IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
PARITOSH BHUPESH SHETH,	)	**Supreme Court #SC95382**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

RULES

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

Respondent is Paritsoh Bhupesh Sheth, who was licensed as an attorney in Missouri on April 18, 2001. **App. 7.**[1] Respondent has no prior disciplinary history. **App. 11.**

According to his resumé, Respondent received his Bachelor of Science in Chemistry in 1993 and Chemical Technology in 1996, his MBA in Marketing and Finance in 1989, and his Juris Doctor in 2000. **App. 219.** Since 2001, Respondent's legal practice has been focused on immigration and related client matters. **App. 31.** In addition, until 2014, Respondent taught business ethics at Harris-Stowe State University. **App. 143-144.**

On February 3, 2014, Respondent received notification from Enterprise Bank & Trust ("Enterprise") of insufficient funds in his client trust account ("trust account") after writing a check for $5,000.00 payable to another attorney to advance Respondent's portion of legal expenses in a proposed lawsuit for a new client. **App. 39; 175.** The check was the second of four $5,000.00 checks. **App. 39-40.** Respondent's trust account held no client funds for the benefit of the new client. **App. 61-68.** The agreement with

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[1] The facts contained herein are drawn from the allegations in the First Amended Information, the admissions in the Respondent's Answer, and the testimony and exhibits from the Respondent's Disciplinary Hearing. Citations to the record are denoted by the appropriate Appendix page, for example **"App. ___"**.

the other attorney was that if the lawsuit was successful and money was recovered, then Respondent would be reimbursed $20,000.00 and would share 50/50 in the fee. **App. 39.** The first $5,000.00 check was also drawn from Respondent's trust account. **App. 39-40.** Respondent knew that the money was coming out of his trust account, and that his trust account contained other client funds. **App. 32; 38-45.** Respondent never notified his clients for whom he held funds in trust that he was disbursing funds for his personal business purpose. **App. 47-48.** After he was notified by the bank of insufficient funds for the second check, Respondent deposited $7,000.00 of his own money into his trust account "to make sure that the overdraft issue was resolved." **App. 44.**

Following notification by Enterprise to the OCDC of the insufficient funds incident, that office began an investigation. **App. 58.** Kelly Dillon, on behalf of the OCDC, had difficulty in obtaining information from Respondent, who voiced his displeasure regarding the investigation in a telephone call with the Chief Disciplinary Counsel. **App. 58.** Eventually, Respondent produced his bank records and sat for a sworn statement. With Respondent's testimony and client billing records, Ms. Dillon was able to reconcile some, but not all, of Respondent's trust account transactions for what she described as a "pretty active practice." **App. 58-60.** Respondent's immigration practice and his fee transactions had a lot of complexities due to receiving fees before work was done, while work was being done, and after work was done. According to Respondent, each of those types of payment required different treatment under the rules. **App. 78.** Ms. Dillon observed that Respondent "needed additional education and

assistance in making sure he was maintaining accurate and complete records for all of the transactions in his trust account." **App. 60.**

In addition to discovering that the two checks were drawn from Respondent's trust account, Ms. Dillon discovered other improprieties. **App. 61-68.** There were other instances of Respondent depositing his own funds, namely a Citibank refund of $155.05 and a payroll check from Harris-Stowe for $363.41. There were instances of Respondent allowing his earned fees to linger in the trust account rather than sweeping them into his operating account. **App. 67.** Respondent's commingling personal money with client money exposed the trust account to possible levy from attorney creditors. **App. 55.**

There were instances of personal or business disbursements, including a donation of $200.00 to the Pakistan Club, a payment for another attorney's CLE expense for $125.00, and dues paid to the South Asian Bar Association for $50.00 and the Illinois Attorney Registration and Disciplinary Commission for $342.00. **App. 167-174.** Respondent claimed that he did not know it was wrong to use his trust account for his law practice expenses. **App. 36.**

There was one instance of Respondent using other clients' funds held in trust to make a payment of $822.00 to a third party on behalf of a client prior to receiving payment from that client. **App. 65.**

