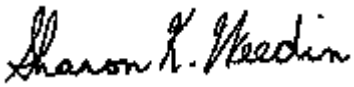
IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
EDWARD J. GRIESEDIECK, III,	)	**Supreme Court #SC92726**
	)	
Respondent.	)	

INFORMANT'S BRIEF

OFFICE OF
CHIEF DISCIPLINARY COUNSEL



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ATTORNEY FOR INFORMANT

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STATEMENT OF JURISDICTION

This action is one in which Informant, 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

Background

Respondent Edward J. Griesedieck was admitted to Missouri's Bar in 1983. He has no disciplinary history.

In July of 2009, Respondent was a partner in the St. Louis law firm called Herzog Crebs. One of Mr. Griesedieck's clients was Missouri Employers Mutual (MEM), a provider of workers compensation insurance.

On April 13, 2012, Respondent signed a plea agreement in the case styled *United States v. Griesedieck*, 4:12 CR 156 CEJ-MLM. By signing the agreement, Respondent pled guilty to violating 18 U.S.C. §1033 (b) (1). The elements of that crime, as forth in the plea agreement, are as follows:

> (1) That the Defendant was an officer, director, employee or agent of Missouri Employers Mutual, a company engaged in the business of insurance;
>
> (2) That the business activities of Missouri Employers Mutual affected interstate commerce;
>
> (3) That the Defendant misappropriated funds belonging to Missouri Employers Mutual; and,
>
> (4) That the Defendant acted willfully.

App. 3.

As part of the plea agreement, Respondent Griesedieck admitted the facts recited in the plea agreement. The twelve paragraphs of facts recited in the plea agreement are set forth here in their entirety.

> Missouri Employers Mutual (hereinafter referred to as "MEM") was a provider of workers compensation insurance, created in 1994 by the Missouri legislature, with its primary office located in Columbia, Missouri, and the branch offices in Kanas City, Springfield, and St. Louis, Missouri. Co-defendant Roger B. Wilson was the chief executive officer of MEM.
>
> Herzog Crebs was a law firm with its primary office located in St. Louis, Missouri which provided legal services to MEM through the defendant, Edward J. Griesedieck, III, who was a partner at Herzog Crebs and a member of that law firm's management committee. Douglas Morgan was a member of the Board of Directors for MEM, having been appointed to that Board by the Governor of the State of Missouri. The Missouri Democratic State Committee is a Political Action Committee with its office located in Jefferson City, Missouri. The Missouri Democratic State Committee is the funding arm of the Missouri Democratic Party.

On or about October 8, 2009, in the Eastern District of Missouri and elsewhere, co-defendants, Edward J. Griesedieck, III and Roger B. Wilson, being officers, employees, or agents of MEM, a company engaged in the business of insurance whose activities affect interstate commerce, and acting along with Douglas Morgan, willfully misappropriated or aided and abetted the misappropriation of moneys or funds of MEM.

During in or about July, 2009, Douglas Morgan requested that defendant Edward J. Griesedieck, III make a $5,000 contribution out of the bank account of Herzog Crebs to the Missouri Democratic Party, but bill the $5,000 to MEM on the next Herzog Crebs legal bill as “cost advanced”. Defendant Edward J. Griesedieck, III had other discussions with Douglas Morgan about the contribution and the billing, as well as one or more discussions with defendant Roger B. Wilson about the contribution and the billing. The other members of the MEM Board of Directors were not advised of the political contribution, or the plan to have Herzog Crebs bill MEM for the contribution amount. The MEM Board of Directors did not approve the political contribution.

On or about August 27, 2009, defendant Edward J. Griesedieck, III requested a Herzog Crebs check in the amount of $5,000 payable to the Missouri Democratic Party. The check was issued from the Herzog Crebs checking account, signed by defendant Edward J. Griesedieck, III, and given to the Missouri Democratic Party which deposited the check into the Missouri State Democratic Committee bank account on or about August 28, 2009.

On or about September 29, 2009, at the direction of defendant Edward J. Griesedieck, III, the monthly legal bill from Herzog Crebs to MEM falsely included "cost advanced" of $5,000, with no detail that the money was in fact a contribution to the Missouri Democratic Party. This Herzog Crebs bill was then approved for payment by defendant Roger B. Wilson, and on October 8, 2009 MEM issued its check to Herzog Crebs for legal services, including $5,000 "cost advanced". The Board of Directors for MEM was not advised of the true nature of the $5,000 "cost advanced" and were unaware that it was to reimburse Herzog Crebs for the $5,000 contribution made to the Missouri Democratic Party. The MEM Board of Directors did not approve this payment.

