disability claim handled by Respondent as well as Morrison's child support problems being handled by

Respondent. Morrison testified:

*Q.* *Was Dr. Febbo's treatment of you related to your automobile accident?*

*A.* *Yes. It was related as an attempt to help alleviate some of my pain And help – I understood it to help provide social security disability Administration extents of my injury.*

*Q.* *What areas of the body did Dr. Febbo work on?*

*A.* *Like my -- my lower back to my neck, but she was limited on what she could do due to my recent hip surgery.*

*Q.* *And were those areas of the body affected in your automobile accident?*

*A.* *Yes.*

**App. 105 (T. 93-94).**

Respondent testified:

*Q.* *Did you use Dr. Febbo's records in connection with your settlement evaluation of his personal injury claim?*

*A.* *Yes, I did.*

*Q.* *Did you utilize Dr. Febbo's records in connection with the social security claim?*

*A.* *No, I did not.*

*Q.* *Not at all?*

*A.* *Well, it was submitted but the Social Security Administration medical providers gave absolutely no weight to chiropractic treatment. So I -- it was submitted but it was not considered.*

*Q.* *And submitted by you; is that correct?*

*A.* *Yes, sir.*

*Q.* *Dr. Febbo's records were submitted by you to the Social Security Claims Office?*

*A.* *To the best of my memory I believe it was, yes. Yes.*

*Q.* *Did you utilized Dr. Febbo's records in connection with Mr. Morrison's criminal non-support case?*

*A.* *The answer to that question is, yes, in order to prove that Mr. Morrison was unable to work in order to prevent the judge from incarcerating him.*

*Q.* *Did you utilize Dr. Febbo's records in connection with the motion to modify child support?*

*A.* *Yes, I did for the -- for the reason to prove that Mr. Morrison could not work. And by "records," I mean I think there was only one entry note where Dr. Febbo said it was her opinion that Mr. Morrison could not work.*

**App. 209 (T. 385-386).**

A month or so after receiving Judge Bednar's adverse ruling, Respondent proceeded to involve himself on behalf of Dr. Febbo against Morrison in a second proceeding, identified as the *Febbo v. Morrison* lawsuit in the Circuit Court of Platte County, Missouri. **App. 408-410**. Respondent selected his friend, William Hudnall, to serve as his co-counsel on behalf of Dr. Febbo. **App. 408-410**.

Respondent appears to deny that he "represented" Dr. Febbo to collect the $3,100 invoice for chiropractic services in the Platte County lawsuit. **App. 211 (T. 393)**. Respondent prepared the lawsuit petition on behalf of Dr. Febbo against Morrison. Respondent's legal assistant notarized Dr. Febbo's signature on the lawsuit petition. **App. 410**. Respondent paid the filing fee for the lawsuit and arranged to have it filed at the courthouse. **App. 233 (T. 481); App. 31.** Respondent appeared in Platte County Circuit Court at least twice, perhaps three times, on behalf of Dr. Febbo against Morrison. **App. 411-414**.

Morrison testified:

*Q. Okay. Did you see Lyle Odo in court on any occasion that a judge called this case on his docket?*

*A. Yes.*

*Q. And when the judge called the case on his docket, did you observe what Mr. Odo did?*

*A. Yes.*

*Q. And you saw Mr. Odo present?*

*A. Yes.*

*Q. And what did you observe Mr. Odo do when the judge called the case?*

*A. He stood up, approached the bench, introduced himself of Lyle Odo on behalf of Theresa Febbo.*

*Q. How many times would you say that happened in Platte County, Missouri?*

*A. Three.*

**App. 106 (T. 98-99).**

Attorney William Hudnall testified as to the legal significance of those court appearances:

*Q. What would Judge Eckold have done if no one from the plaintiff appeared in the case on February 16th, 2012?*

*A. Given the date that was issued, summons return non-established, only 30 days after the summons was issued, I'm not sure that Judge Eckold wouldn't have passed that and waited for me to come back to The court and reschedule to ask for an alias summons to be issued. I don't think he would have dismissed.*

*Q. But he could have dismissed?*

*A. He certainly could have. It would have been within his authority to do so.*

*Q. What would have happened if no one had appeared for the plaintiff on April 5th, 2012?*

A. *Probably would have been dismissed and I would have had to have gone and done some extra work probably to get it -- that judgment set aside and reinstated.*

Q. *If the case was dismissed, the court would not have been able to enter a judgment at this point?*

A. *No, they wouldn't -- the court would not have.*

Q. *And you would have had to ask the court for permission to file a -- or to set aside a dismissal?*

A. *There's no question I would have had to do that extra work.*

Q. *And the judge may not have granted the motion to set aside the dismissal?*

A. *Again, that would be within his discretion.*

**App. 141 (T. 237-239).**

Respondent monitored Dr, Febbo's $3,100 collection lawsuit against Morrison even after a judgment had been obtained. **App. 140-143 (T. 234-241).** Respondent discussed certain aspects of the lawsuit (such as court appearances and the judgment) with William Hudnall. **App. 140-143 (T. 234-241).** Mr. Hudnall testified:

Q. *Did you feel it was important for Lyle Odo to -- to know anything about the judgment once it had been entered?*

A. *I felt compelled to share with him, because he did tell me that Dr. Febbo was a long-standing client of his, I understood him to have* *called me because of that relationship and he didn't want to lose a good client. So, yes, I told Lyle after the fact, I said, "I took care of your client. I hope she's happy."*

**App. 141 (T. 239).**

After Hudnall obtained the judgment against Morrison on behalf of Dr, Febbo, Respondent again arranged to have one of his friends, John Campbell, register the judgment in Atchison County, Kansas, to seek collection and enforcement of the judgment in Kansas. **App. 212-213 (T. 399-400).** Respondent then became involved in a debtor examination of Morrison in January of 2013 in connection with the enforcement of Dr. Febbo's judgment as registered in Atchison County, Kansas.

Morrison testified:

*Q. Okay. And it was in that context of that judgment registration matter where you personally observed Mr. Odo appear in court on behalf of Dr. Febbo?*

*A. Actually, Robert Campbell appeared as her attorney but Dr. Febbo wasn't there. It was Mr. Campbell and Mr. Odo where I had to list my – or explain what happened to my settlement proceeds and list my assets is what I was trying to say.*

*Q. Is that like a debtor exam?*

*A. Yes.*

*Q. Okay. Mr. Odo was present during your debtor exam; is that correct?*

*A. Correct.*

*Q. And where did the debtor exam take place?*

*A. In Atchison County.*

*Q. And specifically in what -- in what kind of a setting or what kind of room?*

*A. When -- approached the bench to – in front of Bednar and he sent Mr. Campbell, Mr. Odo, my attorney Mr. Fresh, and myself to a chamber room and -- a conference room, whatever, and the four of us went through it.*

*Q. Okay. Do you recall being sworn under oath before going into the debtor exam?*

*A. Yes.*

*Q. Okay. And do you remember being asked a lot of questions about your assets and your intentions to pay the judgment and your ability to pay the judgment?*

*A. Yes.*

*Q. And Mr. Odo was present for those questions and answers?*

*A. Yes.*

**App. 108 (T. 108-110).**

Respondent testified:

*Q. Did you refer Dr. Febbo to Mr. Campbell regarding the judgment?*

*A.* *In registering the Missouri judgment in Kansas?*

*Q.* *Well, in registering in and in collecting on it?*

*A.* *Yes, I did.*

*Q.* *Did you discuss at that time anything with Mr. Campbell about a debtor exam?*

*A.* *At what time, sir? I apologize for that question.*

*Q.* *From the date of the judgment in September of 2012, September 28th, 2012, to the date of the debtor exam, whatever date that was in January of 2013?*

*A.* *Certainly we had some discussions subsequent to the judgment.*

**App. 213 (T. 399-400).**

* * *

*Q.* *Were you present during the debtor exam?*

*A.* *Yes, sir, I was.*

*Q.* *What was your purpose in being present during the debtor exam?*

*A.* *My purpose was believing it was a public and open forum, that I -- as Dr. Febbo's friend, I could come in, sit down, listen and observe.*

*Q.* *What type of room was the debtor exam in?*

*A.* *It was in a small room.*

*Q.* *Did the judge order the parties to go into a small room to conduct the debtor exam?*

*A.* *Yes, sir. Yes, he did.*

*Q.* *Was anyone present in that debtor exam room besides Chad Morrison, yourself, and Robert Campbell?*

*A.* *Yes, Mr. Morrison's attorney was there.*

*Q.* *Okay. Anyone else?*

*A.* *No.*

*Q.* *Was the door closed to the room?*

*A.* *Yes, it was.*

*Q.* *And that did not take place in the hallway of the courthouse, correct?*

*A.* *No, sir, it did not.*

*Q.* *It did not take place in a courtroom of the courthouse, correct?*

*A.* *In the courtroom itself? No, sir, it did not. Where the judge sits on the bench? No, sir.*

*Q.* *All right. Something that might be called the witness room?*

*A.* *I don't know if it was a witness room or a jury room.*

**App. 213 (T. 400-401).**

## B. COUNT VI

### *KNP v. MORRISON*

Respondent testified:

*Q.* *Okay. One more question. You had testified at one point that you felt* *that KNP's interests was -- in the proceeds of Mr. Morrison's settlement was adequately -- adequately secured as long as -- as the firm was representing him in the personal injury action; is that correct?*

*A.* *That's correct.*

*Q.* *And then at the time that Mr. Morrison terminated that relationship, I understood your testimony to be that you then felt that the interests of KNP was not adequately secured; is that a correct understanding?*

*A.* *That's a correct -- yes, sir.*

**App. 235 (T. 488-489).**

* * *

*Q.* *If it came to a point during your representation of Mr. Morrison that you felt that it was appropriate, for whatever reason, for Kristen Nicole Properties to call any of the notes or take any legal action on any of the notes, what would you have done?*

*A.* *I would have, as an attorney at law, immediately withdrawn. I would have withdrawn from all of Mr. Morrison's cases.*

**App. 231 (T. 471).**

*Q.* *Did you threaten to call in the loans if Mr. Morrison ever fired you?*

*A* *No, I never threatened to call any of the loans if Mr. Morrison threatened to fire me.*

*Q. Isn't that what you, in fact, did?*

*A. When Mr. Morrison fired me?*

*Q. Yes.*

*A. Yes, after he fired me.*

*Q. Okay. How many days after he fired you did you call in demand on the loans?*

*A. It was shortly thereafter, sir.*

**App. 192 (T. 317).**

The relationship between KNP as lender and Morrison as borrower deteriorated after May 11, 2011, when Morrison fired Respondent. Within three weeks after Morrison had become a former client to Respondent, Respondent engaged in an actual representation of KNP as its legal counsel adverse to the financial interests of Morrison. **App. 577.** By letter dated June 1, 2011, Respondent, as legal counsel on behalf of KNP, attempted to collect a debt from Respondent's former client. **App. 577.** Respondent testified that the reason he sent the collection letter on behalf of KNP was because Morrison had fired Respondent. **App. 192-193 (T. 317-320).**

Thereafter, later in 2011, Respondent again represented KNP as its legal counsel of record against Morrison in the Atchison County, Kansas proceeding captioned as *Morrison v. Cummings* to enforce KNP's purported security interest under the loan documents upon Morrison's settlement proceeds. **App. 450-459.** Respondent never withdrew as counsel of record for KNP in the *Morrison v. Cummings* proceeding in the Atchison County, Kansas

District Court. **App. 395-406; App. 196 (T. 334).**

Respondent represented KNP in a third instance as its legal counsel against Morrison in the Circuit Court of Platte County, Missouri, in the *Odo v. Morrison* action. **App. 561-576.** Amongst the various claims asserted by the parties, the dispute over Morrison's potential liability on the loans was also joined in the *Odo v. Morrison* lawsuit. **App. 214 (T. 406).** Respondent filed an Answer on behalf of KNP. **App. 214 (T. 406).** Respondent never withdrew as counsel of record from this representation of KNP in Platte County Circuit Court. **App. 561-576; App. 215 (T. 407-409).**

After Respondent was fired by Morrison, KNP's legal interests in enforcing the loans were directly adverse to Morrison's financial and legal interests in avoiding repayment of the loans. **App. 214 (T. 404).** Respondent's representation of KNP in enforcing the loans against Morrison involved the same or substantially related subject matter as Respondent's previous representation of Morrison in connection with signing the loan documents.