There was one instance of Respondent failing to wait for deposited client funds to become "good funds" prior to disbursement. Specifically, Respondent deposited a check from client, St. Louis Communications for $4,525.00. Three days prior, he disbursed

checks for filing fees for that client, which only cleared one day after the deposit was made. The risk of a good funds violation is that if for some reason the client check is returned as insufficient, then the disbursements for that client are improperly drawing on funds from other clients. **App. 65-66.**

At the hearing before the Disciplinary Hearing Panel in this matter, Respondent admitted the need for education regarding proper client trust account management. **App. 32.** For his complex immigration practice, Respondent testified he is now using "MyCase," to "essentially reconcile each client account with how much money is being paid in, how much of that [is] being earned, paid into the trust account (sic), how much of that is being paid into the operating account and how much is left. So, we can have a running tally of the amount of money by account by month by client." **App. 132.** However, Respondent conceded that "MyCase" does not conform to the Trust Account Handbook for client ledgers, and he is "trying to make sure that there is some way for them to give [him] these functionalities." **App. 133.**

Prior to submission of the case to the DHP for decision, Respondent tendered a number of character witnesses, through live testimony or letters. None of these individuals professed personal knowledge of Respondent's trust account handling practices. **App. 56-59; 189-209**.

Informant's counsel argued for a stayed suspension with a term of probation for one year. The terms of probation set forth included appointment of a probation monitor, quarterly reporting to the OCDC, compliance with the Rules of Professional Conduct,

attendance at the Ethics School, periodic auditing of the trust account, and maintenance of legal malpractice insurance. **App. 259-265**. Respondent's counsel argued for a Reprimand with some conditions similar to those in the proposed term of probation. **App. 159-163.**

DISCIPLINARY HEARING PANEL DECISION

The DHP determined the facts substantially as set forth above, namely:

> Respondent was advancing costs on a case using personal funds deposited or left in the trust account. Once the overdraft occurred, Respondent deposited $7,000.00 of his own money into the trust account to compensate for the overdraft, $2,000.00 more than was necessary. Respondent admitted it was improper to place his own money in the trust account. Respondent admitted there were client funds in the trust account at the time of the overdraft. Respondent admitted he left his own money in the trust account.
>
> Respondent made personal or business expenses from the trust account. Respondent was unaware that it was improper to pay or advance fees for a law practice expense from his trust account.

Respondent made payments from his trust account drawing against deposited funds that had yet to become "good funds" prior to their disbursement.

Respondent admitted he needed help in handling his trust account properly.

App. 268-270.

As a result, the DHP concluded that:

a. Respondent's conduct of depositing personal funds, including earned legal fees, into his trust account in amounts in excess of paying bank service charges violated Rule 4-1.15(b), effective July 1, 2013;

b. Respondent's commingling of personal funds with property belonging to clients in the trust account violated Rule 4-1.15(a), effective July 1, 2013;

c. Respondent's personal and business payments from the trust account violated Rule 4-1.15(a), effective July 1, 2013;

d. Respondent's failure to maintain and preserve complete records of his trust account records violated Rule 4-1.15(f), effective July 1, 2013;

e. Respondent's violations constituted conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d).

App. 271.

With regard to its recommendation for sanction, the DHP utilized the Theoretical Framework of the ABA Standards, focusing on the general standard for mishandling client property found in Standard 4.1:

> 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
>
> 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

A271-273.

As for Respondent's mental state, the DHP determined that Respondent was unaware that his transactions regarding his trust account were improper. However, he did knowingly place his money into his trust account and was aware that was improper. "If he did not place the money into his trust account, the result would be injury or potential injury to his clients although he placed a larger amount than necessary to correct his failure to adequately balance his account." Thus, according to the DHP, "Respondent

was at most, negligent regarding his proper handling of his trust account. Respondent admitted he needs training regarding the handling of his trust account." **App. 273-274.**

The DHP considered the aggravating factor of 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent was initially uncooperative with Kelly Dillon of the OCDC. The panel also considered the mitigating factors of 9.32(a) absence of a prior disciplinary record, (b) absence of a dishonest or selfish motive, and (l) remorse. **App. 274-275.**

Based on its findings and analysis, the DHP recommended a Reprimand with the following conditions:

Trust Account Mentor:

a. Respondent shall, within 30 days of the Court's order, retain a Mentor attorney acceptable to the OCDC, to set up and organize a client trust account that complies with the Missouri Rules of Professional Conduct and IOLTA;

b. The Trust Account Mentor shall receive monetary compensation in a reasonable amount for the time involved in mentoring Respondent;

c. Client Trust Account Audits: For a period of one year following the Court's Order, Respondent shall submit to audits of Respondent's trust account, conducted by OCDC

or an auditor of OCDC's designation. The audits shall be at Respondent's expense and may be conducted at random times.

