IN THE SUPREME COURT OF THE
STATE OF MISSOURI

In re	)	
	)	
PARITOSH BHUPESH SHETH,	)	Supreme Court Case SC95382
	)	
Attorney-Respondent.	)	
	)	

BRIEF OF RESPONDENT

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JURISDICTIONAL STATEMENT

Mr. Sheth does not contest this Court's jurisdiction. This is a lawyer discipline case. Therefore, as stated in Informant's Brief, this Court has jurisdiction over this case pursuant to Article V, Section 5 of the Missouri Constitution; Supreme Court Rule 5; Missouri common law; and Missouri Revised Statute § 484.040. In addition, this Court has jurisdiction under its inherent authority to regulate the Missouri Bar.

CASE SUMMARY

Paritosh "Pari" Sheth is a leader in the St. Louis immigration law bar and the City's South Asian community. Mr. Sheth has a robust and busy practice providing services to clients, both those who can and those who cannot pay for such services. For more than fourteen years, Mr. Sheth has spent countless hours helping other immigrants with both legal and non-legal issues, without significant problems or prior discipline.

Mr. Sheth finds himself before this Court because he made unintentional mistakes in the handling of trust account funds. Specifically, Mr. Sheth admits that he paid several business expenses directly from his trust account and that he drew upon trust account deposits before the deposited funds were "good." Mr. Sheth also placed his own funds into his trust account to cover for an inadvertent overdraft.

A Hearing Panel chaired by the Hon. Donald McMullin heard all the evidence, including considerable evidence in mitigation such as Mr. Sheth's exemplary reputation and extensive, often *pro bono* assistance to St. Louis immigrant communities. The Hearing Panel then decided that Mr. Sheth should be reprimanded. Mr. Sheth himself had previously conceded a reprimand was appropriate, recognizing the importance of proper handling of trust accounts and trust account funds.

Informant promptly rejected the Hearing Panel's suggested penalty, a reprimand. Informant instead requests a stayed suspension. In this Brief, Mr. Sheth demonstrates why, based upon the (largely uncontested) errors at issue and Mr. Sheth's compelling evidence in mitigation, this Court should concur with Judge McMullin's Hearing Panel and impose no more than a reprimand.

STATEMENT OF FACTS

Introduction. Mr. Sheth accepts the Hearing Panel's determination of the facts as well as the Hearing Panel's recommendation that this Court should impose a reprimand. Mr. Sheth also largely concurs with the factual underpinning of Informant's Statement of Facts, except that Informant has characterized certain facts in an argumentative, unbalanced fashion, largely in an effort to suggest Mr. Sheth "knowingly" violated the trust account requirements and thereby deserves a more severe penalty. Accordingly, consistent with Missouri Supreme Court Rule 84.04(c) and (f), Ms. Sheth offers the following Statement of Facts.

Background. Mr. Sheth was born in India and immigrated to the United States at the age of twenty-two. He obtained a Master's Degree in polymer science from the University of Georgia and an MBA from the University of Illinois in Chicago. (App. 105) In 1995, Mr. Sheth moved to St. Louis to work as marketing manager for the North American division of the chemical company Petrolite. (App. 105-06) Mr. Sheth's full work history is stated on his resume included in the Appendix. (App. 218-19)

While working full time, Mr. Sheth attended St. Louis University School of Law's night program, graduating in 2000. (App. 106) Mr. Sheth received a scholarship from St. Louis University based on his prior GPA and other academic qualifications, and he earned international law society honors recognition in 1999 for the highest international law grade in his class. (App. 107)

Law Firm Practice. In 2001, Mr. Sheth started his own law practice – The Law Offices of Pari Sheth – where he currently practices. The Law Offices of Pari Sheth

primarily focus on immigration law, as well as legal issues that immigrants typically encounter. (App. 109-10)

Initially, Mr. Sheth provided legal services and built his law practice in the evenings and on weekends while also working 40 hours per week as a consultant to AmerenUE. (App. 111) In or around 2011, Mr. Sheth stopped consulting with AmerenUE so that he could focus his energies full-time on his expanding law practice. (App. 112-13)

Mr. Sheth has no prior disciplinary history. (App. 11)

Community Involvement. Mr. Sheth is recognized as one of the leaders of St. Louis's South Asian community, and he volunteers his time to many community causes and bar association activities. This includes considerable *pro bono* legal services to St. Louis's immigrant communities. (App. 72, 131-42)