Respondent testified:

*Q. Did you analyze these loan documents on behalf of your client Chad Morrison?*

*A. The answer is, yes. And Mr. Morrison and I, with Ms. Ferris present, concerning these loans, the first loan that was executed by them, went through line by line and read verbatim each term and answered any questions that Mr. Morrison or Miss Ferris had and as they initialed* *each one of these pages, sir.*

*Q.* *Is it your testimony that in going through the terms of the loan documents, you went through the loan documents with Chad Morrison and Lori Ferris at -- both as their attorney and also as an officer and director of Kristen Nicole Properties, Inc.?*

*A.* *Yes, that's a true statement.*

**App. 191 (T. 314-315).**

* * *

*Q.* *Okay. Did you, in fact, represent Mr. Morrison and Miss Ferris in regards to the loan documents themselves as you were going through the loan documents?*

*A.* *I sat down with Mr. Morrison and Miss Lori Ferris and I yes, the answer's yes.*

**App. 215 (T. 410).**

* * *

*Q.* *So, in fact, the claims of KNP – KNP against Morrison were the same as the subject matter of your prior representation of Chad Morrison; is that correct?*

*A.* *Only with respect to explaining the loan documents and to answer questions, yes, sir.*

**App. 216 (T. 411).**

## VII. PREJUDICE TO THE ADMINISTRATION OF JUSTICE

## (COUNT VII, RULE 4-8.4(d))

Morrison fired Respondent by letter dated May 10, 2011, which Respondent likely received in the mail the next day. **App. 193 (T. 319-320).** Respondent was "profoundly disappointed" in Morrison's decision to terminate his services. **App. 199 (T. 345).** OCDC received Morrison's bar complaint on June 27, 2011, and Respondent received notice of the complaint sometime in early July 2011. **App. 273; App. 449.**

On or about May 13, 2011, Respondent's office staff, under his direct supervision, attempted to obtain protected information about Morrison's drug tests results to use against Morrison. **App. 560; App. 199-200 (T. 345-350); App. 201 (T.353).** Respondent was unable to obtain the protected information because he did not have a written authorization for the release of that information.

Respondent testified:

*Q. After you were fired by Mr. Morrison, did you attempt to obtain some drug testing information about him?*

*A. The answer to that question is, yes. May I explain?*

*Q. Okay. And Robin Wright sent this email [Exhibit 37] on your behalf; is that correct?*

*A. That's -- yes, yes.*

**Appl. 199 (T. 345). App. 200 (T. 347).**

* * *

*Q. Who were you trying to refer to drug testing?*

*A. At that time, sir?*

*Q. Yes.*

*A. I don't know if it was then. The -- no, no, I was not referring anybody to drug testing on May 13 of 2011.*

*Q. Okay. So where it says, "I've got an individual I need to refer," that's not true, is it?*

*A. Well, at that time, no, it's not true. I did not carefully read the email that Miss Robin Wright had prepared and sent out under her signature. I did not. So that's not true.*

**App. 200 (T. 348).**

* * *

*Q. Why are you trying to find the name of a drug testing company in liberty?*

*A. I knew that I couldn't remember the name of the drug testing company in Liberty that Mr. Morrison had went to and so I requested Tammy Glick to give me the name of the company.*

*Q. Okay. And you told her it was for the purpose of referring someone to that clinic; is that correct?*

*A. That's what Robin Wright said, yes, sir.*

*Q. And she's your employee; is that correct?*

*A.* *Yes, sir, she was.*

*Q.* *Okay. She at the time was your legal assistant?*

*A.* *Yes, sir.*

*Q.* *And you supervised her actions; is that correct?*

*A.* *Yes.*

*Q.* *And this was all two days after you were fired by Mr. Morrison; is that correct?*

*A.* *Yes, three days.*

*Q.* *Why are you trying to find out where Chad Morrison had his drug testing done two days after he fired you?*

*A.* *As an attorney, I knew that Mr. Morrison, in all probable likelihood, in order to avoid paying his debts, he would file a bar complaint and probably a malpractice claim against me as an attorney. I believe that because Mr. Morrison had terminated me that I needed to get evidence to defend myself.*

*Q.* *Okay. And you know, in your personal injury practice, that the only way that you're going to get those kind of records is if you have an authorization signed by the individual; is that correct?*

*A.* *Absolutely. And I did not send any authorization Mr. Morrison had executed because I didn't have his permission.*

*Q.* *Did you instruct your office to attempt to get Mr. Morrison's drug* *testing information after he fired you?*

*A. Yes.*

*Q. Okay. And it was your intent to utilize that information about Mr. Morrison in this hearing today; is that correct?*

*A. That's correct. May I explain my answer?*

**App. 200 (T. 349-350).**

* * *

*A. I directed Mr. Morrison to Northland Dependency Services. Mr. Morrison then personally obtained the results of those drug tests, I did not. . . . I told Mr. Morrison that I did not want that document in my file for any reason; that he should take it and destroy it. Then after Mr. Morrison filed the bar complaint, fired me, I believed it was my best interests to try to retrieve the document. I did not get it because, as you said Mr. Odrowski, I cannot get personal confidential records of a medical nature without the release of Mr. Morrison, and I did not have that release with his permission. So I did not get the document.*

**App. 201 (T. 352-353).**

On May 20, 2011, Respondent filed a lawsuit against Morrison for fees, revealing information about Morrison to the public. **App. 369-394.**

On June 1, 2011, Respondent made a demand for payment of three of the loans on behalf of KNP. **App. 577.** Although the notes had matured, Respondent admits the demand for payment was motivated by the fact that Morrison had terminated the attorney-client relationship. **App. 192-193 (317-320).** Eight of the sixteen loans had a stated maturity date after October 31, 2011. **App. 279-355.** In connection with the *Morrison v. Cummings* matter, which was filed in October 2011, Respondent made demand for payment on those eight notes prior to the stated maturity date due to the termination of the attorney-client relationship. **App. 450-459.**

After being fired and after receiving of the bar complaint, Respondent confronted Morrison at least four times in a courthouse setting on behalf of Dr. Febbo in a $3,100 collection action culminating in a debtor exam held in January 2013. **App. 211-214 (T. 193-404).**

## VIII. AGGRAVATING FACTORS

Respondent has received one prior admonition. **App. 579-500.**

With respect to the loan transactions, Respondent charged his clients over $5,500 in interest and $1,200 in loan processing fees. **App. 364-365.** The loan documents attempted to make Morrison liable for KNP's attorney fees in the event of default. **App. 280.**

At the conclusion of Informant's evidence, Respondent was given an opportunity to acknowledge the wrongfulness of any misconduct as well as an opportunity to express remorse for his actions. **App. 220-221 (T. 427-432).** Respondent declined to admit to any instance of professional misconduct with respect to any of the matters charged in the

Information. **App. 220-221 (T. 427-432).** Respondent declined to express any remorse. **App. 220-221 (T. 427-432).**

At the time of the conduct, Respondent had practiced law in Missouri for thirty-five years. **App. 181 (T. 273).** He is a litigator and a personal injury lawyer. **App. 181 (T. 274).** Respondent testified that he was quite familiar with Rule 1.8, having been asked to educate himself on that rule in 2004 by a regional disciplinary committee. **App. 197-198 (T. 335-339); App. 578.**

## 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) RESPONDENT ENGAGED IN PROHIBITED BUSINESS TRANSACTIONS WITH CLIENTS AND OBTAINED SECURITY INTERESTS ADVERSE TO THE CLIENTS WITHOUT SATISFYING THE MANDATORY SAFEGUARDS OF RULE 4-1.8(a);**

**(B) RESPONDENT ENGAGED IN THE CONCURRENT REPRESENTATION OF TWO CLIENTS WITH DIRECTLY ADVERSE INTERESTS IN VIOLATION OF RULE 4-1.7(a)(1) BY REPRESENTING BOTH LENDER AND BORROWER IN SIXTEEN LOAN TRANSACTIONS AND BY CREATING A SIGNIFICANT RISK THAT THE CONTINUED REPRESENTATION OF THE BORROWER CLIENT WOULD BE MATERIALLY LIMITED BY RESPONDENT'S PERSONAL RELATIONSHIP WITH THE LENDER IN VIOLATION OF RULE 4-1.7(a)(2);**

**(C) RESPONDENT VIOLATED RULE 4-1.8(e) BY**

**PROVIDING FINANCIAL ASSISTANCE TO A CLIENT BY GIVING $28,000 IN LOAN PROCEEDS TO THE CLIENT FOR DELINQUENT CHILD SUPPORT PAYMENTS AND OTHER LIVING EXPENSES AND BY MAKING SEPARATE PAYMENTS, TOTALING $5,079, DIRECTLY TO HEALTH CARE PROVIDERS FOR THE CLIENT'S MEDICAL TREATMENT;**

**(D) RESPONDENT VIOLATED RULE 4-1.6 BY REVEALING INFORMATION RELATED TO THE REPRESENTATION OF A FORMER CLIENT WITHOUT AUTHORIZATION BY PUBLICLY DISCLOSING SUCH INFORMATION AS PART OF A LAWSUIT PETITION AGAINST THE FORMER CLIENT WITHOUT SEEKING TO FILE SUCH DOCUMENT UNDER SEAL;**

**(E) IN SEPARATE INSTANCES, RESPONDENT UNDERTOOK THE REPRESENTATION OF A CLIENT IN LITIGATION AGAINST A FORMER CLIENT IN THE SAME OR SUBSTANTIALLY RELATED MATTER IN VIOLATION OF RULE 4-1.9;**

**(F) RESPONDENT ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d) BY TAKING RETALIATORY**

**ACTION AGAINST A FORMER CLIENT WHO HAD FIRED RESPONDENT AND THEN INITIATED A BAR COMPLAINT AND A LEGAL MALPRACTICE CLAIM AGAINST RESPONDENT; AND**

**(G) RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION IN VIOLATION OF RULE 4-8.4(c) BY ATTEMPTING TO OBTAIN A FORMER CLIENT'S PROTECTED DRUG TEST RESULTS THROUGH SUBTERFUGE.**

**POINT RELIED ON**

**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 AT LEAST TWELVE MONTHS BECAUSE:**

**A. SUSPENSION IS THE BASELINE STANDARD UNDER THE ABA STANDARDS AND PRIOR MISSOURI CASES;**

**B. AFTER THE TERMINATION OF THE ATTORNEY-CLIENT RELATIONSHIP, RESPONDENT KNOWINGLY VIOLATED THE RULES OF PROFESSIONAL CONDUCT AND TOOK DELIBERATE, RETALIATORY ACTION AGAINST A FORMER CLIENT WHO HAD INITATED A BAR COMPLAINT;**

**C. RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT INVOLVING DECEIT AND DISHONESTY;**

**D. THE EXISTENCE OF NUMEROUS AGGRAVATING FACTORS AND ABSENCE OF MITIGATING CIRCUMSTANCES BOLSTER THE APPROPRIATENESS OF SUSPENSION; AND**

**E. RESPONDENT PRESENTS A GRAVE RISK OF HARM**

**TO THE PUBLIC THAT CANNOT BE ADDRESSED BY SUPERVISION OR OVERSIGHT OF RESPONDENT'S LAW PRACTICE.**

# <u>ARGUMENT</u>

## 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) RESPONDENT ENGAGED IN PROHIBITED BUSINESS TRANSACTIONS WITH CLIENTS AND OBTAINED SECURITY INTERESTS ADVERSE TO THE CLIENTS WITHOUT SATISFYING THE MANDATORY SAFEGUARDS OF RULE 4-1.8(a);**

