IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
SAMUEL E. TRAPP	)	**Supreme Court #SC94172**
	)	
Respondent.	)	

RESPONDENT'S BRIEF

JAMES D. BARDING, 46302
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ATTORNEY FOR RESPONDENT

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STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

On June 19, 2012, the Chief Disciplinary Counsel filed a three count Information, alleging Respondent violated Rules of Professional Conduct, 4-1.3, 4-1.4, 4-1.16(d), 4-1.15(c) and (j), and 4-1.8(a). Respondent filed his Answer on September 11, 2012. Informant filed a seven count Amended Information on April 30, 2013, alleging separate violations of the Rules of Professional Conduct, 4-1.3, 4-1.4, 4-1.16(d) (Count I), 4-1.4, 4-1.16(d), 4-1.15(c) and (j) (Count II) ,4-1.8(a) (Count III), 4-8.1 (Count IV), 4-8.1 (Count V), 4-1.4 (Count VI), and 4-1.15 (Count VII). With this Amended Information, a stipulated disposition was also filed.

On May 2, 2013, the Panel announced that it would not accept the stipulated disposition, and indicated their intention to recommend a suspension with a stay of execution. Respondent filed a Motion to Disqualify the Panel on November 19, 2013. The Panel denied this motion on November 20, 2013, and on that same date granted Respondent leave to file his Answer Out Of Time to the Amended Information.

The attorney discipline case was heard by the hearing panel on November 22, 2013. Informant dismissed Counts I and VI at the hearing. The parties stipulated to the admission of Informant's Exhibits 1-10, 21-53, 54-67, and 75-90. By agreement, Exhibit 82 was admitted subject to a protective order pursuant to Rule 5.31.

Following this hearing, the Panel found Respondent had not violated Rule 4-1.8, concerning Count III (Burris). But as to all remaining allegations (Counts II, IV, V, and VII), the Panel found that Respondent had violated the Rules of Professional Conduct as alleged in the Amended Information. The Panel recommended that Respondent's license

to practice law be suspended indefinitely, with no leave to apply for reinstatement for one year, but that the suspension be stayed and that Respondent be placed on probation under Rule 5.225, under conditions as had been recommended by Informant.

Both Informant and Respondent rejected the Panel's recommended findings and sanction.

COUNT I

Count I was dismissed by Informant.

COUNT II (MD)

In September, 2010, Ms. Downing retained Respondent to represent her in a divorce. **Tr. 109**. On September 10, 2010, Ms. Downing paid Respondent $1,200.00 for what both believed to be an uncontested divorce. **Tr. 109-110**. **Record, Vol. 2, p. 171**. $200.00 of the payment was intended to cover the filing fees in the matter. **Tr. 143-144**. Respondent acknowledged depositing the entire $1,200.00 into his operating account before paying the filing fee. **Tr. 144-145**. When it became apparent that the "uncontested" divorce was going to be contested, Respondent deposited a subsequent October 20, 2010 payment of $2,300.00 into his operating account. **Tr. 142**.

On November 25, 2010, Respondent's office prepared an invoice seeking payment of $200.00. **Tr. 172**. This invoice was mailed to Ms. Downing and she received it sometime after the Thanksgiving Holiday. **Tr. 112**. Ms. Downing was confused concerning this invoice and sought an explanation for this billing from Respondent's office, but was dissatisfied with both the quality of response and the availability of

Respondent to address her concerns. **Tr. 114**. Respondent too was confused regarding the invoice in question. **Tr. 151-153; 176**.

On December 8, 2010, Ms. Downing hired a new attorney who contacted Respondent and requested her file. **Tr.153**. **Record, Vol. 2, p. 165**. On March 21, 2011, Ms. Downing filed a complaint with the OCDC. **Record, Vol. 2, pp. 164-166**. On January 13, 2011, Ms. Downing wrote to Respondent demanding return of all but $200.00 of her $3,500.00 in fees paid to Respondent. **Record, Vol. 2, p. 206**. In a letter to Ms. Downing dated January 18, 2011, denying her demands for a refund of $3,300.00, Respondent's attorney suggested that Ms. Downing might wish to contact the Missouri Bar's Fee Dispute Resolution Committee. **Record, Vol.2, p. 207**.

Sometime after January 18, 2011 but prior to April 18, 2011, Ms. Downing filed a Fee Dispute with the Missouri Bar Fee Dispute Resolution Committee. **Tr. 115**; **Record, Vol. 2, p. 208**. Respondent did not participate in this process based in part on the belief that Ms. Downing's complaint filed under Rule 4 somehow did not allow for a fee dispute. **Record, Vol.2, p. 208.** Additionally, because Ms. Downing pursued arbitration rather than mediation, Respondent took no part in the fee dispute process. **Tr. 118-119; 178-179**.

Following an arbitration hearing held on August 17, 2011, which Respondent did not attend, based in part on Respondent's belief that Ms. Downing's complaint filed under Rule 4 somehow did not allow for a fee dispute, the arbitrator determined that Respondent should refund $2,900.00. **Tr. 126; Record, Vol. 2, pp. 208-211.**

On October 10, 2011, Ms. Downing filed a small claims case against Respondent seeking at least $2,900.00. **Tr. 134-135**; **Record, Vol. 2, pp. 212-213**. This claim was settled prior to trial on November 8, 2011, when Respondent paid $1,750.00 to Ms. Downing. **Tr. 127-128**.

Respondent and Ms. Downing offered differing accounts of their communication concerning the $200.00 invoice. **Tr. 113-116; 152**. Ms. Downing testified that she thought she left a message with Jennifer . . .” shortly after receiving the invoice. She was unsure how many times she called but acknowledged it was less than ten times. **Tr. 113**. When asked if she made any further efforts to contact Respondent regarding her concerns, she testified she sent him a letter. **Tr. 114**; **Record, Vol. 2, p. 206**. She testified that she had no communication at all with Respondent from the time she received the invoice and her January 13, 2011, letter to Respondent. **Tr. 114**. When asked if she had conversations with anyone else at Respondent’s office concerning the invoice, she testified “I think I did have a conversation with Jennifer regarding that.” **Tr. 115**.

