IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
DERRICK R. WILLIAMS, SR.,	)	Case No.: **SC86450**
	)	
Respondent.	)	

RESPONDENT'S BRIEF

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ARGUMENT

I. THIS COURT SHOULD NOT DISCIPLINE RESPONDENT BASED ON THE STIPULATED CONDUCT CONTAINED IN COUNT I OF THE INFORMATION BECAUSE RESPONDENT HAS NO PRIOR DISCIPLINARY HISTORY AND HIS CONDUCT DID NOT HARM ANY CLIENT OR THE PUBLIC IN THAT HE PAID-IN-FULL 13 OF HIS 18 CREDITORS, AND PROVIDED 10 OF 12 QUARTERLY REPORTS DURING THE THREE-YEAR TERM OF THE MONITORING AGREEMENT.

Respondent stipulates, acknowledges, and accepts responsibility for not providing quarterly reports to the Office of Chief Disciplinary Counsel (hereinafter "OCDC") for the fourth quarter 2001 and the second quarter 2002. There are no excuses. There are additional facts, however.

After practicing law in New York for nearly one year with no ethical violations, Respondent and his son moved to Cape Girardeau. He accepted an attorney position with the Missouri State Public Defender System in Jackson. He was a single-parent with one teenage son living at home with him. Respondent had between 100 and 150 criminal defense clients. Respondent was sensitive to each of his client's legal needs and demands. He was sensitive, also, to his son's adjustment to a new high school and new town. Negligently, Respondent failed to submit his very first quarterly report, and later, another quarterly report. Respondent submitted the remaining ten quarterly reports in a timely manner, however.

Additionally, Respondent stipulates, acknowledges, and accepts responsibility for the fact he misstated he made payments to a few creditors on certain dates that he had not in fact made on those dates. Respondent does not deny this fact. Again, however, there are additional facts.

While it is true that Respondent did not make a few of the payments to his creditors on the dates he stated in the quarterly reports, he did make the payments shortly thereafter. In fact, Respondent paid-in-full 13 of his original 18 creditors. Five creditors remain unpaid. Two of the unpaid creditors are large student loans. Respondent continues to owe the final three creditors.

Informant cites to In re Harris, 890 S.W.2d 299 (Mo. banc 1994) in support of her position that this Court should suspend Respondent from the practice of law. Harris, however, supports Respondent's position that this Supreme Court should *not* discipline Respondent.

Attorney Harris practiced law in St. Louis for more than thirty years. He had not been the subject of any attorney discipline until 1988. During a four-year period: 1988 to 1992, allegations of misconduct toward clients surfaced. Three prior complaints relating to neglect of client business during that same period resulted in private admonitions. Id. at 302. In addition, Harris did not reply to an inquiry of disciplinary counsel's special representative. Harris failed to answer the

charges OCDC filed against him. He did answer, however, once this Court entered an Order summarily disbarring him. In re Harris, 890 S.W.2d at 301.

This Court "ordered that respondent be publicly reprimanded for his failure to explain matters to the extent reasonably necessary to keep his client informed and for failing to cooperate with disciplinary counsel's inquiries." Id. at 302-303.

In the instant matter, Respondent has been practicing law in Southeast Missouri since October 2001. He has not been the subject of any attorney discipline until October 2003 when the instant matter surfaced. During the two-year period from October 2001 to October 2003, there has been no prior disciplinary record. Moreover, since October 2003 to present there has been no disciplinary record for Respondent. He has not had any private admonitions. Finally, Respondent replied to inquiries of disciplinary counsel and answered the information filed against him, attended the disciplinary hearing, and filed the instant brief with this Court all in a timely fashion. The misconduct in Harris is markedly more severe than the misconduct in the instant matter. Thus, the discipline meted out in Harris is inappropriate here. The facts of each case are incongruent. Thus, in keeping with the well-worn principals of precedent and *stare decis*, Respondent respectfully requests the Court not discipline him on Count I of the Information.

Next, Informant cites to In re Frank, 885 S.W.2d 328 (Mo. banc 1994) in support of its demand that this Court suspend Respondent from the practice of law. The facts of Frank, however, are unavailing to Informant. The conclusion in Frank to discipline the attorney is a function of the law and the particular facts of the case. While Informant cites to a principle of law Frank mentions *in dicta*, she fails to relate the facts of that case.