Mr. Sheth is a leader of the immigration law bar in Missouri and surrounding states. Mr. Sheth currently serves as secretary of the Missouri, Kansas, and Iowa chapter of the American Immigration Law Association (AILA). (App. 134-35) Mr. Sheth previously chaired the Immigration Law Committee of the Bar Association of Metropolitan St. Louis (BAMSL). Although Mr. Sheth has stepped down as chair of BAMSL's Immigration Law Committee, in part because of these proceedings, he still coordinates monthly lawyer meetings with the Department of Homeland Security to discuss immigration law issues. (App. 135) While this Court may have comparatively little experience with Mr. Sheth in light of the fact immigration is effectively a federal-law only practice, Mr. Sheth is well-known and well-respected in the immigration law community.

Mr. Sheth is also a leader of immigrant community groups. He spent five years on the board of the International Institute of St. Louis, which assists refugees and immigrants in the St. Louis area and provides micro-lending to immigrant businesses. (App. 136) Mr. Sheth also has worked with the Angel Investors Network, helping small businesses acquire angel financing to grow their businesses. (App. 138) In addition, Mr. Sheth currently serves as general counsel to the Indian Culture Education Center, Bal Vihar, and has done so for the past seven years. (App. 138-39) Mr. Sheth serves in each of these roles without compensation. (App. 137, 138, 140)

In addition, Mr. Sheth provides pro bono legal services at The Hindu Temple of St. Louis on Saturday mornings, and he also provides free legal services from time-to-time at the Northwest Islamic Center in St. Louis. Each of these activities require several hours per month of Mr. Sheth's time, which he provides at no charge. (App. 131-142)

Mr. Sheth has been involved as a volunteer and leader within the Council on American Islamic Relations (CAIR); local Islamic Mosques; and even as a subdivision trustee for Baxter Pointe. (App. 141, 142, 144) Mr. Sheth has taken on these roles, each without expectation of being compensated. (App. 144) Thus, again, within the relevant communities, particularly among recent immigrants, Mr. Sheth is known, recognized, and respected, a tireless worker willing to protect and serve the interests of others. (Character Reference Letters, App. 189-209; *see also* App. 146-48) In fact, Mr. Sheth has even taught business ethics (not legal ethics) at Harris-Stowe University, a position for which he did receive some compensation. (App. 143)

Finally, the positive benefits of Mr. Sheth's *pro bono* and community work, and his strong reputation in the community, were made clear through numerous letters of support that Mr. Sheth submitted to the Hearing Panel, (App. 146-48, 189-209), as well as by the testimony of lawyers Richard Concannon (App. 189) and Frank Duda (App. 191-92), lawyers who appeared in person to speak in support of Mr. Sheth.

Trust Account Issues. This case arises from a February 2014 overdraft notice issued on Mr. Sheth's lawyer trust account. Mr. Sheth made a $5,000 payment to another lawyer to advance legal expenses in a lawsuit planned for a new joint client. (App. 269) Mr. Sheth did not have enough funds in the trust account to cover this check, so the check triggered an overdraft. (App. 41-42) Mr. Sheth then placed his own funds into the trust account to cover the check. (App. 43) No client funds were ever used to cover the check; in fact, Office of Chief Disciplinary Counsel ("OCDC") paralegal Kelly Dillon testified that Mr. Sheth never improperly disbursed client funds. (App. 59)

The February 2014 overdraft resulted in an OCDC investigation. Mr. Sheth cooperated with this investigation, including sending copies of the check at issue and other bank records. (App. 57-58 (Testimony of OCDC Paralegal Kelly Dillon)) Although admittedly Mr. Sheth was not happy to be investigated, Ms. Dillon testified that Mr. Sheth did provide all requested records, such that Informant did not need to subpoena the bank. (App. 58-59)

The OCDC investigation found that, on a few occasions, Mr. Sheth had left his own funds in the trust account and used his funds to pay business expenses improperly, directly from his trust account. (App. 34-35) Such payments were made with Mr. Sheth's

own funds because Mr. Sheth did not have a practice of "sweeping" his own funds out of his trust account when earned. (App. 63-64) As a result, as Ms. Dillon testified, Mr. Sheth had never improperly disbursed client funds. (App. 59)

Mr. Sheth did not know at the time that it was improper to advance costs and fees from his client trust account. (App. 41) Mr. Sheth was also not aware that he should not pay expenses directly from his trust account using his own funds, nor did he understand that he should have swept funds he had earned from the account. (App. 35)