Respondent testified before the Hearing Panel that he never knew anything about the $200.00 invoice until well after Ms. Downing retained new counsel on December 8, 2011. **Tr. 151**. He testified that he and his staff made multiple efforts to contact her. **Tr. 152; 182**. He testified that when contacted by Ms. Downing’s new counsel on December 8, 2011, he could get no information concerning why she was unhappy other than she wanted her fees refunded. **Tr. 154**; **178**.

Respondent testified he originally understood Ms. Downing 's complaints to be primarily in the nature of a fee dispute. **Record, Vol.2, pp. 201, 207**; **Tr. 177-180**.

COUNT III (JB)

Respondent accepts the statement of facts as submitted by Informant.

The Panel recommended dismissal of Count III.

COUNT IV (CB)

On September 10, 2012, Informant notified Respondent of the complaint filed by CB, requesting a response by September 24, 2012. Respondent made his initial response on September 24, 2012, indicating that he never entered into an agreement to represent CB, and that CB was not a client of his. On November 2, 2012, Informant requested additional documentation from Respondent by November 16, 2012. On November 14, 2012, Respondent requested additional time in which to provide the requested documentation. Informant requested the documents by December 5, 2012 and asked to have present counsel contact him in the event "you do retain him for these cases."

Upon present counsel entering for Respondent (January 2013), he contacted Informant and requested more time regarding this and another matter (Count V), and it was understood that additional time would be allowed based on present counsels entry and given demands on present counsels time stemming from the original Information filed. Additionally, it was explained to Informant that Respondent was unable to obtain many if not most of the items requested, either because of circumstances beyond Respondent's control making it difficult to comply within the time frames requested **Record, Vol.2, p. 359,** or because the documents were held by others or did not exist.

On January 23, 2013, Respondent's Columbia, Missouri office was destroyed in a fire making document retrieval impossible. Additionally, Respondent's brother disappeared mysteriously the first week of January, 2013, requiring Respondent to attend to urgent family matters. Despite this, Respondent was subsequently able to locate and provide additional documents, though not as quickly as hoped for by either Informant or Respondent. **Record, Vol.3, p. 375**.

Respondent provided the requested documents on March 11, 2013, and March 18, 2013. **Informants Brief, p. 14**; **Record, Vol.3, p. 375**. He did not fail to provide even a single specific document known to exist. CB acknowledged in his original complaint to the Office of the Chief Disciplinary Counsel that he was having trouble with the Missouri Department of Corrections not sending his legal mail to Respondent and not giving his legal mail to me from Respondent. Any failure to provide a requested document was because Respondent did not possess the document in question because CB was never his client, and the records sought, to the extent they existed, were in the possession of others. **Record, Vol.3, p. 351**.

Count V (TJ)

On September 11, 2012, Informant notified Respondent of the complaint filed by TJ, requesting a response by September 25, 2012. Respondent made his initial response on September 25, 2012, denying the allegations contained in the June 28, 2012, complaint filed by TJ. **Record, Vol.2, pp. 366-7**.

On November 2, 2012, Informant requested additional documentation from Respondent by November 16, 2012. On November 14, 2012, Respondent requested

additional time in which to provide the requested documentation. Informant requested the documents by December 5, 2012 and asked to have present counsel contact him in the event "you do retain him for these cases." **Record, Vol.2, pp. 368-370**.

Upon present counsel entering for Respondent (January 2013), he contacted Informant and requested more time regarding this and another matter (Count IV), and it was understood that additional time would be allowed based on present counsels entry and given demands on present counsels time stemming from the original Information filed. Additionally, it was explained to Informant that Respondent was unable to obtain many if not most of the items requested, either because of circumstances beyond Respondent's control, making it difficult to comply within the time frames requested, or because the documents were held by others or did not exist. **Record, Vol. 2, p.374**.

During this period, Respondent's Columbia, Missouri office was destroyed in a fire (January 23, 2013), making document retrieval impossible. Additionally, Respondent's brother disappeared mysteriously the first week of January, 2013, requiring Respondent to attend to urgent family matters. Despite this, Respondent was subsequently able to locate and provide additional documents, though not as quickly as hoped for by either Informant or Respondent. **Record, Vol.3, p.375**.

Respondent provided the requested documents on March 11, 2013, and March 18, 2013. **Informants Brief, p. 14**; **Record, Vol.3, pp. 375-382**. He did not fail to provide even a single specific document khown to exist. Any failure to provide a requested document was due to the fact that Respondent did not possess the document in question,

or the records sought, to the extent they existed, were in the possession of others. **Record, Vol.3, pp. 374-5**.

COUNT VI

Count VI was dismissed by Informant.

COUNT VII

On June 25, 2012, Central Bank notified the OCDC that Respondent's client trust account was overdrawn. **Record, Vol. 3, pp. 383-385**. On June 29, 2012, Informant shared this information with Respondent and requested an explanation within ten (10) days. **Record, Vol. 3, p. 386**. Respondent's associate provided a written response for Respondent on July 11, 2012, indicating that the bank had submitted the notice to OCDC in error. **Tr. 15-16; Record, Vol. 3, p. 387**. This response included a letter from the commercial banking officer at Central Bank stating that "there was an error in coding the transaction as insufficient and the previous letter you received can be discarded." **Record, Vol. 3, p. 388**.

On July 17, 2012, Informant acknowledged receipt of Respondent's letter of July 11, 2012, along with the letter from the banks commercial banking officer, but requested additional information from Respondent as the banks letter "is not sufficient in demonstrating that the overdraft was created by bank error." **Record, Vol. 3, p. 389**. Though clearly upset that Informant considered his initial response insufficient, "Respondent soon provided some, but not all of the documents requested." **Record, Vol. 3, p. 390**; **Informants Brief, p.16; Tr. 18-21**.

On August 30, 2012, additional documents were requested and Respondent was asked to respond by September 14, 2012. **Record, Vol. 3, p. 399**. On September 14, 2012, Respondent requested additional time as he intended to seek legal representation in this matter. **Record, Vol. 3, p. 390**. On October 12, 2012, present counsel entered for Respondent in this matter and requested time to review what had been submitted at that point in the process. **Record, Vol. 3, p. 402**. On October 15, 2012, Informant agreed to the request for additional time and requested our response by November 5, 2012. **Record, Vol. 3, p. 403**. By this time present counsel had come to the realization that Respondent's financial record keeping made responding to Informants document requests difficult.