Informant rejected the Panel's decision on September 30, 2015. **App. 276.**

POINT RELIED ON

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:

(A) DEPOSITING PERSONAL FUNDS, INCLUDING EARNED LEGAL FEES, INTO HIS TRUST ACCOUNT IN AMOUNTS IN EXCESS OF PAYING BANK SERVICE CHARGES IN VIOLATION OF RULE 4-1.15(b), EFFECTIVE JULY 1, 2013;

(B) COMMINGLING PERSONAL FUNDS WITH PROPERTY BELONGING TO CLIENTS IN HIS TRUST ACCOUNT IN VIOLATION OF RULE 4-1.15(a), EFFECTIVE JULY 1, 2013;

(C) MAKING PERSONAL AND BUSINESS PAYMENTS FROM HIS TRUST ACCOUNT IN VIOLATION OF RULE 4-1.15(a), EFFECTIVE JULY 1, 2013;

(D) DISBURSING FUNDS FROM HIS TRUST ACCOUNT PRIOR TO WAITING A REASONABLE PERIOD OF TIME TO PASS FOR THE FUNDS TO BE ACTUALLY COLLECTED BY THE

FINANCIAL INSTITUTION IN WHICH THE TRUST ACCOUNT IS HELD IN VIOLATION OF RULE 4-1.15(a)(6)(b), EFFECTIVE JULY 1, 2013;

(E) FAILING TO MAINTAIN AND PRESERVE COMPLETE RECORDS OF HIS TRUST ACCOUNT RECORDS IN VIOLATION OF RULE 4-1.15(f), EFFECTIVE JULY 1, 2013; AND

(F) ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4(d).

In re Witte, 615 S.W.2d 421 (Mo. banc 1981)

In re Farris, No. SC94418, 2015 Mo. LEXIS 157 (Mo. banc Sep. 18, 2015)

Rule 4-1.15, Effective July 1, 2013

Rule 4-8.4

POINT RELIED ON

II.

THIS COURT SHOULD SUSPEND RESPONDENT'S LICENSE INDEFINITELY, WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR AT LEAST ONE YEAR, WITH THE SUSPENSION STAYED AND IN LIEU OF ENFORCEMENT THEREOF, PLACE RESPONDENT ON PROBATION FOR ONE YEAR FROM THE EFFECTIVE DATE OF ANY DISCIPLINARY ORDER ISSUED BY THIS COURT IMPOSING DISCIPLINE.

A.B.A. Standards for Imposing Lawyer Sanctions (1991 ed.)

In re Wiles, 107 S.W.3d 228 (Mo. banc 2003)

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

ARGUMENT

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:

(A) DEPOSITING PERSONAL FUNDS, INCLUDING EARNED LEGAL FEES, INTO HIS TRUST ACCOUNT IN AMOUNTS IN EXCESS OF PAYING BANK SERVICE CHARGES IN VIOLATION OF RULE 4-1.15(b), EFFECTIVE JULY 1, 2013;

(B) COMMINGLING PERSONAL FUNDS WITH PROPERTY BELONGING TO CLIENTS IN HIS TRUST ACCOUNT IN VIOLATION OF RULE 4-1.15(a), EFFECTIVE JULY 1, 2013;

(C) MAKING PERSONAL AND BUSINESS PAYMENTS FROM HIS TRUST ACCOUNT IN VIOLATION OF RULE 4-1.15(a), EFFECTIVE JULY 1, 2013;

(D) DISBURSING FUNDS FROM HIS TRUST ACCOUNT PRIOR TO WAITING A REASONABLE PERIOD OF TIME TO PASS FOR THE FUNDS TO BE ACTUALLY COLLECTED BY THE

FINANCIAL INSTITUTION IN WHICH THE TRUST ACCOUNT HIS HELD IN VIOLATION OF RULE 4-1.15(a)(6)(b), EFFECTIVE JULY 1, 2013;

(E) FAILING TO MAINTAIN AND PRESERVE COMPLETE RECORDS OF HIS TRUST ACCOUNT RECORDS IN VIOLATION OF RULE 4-1.15(f), EFFECTIVE JULY 1, 2013; AND

(F) ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 4-8.4 (d).