As a result of defendants' and Douglas Morgan's conduct, the public records of the State of Missouri incorrectly reflected that the August 27, 2009 $5,000 contribution to the Missouri Democratic Party was made by Herog Crebs when, in fact, the funds came from MEM.

During December, 2009, Douglas Morgan again requested that defendant Edward J. Griesedieck, III make a $3,000 contribution out of the bank account of Herzog Crebs to the Missouri Democratic Party, but bill the $3,000 in two parts to Morgan personally, and Morgan would then get reimbursed for the $3,000 from MEM. Defendant Edward J. Griesedieck, III had other discussions with Douglas Morgan about this contribution and the billing, as well as one or more discussions with defendant Roger Wilson about this contribution and the billing. The other members of the MEM Board of Directors were not advised of the political contribution, or the plan to have MEM reimburse Douglas Morgan for the contribution amount. The MEM Board of Directors did not approve the political contribution.

On or about December 21, 2009, defendant Edward J. Griesedieck, III requested a Herzog Crebs check in the amount of $3,000 payable to the Missouri Democratic Party.

The check was issued from the Herzog Crebs checking account and given to the Missouri Democratic Party which deposited the check into the Missouri State Democratic Committee bank account on or about December 22, 2009.

On or about January 28, 2010 and February 24, 2010, at the direction of defendant Edward J. Griesedieck, III, each of the monthly legal bills from Herzog Crebs to Douglas Morgan included "cost advanced" of $1,500, with no detail that the money had been a contribution to the Missouri Democratic Party. During August, 2010, Douglas Morgan directed defendant Edward J. Griesedieck, III to change the billing of the $3,000 contribution from Morgan's personal billing to MEM, as Morgan had not yet paid the bill.

At the direction of defendant Edward J. Griesedieck, III, each of the monthly legal bills from Herzog Crebs to MEM for July, 2010 and August, 2010 falsely included "cost advanced" of $1,500 for a total "cost advanced" of $3,000, with no detail that the money had been a contribution to the Missouri Democratic Party. In-house counsel for MEM reviewed the August, 2010 Herzog Crebs bill and in following up learned for the first time from Herzog Crebs'

billing department that the "cost advanced" related to the December 21, 2009 $3,000 contribution to the Missouri Democratic Party. MEM's in-house counsel then brought this issue to the attention of defendant Roger B. Wilson who denied any knowledge of the contribution and the agreement to bill it to MEM as "cost advanced".

During September and October, 2010, defendant Edward J. Griesedieck, III had one or more discussions with Douglas Morgan and defendant Roger Wilson about the $3,000 contribution and the unpaid Herzog Crebs bill. On or about November 3, 2010 defendant Roger B. Wilson issued a personal check from his own checking account to Herzog Crebs in the amount of $3,000 to reimburse Herzog Crebs for the December 21, 2009 contribution to the Missouri Democratic Party. That amount therefore was not paid by MEM. The Board of Directors for MEM had not been advised of the true nature of the $3,000 "cost advanced" on the Herzog Crebs MEM bills and were unaware that it was to reimburse Herzog Crebs for the December 21, 2009 $3,000 contribution made to the Missouri Democratic Party. The MEM Board of Directors were unaware of the Herzog Crebs bills and defendant Roger B. Wilson's payment. As a result

> of defendants' and Douglas Morgan's conduct, the public records of the State of Missouri incorrectly reflected that the $3,000 contribution to the Missouri Democratic Party was made by Herzog Crebs when, in fact, the funds were billed to MEM and ultimately paid by defendant Roger B. Wilson.
>
> As a consequence of these acts, Defendants Roger B. Wilson and Edward G. Griesedieck, II misappropriated and aided and abetted the misappropriation of an amount not exceeding $5,000 from MEM.

App. 3-7.

Because Respondent "clearly demonstrated acceptance of responsibility" for his crime, the federal government deducted "two levels" from the applicable base offense level pursuant to federal sentencing guidelines. App. 8. After noting the two level credit, the plea agreement states that if "subsequent to the taking of the guilty plea the government receives new evidence of statements or conduct by the defendant which it believes are inconsistent with defendant's eligibility for this deduction, the government may present said evidence to the court, and argue that the defendant should not receive all or part of the deduction pursuant to §3E1.1, without violating the plea agreement." App. 8-9.