Yet even Informant's counsel noted in closing arguments before the Hearing Panel that "[t]here was no actual harm in this case" from the trust account errors. (App. 150)

Hearing Panel Recommends Reprimand. The Hearing Panel – chaired by Judge McMullin – recommended Mr. Sheth receive a reprimand for his negligent violations of the Rules of Professional Conduct. Regarding claims that Mr. Sheth had knowingly violated trust accounting rules by depositing his own money into the account, the Hearing Panel understood Mr. Sheth's dilemma after receiving notice of an overdraft:

> In that instance, [Mr. Sheth] had a difficult choice. If he did not place the money into the 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. Respondent was at most, *negligent* regarding the proper handling of his trust account.

(App. 274) (emphasis added)

The Hearing Panel decision authored by Judge McMullin reports that Mr. Sheth had also made several expense payments directly from his trust account. (App. 270) Yet Mr. Sheth had testified that he was not aware that such expenses could not be written from his trust account. (App. 35) Further, there is no express language in Rule 4-1.15 that prohibits such payments, where the funds used – as in this case – are fees the lawyer has previously earned. Thus, the Hearing Panel found no *mens rea* that would support imposition of a sanction more severe than a reprimand.

Informant Rejects Hearing Panel Recommendation. Upon receiving the Hearing Panel's decision, the Informant promptly rejected that decision and its recommendation that Mr. Sheth receive a reprimand.

These proceedings then followed.

POINT RELIED UPON

1. MR. SHETH'S CONDUCT AND EVIDENCE OF MITIGATION SUPPORT IMPOSITION OF A REPRIMAND, NOT A STAYED SUSPENSION.

In re Miller, 568 S.W.2d 246 (Mo. 1978)

In re Elliott, 694 S.W.2d 262 (Mo. 1985)

In re Armano, Case No. SC9601 (Mo. Oct. 4, 2011)

ARGUMENT

Preliminary Statement. The only question before this Court is whether Mr. Sheth's conduct should result in a reprimand – as the Hearing Panel chaired by Judge McMullin ordered, with Mr. Sheth's concurrence – or whether Mr. Sheth should instead receive a stayed suspension (as the Informant argues). Mr. Sheth admits that he made mistakes with regard to several trust account transactions.

The parties' arguments thus relate to which side of a blurred line Mr. Sheth's conduct falls, the blurred line between a reprimand and a stayed suspension. Mr. Sheth has previously explained, and the Hearing Panel has agreed, that Mr. Sheth's conduct falls well on the reprimand side of this line (a) based upon the nature of the trust account mistakes at issue; and (b) based upon Mr. Sheth's reputation and service to others, including the immigrant community and the immigration law community.

Standard for Imposition of Discipline. The twin aims of the Missouri lawyer discipline system are "to protect the public and maintain the integrity of the legal profession," not to punish the lawyer. *In re Coleman*, 295 S.W.3d 857, 869 (Mo. 2009). In assessing the proper sanction, this Court has recognized that ABA Standards for Imposing Lawyer Sanctions (the "ABA Standards") provide useful guidance for appropriate discipline. *In re Madison*, 282 S.W. 3d 350, 360 (Mo. 2009). Consideration is given to the nature of the conduct at issue, as well as any evidence in aggravation or mitigation. ABA Standard 9.1.

POINT RELIED #1: Mr. Sheth's Conduct and Evidence in Mitigation Support Imposition of a Reprimand, Not a Stayed Suspension.

A reprimand is an appropriate sanction for two reasons. First, a reprimand is appropriate based upon Mr. Sheth's conduct. Specifically, Mr. Sheth's conduct is consistent with – and in some instances less than –prior situations where this Court has previously imposed a reprimand. Second, even if Mr. Sheth's conduct did merit a more severe penalty than reprimand – which it does not – Mr. Sheth's extraordinary mitigating evidence should cause this Court to impose a reprimand and not more serious penalty.