Standard of Review of Disciplinary Hearing Panel Decision

It is well-settled that a Disciplinary Hearing Panel's recommendations are advisory in nature. *In re Crews*, 159 S.W.3d 355, 358 (Mo. banc 2005). In a disciplinary proceeding, this Court reviews the evidence *de novo*, independently determining all issues pertaining to credibility of witnesses and the weight of the evidence, and draws its own conclusions of law. *Id*. Discipline will not be imposed unless professional misconduct is proven by a preponderance of the evidence. *Id*. Where misconduct is proven by a preponderance of the evidence, violation of the Rules of Professional Conduct by an attorney is grounds for discipline. *In re Shelhorse*, 147 S.W.3d 79, 80 (Mo. banc 2004).

A. Respondent deposited personal funds, including earned legal fees, into his trust account in amounts in excess of paying bank service charges in violation of Rule 4-1.15(b), Effective July 1, 2013.

Rule 4-1.15(b) prohibits a lawyer from depositing a lawyer's own funds in a client trust account other than for the purpose of paying bank service charges on that account, and only in an amount necessary for that purpose**.**

In Respondent's case, there were numerous instances of Respondent depositing his own money in his trust account and letting earned fees linger instead of sweeping them into his operating account. Most significant was his personal deposit of $7,000.00 ($2,000.00 more than was necessary) "to make sure that the overdraft issue was resolved," with respect to his advancing fees to another attorney for his own business purposes. **App. 44; 67.** Other instances included his Citibank refund of $155.05 and a payroll check from Harris-Stowe for $363.41—for teaching business ethics.

There is no dispute that Respondent violated Rule 4-1.15(b).

B. Respondent's commingled personal funds with property belonging to clients in his trust account in violation of Rule 4-1.15(a), effective July 1, 2013.

Rule 4-1.15(a) requires a lawyer to hold property of his clients and third persons that is in a lawyer's possession separate from the lawyer's own property.

In Respondent's case, he admitted there were client funds in the trust account at the time of the overdraft. **App. 268-269.** According to the Court, the rule against commingling is to provide against the probability in some cases, the possibility in many

cases, and the danger in all cases that such commingling will result in the loss of clients' money. *In re Witte*, 615 S.W.2d 421, 422 (Mo. banc 1981).

There is no dispute that Respondent violated Rule 4-1.15(a).

C. Respondent made personal and business payments from his trust account in violation of Rule 4-1.15(a), effective July 1, 2013.

Rule 4-1.15(a) requires a lawyer to hold property of his clients and third persons in a lawyer's possession separate from the lawyer's own property.

In Respondent's case, there were instances of Respondent's personal or business disbursements, including a donation of $200.00 to the Pakistan Club, a payment to reimburse an independent contractor attorney's CLE expense for $125.00, and dues paid to the South Asian Bar Association for $50.00 and the Illinois Attorney Registration and Disciplinary Commission for $342.00. **App. 167-174.** Respondent claimed that he did not know it was wrong to use his trust account for his law practice expenses. **App. 36.**

There was also one instance of Respondent using other clients' funds held in trust to make a payment of $822.00 to a third party on behalf of a client prior to receiving payment from that client. **App. 65.**

It is those types of personal and business payments that alert attorney creditors that the trust account may be a source of funds to levy. Thus, Respondent placed client funds in his trust account at risk. *See Witte*, 615 S.W.2d at 422.

There is no dispute that Respondent violated Rule 4-1.15(a).

D. Respondent disbursed funds from his trust account prior to waiting a reasonable period of time to pass for the funds to be actually collected by the financial institution in which the trust account is held in violation of Rule 4-1.15(a)(6)(B), effective July 1, 2013.

Rule 4-1.15(a)(6)(b) prohibits a lawyer from disbursing funds from the trust account prior to waiting a reasonable period of time to pass for the funds to be actually collected by the financial institution in which the trust account is held.