**(B) RESPONDENT ENGAGED IN THE CONCURRENT REPRESENTATION OF TWO CLIENTS WITH DIRECTLY ADVERSE INTERESTS IN VIOLATION OF RULE 4-1.7(a)(1) BY REPRESENTING BOTH LENDER AND BORROWER IN SIXTEEN LOAN TRANSACTIONS AND BY CREATING A SIGNIFICANT RISK THAT THE CONTINUED REPRESENTATION OF THE BORROWER CLIENT WOULD BE MATERIALLY LIMITED BY RESPONDENT'S PERSONAL RELATIONSHIP WITH THE LENDER IN VIOLATION OF RULE 4-1.7(a)(2);**

**(C) RESPONDENT VIOLATED RULE 4-1.8(e) BY**

**PROVIDING FINANCIAL ASSISTANCE TO A CLIENT BY GIVING $28,000 IN LOAN PROCEEDS TO THE CLIENT FOR DELINQUENT CHILD SUPPORT PAYMENTS AND OTHER LIVING EXPENSES AND BY MAKING SEPARATE PAYMENTS, TOTALING $5,079, DIRECTLY TO HEALTH CARE PROVIDERS FOR THE CLIENT'S MEDICAL TREATMENT;**

**(D) RESPONDENT VIOLATED RULE 4-1.6 BY REVEALING INFORMATION RELATED TO THE REPRESENTATION OF A FORMER CLIENT WITHOUT AUTHORIZATION BY PUBLICLY DISCLOSING SUCH INFORMATION AS PART OF A LAWSUIT PETITION AGAINST THE FORMER CLIENT WITHOUT SEEKING TO FILE SUCH DOCUMENT UNDER SEAL;**

**(E) IN SEPARATE INSTANCES, RESPONDENT UNDERTOOK THE REPRESENTATION OF A CLIENT IN LITIGATION AGAINST A FORMER CLIENT IN THE SAME OR SUBSTANTIALLY RELATED MATTER IN VIOLATION OF RULE 4-1.9;**

**(F) RESPONDENT ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d) BY TAKING RETALIATORY**

**ACTION AGAINST A FORMER CLIENT WHO HAD FIRED RESPONDENT AND THEN INITIATED A BAR COMPLAINT AND A LEGAL MALPRACTICE CLAIM AGAINST RESPONDENT; AND**

**(G) RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION IN VIOLATION OF RULE 4-8.4(c) BY ATTEMPTING TO OBTAIN A FORMER CLIENT'S PROTECTED DRUG TEST RESULTS THROUGH SUBTERFUGE.**

The Information charged Respondent with seven counts of professional misconduct, to wit, violations of Rule 4-1.8(a) (prohibited business transactions with a client); Rule 4-1.8(e) (prohibited financial assistance to a client); Rule 4-1.7 (concurrent conflict of interests); Rule 4-1.9 (former client conflict of interest in the same or substantially related matter) (two separate instances); Rule 4-1.6 (unauthorized disclosure of information related to the representation of a former client); and Rule 4-8.4(d) (conduct prejudicial to the administration of justice).

A large portion of the misconduct involves a <u>conflict of interest</u> of one type or another. However, this disciplinary matter also involves <u>retaliatory conduct</u> taken by an attorney against a former client. Moreover, the evidence also demonstrates conduct involving <u>dishonesty and deceit</u>. Viewed from a temporal perspective, a large portion of the misconduct occurred during the course of the attorney-client representation from February 2010 to May 10, 2011, while an equally substantial portion of the misconduct occurred over a period of eighteen months after the legal representation was terminated.

Each of the three types of misconduct identified above (conflict of interest misconduct, retaliatory misconduct, and dishonest conduct) is addressed in detail below. Notably, at each stage of this proceeding Respondent steadfastly denied having committed any form of misconduct as charged in the Information, despite overwhelming evidence and testimony (including uncontested documents and, in certain cases, the absence of written documentation).

This case also raises the issue of what weight, if any, this Court should give to evidence presented at trial that would support a finding of professional misconduct not expressly charged in the Information. In the present case, Informant moved to amend the pleading to conform to the evidence before submission to the panel in accordance with Rule 5.15(b).

**CONFLICT OF INTEREST MISCONDUCT**

There are four types of conflict of interest misconduct at issue in this disciplinary proceeding. First, the Respondent, as the *de facto* lender, entered into a series of sixteen loan transactions with two clients during the course of the attorney-client relationship. These loans were purportedly secured by a grant of a security interest in the proceeds of a personal injury claim. Respondent did not observe any of the mandatory safeguards set forth in Rule 4-1.8(a) regarding business transactions with a client.

Second, the lending of money by an attorney to an unemployed client in financial distress necessarily involves providing financial assistance to a client, a practice outlawed by Rule 4-1.8(e). It is undisputed that Respondent knew that the client needed to borrow money for daily living expenses as well as payment of a delinquent child support obligation. Additionally, Respondent also provided financial assistance to a client by making direct payment to the client's health care providers for the expense of the client's medical treatment.

Third, Respondent engaged in a concurrent conflict of interest by simultaneously representing a borrower and a lender with respect to a series of sixteen loan agreements, and then administering and enforcing the loan agreements against the borrower client during the course of the attorney-client relationship. This conduct violates Rule 4-1.7. Respondent held a personal interest in the administration and collection of the loans.

The fourth type of conflict of interest misconduct involves the representation of a client in litigation against a former client in the same or substantially related matter. There are two examples of this. The first involves lawsuits in two separate courthouses on behalf of KNP (the nominal lender) against the borrower, Chad Morrison, to collect the outstanding balance of the sixteen loan agreements. The second example of a former client conflict of interest involves the representation of a chiropractor, Dr. Theresa Febbo, against a former client, Morrison, to collect on an unpaid medical bill arising out of the injury which gave rise to the attorney-client relationship between Respondent and Morrison.

## CONFLICT OF INTEREST TYPE 1 [RULE 4-1.8(a)]

## BUSINESS TRANSACTIONS/ADVERSE SECURITY INTERESTS

Respondent advanced no real argument or evidence at trial rebutting the underlying factual basis for the business transactions with his then existing clients, save for his defense that he did not directly make the loans in a personal capacity. The sixteen loan transactions were documented by sixteen separate written loan agreements, all of which were received in evidence. Each one of the loan agreements were signed by Chad Morrison during the course of the attorney-client relationship from February 2010 to May 2011. Each of the loan agreements were also signed by Lori Ferris. Ms. Ferris had settled her personal injury claim in January 2011. She signed twelve of the loan agreements during the course of the attorney-client relationship with Respondent.

Respondent selected the loan documents and prepared the loan agreements. Respondent is responsible for all of the content and provisions of the agreements, including the grant of a security interest in the proceeds of the injury claim. Respondent had actual knowledge of the security interest feature of the loan documents. These sixteen secured loan transactions are "business transactions with a client" as such phrase is used in Rule 4-1.8(a). Likewise, Respondent “knowingly acquired” a “security interest” “adverse” to his “client,” as such phrases are used in Rule 4-1.8(a).

A lawyer owes his client the utmost good-faith and the highest loyalty and devotion to his client’s interests. The relation between attorney and client is highly fiduciary and of a very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith on the part of the attorney. ***In re Oliver***, 285 S.W.2d 648, 655 (Mo. banc 1956). When a lawyer chooses to engage in business with a client, the lawyer steps into an area wrought with pitfalls and traps. Nevertheless, the Missouri Supreme Court is without choice other than to hold the attorney to the highest of standards. ***In re Lowther***, 11 S.W.2d 1, 2 (Mo. banc 1981) (per curiam).

"Indeed, the attorney-client relationship is one of special trust and confidence. As this court explained in ***Shaffer***: 'From the free and intimate disclosures required by that relation, the attorney acquires, not only a full knowledge of this client's business and affairs, but of his necessities and weaknesses as well. His position is that of a confidential adviser and he naturally has great influence over his client. To an unscrupulous man, the attorney's position, in many instances, offers great temptations to take advantage of the knowledge acquired to make gain for himself by preying upon his client's confidence or necessities. The law, therefore, very properly requires that all of the dealings between the attorney and his client shall be characterized by the utmost fairness and good faith, and it scrutinizes with great closeness all transactions had between them.' An attorney, therefore, may not obtain an advantage for himself or herself from the dealings committed to him or her by the client unless the client has knowledge and consents." ***McRentals v. Barber***, 62 S.W.3d 684 (Mo. App. 2001) (citations omitted).

The conflicts rule governing transactions between an attorney and his client finds its origin in contracts law: a contract is construed against the drafter and against the one with superior knowledge. ***The Law of Lawyering*** 262 (2d ed. 1990). Indeed, it has been the law in this state that, when a client attacks a conveyance from the client to the attorney, the conveyance is presumptively fraudulent, and the attorney bears the burden of proving that the transaction, as well as the conveyance itself, was fair and reasonable in all respects. ***Laspy v. Anderson***, 361 S.W.2d 680, 682 (Mo. 1962). Tracking the stringent requirements in the current rule, the case law held it was essential that the lawyer make full disclosure to the client of all pertinent information and advice with regard to the transaction. ***In re Miller***, 568 S.W.2d 246, 251 (Mo. banc 1978).

Rule 4-1.8(a) is a recognition that lawyers and clients are in a fiduciary relationship. The lawyer typically has more knowledge and experience. A lawyer's legal skill and training, together with the relationship of trust and confidence between the lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property, or financial transaction with a client. . . . Comment [1] to Rule 4-1.8. In such situations, the burden shifts to Respondent to establish that he met the safeguards set forth in Rule 4-1.8(a). Respondent did not satisfy stringent requirements in Rule 4-1.8(a) for business transactions with clients and the acquisition of security interests adverse to clients.

The terms of the loan agreements were unduly burdensome, unfair and unreasonable to the clients. The interest rate was 38% per annum, with the first month's interest calculated on the basis of 180% per annum. Even Respondent admitted the interest rates were usurious under Missouri law. In his written ruling finding that Respondent had engaged in unclean hands, the Kansas district court judge found the interest rate to be "rather onerous." Each loan carried a $75 "processing fee." Since there were sixteen loans, the client was charged an extra $1,200. Respondent incurred virtually no expense in "processing" the loans. In other words, the $1,200 was just an opportunity to extract more money from a distressed, unemployed, desperate, unsophisticated and vulnerable borrower.

In requiring Ferris to execute the loan agreements even though the loan proceeds were not paid to her, Respondent also acted unreasonably and unfairly to his client. Respondent did not rely upon Ferris' creditworthiness or employment income as a means of repayment of the loans. In fact, Respondent did not even request loan applications from her or otherwise consider her credit history. Respondent simply used the guaranty as another mechanism to take advantage of the client. Ferris testified that she later realized the guaranty was unfair, but at the time of the loans she had no other option.

The terms of loan agreements were not negotiable by the clients. Respondent did not give them a realistic opportunity to alter the terms of the loan agreements. In order to obtain more favorable terms, Morrison and Ferris would have had to negotiate against someone who was acting as their own attorney. The terms of the loan were offered on a "take it or leave" basis and thus were contracts of adhesion.

The loans were purportedly secured by a security interest in a personal injury claim. This type of lien is forbidden under Missouri law. A personal injury claim is not a commodity. Missouri has never allowed individuals to sell their personal injury claims to the highest bidder. The commercial exploitation of a person's pain and suffering for the pecuniary gain of another is offensive to the public policy of this state. In ***Schweiss v.***

***Sisters of Mercy***, 950 S.W.2d 537 (Mo. App. 1997), the Court struck down a consensual lien upon the proceeds of a personal injury claim as against public policy. ***See also Huey v. Meek***, 419 S.W.3d 875 (Mo. App. 2013); ***Scroggins v. Red Lobster***, 325 S.W.3d 389 (Mo. App. 2010). A creditor who seeks to obtain a security interest in a personal injury claim violates the public policy of Missouri.