Background for Imposition of Penalty. In discussing the appropriate sanction, this Court should be attentive to the uncontroverted testimony the Hearing Panel heard – primarily from Kelly Dillon, a paralegal at the OCDC – of the following:

(a) Mr. Sheth has admitted the trust account violations, which are limited both in nature and in number. Mr. Sheth made and admitted mistakes, but his mistakes do not constitute cavalier treatment of his trust account as a personal bank account;

(b) Prior discipline is absent: Mr. Sheth has never been disciplined (App. 11);

(c) No clients were harmed by the misconduct at issue in this case, including that no client experienced a financial loss (App. 79);

(d) There is no indication Mr. Sheth ever used client funds for personal or improper business expenses (App. 59, 79-80);

(e) There is no indication Mr. Sheth ever acted improperly for personal gain (App. 78);

(f) There is no indication Mr. Sheth ever wrongfully withheld funds from a client or third party (App. 77-79);

(g) Mr. Sheth was generally cooperative with the Office of Chief Disciplinary Counsel (OCDC) investigation. Although he expressed his displeasure with the proceeding (a natural response), Mr. Sheth did produce all required records, such that OCDC never had to subpoena his bank records (App. 58-60);

(h) The evidence uncovered by the OCDC did not indicate that Mr. Sheth intended to violate trust account or other ethics rules (App. 82);

(i) Mr. Sheth had done many things correctly when establishing and operating his law firm's trust account prior to the overdraft, including:

- Opening a trust account concurrent when starting his practice (App. 112);
- Establishing the trust account in an appropriate financial institution (App. 112);
- Including the proper language in the account name, which designates the account clearly as a lawyer's trust account (App. 75);
- Depositing all advance fees in the account;
- Using appropriate means to withdraw money from the account (App. 62-63);

- Having all trust account activities supervised by an attorney, Mr. Sheth himself, who was the only authorized signer on the account (App. 75-76);
- Generally placing deposits into the account "intact," with only one exception (App. 76-77);
- Not placing his personal funds in the account, except when Mr. Sheth deposited $7,000 upon learning of the $5,000 overdraft;[1]
- Except in one instance, withdrawing funds only by approved means, by check or appropriate electronic transfer (App. 76); and
- Maintaining general records for the trust account as well as specific client ledgers.

With these uncontested facts in mind, we turn now to legal support that a reprimand should be sufficient in this case, as well as the two reasons that a reprimand – and not a stayed suspension – is appropriate.

Available Formal Sanctions for Misconduct. As this Court is well aware, the Rules governing Missouri Lawyer discipline proceedings (all part of Missouri Supreme

[1] It would seem necessary for Mr. Sheth to deposit his own funds into his own account to avoid repeated dishonoring of the check drawn on insufficient funds, or to prevent client funds from being compromised to pay that check. That said, Mr. Sheth admits he deposited $7,000 of his own funds – more than the amount of the dishonored check – upon learning of the overdraft.

Court Rule 5) establish six different types of discipline a lawyer might receive. Two are informal: an admonition (a largely private letter identifying the error) and diversion (an agreed course of rehabilitative and practice-improvement actions, which technically are not actually considered discipline). Four forms of sanction are formal discipline: public reprimand, probation, suspension, and disbarment. Any formal discipline is a serious matter, imposed only by order of this Court.

Mr. Sheth's Conduct Merits a Reprimand. Prior precedent from this Court supports imposition of a reprimand in this case. This Court has long imposed a reprimand, not a more serious penalty, in cases involving relatively limited trust account violations, as Mr. Sheth has admitted and been adjudged to have performed.

Precedent cases – both old and new – support imposition of a reprimand against Mr. Sheth. In *In re Miller*, 568 S.W.2d 246 (Mo. 1978), for example, this Court imposed only a reprimand despite concluding the lawyer Miller had misappropriated $30,000 in client funds purportedly held in trust for a client, and also caused the client to transfer an interest in real state to the client's wife.

Likewise, in *In re Elliott*, 694 S.W.2d 262 (Mo. 1985), the Missouri Supreme Court imposed only a reprimand where the lawyer – in addition to maintaining poor records and having insufficient funds in the account – mishandled deposits, failed to forward payments to a client promptly, and failed to respond to client inquiries.

The misconduct at issue in *Miller* and *Elliott* is more serious than Mr. Sheth's mistakes at issue here. Misappropriating client funds is a particularly egregious misuse of client property, far worse than anything Mr. Sheth has done or been accused of doing.

