IN THE SUPREME COURT
THE STATE OF MISSOURI

In re:	)	
	)	
RADFORD REUBEN RAINES, III,	)	Supreme Court Case SC95032
	)	
Attorney-Respondent.	)	
	)	

BRIEF OF RESPONDENT

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JURISDICTIONAL STATEMENT

Mr. Raines does not contest this Court's jurisdiction. This is a lawyer discipline case, so as Informant's Brief states, 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

A good deed has led to this downward spiral. Upon learning his lawyer-friend Michael Londoff had cancer, respondent Radford "Skip" Raines stepped in to help maintain Londoff's busy two-lawyer personal injury and workers' compensation law practice. But Mr. Londoff's soon-to-be widow and associate Ryan Cox proved unwelcoming compatriots, and Mr. Raines faltered under the press of more than a hundred of Mr. Londoff's workers' compensation cases plus his own general practice. Overwhelmed, Mr. Raines made errors – errors Mr. Raines has admitted – in his practice and in management of his trust account. These errors resulted in Mr. Raines' suspension in February 2014 and, earlier this year, a Hearing Panel recommendation for his disbarment.

Regarding most of the contentions in this case – the contentions not involving Berthold Cox[1] – there is no dispute. The only debate is over the proper punishment. Mr. Raines recognizes the seriousness of those mistakes, and has even conceded that a significant suspension would be suitable for the trust account violations. Yet Mr. Raines should not be disciplined for anything relating to the representation of Berthold Cox, and the nature of Mr. Raines' trust account mistakes should result only in a substantial suspension, particularly when mitigating factors are considered. Finally, even if a disbarment is appropriate – a conclusion Mr. Raines contests – Mr. Raines should receive credit for the period since February 24, 2014, when his license has been in limbo due to the pendency of this ethics prosecution.

STATEMENT OF FACTS

Introduction. Mr. Raines largely accepts Informant's Statement of Facts, except that – as signified by his filing under Missouri Supreme Court Rule 5.19 – Mr. Raines disagrees with and rejects the Hearing Panel's findings regarding the

[1] To reduce confusion, this Brief typically refers to Mr. Londoff's associate attorney Ryan Cox as "attorney Ryan Cox." It refers to Mr. Raines' former client Berthold Cox as "Berthold Cox." Mr. Raines is aware of no further relationship between Ryan Cox and Berthold Cox.

Berthold Cox Complaint, and Mr. Raines contests the Hearing Panel's recommendations for disciplinary sanction. *See R*ecord at 988. Mr. Raines provides this Statement of Facts to expand upon and emphasize some aspects of his personal background and activities, to contest the allegations of Berthold Cox, and to provide additional information relating to mitigating factors discussed later in this Brief.

Background. Mr. Raines graduated from Southeast Missouri State and the University of Missouri School of Law (Columbia). Raines Hearing Testimony, Record at 271-72. After graduating from law school in 1989, Mr. Raines obtained his license to practice law in Missouri. Mr. Raines then practiced law with several law firms, including Holtkamp, Liese, Beckemeyer & Childress and Walker & Williams. *Id.* At these firms, Mr. Raines had little direct involvement in trust account management or related matters. *Id.* at 274.

Solo practice. In 2000, Mr. Raines' friend Rex Burlison[2] was appointed Associate Circuit Judge for the Eleventh Circuit (St. Charles County). Mr. Burlison asked Mr. Raines to take over his law practice. *Id.* at 273. Mr. Raines accepted the invitation, and retained Mr. Burlison's wife Rita to help manage the practice and its accounts until 2005. *Id.* at 275. During this time, Ms. Burlison also helped transition management of the law practice and its accounts to Judy Fasikas. *Id.* By

[2] Judge Burlison's name is misspelled in the Hearing Transcript.

February 2005, Mr. Raines was handling approximately 30 workers' compensation cases, 10 to 15 personal injury cases, and some DWI and traffic cases in his solo general practice. *Id.* at 281.

Helping Mr. Londoff. In February 2005, Mr. Raines' friend attorney Michael Londoff confided to Mr. Raines that he had esophageal cancer. *Id.* Mr. Londoff asked Mr. Raines to help manage Mr. Londoff's busy personal injury and workers compensation law practice the Londoff Law Firm while Mr. Londoff was receiving cancer treatment. *Id.* Mr. Londoff was a "great friend" who needed Mr. Raines' help. *Id.* at 284. Mr. Londoff had even introduced Mr. Raines to the woman who became Mr. Raines' wife. *Id.* at 279.