The loan agreements go way beyond the creation of a consensual lien upon the proceeds of an injury claim. Rather, the loan agreements give the lender tremendous **control over the personal injury claim**. The secured creditor was authorized to do anything necessary to protect its interest in the proceeds. Morrison was required to keep books and records about the proceeds of the personal injury claim and to give the secured creditor access to such information. Morrison was required to provide the secured creditor with all documents, reports and all other information related to the proceeds. Morrison was prohibited from transferring the injury claim proceeds without the creditor's written consent. Morrison was required to protect the proceeds against competing claims. Morrison was required to use the injury proceeds only for personal, family or household purposes. Morrison was required to waive all exemptions[4] associated with the proceeds.

Missouri law does not permit such third-party control over a cause of action based

[4]Personal injury claims are exempt from creditors, and thus not subject to attachment or execution under Missouri law. ***State ex rel. v. Lasky***, 454 S.W.2d 942 (Mo. App. 1970).

upon human pain and suffering. The loan agreements promote champerty and maintenance, a practice outlawed in Missouri long ago.

Because the security interests directly affected the amount of settlement proceeds he would receive from his personal injury claim, the security interests were adverse to Morrison. There is ambiguity as to whether the loans intended to create a lien upon the proceeds of Ferris' injury claims as well as Morrison's proceeds. To the extent that the security agreements were intended to encumber Ferris' injury proceeds, such security interests would have been adverse to Ms. Ferris as well.

Other terms of the loan agreements were also ambiguous, meaning that they left additional room for Respondent to exploit his clients in the enforcement of the loan documents. Agreements prepared by lawyers that are not easily understandable by their non-lawyer clients can hardly be said to be fair and reasonable. Rule 4-1.8(a)(1) requires that the terms of the transaction be provided in a written document to the client "in a manner that can be reasonably understood by the client." The loan documents are a far cry from being reasonably understandable, especially to an unsophisticated individual with nothing more than a high school diploma.

Did Ferris grant a security interest in the proceeds of her respective injury claim? The loan documents are not clear on this issue. Did the loans mature on demand or upon a stated maturity date? The loan documents are not clear on this issue. Were the security interests governed by Missouri's Uniform Commercial Code as an Article Nine security interest (RSMo. § 400.9-101 *et seq.*), notwithstanding RSMo. § 400.9-109(c)(12)'s exclusion of non-commercial tort claims from Article Nine? Respondent could not adequately answer these questions. The loan documents are not clear on this issue.

Other than the "fine print" and boilerplate of the loan agreements themselves, Respondent provided no separate written disclosure of the transactions or written summary of the loan terms or explanation of the risks of the transactions to the clients. Respondent's insider relationship to the nominal lender, Kristen Nicole Properties, Inc., was a crucial aspect of the transaction. Morrison and Ferris believed that Respondent served only as their attorney, and that Respondent had no financial interest or other connection to the lender. In the eighty pages of loan documents, there is not a single sentence describing this relationship. Respondent admitted no writing on this subject was presented to the clients.

For each loan transaction, Respondent actually left Morrison and Ferris sitting alone in one room at his office, and then went back to another room to hold a private meeting of the Board of Directors of KNP (consisting only of himself), then prepared and signed a specific corporate resolution for each loan transaction, all before coming back to the room to close the loan in person with Morrison and Ferris. There were sixteen separate written corporate resolutions. Yet, Respondent inexplicably withheld such corporate resolutions from his client/borrower. All he had to do was give the client a copy of the resolution to adequately disclose his connection to the lender.

It is inexcusable for a lawyer with over thirty years of experience to fail to make such a crucial written disclosure to the client. It is even more egregious for an attorney to actually withhold pertinent and readily available written documentation from the client that would have fully disclosed the nature of the lawyer's relationship with the lender.

Rule 4-1.8(a)(2) requires that the client be "advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction." The clients were not advised in writing of the desirability of seeking the advice of independent legal counsel with respect to the transactions. Likewise, the clients were not given a reasonable opportunity to seek the advice of independent legal counsel before signing the loan documents. Respondent went through the loan paperwork very quickly. Respondent did not obtain the clients' informed consent to these transactions, as required by Rule 4-1.8(a).

Respondent's primary defense to the 4-1.8(a) charge is that Respondent himself did not violate the rule because the loan documents reflect that Kristen Nicole Properties, Inc. was the actual lending party. Moreover, Respondent appears to suggest that applying Rule 4-1.8(a) to a situation where he personally was not the lender is a violation of his due process rights. Respondent's contentions on this point are so lacking in merit that they border upon absurdity and frivolity.

The Rules of Professional Conduct are rules of reason. ***Preamble*** § 14. They should be interpreted with reference to the purposes of legal representation and of the law itself. ***Id***. No worthwhile human activity can be completely defined by legal rules. See ***Preamble*** § 15. It does not offend due process to prohibit a lawyer from utilizing a separate corporation which he controls to accomplish an end run around an ethical restriction upon the lawyer. It is professional misconduct for a lawyer to violate the Rules of Professional

Conduct "**through the acts of another**." Rule 4-8.4(a). (emphasis added). Rule 4-8.4(a) is simply a reflection of the established legal maxim that a person may not do indirectly what he cannot do directly. ***Cf. Myers v. Scott***, 789 S.W.2d 802, 804 (Mo. App. 1990); ***Loving v. City of St. Joseph***, 753 S.W.2d 49, 51 (Mo. App. 1988). Under Rule 4-8.4(a), Respondent was prohibited from utilizing KNP as the vehicle to enter into a transaction otherwise prohibited by lawyers.

"A corporation, being an artificial person created by operation of law, can act only through its officers, directors and agents." ***Schneider v. Schneider***, 347 Mo. 102, 146 S.W.2d 584, 589 (1940); ***Valentine-Radford, Inc. v. Am. Motorists Ins. Co.***, 990 S.W.2d 47, 54 (Mo. App. 1999) (stating that "[i]t is well-settled that a corporation is an artificial entity that can act only through its agents and employees"). The acts of KNP in loaning money to Respondent's client are the acts of Respondent himself since Respondent was the only officer, director and agent of the lender and since Respondent controlled each aspect of the transactions without the independent assistance of any other person. Importantly, Respondent controlled the checking account used to consummate the loans and personally signed each loan check.

For purposes of 4-1.8(a), the acts of KNP in entering into business transactions with Respondent's clients and acquiring security interests from the clients are fully attributed to Respondent notwithstanding that Respondent's daughter had become the sole shareholder of such corporation for estate-planning purposes. Kristen Odo did not testify at the hearing to testify on her father's behalf. Presumably, her testimony would not have been favorable to Respondent with respect to Respondent's surprising denial of professional accountability for these loan transactions.

**CONFLICT OF INTEREST TYPE 2 [Rule 4-1.8(e)]**

**PROVIDING FINANCIAL ASSISTANCE TO A CLIENT**

Morrison was behind on his child support payments. Morrison was unemployed as a result a serious car accident. Morrison needed money to live on, and he also needed money to pay child support. Morrison also needed money for medical treatment. Respondent was aware of these circumstances, inasmuch as Respondent provided legal representation to Morrison on both the personal injury claim arising out of the automobile accident as well as two legal proceedings involving child support.

From Respondent's own funds, during the course of the representation, Respondent paid various bills for medical treatment received by Mr. Morrison. Respondent twice paid $500 each for Mr. Morrison's epidural treatments to relieve his pain. Respondent admits that such payments were for actual medical treatment received by Mr. Morrison. An attorney is permitted to advance the costs of **medical evaluation** as an expense of litigation to ensure the client has access to the courts.[5] ***See*** Comment to Rule 4-1.8(e). However, an attorney may not pay for the costs of the client's **medical treatment**. Payment for a client's medical treatment violates Rule 4-1.8(e) because such payment provides financial

[5]In the present case, no litigation had been commenced. Morrison's access to the courts was not an issue.

assistance to a client. The payments made by Respondent for his client's for epidural treatments violate Rule 4-1.8(e).

This is the same conclusion of law reached by Judge Bednar, a district court judge in Kansas, in connection with his ruling to resolve the amount of Respondent's attorney lien. Judge Bednar held: "The Court finds that Mr. Odo did pay certain medical bills contrary to the Kansas Code of Professional Responsibility and these will be deducted from his fees and expenses approved by this Court. (See Rule 1.8(e))."[6]

Respondent also paid $4,079 for an MRI on Morrison's behalf. Respondent's Amended Answer characterizes this payment as a payment of "medical evaluation" rather

[6]Morrison is a Kansas resident. Morrison's injuries arose in Kansas. The epidurals were administered in Kansas. Respondent paid the $1,000 to a Kansas physician. Respondent is also licensed in Kansas, and is likewise required to conform his conduct to Kansas rules. If payment for the epidurals occurred in Kansas, then the disciplinary rule of Kansas would be used to resolve any discrepancy between the two rules. Rule 4-8.5(c). However, Rule 1.8(e) is nearly identical in both states. A Missouri lawyer is subject to the disciplinary jurisdiction of the Missouri Supreme Court regardless of where the conduct occurs. Rule 4-8.5(a). In other words, it is appropriate for this Court to find Respondent has violated a Kansas ethical rule as well as a Missouri ethical rule, particularly where there is no substantive difference in the rules.

than for "medical treatment."[7] However, in his testimony Respondent did indeed admit that the $4,079 payment was for his client's "medical treatment." The $4,079 payment for medical treatment also included a charge for a pharmaceutical analgesic administered to Morrison. Combined, these payments show that Respondent provided a total of $5,079 in financial assistance to the client for medical treatment.

From February 2010 until May 9, 2011, Respondent made sixteen payments to Morrison, totaling approximately $25,875. The proceeds were used by Morrison for his household and living expenses and for payment of his child support obligation. Respondent was aware that these payments would be used by Morrison for personal purposes. The sixteen payments, totaling approximately $25,875, provided financial assistance to Mr. Morrison in violation of Rule 4-1.8(e).

**CONFLICT OF INTEREST TYPE 3 [Rule 4-1.7]**

**CONCURRENT CONFLICT OF INTEREST**

Rather surprisingly, Respondent admitted that at the time of the first loan transaction, Respondent went through the loan paperwork with Morrison and Ferris in the dual capacity as lawyer for the borrowers **and** as the lawyer/officer/director for the lender. This simultaneous representation involved parties to a contract with directly adverse

[7]Respondent's initial Answer admitted that the $4,079 payment was for "medical treatment" rather than for "medical evaluation." Respondent was permitted to amend his Answer one week before trial.

interests. This is a violation of Rule 4-1.7(a)(1). Admittedly, the Information charged Respondent with a violation of Rule 4-1.7(a)(2) in Count III of the Information, but did not expressly charge Respondent with a violation of Rule 4-1.7(a)(1). Since Respondent voluntarily gave this testimony, there was no objection to evidence of Respondent's dual representation in connection with the loan documents. At the conclusion of the hearing (but prior to the submission of this case to the disciplinary hearing panel), Informant requested to amend the Information to conform to the evidence. Under the circumstances, the request to amend does not offend the pleading requirements for an Information set forth in Rule 5.15(b). This Court should find that a violation of Rule 4-1.7(a)(1) was established by a preponderance of the evidence.

A concurrent conflict of interest violation under Rule 4-7.1(a)(2) was also established by a preponderance of the evidence. There was a significant risk that Respondent's representation of Morrison and Ferris would be materially limited by Respondent's personal interests and personal involvement in the loans. Because of his personal relationship to the lender, Respondent created a prohibited concurrent conflict of interest in connection with his actions in brokering loans for his client and in administering the loans.