Yet the Missouri Supreme Court ruled in *Miller* that a reprimand was appropriate sanction. Likewise, in *Elliott* the lawyer delayed forwarding payments to clients and failed to respond to client communications. In this case, meanwhile, even Informant admits that there was no actual harm to clients. (App. 150)

Miller and *Elliott* therefore support that, at most, Mr. Sheth should receive a reprimand. *Miller* and *Elliott* should not be dismissed merely because of their age. More recent decisions by the Missouri Supreme Court likewise support imposition of a reprimand in this case. Three recent cases identify trust account violations as among the rules lawyers violated when those lawyers received only a reprimand. Those three cases are *In re Gary Lee Collins*, Case No. SC93645 (Mo. Sept. 28, 2013) (reprimand for violations of Rules 4-1.15, 4-1.15(d), 4-1.3, 4-3.2 and 4-8.1); *In re Luis Hess*, Case No. SC93013 (Mo. Jan. 29, 2013) (reprimand for violations of Rules 4-1.15(c), 4-1.15(d) and 4-1.15(f)); and *In re Kwadwo Jones Armano*, Case No. SC9601 (Mo. Oct. 4, 2011) (reprimand for violations of Rules 4-1.15(c) and 4-1.15(d)).[2]

Unfortunately, factual statements for *Collins* and *Hess* are not publicly available. The facts for the *Armano* case, however, are available through a Brief the OCDC filed

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[2] *Collins*, *Hess*, and *Armano* all involve lawyer discipline imposed under the version of Rule 4-1.15 prior to July 1, 2013. Subsection (c) of that earlier version of Rule 4-1.15 required holding client funds in a separate account, while subsection (d) imposed record-keeping requirements and subsection (f) mandated advanced fees and expenses be deposited in the trust account.

with the Missouri Supreme Court. The contents of the OCDC's Brief – filed in this case with Mr. Sheth's post-hearing brief, and also available to this Court – make clear the misconduct Mr. Sheth has admitted pales in comparison to Mr. Armano's misconduct, which include:

(a) Mr. Armano was – in the words of the OCDC – "routinely using his trust account for personal banking," including:

- Mr. Armano wrote checks for a property he owned on Westminister Place to landscaping companies, Home Depot, Lowes, Laclede Gas, and "Cash"; and
- Mr. Armano wrote "checks for many thousands of dollars to himself, with check memos indicating the Westminster Place address."

(b) Mr. Armano deposited funds ($195,000.00) from the sale of property he owned, the house on Westminster Place, but the deposit was ***after*** Mr. Armano had written the checks to pay for the remodeling. Thus, the checks to pay for remodeling "were made, at times, with client funds."

In addition, prior to the conduct that resulted in a reprimand in 2011, Mr. Armano had received a prior admonition in 2005. (*See* OCDC Brief in *Armano*). Nevertheless, OCDC argued that an appropriate sanction for Mr. Armano was a reprimand.

Mr. Sheth, meanwhile, did *not* "routinely" use his trust account for personal banking, and he has no prior disciplinary history. On a few occasions, Mr. Sheth did use his trust account to pay for personal and business payments, but he used his funds left in that account: no client was ever actually harmed by his actions. (App. 150)

Thus, under *Miller*, *Elliott*, and *Armano* – precedent issued by this Court both recently through almost forty years ago – the proper sanction for Sheth should be a reprimand.

The cases that Informant cites and hopes to employ as meaningful precedent, meanwhile, are not on point and easily distinguished from Mr. Sheth's case based upon the seriousness of the misconduct and the harm caused to clients, as well as the fact that lawyers in both Informant's main cases – *In re Coleman*, 295 S.W.3d 857 (Mo. 2009), and *In re Wiles*, 107 S.W.3d 228 (Mo. 2003) – had significant prior disciplinary histories, whereas Mr. Sheth has never faced prior discipline (App. 11). Both *Coleman* and *Miller* also involve deliberate actions by the lawyer that harmed the lawyer's client – a serious departure from this case where even Informant's counsel "[t]here was no actual harm." (App. 150)

Specifically, in *Coleman*, the lawyer received a stayed suspension, as Informant argues Mr. Sheth should receive. Yet the *Coleman* respondent was not merely adjudged to have commingled funds and failed to keep adequate trust account records. Rather, the *Coleman* respondent took significant additional actions for his own benefit and to the detriment of his clients, including:

(a) The *Coleman* respondent had a client execute a retainer agreement that gave him exclusive right to settle a client's case, thereby violating Rules 4-1.2 and 4-1.7;

(b) The *Coleman* respondent had failed to notify his client at the time he withdrew from the client's case, a Rule 4-1.16 violation; and

(c) The *Coleman* respondent "regularly paid personal obligations out of his portion of settlement proceeds" which were still in his trust account, commingled with client funds.