Additional time was requested on November 6, 2012. **Record, Vol. 3, p. 404**. The requested documents were finally provided to Informant on December 17, 2012, following present counsels extended period of illness prior to that date. **Record, Vol. 3, pp. 405-406**. On December 18, 2012, following Respondent's submission of the previously requested documents, Informant made an additional request for documents. **Record, Vol. 3, pp. 407-408**. On January 31, 2013, Respondent provided documents in response to this request, acknowledging that copies the "settlement sheets" requested and checks other than what had already been provided did not exist. **Record, Vol. 3, pp. 409**.

Respondent acknowledged that his prior practices concerning his client trust accounts and his operating accounts may have resulted in his failure to keep funds separate. **Tr. 144-145**. The failure to prepare settlement sheets and other record keeping practices made it difficult to determine whether client funds were co-mingled with personal funds. **Tr. 47; 52**. He testified that any co-mingling that may have occurred was

not knowingly done and was the result of his good faith belief that he had earned the funds in question at the time of payment. **Tr. 147-149; 166; 184**. He acknowledged that his prior practice of contracting was inconsistent with the rules as he now understands them. (**Tr. 150-151**). Respondent testified that he has since changed the way he manages his client trust account and his operating account. **Tr. 164-165**.

POINTS RELIED ON

I

COUNT I: DISMISSED

COUNT II: RESPONDENT DID NOT VIOLATE

A: RULE 4-1.4 IN THAT HE DID NOT FAIL TO COMMUNICATE WITH HIS CLIENT, MD, ABOUT AN INVOICE SENT TO HER;

B: RULE 4-1.15 (j) BY FAILING TO SEGREGATE DISPUTED FUNDS FROM HIS OWN IN THAT HE FAILED TO PLACE THE DISPUTED AMOUNT INTO HIS TRUST ACCOUNT; AND

C: RULE 4-1.16 (d) BY FAILING TO PROMPTLY RETURN UNEARNED FEES TO MD.

RESPONDENT ADMITS HE VIOLATED RULE 4-1.15(c) IN THAT HE FAILED TO KEEP MD'S FUNDS SEPARATE FROM HIS OWN IN THAT HE DEPOSITED UNEARNED FEES INTO HIS OPERATING ACCOUNT.

COUNT III: RESPONDENT DID NOT VIOLATE RULE 4-1.8 IN THAT HE DID NOT KNOWINGLY ACQUIRE AN OWNERSHIP, POSSESSORY, SECURITY, OR OTHER PECUNIARY INTEREST ADVERSE TO HIS CLIENT.

COUNT IV: RESPONDENT DID NOT VIOLATE RULE 4-8.1 IN THAT HE DID NOT KNOWINGLY FAIL TO RESPOND TO A LAWAFUL DEMAND FOR INFORMATION FROM OCDC.

COUNT V: RESPONDENT DID NOT VIOLATE RULE 4-8.1 IN THAT HE DID NOT KNOWINGLY FAIL TO RESPOND TO A LAWAFUL DEMAND FOR INFORMATION FROM OCDC.

COUNT VI: DISMISSED

COUNT VII: RESPONDENT ADMITS HE VIOLATED

A: RULE 4-1.15 IN THAT HE PLACED PERSONAL FUNDS INTO HIS TRUST ACCOUNT AND PLACED CLIENT FUNDS INTO HIS OPERATING ACCOUNT;

B: RULE 4-1.16 IN THAT HE FAILED TO MAINTAIN ADEQUATE RECORDS OF FUNDS RECEIVED, HELD, DEPOSITED AND DISBURSED ON BEHALF OF HIS CLIENTS.

In re Hardge-Harris, 845 S.W.2d 557 (Mo. Banc 1993)

In re Stricker, 808 S.W.2d 356 (Mo. Banc 1991)

In re Tessler, 763 S.W.2d 906 (Mo. Banc 1990)

State Ex Rel. Koster v. Cain, 383 S.W.3d 105 at 119 (Mo.App.W.D. 2012)

In re Vails, 768 S.W.2d 78 (Mo. Banc 1989)

Rule 4-1.4 (2011)

Rule 4-1.8 (2011)

Rule 4-1.15 (2011)

Rule 4-1.16 (2011)

Rule 4-8.1 (2011)

POINTS RELIED ON

II

THE SUPREME COURT SHOULD NOT SUSPEND RESPONDENT'S LICENSE INDEFINITELY WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR ONE YEAR, STAYED FOR A ONE YEAR PERIOD OF PROBATION UNDER THE TERMS SUBMITTED BY THE DISCIPLINARY HEARING PANEL, BECAUSE AN ADMONITION IS THE APPROPRIATE SANCTION UNDER ABA STANDARDS ANALYSIS FOR VIOLATIONS OF RULES 4-1.15 AND 4-1.16.

ARGUMENT

I

COUNT I: DISMISSED

COUNT II: RESPONDENT DID NOT VIOLATE

A: RULE 4-1.4 IN THAT HE DID NOT FAIL TO COMMUNICATE WITH HIS CLIENT, MD, ABOUT AN INVOICE SENT TO HER;

B: RULE 4-1.15 (j) BY FAILING TO SEGREGATE DISPUTED FUNDS FROM HIS OWN IN THAT HE FAILED TO PLACE THE DISPUTED AMOUNT INTO HIS TRUST ACCOUNT; AND

C: RULE 4-1.16 (d) BY FAILING TO PROMPTLY RETURN UNEARNED FEES TO MD.

RESPONDENT ADMITS HE VIOLATED RULE 4-1.15(c) IN THAT HE FAILED TO KEEP MD'S FUNDS SEPARATE FROM HIS OWN IN THAT HE DEPOSITED UNEARNED FEES INTO HIS OPERATING ACCOUNT.

COUNT III: RESPONDENT DID NOT VIOLATE RULE 4-1.8 IN THAT HE DID NOT KNOWINGLY ACQUIRE AN OWNERSHIP, POSSESSORY, SECURITY, OR OTHER PECUNIARY INTEREST ADVERSE TO HIS CLIENT.

COUNT IV: RESPONDENT DID NOT VIOLATE RULE 4-8.1 IN THAT HE DID NOT KNOWINGLY FAIL TO RESPOND TO A LAWAFUL DEMAND FOR INFORMATION FROM OCDC.