Under the evidence adduced at the disciplinary hearing, it is clear that Respondent held a personal interest in the making, administration and enforcement of the loans due to the nature of his relationship to the entity identified as the lender. There was no evidence that Respondent's daughter, Kristen Odo, held any **specific** interest in the actual repayment of these sixteen loan transactions. There is no evidence she even knew about the loans. The only thing we know about Kristen Odo is that at the time of the loans, she held a full time job elsewhere unrelated to KNP. We also know that the only reason Kristen Odo was a shareholder in KNP is for estate planning purposes in the event of Respondent's death.

Kristen Odo's shareholder interest in the company is nominal. It exists in name only. Kristen Odo's lack of *bona fide* interest in her "own" company is underscored by the fact that Kristen Odo did not even testify on her father's behalf. Since Respondent controlled KNP's bank account, there was no evidence that Kristen Odo even saw any of the $34,000 proceeds paid by Morrison to repay the loans. In fact, the $34,000 was jointly payable to Respondent's law firm as well as KNP. Respondent testified that there have not been any distributions to Kristen Odo during her ownership of the company.

There is no evidence that Kristen Odo had any interest or played any role in the correspondence sent to Morrison regarding the loan accounts (e.g. **App. 278, 362-365, 448-449**) regarding loan balances, settlement negotiations of the debt, refinancing and demands for payment). Respondent sent these letters all on his own without shareholder input. In sharp contrast to Kristen Odo's lack of genuine interest in the loan transactions, Respondent unilaterally controlled every single aspect of these loans including enforcement and collection without the input or consent of his daughter. If Respondent's corporate resolutions are to be believed, Respondent held a meeting with himself as the Chairman of the Board of Directors to approve each loan before authorizing himself as the corporate President to enter into the loan transaction.

The overwhelming weight of the evidence is that the only person with an actual, specific interest in obtaining full repayment of the sixteen loans was Respondent himself. In other words, Respondent held a personal interest in the loans.

The potential that the lending relationship and the attorney-client relationship could ripen into a real problem was ascertainable to Respondent from the beginning. In other words, there was an ever-present risk that some $20,000+/- in outstanding loans could interfere with the progress of settlement of Morrison's injury claim, initially valued at $1 million by Respondent. Respondent testified:

> *Q. If it came to a point during your representation of Mr. Morrison that you felt that it was appropriate, for whatever reason, for Kristen Nicole Properties to call any of the notes or take any legal action on any of the notes, what would you have done?*
>
> *A. I would have, as an attorney at law, immediately withdrawn. I would have withdrawn from all of Mr. Morrison's cases.*

This testimony is very revealing as to where Respondent rested his true loyalties, which was not on the side of completing the legal representation for a seriously injured individual to whom Respondent ostensibly committed himself in December 2009 before the first loan was ever made.

The loans did not result in a typical lender-borrower relationship. Obviously, since the lender had "in-house" counsel and the borrower had nowhere else to turn, the lender always had the upper hand. It is interesting to note how closely the lending relationship had become intertwined with the attorney-client relationship. A breakdown in one relationship would necessarily lead to a breakdown in the other. In practical effect, any decision by Morrison to terminate the attorney-client relationship would almost certainly trigger a loan default under the lender's subjective determination of whether it was secure. A loan default necessarily created an adversarial relationship between lender and borrower. This flies in the face of the paramount principal that a client should be allowed to terminate the attorney-client relationship without fear of retribution from the lawyer. The unique circumstances of this case illustrate the fragile nature of the attorney-client relationship due to Respondent's paramount loyalty to KNP arising out of the loan agreements.

The disciplinary hearing panel found no evidence that Respondent's brokering of loans over a fifteen-month period for his clients had an actual adverse effect on the progress of the settlement of the clients' personal injury claims. Informant does not quarrel with the finding that there was no separate violation of Rule 4-1.3 (diligence). However, the panel did astutely recognize the potential for the lawyer to manipulate the settlement process to either (a) accumulate more accrued interest on the loans at 38% per annum; or (b) use the outstanding balance of the loans to pressure the client into accepting an unfavorable settlement offer. Given that the loans arguably were payable upon demand, Respondent could have placed the client in the position of having to choose between acceptance of an unfavorable settlement recommendation or default under the loans. In short, having an outstanding loan balance of $28,000 hanging over the client's head while the parties are also trying to settle a pending injury claim creates a significant risk of mischief to the detriment of the client.

During the relevant period at issue, Respondent simultaneously served as the lawyer for Morrison and Ferris; the lawyer for KNP; the sole officer and director of KNP; and a father who desired to leave an inheritance to his daughter. Respondent was unable to keep track of the many hats he wore. In March 2011, Respondent sent to Morrison **on law firm letterhead** an accounting of the loan balances with accrued interest while in April 2011, Respondent sent Morrison copies of the loan documents **on KNP letterhead** as president of KNP. Respondent testified *"I was Chad Morrison's attorney. I had access to that information because Mr. Morrison signed the loan documents in my office and my secretary, Amy Legault, kept those records in the Kristen Nicole Properties' file and therefore I had access to it and information."*

Respondent represented KNP as a creditor of Morrison and Ferris while also representing Ferris and Morrison as personal injury claimants. With respect to Exhibit 9 (**App. 363**), in April 2011 Respondent appears to be attempting to engage in "settlement negotiations" concerning one of the loans on behalf of KNP against his own client, Morrison, regarding a payment made by the law firm. At that time, Respondent knew Morrison was represented by counsel, i.e. Respondent himself in connection with the loans because Respondent admits that he served as Morrison's counsel at the time of the loan and also provided the information to Morrison in March 2011 (**App. 364-365**) as Morrison's attorney. These documents demonstrate the bizarre scenarios that can arise when a lawyer tries to simultaneously represent two clients with competing interests.

Finally, it is undisputed that there was no written document signed by the clients signifying their informed consent to a waiver of these concurrent conflicts of interest.

**CONFLICT OF INTEREST TYPE 4 (Rule 4-1.9)**

**FORMER CLIENT CONFLICT OF INTEREST IN SAME OR SUBSTANTIALLY RELATED MATTER**

Upon discharging Respondent from further legal representation in May 2011, Morrison hired another attorney. The new attorney settled Morrison's injury claim in the latter half of 2011. In connection with the settlement, the new attorney filed an action to apportion the settlement proceeds between disputed liens and Morrison's share of the recovery. The two putative liens pertinent to this disciplinary proceeding are: (a) KNP's alleged security interest under the loan documents; and (b) Dr. Febbo's alleged lien for chiropractic services. Respondent undertook to represent both lien claimants against Morrison, his former client, even though the subject matter of the respective representations was the same or substantially related. In so doing, Respondent violated Rule 4-1.9.

The underlying facts are largely undisputed. In or about November 2011, Respondent decided that Dr. Febbo should hire him to assert a lien claim on her behalf as to Morrison's settlement proceeds in the settlement apportionment action, *Morrison v. Cummings*. Respondent appeared on behalf of Dr. Theresa Febbo, D.C. in that case to assert a $3,100 chiropractor's lien. Respondent represented Dr. Febbo in such proceeding from at least November 2011 until the case was decided in December 2011.

The interests of Morrison and Dr. Febbo were materially adverse at all times in connection with the *Morrison v. Cummings* lawsuit. Febbo had an interest in claiming a direct lien on the proceeds, while Morrison had an interest in disputing the lien to maximize the amount of proceeds he would actually receive from the settlement. Morrison's new counsel objected to Dr. Febbo's claim.

Judge Bednar of the Atchison County, Kansas District Court denied the lien claim of Dr. Febbo asserted by Respondent against his former client. The court found that Respondent had presented no authority that would grant Dr. Febbo an interest in the proceeds of the settlement. Dr. Febbo did not appeal this ruling. Dr. Febbo received no money from the *Morrison v. Cummings* action. In other words, Morrison and his new attorney fully prevailed against Dr. Febbo's claim as presented to the judge by Respondent.

Respondent's representation of Dr. Febbo against his former client was ethically permissible under Rule 4-1.9(a) only[8] if the two legal matters **<u>were not the same or were not substantially related</u>**. Judge Bednar was troubled by Respondent's representation of Dr. Febbo against his former client. Judge Bednar stated: "The actions of both parties, plaintiff and Mr. Odo, demonstrate less than clean hands in appearing in court and making their arguments." However, Judge Bednar essentially left for someone else to pass

[8]Rule 4-1.9(a) sets forth a second exception in cases where the former client gives informed consent in writing as to a waiver of the conflict. Respondent does not appear to rely upon this exception, and no such writing exists under any stretch of the evidence.

judgment upon the ethics of Respondent's representation of Dr. Febbo, a task suitable for this Court.

The subject matter of Dr. Febbo's lien claim was the chiropractic evaluation and treatment of Morrison's bodily injuries arising out of his motor vehicle accident in November 2009. The subject matter of Respondent's former representation of Morrison was also the bodily injuries arising out of Morrison's motor vehicle accident in November 2009. Respondent referred Morrison to Dr. Febbo for chiropractic treatment and evaluation. Respondent had hoped to use Dr, Febbo's treatment records as evident to support the injury claim. Likewise, Respondent hoped to use this information to support a social security disability claim he was handling for Morrison, as well as support for Morrison's position in the child support modification proceeding and as a defense in the criminal non-support case. Dr. Febbo's claim for unpaid services arose out of the treatment and evaluation of Morrison she provided, which in turn arose out of the injuries Morrison received in the motor vehicle accident, which was at the heart most of the legal matters being handled by Respondent on behalf of Morrison.

A month after receiving Judge Bednar's adverse ruling (which cited his representation of Dr. Febbo against a former client as an example of unclean hands), Respondent boldly proceeded to represent Dr. Febbo against Morrison in a second proceeding, identified as the *Febbo v. Morrison* lawsuit in the Circuit Court of Platte County, Missouri. Although Respondent appears to deny that he "represented" Dr. Febbo to collect the $3,100 invoice in the Platte County case, the underlying facts of Respondent's involvement in the lawsuit are undisputed.

Respondent hand-selected his friend, William Hudnall, to serve as co-counsel for Dr. Febbo in the collection action. Respondent prepared the lawsuit petition on behalf of Dr. Febbo against Morrison. Respondent's legal assistant notarized Dr. Febbo's signature on the lawsuit petition. Respondent paid the filing fee for the lawsuit and arranged to have it filed at the courthouse. Respondent appeared in Platte County Circuit Court at least twice, perhaps three times, on behalf of Dr. Febbo against Morrison. These court appearances by Respondent saved the lawsuit from being dismissed for failure to prosecute. Even when not appearing in court, Respondent monitored the lawsuit. Respondent discussed certain aspects of the lawsuit (such as court appearances and the judgment) with Hudnall. After Hudnall obtained the judgment against Morrison on behalf of Dr. Febbo, Respondent again arranged to have one of his friends, John Campbell, register the judgment in Atchison County, Kansas to seek collection and enforcement of the judgment in Kansas.

Respondent's continuous representation of Dr. Febbo (from the time Respondent decided to represent Dr. Febbo on the claim against the settlement proceeds in November 2011, throughout the lawsuit in Platte County in 2012, and up through the registration of the judgment and the debtor exam in Atchison County, Kansas in January of 2013) and Respondent's former representation of Morrison were the "same or substantially related" legal matters as such phrase is used in Rule 4-1.9(a). Respondent's representation of Dr. Febbo in *Morrison v. Cummings* was in violation of Rule 4-1.9(a). Likewise, Respondent's representation of Dr. Febbo in the *Febbo v. Morrison* both in Platte County, Missouri and in Atchison County, Kansas, was also in violation of Rule 4-1.9(a).