Respondent was sentenced to a one year term of probation, was ordered to pay $5,000 restitution, and was ordered to perform one hundred hours of community service. App. 26-31.

On April 25, 2012, Informant filed an information and motion for interim suspension pursuant to Rule 5.21 (a). App. 33. Respondent Griesedieck filed a response to the show cause order, conceding the interim suspension and requesting a final disposition that would end on or before October 13, 2013. App. 61. The Court, on July 3, 2012, issued an order suspending Respondent's license pending final disposition of any disciplinary proceeding. App. 66. On July 10, 2012, Respondent Griesedieck filed a response to the interim order of suspension. Respondent advised the Court he had been sentenced on July 9, 2012. App. 68.

On July 26, 2012, Informant filed a motion for final order of discipline pursuant to Rule 5.21 (c). Informant recommended suspension with no leave to apply for reinstatement for three years. App. 18. On August 10, 2012, Respondent filed a motion to file a responsive pleading, App. 79, which was sustained by the Court on August 21, 2012.

Respondent thereafter filed a "brief" opposing Informant's recommended discipline. App. 83. On August 30, 2012, the Court ordered the record filed and activated a briefing schedule.

POINT RELIED ON

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITHOUT LEAVE TO APPLY FOR REINSTATEMENT FOR THREE YEARS BECAUSE HE WILLFULLY MISAPPROPRIATED CLIENT MONEY IN THAT HE PLED GUILTY TO A FEDERAL MISDEMEANOR THAT INCLUDES THE ELEMENTS OF WILLFUL MISAPPROPRIATION OF FUNDS BY AN AGENT.

In re Zink, 278 S.W. 3d 166 (Mo. banc 2009)

In re Kazanas, 96 S.W. 3d 803 (Mo. banc 2003)

In re Duncan, 844 S.W. 2d 443 (Mo. banc 1992)

18 U.S.C. §1033 (b) (1)

ARGUMENT

THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE WITHOUT LEAVE TO APPLY FOR REINSTATEMENT FOR THREE YEARS BECAUSE HE WILLFULLY MISAPPROPRIATED CLIENT MONEY IN THAT HE PLED GUILTY TO A FEDERAL MISDEMEANOR THAT INCLUDES THE ELEMENTS OF WILLFUL MISAPPROPRIATION OF FUNDS BY AN AGENT.

Disciplinary counsel and Respondent have both proposed terms of actual suspension as the appropriate sanction for Respondent's misconduct. The point of dispute is the length of the suspension. Informant has recommended suspension with no leave to apply for reinstatement for three years; Respondent has suggested suspension with leave to apply for reinstatement after six months. Disciplinary counsel recommended suspension with no leave to apply for reinstatement for three years because that is the most appropriate sanction for Respondent's misconduct: willful misappropriation of client funds.

There may be disagreement over how long the Court should suspend Respondent's license, but his conduct is not, cannot, be in dispute. Respondent pled guilty to a violation of 18 U.S.C. §1033 (b) (1). The elements of that crime, found at page 2 of the federal plea agreement, establish that Respondent willfully misappropriated funds from Missouri Employers Mutual, a company he acknowledges was his client at the time. Respondent Griesedieck is stuck with those facts. The elements of the crime and the facts fleshing out the crime are concisely laid out in the plea agreement and repeated in this brief's Statement of Facts.

Respondent not only signed the plea agreement, but the plea agreement itself requires Respondent to stand by the admissions in it. Respondent was given a "two level" deduction in the federal sentencing guidelines calculus for clearly demonstrating acceptance of responsibility for his conduct. Respondent Griesedieck is not at liberty to dilute seriousness of the facts stated in the plea agreement. The "facts" set forth in Respondent's response to his motion for final order of discipline, filed with this Court on August 27, 2012, raise a real question as to the genuineness of Respondent's acceptance and acknowledgement of the facts set forth in the plea agreement. For example, in his pleading to this Court Mr. Griesedieck describes a benign scenario whereby he appropriately assisted a client in making a legal contribution to a political party in a way that achieved the client's goal of donating, but at the same time allowed it to keep its name off a list that could have subjected it to future, unwanted, solicitations. The factual scenario Respondent describes to this Court, however, runs counter to facts set forth in the plea agreement and the elements of the crime he has admitted committing. Quite simply, it defies logic that Respondent Griesedieck would plead guilty in federal court to willful misappropriation of funds from his client if the matter were as legal and innocuous as Respondent describes in his pleading filed with the Court.