In Respondent's case, there was one instance of Respondent's failure to wait for deposited client funds to become "good funds" prior to disbursement. Specifically, Respondent deposited a check from client, St. Louis Communications for $4,525.00. Three days prior, he disbursed checks for filing fees for that client, which only cleared one day after the deposit was made. **App. 65.** The risk of a "good funds" violation is that if for some reason the client check is returned as insufficient, then the disbursements for that client are improperly drawing on funds from other clients. **App. 66.**

There is no dispute that Respondent violated Rule 4-1.15(a)(6)(b).

E. Respondent failed to maintain and preserve complete records of his trust account in violation of Rule 4-1.15(f), effective July 1, 2013.

Rule 4-1.15(f) requires a lawyer to maintain and preserve for at least 5 years after termination of the representation complete records of client trust account. According to the Court, one of the purposes of [Rule 4-1.15(f)] is to ensure that an attorney always

knows what money is being moved into and out of the trust account and why. *In re Farris*, No. SC94418, 2015 Mo. LEXIS 157 (Mo. banc Sep. 18, 2015).

In Respondent's case, Ms. Dillon had difficulty in obtaining information from Respondent, who voiced his displeasure in a telephone call with the Chief Disciplinary Counsel. **App. 58.** Eventually, Respondent produced his bank records and sat for a sworn statement. With Respondent's testimony and client billing records, Ms. Dillon was able to reconcile some, but not all, of Respondent's trust account transactions for what she described as a "pretty active practice." **App. 58-60.** Respondent admitted that his immigration practice is complex and that he has yet to find a system to give him functionality which conforms to the Trust Account Handbook for client ledgers. **App. 133.**

There is no dispute that Respondent violated Rule 4-1.15(f).

F. <u>Respondent engaged in conduct prejudicial to the administration of justice in violation of Rule 4-8.4(d).</u>

According to Rule 4-8.4(d), it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

In Respondent's case, because of commingling, he caused an insufficient funds incident which resulted in the need for a trust account audit. The audit revealed that Respondent was misusing his trust account and placing his clients' money at risk.

Based upon the foregoing, Respondent violated Rule 4-8.4(d) by engaging in conduct prejudicial to the administration of justice.

ARGUMENT

II.

THIS COURT SHOULD SUSPEND RESPONDENT'S LICENSE INDEFINITELY, WITH NO LEAVE TO APPLY FOR REINSTATEMENT FOR AT LEAST ONE YEAR, WITH THE SUSPENSION STAYED AND IN LIEU OF ENFORCEMENT THEREOF, PLACE RESPONDENT ON PROBATION FOR ONE YEAR FROM THE EFFECTIVE DATE OF ANY DISCIPLINARY ORDER ISSUED BY THIS COURT IMPOSING DISCIPLINE.

This Court has relied on the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") to determine the appropriate discipline to be imposed in attorney discipline cases. *See, e.g.*, *In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009). The most serious violation by Respondent was commingling. Rule 4-1.15(a). According to the ABA Standards, suspension from the practice of law is appropriate for those lawyers who "commingle client funds with their own, or fail to remit client funds properly." ABA Standards 4.12, p. 27.

Following the model laid out in ABA Standard 3.0, four factors are considered in determining the appropriate discipline: (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's misconduct; and (4) aggravating and mitigating circumstances." *In re Stewart*, 342 S.W.3d 307, 309 (Mo. banc 2011).

The Duty Violated

"In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. These include: (a)(1) the duty of loyalty which includes the duty to preserve the property of a client [Rule 4-1.15]." ABA Standards, p. 5. At all relevant times, Respondent's trust account contained client funds.

The Lawyer's Mental State

The mental states used in this model are defined as follows:

> The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct but without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is that of negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.
>
> ABA Standards, p. 6.

In the instant case, by his sworn testimony at hearing, Respondent admitted he knew that the $7,000.00 deposit he made of his personal money was an improper use of his trust account. Therefore, Respondent's commingling was done knowingly.

The Potential or Actual Injury Caused

"The extent of the injury is defined by the type of duty violated and the extent of the actual or potential harm. For example, in a conversion case, the injury is determined by examining the extent of the client's actual or potential loss." ABA Standards, p. 6. In Respondent's case, there was no evidence of actual harm to a client. However, Respondent's commingling exposed his clients to significant potential harm by Respondent's creditors.