Respondent engaged in a similar type of conflict of interest with respect to collection of the outstanding loan balances. Although Respondent's letters to Morrison in March, April and May of 2011 begin to show the handwriting on the wall, the relationship between KNP as lender and Morrison as borrower sharply deteriorated on or about May 11, 2011 when Morrison fired Respondent. Respondent's representation of KNP as legal counsel for the lender against his client, Morrison, as borrower, dates back to May 2011, shortly after Morrison fired Respondent. In other words, within a mere few days after Morrison had become a **former client**, Respondent engaged in an actual representation of KNP as its legal counsel to collect money against Morrison.

There is no question that after Respondent was fired by Morrison, KNP's interests were adverse to Morrison's. Such representation adverse to the former client continued up through the time a settlement was reached in February 2012. Again, Respondent's representation of a creditor against the former client is ethically permissible only if the two legal matters were not the same or substantially related.

It is undisputed that Respondent represented KNP as its legal counsel of record against Morrison in the Atchison County, Kansas proceeding captioned as *Morrison v. Cummings* to enforce KNP's purported security interest under the loan documents upon Morrison's settlement proceeds. Respondent never withdrew as counsel of record for KNP in the *Morrison v. Cummings* proceeding in Atchison County. It is also undisputed that KNP did not prevail in the Atchison County, Kansas proceeding because Judge Bednar did not have jurisdiction to resolve KNP's claim. It is likewise undisputed that Respondent represented KNP as its legal counsel of record against Morrison in the Circuit Court of Platte County, Missouri. There again, Respondent never withdrew from this representation of KNP.

The inescapable conclusion is that Respondent represented KNP against Morrison, his former client, to enforce the very same set of loan agreements upon which he gave legal advice and counsel to Morrison. Not only is there a substantial relationship between the two matters, they are identical. Respondent admits the subject matter of the two legal matters were the same. Respondent testified:

*Q. Did you analyze these loan documents on behalf of your client Chad Morrison?*

*A. The answer is, yes. And Mr. Morrison and I, with Ms. Ferris present, concerning these loans, the first loan that was executed by them, went through line by line and read verbatim each term and answered any questions that Mr. Morrison or Miss Ferris had and as they initialed each one of these pages, sir.*

*Q. Is it your testimony that in going through the terms of the loan documents, you went through the loan documents with Chad Morrison and Lori Ferris at -- both as their attorney and also as an officer and director of Kristen Nicole Properties, Inc.?*

*A. Yes, that's a true statement.*

**App. 191 (T. 314-315).**

* * *

*Q. Okay. Did you, in fact, represent Mr. Morrison and Miss Ferris in regards to the loan documents themselves as you were going through the loan documents?*

*A. I sat down with Mr. Morrison and Miss Lori Ferris and I yes, the answer's yes.*

**App. 215 (T. 410).**

* * *

*Q. So, in fact, the claims of KNP – KNP against Morrison were the same as the subject matter of your prior representation of Chad Morrison; is that correct?*

*A. Only with respect to explaining the loan documents and to Answer questions, yes, sir.*

**App. 216 (T. 411).**

Respondent's representation of KNP in connection with the demand set forth in the letter dated June 1, 2011 (**App. 577**) was in violation of Rule 4-1.9(a). Respondent's representation of KNP in the *Morrison v. Cummings* lawsuit was in violation of Rule 4-1.9(a). Likewise, Respondent's representation of KNP in the *Odo v. Morrison* lawsuit in Platte County, Missouri was in violation of Rule 4-1.9(a).

## RETALIATORY MISCONDUCT

Based upon Respondent's failure to observe the basic tenets of the fiduciary relationship between attorney and client as addressed thus far above, it is not surprising that Respondent cast aside his fiduciary obligations towards Morrison in other respects as well. Here the misconduct is more appropriately viewed not as a conflict of interest, but rather as deliberate retaliatory action taken against a former client who fired Respondent, then initiated a bar complaint, and thereafter raised allegations of legal malpractice against the attorney.

A client has the right to discharge a lawyer at any time, with or without cause. ***See*** Comment 4, Rule 4-1.16. Respondent was "profoundly disappointed" in Morrison's decision to terminate his services. He lost a potentially lucrative fee in a personal injury case. Respondent stood to gain a fee of at least $68,750 on a contractual contingency fee basis, but instead was awarded a fee of only $27,500 on a *quantum meruit* basis. In addition to the loss of fees, Respondent anticipated both a bar complaint and a legal malpractice claim from his former client. Even where the attorney-client relationship has been abruptly ended by the unilateral action of the client, the lawyer must accept the client's decision. The lawyer should not pursue an objective to follow the client around from courthouse to courthouse, not even in moral support of the former client's opponent. Respondent should have better things to do with his time.

Respondent wasted very little time in taking deliberate, vindictive and retaliatory action against his former client. One example of this retaliatory conduct is the intentional and unauthorized disclosure of information related to the representation of a former client in violation of Rule 4-1.6. On May 20, 2011 (nine days after being fired) Respondent filed a civil lawsuit in the Circuit Court of Platte County, Missouri against Morrison. The Petition in *Odo v. Morrison* was prepared, signed and filed by Respondent. Respondent did not seek to file the Petition under seal. Once filed, the Petition was available for unrestricted public viewing. Respondent admitted that filing the Petition would constitute a "disclosure" or "reveal" information as such terms are used in Rule 4-1.6(a). A large portion of the information set forth in the Petition, including the attachments to the Petition, contained "information relating to the representation of a client" as such phrase is used in Rule 4-1.6(a).

As the commentary to Rule 4-1.6 suggests, the phrase “relating to representation” has broad application. ***See also In re Lim***, 210 S.W.3d 199, 203 (Mo banc) (Stith, J. dissenting). Information protected under Rule 4-1.6(a) does not necessarily have to be attorney-client privileged information. Information protected under Rule 4-1.6(a) can even be information previously disclosed in the public domain. In short, all information "relating to the representation of a client" is protected under Rule 4-1.6(a).

The Petition contained numerous allegations and several exhibits detailing private, personal and confidential information about Morrison, largely including information obtained by Respondent during the course of the attorney-client relationship. The contents of the Petition revealed information relating to the representation of a client without the client's consent. It is significant to note that when the Petition was filed, Morrison's personal injury claim was still pending. The Petition contained a substantial amount of information relating to Respondent's representation of Morrison regarding the then pending personal injury claim. Such information related to the representation could have severely prejudiced Morrison's settlement prospects. Morrison did not provide any consent for Respondent to reveal the information related to the subject matter of the legal matters Respondent had handled on Morrison's behalf.

The contents of the petition and the exhibits thereto went well beyond the factual allegations and details required by the applicable rules of civil procedure to state a claim against Mr. Morrison. Informant invites the Court's careful attention to the specific content of the Petition (**App. 369-394**) and Morrison's testimony regarding the significance of the content of the Petition (**App. 100-103**).

Respondent's action in this regard was extreme and over the top. The rules of pleading do not require a bill collector to attach an itemized statement of the account to the Petition. Rule 55.05 requires only a "short and plain statement of the facts showing the pleader is entitled to relief." Rule 55.22 does not require a petition to attach written instruments. Yet the Petition filed by Respondent contains four separate attorney-client contracts. The excessive nature of the Petition served no purpose other than to annoy, embarrass, harass, disturb and/or intimidate Morrison.

The disciplinary hearing panel concluded that Respondent held a reasonable belief that the content of the Petition was authorized by Rule 4-1.6(b)(3). No lawyer could reasonably have believed that the twenty-six pages of the Petition were necessary to establish a claim for fees against Morrison. The Petition violated Rule 4-1.6(a), and the exception in Rule 4-1.6(b)(3) was not satisfied. Even if Respondent was procedurally required to file a 26-page Petition against his former client in order to obtain relief, Respondent could have, and should have, filed the document under seal to preserve the confidentiality of such information. Respondent failed to take this action as well.

The disciplinary hearing panel also concluded that the content of the Petition was not conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d). Informant respectfully submits that the panel's conclusion is erroneous. When a lawyer is engaged in litigation with a former client, he must be careful to ensure that the litigation tactics comply with the Rules of Professional Conduct. ***In re Hess***, 406 S.W.3d 37 (Mo banc 2013). Improper litigation tactics against a former client constitute conduct prejudicial to the administration of justice. ***Id***.

On June 1, 2011, on behalf of KNP Respondent made a demand for payment of three of the loans. Although the notes had matured, Respondent admits the demand for payment was motivated by the fact that Morrison had terminated the attorney-client relationship. The letter was sent in violation of Rule 4-1.9(a) as addressed above. The letter is another example of vindictive conduct taken by Respondent to retaliate against the former client who decided to abruptly end the attorney-client relationship.

Respondent's involvement in litigation against Morrison both as a personal litigant and on behalf of KNP apparently did not satisfy his desire to confront Morrison. Respondent personally confronted Morrison at least four times in a courthouse setting on behalf of Dr. Febbo. Respondent's personal involvement during a debtor examination of Morrison in connection with the collection of a $3,100 debt on behalf of Dr. Febbo in a routine, garden variety collection matter is another troubling incident of retaliation in violation of Rule 4-8.4(d). Respondent took several hours away from his other professional activities to drive a considerable distance to Atchison County, Kansas, just so he could be in the same small room with Morrison while Morrison was forced to testify under oath about his assets and his intentions and ability to pay Dr. Febbo. Although this examination took place at the courthouse, it did not occur in public. Given the long history of conflict and bad blood between Morrison and Respondent, Respondent was no mere passive or disinterested observer at the debtor examination.

Respondent’s presence for the debtor exam served no purpose other than to intimidate and harass a former client. It is not conduct befitting of an attorney. It is hard to understand how a relatively minor unpaid health care bill[9] would create such a preoccupying need for a lawyer to spend hours upon hours of professional time away from his clients to monitor the collection activity; to attend docket calls and hearings; to prepare a lawsuit petition; to pay a filing fee for a lawsuit petition; to arrange to have a lawsuit filed; to hand-select attorneys to handle the collection; and to attend a debtor exam. The

[9]In the settlement demand written by Respondent on behalf of Morrison, Respondent noted that Morrison's total medical bills were just over $145,000. **App. 366-368**. Dr. Febbo's invoice represented about 2% of Morrison's total medical care.

disciplinary hearing panel was “not persuaded that Respondent’s actions adversely affected the interests of the administration of justice” sufficient to warrant a violation of Rule 4-8.4(d). Informant submits that, if the conduct is viewed from the perspective of the former client who was forced to sit in a small room in an adversarial setting a few feet away from someone who he once regarded as a trusted advisor to discuss the uncomfortable subject of the failure to satisfy a debt, a different conclusion should be reached.

Two days after he was fired as Morrison’s attorney, Respondent's office staff, under Respondent’s direct supervision,[10] used subterfuge to attempt to obtain protected information about Morrison's drug testing results as ammunition to use against Morrison in a later legal proceeding, specifically including this bar complaint. Apparently, Respondent believed he could deflect judicial scrutiny of his actions if he could cast the complaining witness in a bad light and attempt to drag some skeletons out of the complainant’s closet. Thus, Respondent attempted to use private and sensitive information learned about Morrison during the attorney-client relationship to enhance his own position. Fortunately, Respondent's efforts to obtain the drug test results were thwarted. Respondent was unable to obtain the protected information because he did not have a written authorization for the release of that information. Respondent’s plan has back-fired, further demonstrating the retaliatory nature of his actions.

[10] A lawyer is generally responsible for the conduct of his office assistants. Rule 4-5.3.

Here again, the disciplinary hearing panel was not persuaded that this conduct had an adverse effect upon the administration of justice. The panel's conclusion is true in a technical sense inasmuch inasmuch as Morrison's legal interests were not prejudiced. Respondent did not obtain the drug test information and the former client courageously testified at the disciplinary hearing notwithstanding having to endure a lot of mud-slinging about the complaint's character and personal habits.