Informant has recommended suspension with no leave to apply for reinstatement for three years. That sanction recommendation derives from consideration of the ABA Standards for Imposing Lawyer Sanctions (1991 ed.) and prior decisions of this Court. The ABA Standards necessitate evaluation of the case by determining:

a) The duty violated;

b) The lawyer's mental state;

c) The potential or actual injury caused by the lawyer's misconduct; and

d) The existence of aggravating or mitigating factors.

Here, under the unassailable facts admitted in the plea agreement, Respondent violated a duty to his client by misappropriating its funds. See ABA Standard 4.1. He also violated a duty he owed the public to maintain his personal integrity. See ABA Standard 5.1. Inasmuch as the Standards identify duties to clients as the lawyer's most important ethical duties, this case is analyzed under ABA Standard 4.1.

Mental state is the next step in the analysis. The misappropriation was, according to the undisputed facts, willful. "Willful" means a "voluntary, intentional violation of a known legal duty." Willfulness requires more than careless disregard for the truth. *In re Duncan*, 844 S.W. 2d 443, 444 (Mo. banc 1992). Willful and deliberate criminal conduct, even a misdemeanor (both *Duncan* and this case involve federal misdemeanors) are particularly concerning to the Court and can merit disbarment. *In re Kazanas*, 96 S.W. 3d 803, 808 (Mo. banc 2003); *Duncan*, 844 S.W. 2d at 444. Mr. Griesedieck's misappropriation from Missouri Employers Mutual was a voluntary, intentional violation of a known legal duty and not merely careless disregard for the truth.

Injury, or potential for injury, is the third step. Respondent, by his own admission, misappropriated $5,000.00 from Missouri Employers Mutual, his client.

The final step in the ABA analysis is the Court's consideration of the aggravating and mitigating factors particular to the case. The ABA Standards identify such factors in Rule 9.2 (aggravating factors), 9.3 (mitigating factors), and 9.4 (factors that are neither aggravating or mitigating).

Aggravating factors present in this case include Respondent's substantial experience as a practicing lawyer (approximately twenty-six years at the time of the misconduct) and the illegality of the conduct. Standard 9.22 (i) (k).

In mitigation, the Standards would have the Court consider the absence of any prior disciplinary record, apparent absence of selfish motive (the misappropriated funds did not inure to Respondent's direct benefit), his evidence of good character and reputation, the imposition of the federal penalty, and Respondent's payment of restitution, although the Standards credit restitution paid as part of a plea agreement, i.e., forced or compelled restitution, neither aggravating nor mitigating weight. Standard 9.4 (c). The Court should acknowledge the mitigating factors for what they are: part of one step in an analytical process of sanction determination. The presence of mitigation should not overwhelm the rest of the disciplinary case: Respondent willfully misappropriated funds from a client in a highly publicized case.

One unique aspect of Respondent's mitigation argument is the fact that a "voluntary abstention from law practice" clause was part of his plea agreement. The abstention clause is "voluntary," because only the Missouri Supreme Court has the authority to limit or revoke a lawyer's privilege to practice in Missouri courts. *In re Zink*,

278 S.W. 3d 166 (Mo. banc 2009). The effect that a voluntary abstention from law practice clause contained in a federal plea agreement should have in this Court's sanction analysis is negligible. Federal courts can and do discipline attorneys for misconduct. When federal discipline is imposed, disciplinary counsel can and does seek reciprocal discipline from this Court pursuant to Rule 5.20, most often seeking the same or very similar discipline imposed by the originating court.