Suspension is the Appropriate Sanction

According to the ABA Standards, suspension is appropriate in matters involving the failure to preserve client property, such as commingling, when a lawyer knows or should have known that he or she is dealing improperly with client property and causes injury or potential injury to a client (Section 4.12 of the ABA Standards), and (b) when a lawyer engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system (Section 7.2 of the ABA Standards). Respondent's mishandling of funds inside his trust account was conduct prejudicial to the administration of justice and had the potential to cause injury to his clients and the legal profession. Therefore, suspension is the appropriate sanction.

Application of Aggravating and Mitigating Factors

"Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline imposed. Mitigation or mitigating circumstances are any considerations that may justify a reduction in the degree of discipline to be imposed." ABA Standards 9.0, p. 15.

Of the aggravating factors, Respondent's experience in the practice of law stands out as a reason for a significant sanction. Respondent has been practicing law with a client trust account since 2001. However, he has not taken the time to learn and appreciate that lawyer competency also includes the duty, as a fiduciary, to properly handle client money. Rule 4-1.15, Comment [9]. According to Respondent, he has not yet learned to master proper bookkeeping to keep track of client funds for his complicated immigration practice.

Respondent's mitigating factors are his absence of a prior disciplinary record and the testimony and letters from character witnesses. *But cf. In re Frick,* 694 S.W.2d 473, 479-81 (Mo. banc 1985) (This Court gives little weight to character letters and instead focuses on the underlying misconduct.)

Nevertheless, Respondent is capable of learning proper trust account management, and therefore it is appropriate that the suspension be stayed in light of *In re Wiles*, 107 S.W.3d 228 (Mo. banc 2003). In *Wiles,* the Respondent received an indefinite suspension with leave to apply for reinstatement after six months; the suspension was stayed and the Respondent placed on one year of probation. *Wiles* was a reciprocal discipline case from

Kansas. The respondent's Kansas discipline had been for violations relating to diligence, communication, fees, safekeeping property and competence. *In re Wiles*, 58 P.3d 711 (Kan. 2002).

Similarly, Attorney Larry Coleman received a stayed suspension and was placed on probation for a year even though he had three prior incidents of discipline when he was found to have violated several rules of this Court, including Rule 4-1.15 for commingling client funds with his funds. *In re Coleman*, 295 S.W.3d 857 (Mo. banc 2009). Unlike *Wiles* and *Coleman*, Respondent does not have a disciplinary history. A similar disposition is appropriate, however, because Respondent's conduct was prejudicial to the administration of justice and had the potential to cause injury to his clients.

The terms of probation set forth by Informant include appointment of a probation monitor, quarterly reporting to the OCDC, compliance with the Rules of Professional Conduct, attendance at the Ethics School, periodic auditing of the trust account, and maintenance of legal malpractice insurance. **App. 259-265.**

Although the DHP recommends a Reprimand with conditions similar to probation, the recommended conditions lack an enforcement mechanism. To simply expect that Respondent will comply with the trust accounting rules exposes his clients and the public to significant risk, particularly when Respondent admits that he has yet to find a system to properly account for his client funds in his complex immigration practice. Having a term of probation, which can be revoked quickly in the event of a future violation,

properly protects his clients and the public.

CONCLUSION

In the instant case, the most serious violation was that of commingling. By commingling, a lawyer causes significant potential injury by putting his client's money at risk of the lawyer's personal creditors. Respondent's commingling was not a one-time misuse of his client trust account. He also deposited or left unswept earned legal fees in and wrote personal checks from his trust account. His bookkeeping was poor and did not allow Ms. Dillon to reconcile all of the trust account activity. Under the ABA Standards and Missouri case law, a one-year suspension from the practice of law is the appropriate sanction, particularly for a veteran lawyer and teacher of business ethics.

Because of Respondent's plea for education and mentorship to help him comply with Missouri law and the Informant's belief that Respondent can be rehabilitated, Informant respectfully requests that the one-year suspension from the practice of law be stayed and that Respondent be placed on one year of probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2016, the Informant's Brief was sent to Respondent's counsel via the Missouri Supreme Court e-filing system:

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_____
Marc A. Lapp

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 5,155 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

_____

Marc A. Lapp