However, because the misconduct goes directly to an attempt to unduly interfere with the disciplinary complaint process, it should be viewed as prejudicial to the administration of justice in violation of Rule 4-8.4(d) just like an attempt to block a bar complaint in connection with the settlement of a legal malpractice settlement is deemed to constitute conduct prejudicial to the administration of justice. ***See Formal Advisory Committee Opinion 122*** (lawyer's attempt to obtain former client's agreement to refrain from submitting bar complaint or otherwise agree not to cooperate with disciplinary authorities is conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d)).

Eight of the sixteen loans had a stated maturity date after October 31, 2011. In connection with the *Morrison v. Cummings* matter which was filed in October 2011, Respondent made demand for payment on those eight notes prior to the stated maturity date, for no reason other than Morrison's termination of the attorney client relationship. The demands for payment were in violation of Rule 4-1.9(a), as addressed above. The demands are also examples of conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d) because the true motivation for the premature enforcement of the notes was the "profound disappointment" felt by Respondent after being fired.

## MISCONDUCT INVOLVING DISHONESTY AND DECEIT

Respondent improperly attempted to obtain a former client's protected drug test results. As described above, the Information charged Respondent with a violation of Rule 4-8.4(d) with respect to this conduct. The disciplinary hearing panel did not find a violation of Rule 4-8.4(d) for this conduct. However, the panel did find that "Respondent's conduct in using **subterfuge** to attempt to obtain drug test results to which he was not entitled was **outrageous, unethical and possibly illegal conduct**. . . ." (emphasis added). The panel further stated that "this was **wrongful, outrageous and dishonest conduct** on Respondent's part." The panel even went so far as to expressly state that the evidence supported a charge under Rule 4-8.4(c).

A lawyer may not make false statements of material fact to a third person. Rule 4-4.1. The disciplinary hearing panel stopped somewhere short of actually finding a violation of Rule 4-8.4(c) or Rule 4-4.1. Although a violation of Rule 4-8.4(c) or Rule 4-4.1 was not expressly charged in the Information in connection with the same set of facts alleged to violate Rule 4-8.4(d), Informant did make a request on the record to amend the pleading to conform to the evidence before submission of the case to the panel. This procedure is implicitly, if not expressly, authorized in Rule 5.15(b). Since the same set of facts could have been used to find a violation of Rule 4-8.4(d), an amendment to the pleading to allege additional charges under Rule 4-8.4(c) or Rule 4-4.1 did not substantially change the charges. Accordingly, this Court is urged to find a violation of Rule 4-8.4(c) and 4-4.1 even though the panel declined to do so based upon an apparent misperception with regard to allowed amendments to the pleadings.

# 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 AT LEAST TWELVE MONTHS BECAUSE:**

**A. SUSPENSION IS THE BASELINE STANDARD UNDER THE ABA STANDARDS AND PRIOR MISSOURI CASES;**

**B. AFTER THE TERMINATION OF THE ATTORNEY-CLIENT RELATIONSHIP, RESPONDENT KNOWINGLY VIOLATED THE RULES OF PROFESSIONAL CONDUCT AND TOOK DELIBERATE, RETALIATORY ACTION AGAINST A FORMER CLIENT WHO HAD INITATED A BAR COMPLAINT;**

**C. RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT INVOLVING DECEIT AND DISHONESTY;**

**D. THE EXISTENCE OF NUMEROUS AGRRAVATING FACTORS AND ABSENCE OF MITIGATING CIRCUMSTANCES BOLSTER THE APPROPRIATENESS OF SUSPENSION; AND**

**E. RESPONDENT PRESENTS A GRAVE RISK OF HARM**

**TO THE PUBLIC THAT CANNOT BE ADDRESED BY SUPERVISION OR OVERSIGHT OF RESPONDENT'S LAW PRACTICE.**

In determining a sanction for attorney misconduct, the Missouri Supreme Court historically relies on three sources. First and foremost, the Court applies its own standards to maintain consistency, fairness, and ultimately, to accomplish the well-established goals of protecting the public and maintaining the integrity of the profession. Those standards are written into law, of course, when the Court issues opinions in attorney discipline cases. ***In re Kazanas***, 96 S.W.3d 803, 808 (Mo. banc 2003). For additional guidance, the Court frequently relies on the ***ABA Standards for Imposing Lawyer Sanctions*** (1991 ed.). Those guidelines recommend baseline discipline for specific acts of misconduct, taking into consideration the duty violated, the lawyer's mental state (level of intent), and the extent of injury or potential injury. ***In re Griffey***, 873 S.W.2d 600 (Mo. banc 1994). Once the baseline guideline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. ***ABA Standards for Imposing Lawyer Sanctions*** (1991 ed.). The Court also considers the recommendation of the Disciplinary Hearing Panel that heard the case.

It is well settled that the nature of a lawyer's profession necessitates the utmost good faith and the highest loyalty and devotion to his client's interests. The relation between attorney and client is fiduciary and binds the attorney to a scrupulous fidelity to the cause of the client which precludes the attorney from any personal advantage from the abuse of that reposed confidence. ***Shaffer v. Terrydale Management Corporation***, 648 S.W.2d 595, 605 (Mo. App. 1983).

The Missouri Supreme Court has had prior opportunities to address some of the issues in this case, including the appropriate sanction for attorneys found to have engaged in self-dealing. In 1976, the Court entered an indefinite suspension order, with leave to apply for reinstatement after one year, in a case in which the attorney took advantage of his fiduciary relationship with his ward to sell the ward's land. ***In re Mills***, 539 S.W.2d 447, 451 (Mo. banc 1976). The Court explained that it was inconsequential, for disciplinary purposes, that the lawyer did not profit from the sale. ***Id***. at 449.

In 1981, the Court indefinitely suspended another lawyer who engaged in improper financial transactions with his client. He, too, was not permitted to apply for reinstatement until a year had passed. ***Matter of Lowther***, 611 S.W.2d 1 (Mo. banc 1981).

In ***In re Snyder***, 35 S.W.3d 380 (Mo. banc 2000), the attorney acquired adverse pecuniary interests in his clients' respective residential properties. Specifically, the attorney took a quit claim deed from one client and a deed of trust from another client in order to secure payment of his attorney's fees in two criminal representations. The Court indefinitely suspended Snyder with leave to apply for reinstatement after six months, noting that the transactions violated Rule 4-1.7 and 4-1.8(a) and were subject to a heightened scrutiny and notice requirements. ***Id***. at 383. The Court noted that suspension was the appropriate sanction because Snyder constructed fee arrangements that created pecuniary interests in derogation of the attorney-client fiduciary relationship. ***Id***. at 385.

The Missouri Supreme Court has often relied on sanction guidelines developed by the ABA Center for Professional Responsibility. ***In re Griffey***, 873 S.W.2d 600 (Mo. banc 1994). The guidelines, known as the ABA Standards for Imposing Lawyer Sanctions (1991 ed.), consider the following primary questions:

(1) What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?);

(2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?);

(3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?); and

(4) Are there any aggravating or mitigating circumstances?

ABA Standards: Theoretical Framework (p. 5).

The ABA Standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. ABA Standards: Theoretical Framework (p. 5). Application of the ABA Standards requires the user to first analyze the first three questions and then, only after a baseline sanction is apparent, to consider aggravating and mitigating circumstances. ABA Standards, Preface: Methodology (p. 3). The drafters intentionally rejected an approach, however, that focused only on a lawyer's intent. Instead, they recognized that sanctioning courts must consider not only the attorney's intent and damage to his client, but also the damage to the public, the legal system and the profession. ABA Standards Preface: Methodology (p.3).

**ABA Baseline Sanction: Suspension**

Having considered that background, the application of these ABA Standards to the case at bar must start with Standard 4.32: **Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict and causes injury or potential injury to a client**. ABA Standard 4.32. (emphasis added). That standard must be the starting point because mitigating and aggravating circumstances are only considered after a baseline standard is determined.

The standard of a sanction of suspension must be the applicable baseline in this case because the evidence established the following:

**Duty Violated**

Respondent knew or should have known that, by entering into secured loan transactions which included a lien upon personal injury proceeds, he was creating a conflict of interest with his clients in violation of Rule 4-1.8(a). The duty violated was Respondent's obligation to his client to avoid financial transactions that violated Rule 4-1.8(a). This conflict never went away. Once the outstanding loan balance was approaching $30,000 with accrued interest at 38% per annum and some of the loans began to mature, the tension between attorney and client started to boil over. Furthermore, the other violations of the Rules of Professional Conduct committed by Respondent had similar detrimental impact on the fiduciary nature of the relationship between an attorney and the client. Respondent repeatedly violated the duty of loyalty to a client, both during the course of the representation and after the attorney-client relationship had ended. In short, as is clear from Respondent's own testimony, Respondent placed his personal interests in the $30,000 loan obligation ahead of the client's interest in obtaining a fair settlement on an injury claim.

**State of Mind**

Respondent acted with extensive knowledge of Rule 4-1.8. Respondent knew the loan transactions would violate the rules, but he did it anyway. Respondent testified:

> *Q. Why did you select Kristen Nicole Properties, Inc. as the lender instead of your law firm?*
>
> *A. Because, as I explained to Mr. Morrison, according to the Rules of Ethics, lawyers cannot loan money to clients for living expenses or anything else.*
>
> * * *
>
> *THE WITNESS: Mr. Odrowski, Rule 1.8 subparagraph (a) says, A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:*
>
> *(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully*

*disclosed and transmitted in writing in a manner that can be reasonably understood by the client;*

*(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of legal independent legal counsel on the transaction;. and*

*(3) the client gives informed consent in a writing signed by the client to the essential terms of the transaction and the lawyer's role in the transaction including whether the lawyer is representing the client in the transaction.*

*BY MR. ODROWSKI:*

*Q. Okay. And my question to you is in 2011 and 2010, at the time of these 16 loan transactions, did you have knowledge of and understand everything you just read?*

*A. Yes, sir.*

*Q. And you had, in fact, read that specific rule prior to making these loan transactions; is that correct?*

*A. At some point in time I had read that, yes, sir.*

Respondent was also aware of his client's distressed financial circumstances.

Even after Respondent received the bar complaint in July of 2011 raising issues of conflict of interest and disloyalty, he persisted to engage in various acts of disloyalty towards a former client. For each aspect of the litigation against

Morrison, Respondent obtained co-counsel. Yet Respondent did not back away from any of the legal proceedings. Respondent managed to stay at the forefront of each piece of the litigation, even though he surely was aware of the potential for additional charges of a conflict of interest after the bar complaint was initiated. He even told his co-counsel that he had a conflict. **App. 212**.

In December 2011, Respondent was warned by the Kansas district court judge that Respondent had unclean hands in representing Dr. Febbo against a former client. Respondent was aware he was under a conflict of interest to represent Dr. Febbo, but persisted in that endeavor anyway.

**Client Injury and Potential Injury**

There can be no doubt that the client was injured by the Respondent's misconduct. The payment of $34,000 (**App. 415**) from Morrison represents full payment of the approximate principal balance of $28,000 of the loans, but it also represents payment of several thousand dollars in interest and payment of the $1,200 processing fees. In other words, Respondent still profited on the loans at Morrison's expense. Additionally, Morrison incurred a substantial amount of attorney fees defending against the claims of Dr. Febbo and KNP in the various lawsuits. The potential injury could have been worse. Morrison's personal injury claim could have been compromised by the unauthorized disclosure of confidential information about the claim while settlement negotiations were pending. Also, a situation where the client owes a $30,000 loan balance to an attorney who is supposed to be obtaining an injury settlement on a contingency fee basis gives rise to all sorts of potential mischief and overreaching.

**Aggravating Circumstances**

Aggravating circumstances shown by the evidence may be used to increase the degree of discipline to be imposed. In that regard, Section 9.2 of the ***ABA Standards for Imposing Lawyer Sanctions*** lists ten types of aggravating factors. Many compelling aggravating factors are present in this case.