Informant charged attorney Frank with twelve counts of misconduct involving numerous clients. This Court observed: "The facts of this case reveal an appalling pattern of respondent's refusal to communicate with his clients or to act with reasonable diligence in expediting their cases. Furthermore, respondent consistently failed to cooperate with those who investigated the many complaints against him." In re Frank, 885 S.W.2d at 329. Moreover, this Court had twice previously sanctioned Frank for misconduct. Id. at 333[1].

In the matter before the Court, there are no clients involved. Respondent has cooperated with Informant, the disciplinary hearing panel, and this Court. Again, the misconduct in Frank is profoundly more severe than the misconduct in the instant matter. The particular facts of Frank are not parallel with the facts of this matter, and therefore, the outcome in Frank is inappropriate, here.

[1] Respondent points to the descriptive language this Court chooses when describing attorney Frank's conduct: "twelve counts of misconduct involving numerous clients . . . an appalling pattern . . . consistently failed to cooperate with those who investigated the many complaints against him." In re Frank, 885 S.W.2d at 329.

Finally, Informant cites to In re Shelhorse, 147 S.W.3d 79 (Mo. banc 2004) and asks this Court to suspend Respondent from the practice of law. In re Shelhorse, however, supports Respondent's position that this Court should not discipline Respondent.

In Shelhorse, this Court licensed attorney Shelhorse to practice law in 1995. He had no prior disciplinary history. Seven years later, in 2002, disciplinary authorities sent Shelhorse eight letters inquiring about his failure to comply with continuing legal education reporting requirements. In June 2003, the OCDC filed an information alleging that attorney Shelhorse had failed to comply with Rule 15 for the reporting years of 1998-1999, 1999-2000, 2000-2001 and 2001-2002. The information also alleged that attorney Shelhorse had failed to respond to four requests for information from disciplinary authorities. Attorney Shelhorse admitted the allegations in his answer.

In March 2004, the disciplinary hearing panel recommended that attorney Shelhorse be publicly reprimanded and ordered him to enter into a mentor relationship with a member of the Bar to ensure his compliance with continuing legal education requirements. The OCDC did not concur with the disciplinary hearing panel's recommendation and filed the record with this Court.

In Shelhorse, this Court instructed that "[a]s a condition of retaining his or her privilege of practicing law in Missouri, an attorney must comply with rules of

professional conduct. Shelhorse has admitted to professional misconduct by not complying with continuing legal education requirements and by failing to respond to inquiries by disciplinary authorities. Shelhorse's failure to respond to disciplinary authorities is, as he now acknowledges, inexcusable. *However, given that Shelhorse has no prior disciplinary history and his conduct was not shown to have directly harmed a client or the public, a public reprimand is an appropriate punishment.*" In re Shelhorse, 147 S.W.3d 79, 79-80 (Mo. banc 2004)(emphasis added).

In the instant matter, the state of New York licensed Respondent to practice law in July 2000. This Court licensed Respondent to practice law in Missouri in October 2001. He has had no prior disciplinary history in either jurisdiction. Two years after this Court licensed the Respondent to practice law, OCDC began sending Respondent letters requesting various forms of proof of payments to his creditors. Respondent complied with the requests. In March 2004, the OCDC filed an Information alleging in Count I that Respondent had failed to comply with his Monitoring Agreement by not submitting two of the twelve quarterly reports. Additionally, OCDC alleged Respondent stated he made a few payments to his creditors that he in-fact did not make. Prior to the disciplinary hearing, Respondent stipulated to the allegations in Count I of the Information. On August 11, 2004, the disciplinary hearing panel recommended that this Court reprimand

Respondent on Count I. The OCDC did not concur with the disciplinary hearing panel's recommendation and filed the record with this Court.

The misconduct in Shelhorse is not comparable to the misconduct in Respondent's case. In a six-year period, Attorney Shelhorse submitted only two annual continuing legal education reports (33%). He failed to respond to four requests for information from OCDC. On the other hand, in a three-year period (twelve quarters), Respondent submitted ten quarterly reports (83%). Moreover, unlike attorney Shelhorse, Respondent has responded to every request for information from OCDC. Respondent has no prior disciplinary history in any jurisdiction in which he holds a license to practice law and it is clear that his conduct did not effect any client or the public. Therefore, a public reprimand would not be appropriate in the instant case. Finally, Informant states "Count I, by itself, would not involve anything other than an admonition or a reprimand . . ." App. 31 (T. 117).

II. THIS COURT SHOULD AFFIRM THE DISCIPLINARY HEARING PANEL'S CONCLUSION INFORMANT DID NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE ALLEGATIONS CONTAINED IN COUNT II OF THE INFORMATION IN THAT THE EVIDENCE DOES NOT ESTABLISH RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION.