Further, The *Coleman* respondent had three prior instances of discipline: admonitions imposed in 1990 and 1999 and formal discipline, a public reprimand, imposed in 2008.

Mr. Sheth's case is wholly dissimilar from the *Coleman* case, so dissimilar that – compared to *Coleman* – *Coleman* should be seen as supporting less punishment than a stayed suspension. Mr. Sheth took no deliberate action against any client and caused "no harm" to any client. Mr. Sheth also has *no* prior discipline (App. 11). Certainly, Mr. Sheth should not receive the same discipline imposed in *Coleman*, a lawyer who had prior discipline and caused harm to clients. Mr. Sheth should receive some lesser sanction. And the disciplinary penalty one step lower than the stayed suspension imposed in *Coleman* is the precise penalty Mr. Sheth has conceded and the Hearing Panel recommended: a reprimand. Accordingly, *Coleman* supports that Mr. Sheth should be reprimanded.

Informant's counsel also relies heavily upon *Wiles* in Informant's brief, another case that is so much more serious as to misconduct, and involved a lawyer with such a pervasive disciplinary history, that it actually supports Mr. Sheth's argument that Mr. Sheth should receive a reprimand. In *Wiles*, this Court noted that "between 1998 and 2001, Respondent was admonished in Missouri for four diligence rule violations (Rule 4-1.3), five communication rule violations (Rule 4-1.4), one safeguarding client property rule violation (Rule 4-1.15(b)), and one violation of the rule against engaging in conduct

prejudicial to the administration of justice (Rule 4-8.4(d)).” 107 S.W.2d at 229. The attorney Wiles subsequently received a public censure in Kansas for violations of the professional rules regarding (a) competence; (b) diligence; (c) communication; (d) fees; and (e) safekeeping property. *In re Wiles*, 58 P.3d 711, 714-15 (Kan. 2002). The *Wiles* respondent, therefore, had ***eleven*** instances of prior discipline, and was facing – in addition to charges relating to the safekeeping of client property, charges of failure to communicate properly, provide competent representation, and charge excessive fees, all conduct that would involve harm to clients.

In deciding to suspend Mr. Wiles’ license, this Court reviewed the *Wiles* Respondent’s ***eleven*** prior instances of discipline in detail and then concluded: “*In recognition of those admonitions,* a reprimand is insufficient to ensure the protection of the public and integrity of the legal profession.” *In re Wiles*, 107 S.W.3d at 229-30. In other words, this Court stated explicitly that the *Wiles* respondent would have been reprimanded, except for the prior discipline. *See id.* The prior discipline pushed the *Wiles* respondent’s sanction to something more serious. And the *Wiles* respondent had engaged in misconduct involving client harm. Mr. Sheth, meanwhile, has no prior discipline and caused – as Informant’s counsel admitted at the hearing – “no harm.” *Wiles* therefore has little bearing on the present case, except to further demonstrate why a public reprimand is appropriate.

Finally, Informant’s counsel alluded to the ABA Standards for Imposing Lawyer Sanctions. The ABA Standards were last revised in 1992, before automatic overdraft notification caused most jurisdictions to revisit penalties for mistakes in trust account

operations. Under these standards, written before lawyers might face discipline due to such an overdraft notification, the appropriate sanction for trust account violations turns almost entirely upon on the *mens rea* or *scienter* of the lawyer. As this Court is well-aware, the introduction of automatic overdraft notices has required considerable re-evaluation regarding what sanctions should result from mistakes in trust account operations. Cases such as this case, and also the *Armano* decision discussed earlier, make it particularly inappropriate to claim that all attorneys as a matter of law know all requirements for trust account operations, and thus any mistake should constitute a "knowing" mistake.

As discussed in the *Armano* brief, Mr. Sheth's testimony and the nature of the violations demonstrate that Mr. Sheth's mistakes in trust account violation were not actually knowing violations. Rather, Mr. Sheth acted at most with negligence. Mr. Sheth did not undertake transactions – other than depositing his own funds to cure the overdraft, at which time he faced a difficult dilemma – knowing that he was doing something wrong. Rather, if Mr. Sheth had actually known his actions were problematic, he would not have taken those actions, a point made clear by all the things he did correctly with regard to his trust account, which Informant concedes Mr. Sheth did correctly, and which are listed on pages 11-13 of this Brief. Mr. Sheth should therefore receive a penalty no greater than a reprimand.