**Prior Disciplinary Offense**

Respondent has a disciplinary history. He has received one prior admonition.

**Dishonest or Selfish Motives**

The disciplinary hearing panel incorrectly found no evidence of selfish or dishonest motive, believing that Respondent acted in good faith in addressing various conflict of interest issues. This conclusion of the panel is advisory in nature. For its *de novo* review of the evidence, Informant requests this Court's consideration of the following inferences and indicia of improver motives.

Regardless of his estate planning objectives, Respondent exhibited a selfish motive in charging his clients excessive interest and loan fees. Respondent charged his clients over $5,500 in interest and $1,200 in processing fees. Respondent purposefully drafted the loan documents to make Morrison liable for KNP's attorney fees in the event of default. Respondent stood to gain more money from Morrison as KNP's counsel in the event of a default. Respondent's decision to represent KNP against his former client was motivated by Respondent's personal and selfish interests in controlling the business activities of KNP. As president of KNP, Respondent could have allowed another competent attorney handle each and every aspect of the entire litigation so that Respondent would not have been involved as a both an advocate and a witness in the case.

Respondent's attempt to obtain his former client's drug testing information involved an act of dishonesty. Respondent's peculiar participation in Dr. Febbo's collection action was motivated by Respondent's own selfishness, rather than in furtherance of a professional obligation owed towards Dr. Febbo. Respondent's excessive disclosure of protected information about Morrison served to advance Respondent's own selfish motives to obtain a litigation advantage against his former client. The acquisition of a security interest in the injury proceeds was for Respondent's selfish motives of being able to control the attorney-client relationship so that Morrison would be unable to discharge Respondent without incurring a loan default.

**Pattern of Misconduct**

Obviously, the sixteen separate loan transactions over a period of fifteen months demonstrate a pattern of misconduct. Additionally, there is a pattern to the retaliatory nature of Respondent's conduct directed against Morrison. In the *Febbo* matter, Respondent confronted Morrison over a period of more than one year (November 2011 to January of 2013) from one courthouse to another, first in Atchison County, Kansas, then in Platte County, Missouri and then back to Atchison County. Likewise, Respondent confronted Morrison on the KNP matter from one courthouse to another.

**Multiple Offenses**

Respondent has engaged in several instances of professional misconduct over a period lasting from February 2010 with the first loan until January 2013 to the debtor exam. Respondent's conduct violates all several types of the conflict of interest rules (Rules 4-1.7(a)(1) and (a)(2), 4-1.8(a) and (e), and 4-1.9) as well as other professional offenses (Rules 4-1.6, 8-4(a), (c), and (d), and 4-4.1).

**Bad Faith Obstruction of the Disciplinary Process**

Morrison submitted his bar complaint in June 2011. A significant portion of the misconduct described above occurred after Respondent received the bar complaint. Some of Respondent's actions were a preemptive strike in direct contemplation of the prospect that Morrison would initiate a bar complaint. From June 2011 until January 2013, Respondent's set his sights upon the complainant. Respondent has acted in retaliation towards Morrison for having the courage to initiate the disciplinary process. Respondent's desire to denigrate Morrison throughout this proceeding, including the evidentiary hearing held before the disciplinary panel, has not been in good faith.

**Refusal to Acknowledge Wrongful Nature of Conduct**

At the conclusion of Informant's evidence, Respondent testified as follows:

Q. *Let's take a look at Exhibit 33. That's your answer. Do you see on page 8, paragraph 41* --

A. *Yes, sir.*

Q. -- *you have denied the allegations in paragraph 55?*

*A.* *That's correct.*

*Q.* *Okay. Do you wish to change that denial to something -- to an admission?*

*A.* *No, sir.*

*Q.* *Do you see in paragraph 43 of your answer you have denied paragraph 57 of the information; do you wish to change that denial to an admission?*

*A.* *No*

*Q.* *Do you see in paragraph 45 of your answer you have denied the allegations in paragraph 59?*

*A.* *I see that.*

*Q.* *Do you wish to change that denial to an admission?*

*A.* *No, sir.*

*Q.* *Do you see the paragraph 47 denying the allegations of paragraph 61 of the information?*

*A.* *Yes, sir.*

*Q.* *Do you wish to change that denial to an admission?*

*A.* *No, sir.*

*Q.* *Do you see paragraph 49 denying the allegations of paragraph 63 of the information?*

*A.* *I see that.*

*Q.* *Do you wish to deny -- or do you wish to change that denial* *to an admission?*

*A. No, sir.*

*Q. Do you see paragraph 51 of your answer?*

*A. Yes, sir.*

*Q. Do you see where you have denied the allegations of paragraph 65?*

*A. Yes, sir.*

*Q. Do you wish to change that denial to an admission?*

*A. No, sir.*

*Q. Do you see paragraph 54 denying the allegation -- or excuse me do you see paragraph 53 denying the allegations in paragraph 67 of the information?*

*A. I see that paragraph, sir.*

*Q. Do you wish to deny -- change your denial to an admission with respect to the allegations in paragraph 67?*

*A. No, sir.*

*Q. Is there anything that we've discussed during this proceeding where you acknowledge the wrongful nature of your conduct?*

*A. I do apologize, Mr. Odrowski. We started at nine o'clock yesterday and/or nine o'clock today where my testimony was proffered in answer to your questions. I believe that my answer, the amended answer that is contained in Exhibit 33 is* *my position, sir.*

Q. *And you do not acknowledge anything wrongful about your conduct; is that correct?*

A. *That's substantially correct, yes, sir.*

* * *

Q. *I believe that you've made some statements indicating some form of regret but only conditioned upon a finding by the Missouri Supreme Court. Are you in a position today to express any remorse for your actions?*

A. *With respect to what actions, sir?*

Q. *Well, the actions that have been alleged in the information?*

A. *And I apologize, there were I don't know how many allegations. If you could be more specific, and I apologize for that question.*

Q. *Well, I'm not sure that I can be more specific. At this point we're all familiar with the information and the answer. Are – have you -- you've read it from cover to cover; is that correct?*

A. *That is correct.*

Q. *Is there anything about the information that you don't understand?*

A. *No, sir.*

Q. *Okay. With respect to the information and the subject matter* *that's alleged in the information, are you able to express any remorse for your actions as you sit here today?*

*A. As I sit here today, no, sir.*

Respondent has been given multiple opportunities to acknowledge the wrongful nature of the conduct. He has steadfastly and openly refused, which is certainly Respondent's prerogative. Respondent is content to allow the Missouri Supreme Court pass judgment rather than to take personal accountability for his own actions in a public setting, thereby consuming judicial resources and the valuable time of the volunteer panel members. In passing judgment upon Respondent, the Court should take special note of the lack of personal accountability in Respondent's position and his decision to stand upon the denials in his answer, notwithstanding the voluminous record of his conduct generated in this case. Respondent was not able to express any genuine remorse. His qualified, conditional statements of "regret" are transparent and insincere.

**Vulnerability of Victim**

At the time of the loans, Morrison was unemployed, unsophisticated, and financially desperate. He was vulnerable to predatory and exploitive loan practices, including usurious interest and excessive fees. Morrison was also vulnerable because he placed his trust and confidence in Respondent. Respondent used his superior knowledge, experience and legal skills to take advantage of a client with catastrophic injuries.

**Substantial Experience in the Practice of Law**

At the time of the conduct, Respondent had practiced law in Missouri for thirty-five years. He is a litigator and a personal injury lawyer. The scope of Respondent's representation of Morrison appears to have fit squarely within Respondent's practice areas. Respondent's misconduct certainly did not result from inexperience. He testified that he was quite familiar with Rule 1.8, having been asked to educate himself on that rule in 2004 by a regional disciplinary committee. (**App. 578**).

Because Respondent has substantial legal experience, he has many friends in the local legal community. Some of his colleagues even testified in support of Respondent's continued fitness to practice law. However, none of the persons who testified in support of Respondent had any idea of Respondent's knowing and repeated entries into the minefield of engaging in business transactions with clients, his abusive lending practices, his inability to refrain from engaging in representations of one client against another, and Respondent's disloyalty and lack of professional decorum exhibited towards a former client. Respondent did not even have the forthrightness to discuss the allegations of misconduct with those whom he asked to testify on his behalf. None of his colleagues reviewed the loan documents. None of his colleagues examined the lawsuit Petition Respondent filed against his former client to determine if it exceeds their sense of professional dignity. None of Respondent's colleagues who testified on his behalf desired to stick around and listen to the evidence before commenting upon Respondent's character and reputation. If they had, their opinions of Respondent's continued fitness to practice law might have changed dramatically.

In view of the aggravating factors, the baseline standard of suspension and prior Missouri Supreme Court case law, an indefinite suspension with no leave to apply for reinstatement for a period of twelve months is warranted. Respondent puts the public at risk with respect to the failure to properly address conflicts of interest and the retaliation against those clients who may "profoundly disappoint" him in the future. Respondent is not fit to continue have the privilege to practice law in the State of Missouri. Sadly, there are times when lawyers "just don't get it." This is one of those times. Respondent should be given an opportunity to reflect upon his conduct and the stringent nature of his fiduciary responsibilities towards a client before he is allowed to resume the practice law in this state.

Probation is not warranted. In all likelihood, probation would not prove to be effective. Compliance with the conflicts of interest rules are difficult to monitor by the disciplinary office. Moreover, probation may not curb misconduct as deliberate and knowing as that in this case. Respondent was the subject of a disciplinary investigation from July 2011 and January 2013. Yet, this involvement with the disciplinary system had no positive effect in preventing additional acts of misconduct.

The disciplinary hearing panel recommended probation. The panel believed that Respondent will learn from his mistakes and that he will not repeat the misconduct. That would have a greater ring of truth **if** Respondent’s misconduct ended in May of 2011 with the last of the 16 loan transactions or even in July 2011 upon Respondent's receipt of the bar complaint. The misconduct, however, did not stop there. Respondent's actions after being fired and receiving the bar complaint show no desire to learn from a situation of poor judgment. Respondent did not heed to caution from Judge Bednar. Probation cannot cure the propensity of Respondent to follow through on quick-tempered, knee jerk reactions to professional disappointment. Within days after being fired, Respondent tried to dig up some dirt on his former client, called in the loans for immediate repayment against the client, and filed a 26-page lawsuit against the former client.

Although Morrison was the sole victim of Respondent's vindictive action after the termination of the representation, the multiple encounters between Respondent and Morrison demonstrate a risk to the public at large. Any of Respondent's former clients are at risk of becoming the victim of Respondent's failure to maintain client confidentiality or a victim of a legal proceeding that ignores a fiduciary duty that extends beyond the conclusion of the representation. Even if the Court is confident that Respondent will never enter into a business transaction with a client again, the disdain and lack of remorse exhibited towards a former client are tell-tale signs that Respondent is likely to find another way to take advantage of a client or aggressively pursue a former client for personal gain.

The disciplinary hearing panel requested proposed terms of probation from the respective parties. The panel adopted some, but not all, of the terms and conditions of probation suggested by Informant. Those terms of probation are set forth on pages 597 to 606 of the Appendix. **App. 597-606**. If the Court is inclined to allow Respondent to continue to practice law in this state without interruption, at a minimum all of the recommended terms of probation should be utilized in this case.

## CONCLUSION

For the reasons set forth above, the Chief Disciplinary Counsel respectfully requests this Court:

(a) to find that Respondent is guilty of professional misconduct with respect to each of the seven counts charged in the Information and to find that Respondent has violated Missouri Supreme Court Rules 4-1.6, 4-1.7, 4-1.8, 4-1.9 and 4-8.4;

(b) to suspend Respondent's law license for an indefinite period of time with no leave to apply for reinstatement until after the expiration of at least twelve months; and

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

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2014, a copy of Informant's Brief is being served upon Respondent through 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 24,196 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Kevin J. Odrowski