Respondent did not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. The issue is whether an attorney violates Rule 4-8.4(c) when he represents two preexisting clients before his employment with a law firm, receives attorney fees during his employment with the law firm where the law firm retains those fees.

Missouri Rules of Professional Conduct 4-8.4(c) provides: "It is professional misconduct for a lawyer to: . . . (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Here, two clients contacted Respondent for legal services shortly before he began employment with Reynolds, Gold, and Grosser (hereinafter "the firm"). Orally, Respondent agreed to represent both clients shortly before he began employment with the firm. Respondent interviewed with the firm for an associate position. Neither partner of the firm asked Respondent if Respondent had existing clients. Respondent did not mention the existing clients during the interview. The firm hired Respondent. There was no contract or agreement concerning existing clients. During the course of employment, both clients made initial payments totaling five hundred dollars. Respondent retained those funds. Respondent entered his appearance on behalf of each client, appeared

in court a few times and resolved each matter, expeditiously. Respondent used no firm resources during the representation of the two clients. He represented no other clients, but the firm's clients. The firm learned of the preexisting clients. Respondent admitted he received the money from the two clients, but he did not steal, convert, or misappropriate any funds. The partner, Ken Reynolds, indicated Respondent "was very gentlemanly like, very much a gentleman throughout the whole thing and always has been . . . Again, he was nothing but a gentleman about it." App. 9 (T. 29). The firm fired Respondent. It retained five hundred dollars due Respondent from another unrelated matter. Respondent admits he should have mentioned the preexisting clients during the interview or later before to disposal of the cases. However, under these facts, Respondent did not engage in conduct involving dishonesty, fraud, deceit or misrepresentation and asks the Court affirm the Disciplinary Hearing Panel's conclusion and dismiss Count II of the Information.

III. THE COURT SHOULD NOT DISCIPLINE RESPONDENT BECAUSE THE INFORMANT DID NOT PROVE THE ALLEGATIONS CONTAINED IN COUNT II OF THE INFORMATION BY A PREPONDERANCE OF THE EVIDENCE AND RESPONDENT HAS NO PRIOR DISCIPLINARY HISTORY, HIS CONDUCT DID NOT HARM ANY CLIENT OR THE PUBLIC, HE PAID-IN-FULL 13 OF HIS 18 CREDITORS, AND PROVIDED 10 OF 12 QUARTERLY REPORTS DURING THE THREE-YEAR TERM OF THE MONITORING AGREEMENT.

The Court should not discipline Respondent. The Court should consider the following factors in mitigation. Respondent has no prior disciplinary record in any jurisdiction in which he holds a license to practice law. He has received no disciplinary record since the filing of the present Information, almost three years ago. As to Counts I and II of the Information, Respondent possessed no dishonest or selfish motive. Respondent admitted his conduct was negligent in Count I and stipulated to the allegations contained therein. Respondent categorically denies that he stole, misappropriated, or converted any funds from his previous employer. He does concede, however, that better judgment suggests he should have mentioned he had agreed to represent two clients at the initial employment interview. Respondent has exhibited a cooperative attitude toward all proceedings. Respondent has been in practice for less than five years. Respondent has a good reputation among the bench and bar in the communities in which he practices. Finally, and most importantly, Respondent is remorseful. The instant matter began

in 2002. It has been consistently on Respondent's mind. For nearly three years, Respondent has cooperated with OCDC, the hearing panel and this Court.

Wherefore, Respondent prays the Court not discipline him.

CONCLUSION

Respondent admits his misconduct in Count I of the Information. Respondent denies he intentionally or knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentation as alleged in Count II of the Information. Respondent admits, however, that he should have mentioned his two preexisting clients to the partner's of the firm during his initial interview. For this lapse in judgment, Respondent is remorseful and apologizes. I am truly sorry. The facts of the cases Informant relies on are profoundly more egregious than the conduct alleged in Counts I or II of the instant Information. Respondent requests the Court consider proportionality and the factors in mitigation listed in Point III of this brief.

Dated: March 21, 2005

_____

Derrick R. Williams

Certificate of Service

I hereby certify that on this 21st day of March, 2005, two copies of Respondent's Brief have been sent via First Class mail to:

CARL SCHAEPERKOETTER
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_____
Derrick R. Williams

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 2,552 words according to Microsoft Word, which is the word processing program utilized to prepare Respondent's brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

_____
Derrick R. Williams