COUNT V: RESPONDENT DID NOT VIOLATE RULE 4-8.1 IN THAT HE DID NOT KNOWINGLY FAIL TO RESPOND TO A LAWAFUL DEMAND FOR INFORMATION FROM OCDC.

COUNT VI: DISMISSED

COUNT VII: RESPONDENT ADMITS HE VIOLATED

A: RULE 4-1.15 IN THAT HE PLACED PERSONAL FUNDS INTO HIS TRUST ACCOUNT AND PLACED CLIENT FUNDS INTO HIS OPERATING ACCOUNT;

B: RULE 4-1.16 IN THAT HE FAILED TO MAINTAIN ADEQUATE RECORDS OF FUNDS RECEIVED, HELD, DEPOSITED AND DISBURSED ON BEHALF OF HIS CLIENTS.

COUNT I

Informant dismissed Count I.

COUNT II

Informant alleges that Respondent violated Rules of Professional Conduct 4-1.4 by not responding to Ms. Downing's "attempts to discuss his legal work and the invoice he sent for $200.00." Ms. Downing never attempted to discuss Respondent's legal work at any time during the short period of her representation by Respondent. She hired Respondent on September 10, 2010, and by December 8, 2010, she had already retained new counsel. Respondent was restrained by Rule from contacting Ms. Downing after the date he became aware of her new counsel. Her complaint is therefore limited to

a period of roughly three months. The period of time in which Ms. Downing claims she was unable to contact Respondent is even more limited. By her own testimony, she first became concerned upon receipt of the November 25, 2010, invoice for $200.00, which she received no earlier than November 27, 2010. As this date falls on the Saturday of the Thanksgiving weekend, it is likely she didn't try to contact Respondent until the following Monday, November 29, 2010, at the earliest. This would make the period of her "failed communication" with Respondent a mere nine calendar days two of which fall on the weekend.

When Ms. Downing did make her initial efforts to clarify the invoice, she testified "I think I left a message with Jennifer . . ." shortly after receiving the invoice. She was unsure how many times she called but acknowledged it was less than ten times. **Tr. 113**. Later she testified "I think I did have a conversation with Jennifer regarding that." **Tr. 115**. When asked if she made further efforts to clarify the invoice, she testified that she sent Respondent a letter. **Tr. 114**. This letter, dated January 13, 2011, is more than a month after she retained new counsel. **Record, Vol. 2, p. 206**; **Tr. 11**4. She seems to suggest that in the period between January 13, 2011, and her initial conversation with Jennifer, she "called the office and left messages, and no one was able to explain to me what that was." **Tr. 114**. Although Jennifer Thompson testified that she spoke to Ms. Downing on numerous occasions, she did not believe the invoice was ever discussed. She testified that she believed Ms. Downing spoke to another staff member, Abby, who was responsible for billing. **Tr. 224**. In her complaint to OCDC she states, "Sam was to return my call and never did. I then hired another attorney." **Record, Vol. 2, p. 165**.

Ms. Downing at no time suggested she ever had difficulty speaking with Respondent's office staff. The January 13, 2011, letter makes no mention of any communication issues, instead focusing squarely on securing a refund for unreasonable fees. **Record, Vol. 2, p. 206**. Her complaint to OCDC, as it relates to communication, is in the context of Respondent's failure to call her back. In her complaint she states, "Sam was to return my call and never did. I then hired another attorney." **Record, Vol. 2, p. 165**. Likewise, at the arbitration hearing, her complaint is that she was unable to "speak to the attorney." **Record, Vol. 2, p. 211**.

It seems clear that Ms. Downing's real concern was Respondent's failure to personally call her back during the short period between her first phone call to the office after the Thanksgiving holiday and before her new attorney contacted Respondent on December 8, 2011. Respondent was certainly capable of making such a call during this short period, and arguably he should have had he been aware of her frustration. There was little evidence presented however to establish that Respondent was aware of Ms. Downing's desire that he call her personally. The only evidence that she requested he call her, was her uncorroborated and frequently uncertain testimony. **Tr. 113; 115**.

She testified that she only met Respondent in person, two times. She asserted this in her complaint to OCDC, at the arbitration hearing and before the Hearing Panel. In each of these cases however, it was primarily to support her claim that she was charged unreasonable fees. There was no testimony or evidence of any kind to suggest that prior to the receipt of the $200.00 invoice, Ms. Downing expressed any dissatisfaction with Respondent or her ability to communicate with him or his office.

Rule 4-1.4 requires Respondent to "promptly comply with reasonable requests for information . . ." It does not define what constitutes promptly, but at a minimum it would be necessary to establish when Respondent became aware of the request before deciding whether his failure violated the rule. **Rule 4-1.4(a)(2)**. Even assuming Respondent had become aware of Ms. Downing's request sometime during the seven day period before her new attorney contacted him, it is arguable that a personal call back within days is a reasonable expectation given the holiday timing and what certainly would have seemed to be a matter best handled by staff. Ms. Downing testified that she spoke to staff concerning this matter during this period but they were unable to explain the matter to her satisfaction. **Tr. 114**. It is unclear at what point she requested a personal call back from Respondent. Respondent however testified that he was not aware of Ms. Downing's frustration or her request that he personally call her. **Tr. 151**.

When conflicting accounts are at issue, the question becomes one of credibility. Ms. Downing's testimony before the Hearing Panel, taken as a whole, leaves considerable room for doubt as to the accuracy of her recollection of events as it relates to her "communication" with Respondent and his staff. Her testimony should not be the basis upon which this Court finds for Informant.

Ms. Downing's testimony before the Hearing Panel was frequently evasive and she acknowledged that her memory was not real clear.[1] She failed to recall many if not

[1] Tr. 110, line 19; 113, lines 17 & 20; 114, lines 12 & 23; 115, line 6; 119, lines 2 &19; 121, line 4; 122, line 21; 123, lines 9-17; 125, lines 2 & 15; 126, line 3; 127, lines 14 & 18; 129, line 18; 130, lines

most of the details concerning her complaints, explaining that "it has been three years." **Tr. 125, 140**. Initially she testified that she met in person with Mr. Trapp on only two (2) occasions, (**Tr.111**), September 10, 2010 and October 20, 2010, each meeting producing a receipt for payment of fees in her case. She was "absolutely" positive regarding the number of times she met in person with Mr. Trapp. **Tr. 127**. She was however absolutely incorrect in this assertion. When confronted with notarized documents she signed in the presence of Respondent on September 30, 2010, she acknowledged this additional meeting with Respondent. **Tr. 122**. Mr. Trapp testified to more than two meetings with Ms. Downing, and the preceding appears to bear this out.