That is not this case. Rather, the voluntary abstention clause was negotiated between Respondent and the U.S. Attorney's office as part of a plea agreement. The parties to the plea agreement made the chief disciplinary counsel aware of the negotiation, but he was in no way a party to the negotiation. In fact, Mr. Pratzel cautioned Respondent's counsel that neither OCDC nor the Court would be bound by whatever the parties negotiated in the plea agreement. This Court's decisions in *In re Kazanas*, 96 S.W. 3d 803 (Mo. banc 2003) and *In re Zink*, 278 S.W. 3d 166 (Mo. banc 2009), confirm that the Court is the only arbiter of sanctions imposed against lawyers for ethical violations. In *Zink*, the Court considered the terms (including a voluntary law practice abstention clause) of a federal diversion agreement as part of its sanction analysis, but made clear the Court was not bound to adopt the specific terms of the agreement, negotiated outside the state disciplinary process. The Court noted, in the *Kazanas* opinion, that it had refused to accept respondent's earlier license surrender application, which had been negotiated as part of a plea agreement between Kazanas and federal prosecutors, because it was apparent the parties to the federal plea agreement did not understand Missouri's surrender rule. *Kazanas* and *Zink* clearly reject the notion that

this Court should tailor its sanction to "fit" the time frame of the voluntary abstention clause negotiated between Respondent Griesedieck and federal prosecutors.

The case of *In re Connaghan*, 613 S.W. 2d 626 (Mo. banc 1981), is sufficiently similar to the case at bar to merit discussion. Connaghan was a lawyer recommended by the Speaker of the Missouri House of Representatives to an automobile dealers association as an individual who could facilitate passage of legislation, desired by the automobile dealers, which would repeal a law requiring the automobile dealers to pay a particular tax. Connaghan agreed to facilitate the passage of the desired repeal legislation for a fee of $20,000.00. The fee was paid to Connaghan, who passed on most of it to the house speaker, retaining only that portion of it that he believed would cover his personal tax liability for the "fee". Connaghan performed no legal work or lobbying services for the fee.

The Court concluded that Connaghan participated in a plan to obtain passage of legislation by paying money to a lawmaker, i.e., a bribe. In response to Connaghan's argument that he acted only as a conduit between the automobile dealers and the politicians, and reaped no personal financial gain from the transaction, the Court said that Connaghan's conduct was "wrongful and illegal and involved moral turpitude, whether he acted only as conduit or bagman, or whether he also received a financial benefit." 613 S.W. 2d at 632. The Court disbarred Connaghan, noting his conduct was the "antitithesis of the conduct properly expected of a lawyer representing his client and in dealing with a legislator or legislative body. Respondent compounded his wrongful conduct by

disguising his transaction so as to mislead and defraud the federal and state tax authorities." 613 S.W. 2d at 633.

To be clear, this case does not implicate bribery of high ranking legislators. To be equally clear, however, Respondent replicated Connaghan's misconduct by falsely billing a client, then serving as a conduit to transfer the fee (illegally acquired) to be used for political purposes.

The widespread negative publicity that accompanied Respondent's misconduct indisputably damaged the integrity of the profession. Harm to the profession, one of the bases for attorney discipline, coupled with Respondent's willful violation of the law, support Informant's recommendation of an indefinite suspension with no leave to apply for reinstatement for three years.

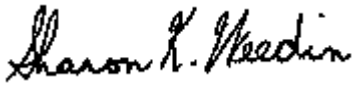
Disbarment is the usual sanction for misappropriation of client funds. *In re Belz*, 258 S.W. 3d 38, 39 (Mo. banc 2008). Long term suspensions are frequently ordered by the Court, even in misdemeanor cases, where an element of the underlying crime is knowing, willful, or intentional violation of criminal law. See *In re Braun*, SC87230; *In re Kaiser*, SC86308. After giving due consideration to the mitigating factors present in this case, suspension without leave to apply for reinstatement for three years is the appropriate sanction.

CONCLUSION

Respondent Griesedieck willfully misappropriated funds from a client in a highly publicized case. Long-term suspension is necessary to satisfy the dual purposes of attorney discipline: to protect the public and preserve the integrity of the profession.

Respectfully submitted,

ALAN D. PRATZEL #29141
Chief Disciplinary Counsel



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by e-filing on this 31st day of October, 2012 to:

Matthew T. Schelp
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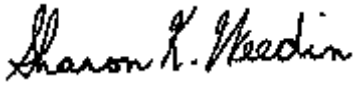

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Sharon K. Weedin

CERTIFICATION: RULE 84.06(c)

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

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06(b);

3. Contains 4,021 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and

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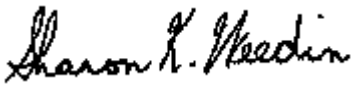

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Sharon K. Weedin

APPENDIX

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