A Reprimand May Be Imposed With Suitable Conditions. Imposition of a reprimand is also adequate here because Rule 5 permits a reprimand to include additional conditions and requirements. Missouri Supreme Court Rule 5.16(d)(1) specifically

provides that imposition of a reprimand "may include additional requirements to improve the lawyer's practice." Mr. Sheth has previously stated, and recognizes here, that he should receive a reprimand with "additional requirements," specifically additional education, a practice mentor, and quarterly trust account reports for a period of a year, which match the Hearing Panel's recommended requirements.

In light of the nature and gravamen of Mr. Sheth's conduct and Mr. Sheth's considerable, compelling evidence in mitigation (discussed in the next section), a reprimand would therefore be adequate to accomplish the twin aims of the Missouri lawyer discipline system: protecting the public and maintaining the integrity of the bar.

Mitigating Factors Support Imposing a Reprimand. Finally, even if Mr. Sheth engaged in knowing misconduct (which he did not) and even if those mistakes merited a stayed suspension under the applicable precedent (which they do not), the mitigating factors here should cause the Court to impose no penalty greater than a reprimand.

ABA Standard 9.1 (quoted above) specifically directs consideration of mitigating factors when assessing the appropriate sanction for mishandling client property. ABA Standard 9.3 then lists mitigating factors, which include:

> "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; . . . (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; . . . [and] (g) character or reputation."

As noted earlier, Mr. Sheth had no prior discipline and no dishonest or selfish motive. Mr. Sheth has already taken numerous actions to rectify his conduct and to learn how better to operate his trust account and his practice. Mr. Sheth was also reasonably cooperative. All these factors weigh in favor of a lesser penalty.

Mr. Sheth's evidence of good character and reputation is extensive and compelling. While running his busy practice, Mr. Sheth has provided countless hours of his time, without compensation, to the immigration bar and the immigrant community in St. Louis. He has literally provided hours of *pro bono* legal services for years, including weekly sessions at The Hindu Temple of St. Louis and at the Northwest Islamic Center in St. Louis. Mr. Sheth is also a leader in the St. Louis immigration law community, including regional positions with the American Immigration Law Association and BAMSL's Immigration Law Committee.

In addition, Mr. Sheth has provided hundreds of hours of assistance, legal and otherwise, for and through other community groups such as the International Institute and its Community Development Association; the Angel Investors Network; the Indian Cultural Education Center (Bal Vihar); and the Council on American Islamic Relations. Mr. Sheth even serves as a subdivision trustee for Baxter Pointe.

Mr. Sheth's community service work and *pro bono* is substantial and widespread, and includes work in and for communities – such as St. Louis's Muslim community – where Mr. Sheth is not even a member, but has recognized and tried to help meet a serious need. Moreover, Mr. Sheth began such volunteer and *pro bono* work years ago,

when he was also working full time and running his law practice effectively on evenings and weekends.

The positive benefits of such *pro bono* and community work were made clear through the fourteen letters Mr. Sheth submitted to the Hearing Panel (App. 189-209), as well as by the testimony of lawyers Richard Concannon (App. 189) and Frank Duda (App. 191-92). Mr. Sheth's character and reputation have been built through hard work and good conduct. Mr. Sheth's has made mistakes, but a reprimand should more than suffice as punishment for that conduct. There is nothing to suggest that the public or integrity of the bar require that Mr. Sheth receive a greater penalty, as Informant requests.

Conclusion. Imposing any formal discipline would signal that Mr. Sheth has engaged in quite serious misconduct. Mr. Sheth's conduct, however, was not so egregious as to warrant a stayed suspension, and none of the cases cited by Informant support such a conclusion – to the contrary, they support the Hearing Panel's recommended reprimand. Therefore, a reprimand with additional conditions (additional education, a practice management mentor, and quarterly trust account reporting for a year) should be adequate to protect the public and the integrity of the Bar.

Mr. Sheth therefore asks that the Court accept and impose the Hearing Panel's recommendation that Mr. Sheth receive a public reprimand, with conditions as set forth in the Hearing Panel's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 8th day of February, 2016, a true and correct copy of the foregoing was served via the electronic filing system on:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03. It was drafted using Microsoft Word. The font is Times New Roman, proportional 13-point font, which includes serifs. The brief complies with Rule 84.06(b) in that it contains 5,527 words.

/s/ Michael P. Downey