Ms. Downing initially testified before the Hearing Panel that she was unaware of what had been filed in her case. She asserted that the work done in her case by Respondent was worth no more than $600.00. **Tr. 120**. After being shown the docket entries and the various pleadings and associated documents filed on her behalf (many of which were signed by her), and acknowledging that she actually was aware of many these, she still insisted that Respondent may not have done any more than $600.00 worth of work for her. **Tr. 126**. She claimed that she had "no idea what attorneys charge." **Tr. 126**. But she acknowledged signing the contract with Respondent reciting a $200.00 hourly rate. **Tr. 137-138** ; **Record, Vol. 2, pp. 167-170**. After firing Respondent, she hired another attorney, who she likewise testified she had no idea what she paid him. **Tr. 130**. She was considerably more forthcoming when asked to provide the same information during her participation in the Missouri Bar Fee Dispute Resolution Program.

That she could not recall paying her new attorney $9,052.23, nearly three times the amount she paid to Respondent, is difficult to credit. **Record, Vol. 2, pp. 210-211**.

Most telling is the fact that after hiring a new attorney, and paying him $9,052.23, for arguably less work than what Respondent performed in her case, she continued to insist $600.00 was reasonable compensation for Respondent's efforts on her behalf. **Tr. 130-131;120**. At a time when she knew of most of the steps taken by Respondent to represent her interests in her divorce, she nevertheless persisted in the assertion that the value of Respondent's services did not exceed $200.00. **Tr. 132**.

Ms. Downing was not an unsophisticated client. She was a U.S. Postmaster, responsible for supervising employees. She was aware of what a professional's time is worth. She was sophisticated enough to search the Internet and find Missouri Advisory Committee Formal Opinion 128. **Tr. 131**. Referencing this Opinion in her January 13, 2011, letter to Respondent, she displays considerable understanding of the rules concerning attorney compensation. **Record, Vol. 2, pp. 206**. She understood that using Respondent's $200.00 per hour fee implied that he did "17 ½ " hours work on her case. **Record, Vol. 2, pp. 190**. Yet she feigns bewilderment that Respondent's efforts on her behalf could amount to more than $200.00 or $600.00. **Tr. 132-135**. And because the only bill she received was for $200.00, she would have us believe that she is entitled to a nearly total refund. **Tr. 132**; **Record, Vol. 2, pp. 206**.

Ms. Downing's lack of credibility and/or admittedly vague recollection of many if not most of the facts of this case, is sufficient basis to find that Informant has failed to prove by a preponderance of the evidence that Respondent violated Rule 4-1.4.

Respondent did not violate Rule 4-1.15 (j) to the extent that the non-existence of the funds in question renders this rule inapplicable. Rule 4-1.15 (j) required Respondent to keep segregate disputed funds in his possession at the time they become disputed. The funds at issue no longer existed by the time Respondent became aware that they were being contested, owing to Respondent's good faith belief the funds paid by Ms. Downing had already been earned and were no longer the property of Ms. Downing. **State Ex Rel. Koster v. Cain**, 383 S.W.3d 105 at 119 (Mo.App.W.D. 2012).

Had Respondent segregated the initial $1,200.00 payment from his own funds when he first received them, as he should have, they may have been available later when they became contested. Respondent no longer treats funds paid by clients as earned upon receipt. **Tr. 150**; **185**. But because at the time of these funds being contested, they were no longer in existence, and because Respondent believed them to no longer be the property of Ms. Downing, Respondent did not violate Rule 4-1.15 (j). To suggest that the rule obligates an attorney to sequester funds which have already been earned and distributed, misapplies the rule and places an attorney in the impossible position of keeping funds forever available in the event that a client later claims they were unearned.

Respondent did not violate Rule 4-1.16 (d), in that he did not fail to return contested funds paid by Ms. Downing. Rule 4-1.16 (d) requires a lawyer, upon termination of representation, to refund upon "any advance payment of fee or expense that has not been earned or incurred." **Rule 4-1.16 (d)**. Though Respondent testified at length that he had a good faith belief that these funds were earned upon receipt, by the time Ms. Downing fired Respondent, they were clearly earned and expended. **Tr. 146-**

148; **184; App. 1 & 2**. The rule clearly contemplates the existence of the property or funds in question at the time of the termination of representation. Because these payments/funds were no longer in existence by the time Ms. Downing fired Respondent, he should not be found to be in violation of this rule.

Respondent admits he violated Rule 4-1.15 (c) in that he deposited Ms. Downing's initial $1,200.00 payment into his operating account. Because Rule 4-1.15 (c) pertains to advanced, and therefore unearned fees, Respondent acted under the mistaken belief, that his contract for a flat fee and "earned upon receipt" language in the contract, obviated the application of this rule. Though Respondent testified at length that he had a good faith belief that these funds were earned upon receipt, he acknowledged at the hearing that he was in error in this belief and he has ceased operating in this manner. **Tr. 150**; **185**.

COUNT III

Respondent did not violate Rule 4-1.8(a) in that he did not "knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client . . ." **Rule 4-1.8(a)**. Informant asks that this Court to find that Respondent's preparing a Promissory Note, Deed of Trust and Quit Claim Deed to Debra Burris' home was adverse to his client, Josh Burris. The Hearing Panel determined there was no violation of Rule 4-1.8(a) based on the fact that Debra Burris was not Respondent's client. **Record, Vol. 3, p. 486**.

Informant has argued that because the home was Josh Burris' residence prior to his incarceration, and that because he listed this home as his release plan when he got out of prison, this is sufficient to implicate the rule. Informant acknowledges that Debra

Burris was not Respondent's client. **Informants Brief, p.7**. The evidence establishes that Josh Burris was never a resident of the property in the sense that he actually lived at the home at any time during which Respondent represented him. **Tr. p.80, 82.**

Were this Court to adopt Informant's position, in what appears to be a case of first impression, it cannot be said that Respondent, under these facts, knowingly acquired an interest adverse to his client. The rule on its face is quite clear and does not suggest the kind of far reaching search for a future expectation, as done by Informant. That the client's mother had already placed the home on the market before Respondent took an interest, establishes that the family had already decided to dispose of Mr. Burris' interests in the home.

If this Court were to adopt Informant's position, there seems to be no limit to what interests can be assumed where one family member pays the attorney fees of another. What of a son's expectation of inheriting his family's wealth, now depleted by the paying of his attorney's fees? The rule cannot be made to turn on a client's future expectation in the property of another.

Respondent acknowledges that he did in fact prepare and cause to be executed the documents in question. Furthermore, this entire transaction was done at the suggestion of Debra Burris and with the knowledge of Josh Burris who testified that he was aware and consented to his mother handling the attorney fees in his case. **Tr. 68, 71, 84, 100, 101-102, 103**. Additionally, Mr. Burris acknowledged that as late as the date of his final sentencing (7/12/10), he had no concerns or complaints of any kind regarding Respondent's handling of his case. **Tr. 10**.

Because Ms. Burris was not Respondent's client, and because Josh Burris had no property interest of any kind in the property at issue herein, Respondent did not violate Rule 4-1.8(a) of the Rules of Professional Conduct. Alternatively, since it is unreasonable to expect Respondent to have known under these facts that he was acquiring an interest adverse to Josh Burris, he did not violate Rule 4-1.8(a) of the Rules of Professional Conduct.

COUNTS IV & V

Informant alleges, and the Hearing Panel so found, that Respondent violated Rules of Professional Conduct 4-8.1 by "failing to promptly respond to a lawful demand for information" concerning his dealings with Charles Bishop (Count IV) and Thomas Johnson (Count V). **Record, Vol. 1, pp. 60-63; Vol. 3, p. 486**. Rule 4-8.1 states in part, that a lawyer shall not "knowingly fail to respond to a lawful demand for information from . . . a disciplinary authority. . ." Nowhere in this Rule can you find the word "promptly." The Information does not claim that Respondent knowingly failed to provide or "evaded" providing information he had available to him. It claims he did not do it soon enough. **Tr. 46**. Informant seems to have changed his mind on this however. **Informants Brief, 49**. The evidence before this panel establishes that Respondent provided whatever information he had available to him, albeit after numerous delays. Informant does not allege that Respondents' delays tainted the process or in any way prevented the investigation to proceed. He seems to argue that delay is itself a violation of Rule 4-8.1.

Many of the delays about which Informant complains were consented to by Informant. **Tr. 17-18, 57-58, 215**. Furthermore, there was considerable evidence

presented to account for Respondent's delay in providing information to Informant. **Tr. 29-30, 45**; **Record, Vol. 3, p. 409**. Most importantly, the Information does not accuse Respondent of withholding information, or intentionally delaying the disclosure of information. **Tr. 46**, **57**. Informant seems to have changed his mind about this too. **Informants Brief, 49**. Respondent did in fact provide all the information and documents he was reasonably capable of providing.

Because the Information does not charge Respondent with knowingly failing to respond as the Rule envisions, and because no single item of information is alleged to have been withheld, Informant has failed to prove by a preponderance of the evidence that Respondent violated Rule 4-8.1 of the Rules of Professional Conduct.

COUNT VI

Informant dismissed Count VI.

COUNT VII

Respondent admits he violated Rules of Professional Conduct 4-1.15 by failing to keep client funds separate from his own, and by failing to maintain adequate records of funds received, held, deposited and disbursed on behalf of his clients. Respondent acknowledges that his prior trust accounting practices have resulted in a failure to keep funds separate and that his prior record keeping practices have contributed to his difficulties in this context. However, there is no evidence suggesting clients suffered any

loss of funds, or that there was any misappropriation of funds**. Tr. 49-50**. Additionally, it was conceded at the hearing of this matter, that there was no evidence that Respondent's trust accounting practices had exposed any client's funds or property to the risks resulting from co-mingling. Any co-mingling that may have occurred was not knowingly done and was the result of Respondent's good faith belief that he had earned the funds in question at the time of payment. As he testified before the Hearing Panel, Respondent has completely overhauled his trust accounting practices and is in compliance with Rule 4-1.15. Additionally, he testified to being in compliance with Formal Opinion 128 concerning non-refundable fees, and no longer treats fees paid as earned upon receipt. **Tr. 150-151**.

ARGUMENT

II

THE SUPREME COURT SHOULD NOT SUSPEND RESPONDENT'S LICENSE INDEFINITELY WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR ONE YEAR, STAYED FOR A ONE YEAR PERIOD OF PROBATION UNDER THE TERMS SUBMITTED BY THE DISCIPLINARY HEARING PANEL, BECAUSE A REPRIMAND IS THE APPROPRIATE SANCTION UNDER ABA STANDARDS ANALYSIS FOR VIOLATIONS OF RULES 4-1.15 AND 4-1.16.

SANCTION

Respondent should be issued an admonition.

Respondent respectfully suggests that the facts before this Court weigh in favor of an admonition. Respondent's failures to comply with Rules 4-1.15 and 4-1.16, were unintentional, and the result of ignorance years rather than indifference. Informant agrees that Respondent seemed to be unaware of the requirements of Rule 4-1.15. **Informant's Brief, 48**. However, Informant mischaracterizes Respondent's testimony before the Hearing Panel when he claims Respondent denied he commingled funds. Respondent acknowledged commingling in those instances where he deposited into his operating account, payments he believed had been earned upon receipt. He acknowledged this was contrary to the rules as he now understood them, and indicated he has ceased this practice. **Tr. 165, 183**.

Informant misrepresents Respondent's testimony before the Hearing Panel. Respondent did not refuse, rather he failed, to keep simple mandatory fiduciary records.

Informant's Brief, 44. Respondent has not denied accountability and he was not defiant. Ignorance or mistaken belief does not become defiance merely because Respondent honestly shared with the Panel his rationale for believing he was not violating certain rules.

Informant cites several cases in support of his position that Respondent should be suspended from the practice of law. Arguing that Respondent trifled with the disciplinary process, he cites *In re Vails*, 768 S.W.2d 78 (Mo. Banc 1989).

In *Vails*, the Court disagreed with the Special Master's recommendation of disbarment and determined that the appropriate sanction was suspension without probation. The Court determined that Vails had engaged in conduct that was prejudicial to the administration of justice. *Vails*, *Id.* at, 80. Vails failed to return phone calls from the Bar Association investigator. He told him that he would refund a client's fees and then failed to do so. He failed to respond to at least three letters from the disciplinary authority seeking an initial explanation, and failed to appear when requested at three scheduled hearings. Only after an information was filed did he refund the fees at issue, with a check that bounced. When he finally did attend a pre-trial conference before the Special Master, he promised to resend the previously refunded fees by July 11, but delayed until September 13. Based on a "persistent failure to appear . . . and his procrastination in refunding the fee" the Court suspended his license for six months.

Though similar in some respects, *Vails* is distinguishable from the case at bar. Respondent did not fail to appear at an arbitration hearing. Because he opted not to be bound by the results, which is his right under the program, he was prevented from

participating. He attempted to appear but was told he could not. **Tr. 180**. The results of the arbitration not being binding upon Respondent, he was under no obligation to refund fees still in dispute. The arbitration rules being different in 1988, it appears Vails had either agreed to arbitration and/or he was bound by the results regardless. *Vails*, *Id.* at, 80.

Respondent has never failed or refused to appear before a disciplinary authority, and has made no promises to the Panel or this Court that he has failed to perform. He did not acknowledge an obligation to return client fees, and he has never failed to return fees after promising to do so.

Informant cites *In re Stricker*, 808 S.W.2d 356 (Mo. Banc 1991) for the proposition that the duty to cooperate with disciplinary authorities is not dependent on the merits of a complaint. *Id*. at 358. *Stricker* is also offered for the proposition that failing to communicate with clients and failing to cooperate with disciplinary investigators can be the basis for a suspension. **Informant's Brief, 44-45**.

Stricker is easily distinguishable from Respondent's case. Mr. Stricker was suspended rather than being reprimanded as recommended by the Master, because he displayed a "disturbing pattern" of lying to clients, court staff, the prosecuting attorney, and disciplinary authorities. He had a "dismal record of missed court appearances" and numerous complaints from court personnel. Only months before receiving these complaints he had been admonished for similar conduct. ***Id.* at 357**.

Respondent is accused of failing to promptly respond to OCDC requests for information. The Information contains no suggestion that he failed to provide any of the documents available to him, or that he attempted to withhold information. He has not

been accused of lying, though Informant seems to be raising this issue for the first time here. **Informant's Brief, 50**. He has not previously been disciplined and he has not displayed a pattern of client neglect such as displayed by Mr. Stricker.

Informant cites *In re Tessler*, 763 S.W.2d 906 (Mo. Banc 1990) as an example of the Court suspending an attorney for trust account irregularities not involving misappropriation. Mr. Tessler also failed to return funds that he had agreed to return, and failed to cooperate with the investigating authorities. Again, this case is easily distinguishable from our case here.

Mr. Tessler was found to have lied to a client regarding filing a cause of action, and then allowing the statute of limitations run. He bounced a trust account settlement check written to a different client and failed to promptly pay two other clients the funds he had deposited into his trust account on their behalf. He failed to provide documents he promised the investigator, and never did answer two letters written by the Committee investigator. ***Id.* at 909-910**. As a result he was suspended indefinitely with leave to apply for reinstatement in six months.

Respondent has never failed to produce any documents he was capable of providing. He has not failed to answer correspondence from the investigating authorities. He has not retained funds in trust and refused to pay or delayed paying them over to a client when requested. He has not lied to clients. Whereas Mr. Tessler's actions caused serious injury to his clients, Respondent's actions have not prejudiced or damaged his client's interests. ***Id.* at 908**.

In a 1993 case, with facts more like ours, this Court ordered a public reprimand where a lawyer was found to have bounced a trust account check written to the clerk of the Bankruptcy Court. *In re Hardge-Harris*, 845 S.W.2d 557 (Mo. Banc 1993). The check was for a filing fee in an appeal, which was subsequently dismissed by the Court for non-payment of the fee. The Bankruptcy Court Judge filed a complaint after the lawyer failed to promptly cover the check. It took more than two months after the check was returned for insufficient funds before Ms. Hardge-Harris covered the check. The Court in describing Hardge-Harris' cavalier attitude, expressed concern that "any lawyer with a check bouncing around the federal courthouse would not feel some urgency to get it paid." ***Id.* at 559**.

The Bar Committee requested four documents from Ms. Hardge-Harris. These documents were not produced despite numerous requests from the Committee and several assurances from Ms. Hardge-Harris that she would produce them. More than two years after they were first requested, only some of the documents were produced.

Citing her extremely lackadaisical attitude and her evasiveness in producing the requested documents, she was found to have violated Rules 8.1 and 8.4. The Master recommended a public reprimand and this Court concurred. ***Id.* at 561**.

We agree with Informant that the most serious charges in this case concern Respondent's trust accounting practices. Respondent acknowledges that his record keeping prior to these proceedings was inadequate and unacceptable. He asserts however that largely owing to this process he has completely restructured the operation and

maintenance of his bank accounts. He has overhauled his accounting practices so as to comply the requirements of the rules governing trust accounting.

We disagree with Informant as to the appropriate Standard to be applied in this case. Standard 4.12 applies when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. While it may be argued that Respondent should have known that his prior trust accounting practices were improper, it is clear he did not. **Informant's Brief, 48**. More importantly, he has not been shown to have caused injury or harm to any client as a result of his earlier practices.

Informant states that because Respondent has not kept adequate records, he cannot establish whether clients actually lost funds. He acknowledges however that no complaints have been received concerning loss of funds by Respondent's clients. **Informant's Brief, 46**; **Tr. 49**. Informant correctly points out that it is the risk of loss rather than the actual loss the rule is intended to prevent. However, an absence of actual injury is surely relevant to a determination of the appropriate sanction to be imposed.

Informant argues that suspension is the proper sanction for commingling client funds. But under the facts here, where there is no misallocation, no conversion, no actual injury and no evidence that Respondent's trust account had ever been subjected to attachment efforts of any kind, a lesser sanction would be appropriate. Standard 4.14 applies when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client. As argued above, at its worst, this is a case of

negligence and it appears there was little or no actual or potential injury that resulted from Respondent's conduct.

Informant suggests that Standard 4.63 is the appropriate Standard to be applied in the Downing case. Standard 4.63 applies when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to a client. For reasons discussed above, Respondent contends that the evidence is insufficient to establish either his failure to communicate with Ms. Downing or his failure to segregate or promptly return property belonging to Ms. Downing.[2] Were the Court to conclude that Respondent has violated any of these Rules, the appropriate standard to apply would be Standard 4.64 which states: **Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.** Because this was an isolated incident, and minimal if any actual or potential injury resulted, the appropriate standard to apply is Standard 4.64.

Informant suggests that Standard 4.33 is the appropriate Standard to be applied in the Burris case. For reasons discussed above, we believe that no conflict of interest existed, and the Hearing Panel joined us in this belief. Because Respondent did not acquire an interest adverse to his client, he has not violated Rule 4-1.8(a). We believe that Informant has failed to establish any such interest, thus no sanction is warranted.

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[2] Respondent admits violating Rule 4-1.15(c) when he deposited the initial $1,200.00 payment which included Ms. Downing's filing fee into his operating account.

However, were this Court to determine that there is some conflict of interest created as a result of Respondent's transaction with Ms. Burris, the appropriate standard to apply would be Standard 4.34 which states: **Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.**

At its worst, it is negligence rather knowing acquisition of an adverse interest at work here. It is unreasonable to expect Respondent to have known, under these facts, that he was acquiring an interest adverse to Josh Burris. Ms. Burris had already placed the home on the market, thereby effectively dispossessing her son of any future interest he might have had in the property. Because this is an isolated instance and no actual or potential injury resulted to a client, Standard 4.34 is the appropriate standard to apply.

Informant suggests that the appropriate standard to apply concerning Counts IV and V is Standard 6.23. While Respondent acknowledges delays in providing information to Informant, no evidence was presented to suggest that he failed to provide the records he had the capability of providing. As such, he did not violate Rule 4-8.1 of the Rules of Professional Conduct and thus no sanction is warranted. Were the panel to conclude Respondent did in fact fail to provide requested documents without good cause, the appropriate standard to apply would be ABA Standard 6.24 which states: **Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential**

injury to a party, or causes little or no actual or potential interference with a legal proceeding. Little or no actual or potential interference with the proceedings herein resulted.

AGGRAVATING FACTORS

Informant, quoting Standard 9.22, suggests that this panel consider as aggravating factors, that there are multiple offenses; that there is bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and substantial experience in the practice of law.

The Amended Information filed in this case alleges violations of Rules of Professional Conduct: 4-1.4, 4-1.16(d), 4-1.15(c) and (j), 4-1.8(a), 4-8.1, and 4-1.15. The alleged violations consist of three allegations of conflict of interest, one allegation of failing to communicate, one allegation of failing to return fees, two allegations of failing to keep funds separate, one allegation of failing to segregate disputed funds, two allegations of failing to respond to a demand for information, and one allegation of failing to maintain adequate records. If the Court determines that Respondent is not subject to discipline in the Burris matter (Count III), the remaining allegations, with the exception of the two Rule 4-8.1 violations, concern generally inadequate trust accounting procedures.

Because the Rule 4-1.15 and 4-1.16 violations should be seen as part of an underlying generalized practice, and not separate, independent offenses, they should be

treated as a single offense (inadequate trust accounting procedures) rather than multiple offenses. Multiple offenses as an aggravating factor depends in large part on how the Court views the trust accounting matters. If they are viewed as a generalized practice giving rise to the various violations, it may not be appropriate to consider them as an aggravating factor.

There is no evidence that Respondent engaged in any bad faith obstruction. All delays regarding the providing of documents were negotiated with opposing counsel and agreed to by the parties. Additionally, there is no evidence to suggest that Respondent withheld any information in his possession or at his disposal. Furthermore, there was no evidence identifying any particular document or piece of information that Respondent has been shown to have failed to produce.

Informant claims Respondent offered inconsistent explanations regarding the invoice triggering Ms. Downing's complaint. **Informants Brief, 50**. This transparently mischaracterizes the record and Respondent's testimony. Respondent acknowledged confusion as to this invoice and conceded the invoice for $200.00 was a mistake. **Tr. 143-144; Record, Vol. 2, pp. 167**. Respondent acknowledged that $200.00 of the initial $1,200.00 payment made by Ms. Downing should have been placed into the trust account. **Tr. 144**. Being confused concerning the origins of a matter is not an inconsistent with later realizing what must have happened.

Likewise, there is nothing to suggest that Respondent submitted false evidence, testimonial or otherwise, or that he engaged in deceptive practices during the disciplinary process. Other than Respondent's claim that a bank coding error caused the initial

overdraft notice, he offers no specific examples of bad faith obstruction, intentional failure to comply with rules and orders of the disciplinary agency, false evidence, false statements or other deceptive practices." **Informants Brief. 50**.

Respondent provided Informant a letter from an officer of his bank establishing that the overdraft notice was in fact due to a coding error by the bank. **Record, Vol. 3, p. 388**. That Respondent had a good faith belief in this claim seems corroborated by this letter. Informant seems unwilling to acknowledge that failing to respond timely, is not necessarily refusing to respond. Informant seems to have forgotten that many if not most of the delays about which he complains were agreed to by his office, and most were for legitimate reasons not of Respondent's making.

Respondent acknowledges that he has substantial experience in the practice of law. He suggests however that potentially greater knowledge and experience does not justify routinely enhancing the sanction. Even in cases involving law office management problems and incompetence, a lawyer's potentially greater knowledge and experience does not justify routinely enhancing the sanction. Case loads can become unmanageable for reasons that have nothing to do with experience.

MITIGATING FACTORS

Informant cites only Respondent's absence of a prior disciplinary record. **Standard 9.32 (a)**. We would add Respondent's absence of a dishonest or selfish motive and Respondent's cooperative attitude toward the proceedings. **Standard 9.32 (b); Standard 9.32 (e)**.

CONCLUSION

For all the foregoing reasons, Respondent respectfully prays that this Court order that Respondent be admonished for his unintentional violations of Rule 4-1.15, by failing to keep client funds separate from his own, and failing to maintain adequate records concerning his Attorney Trust Account.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 29th day of July, 2014, a true and correct copy of the foregoing was served via electronic filing system pursuant to Rule 103.08, to:

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CERTIFICATE OF COMPLIANCE AND SERVICE

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

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 9612 words according to Microsoft Word, which is the word processing system used to prepare this brief.

/s/ James D. Barding
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