Mr. Raines agreed to help Mr. Londoff, anticipating he would be assisting with Mr. Londoff's cases for a limited period of time. *Id.* at 214. Mr. Londoff had employed an associate, second-year attorney Ryan Cox, but Ryan Cox did not have the experience or desire to manage the 395 workers' compensation cases that Mr. Londoff had been handling. *Id.* at 281-82. Mr. Raines therefore moved his practice into Mr. Londoff's office in 2005, focusing his attention largely on Mr. Londoff's workers' compensation cases because those cases had more pressing issues. *Id.* at 276. Although Ms. Burlison stopped working with Mr. Raines at this time, Mr. Raines brought Ms. Fasikas over to work in Mr. Londoff's offices. *Id.* at 276. Mr. Londoff's wife – and soon-to-be widow – Joanne Londoff, however, took over

management of the combined Raines-Londoff practice, including the trust account. *Id.* at 276-77.

Mr. Raines and Ryan Cox acquire Mr. Londoff's practice. Mr. Londoff's cancer promptly and unexpectedly took a turn for the worse. Mr. Londoff entered hospice. Without any negotiation, in September 2005 Mr. Raines accepted an offer made on Mr. Londoff's deathbed for Mr. Raines to become associated with attorney Ryan Cox, and for the Raines-Ryan Cox partnership to purchase the Londoff Law Firm for $1,000,000. *Id.* at 284-85; *see also* Agreement for Redemption of Membership Interests, Record at 881. Messrs. Raines and Cox would pay thirty-five percent of the fees generated on Mr. Londoff's cases to his soon-to-be widow Joanne Londoff, with Mr. Raines and Mr. Cox dividing the remaining sixty-five percent of fees equally. Raines Hearing Testimony, Record at 284-85. Mr. Londoff died six days later. *Id.*

Conflict with Ms. Londoff and Ryan Cox. Shortly after Mr. Londoff died, Mr. Raines recognized that the Raines-Ryan Cox partnership would not work. Ms. Londoff did not seem to like Mr. Raines and wanted Mr. Raines to leave the firm. *Id.* at 285-85. Mr. Raines became concerned that Ms. Londoff and Ryan Cox had intended to use Mr. Raines initially to keep clients, but then intended to bring in a third attorney and effectively freeze Mr. Raines out of the practice. *Id.* at 286.

By February or March 2006, attorney Ryan Cox and Mr. Raines decided they should split the firm. *Id.* at 287. But Ryan Cox warned Mr. Raines that Ms. Londoff did not want Mr. Raines "taking a single file." *Id.* at 287. Mr. Raines objected that such a decision was for the client to make, not Ms. Londoff. *Id.* Ryan Cox, however, did not agree with Mr. Raines, and attempted to expel Mr. Raines from the firm. *Id.*

Mr. Raines undermined by Ms. Londoff and Ryan Cox. Meanwhile, Ms. Londoff began intercepting and withholding important mail addressed to Mr. Raines, including letters from the Office of Chief Disciplinary Counsel regarding complaints filed against Mr. Raines in 2006 for cases that languished while Mr. Londoff was ill. *Id.* at 345. This withholding of mail led in part to Mr. Raines receiving admonitions in 2006 and 2008. *Id.*

Attorney Ryan Cox also apparently wrote to the Bar Plan, asking that they rescind Mr. Raines' malpractice insurance. *Id.* at 287. Ryan Cox also wrote to the firm's bank, asking that Mr. Raines be removed from the bank account. *Id.* Mr. Cox began signing documents as the "president" of the law firm. *Id.*

Firm dissolves but dispute continues. Soon the Raines-Ryan Cox law firm dissolved. Yet the dispute continued, with litigation filed, until a settlement was reached effectively concurrent with the 2015 Hearing. *See, e.g., id.* at 295-300; Docket for *Ryan Cox v. Raines*, 1111-CV-02758, Record at 904; Settlement

Agreement dated December 31, 2014, Record at 913. During the dispute with Ryan Cox, Mr. Raines learned that Ryan Cox was withholding payments to which Mr. Raines was entitled. Raines Hearing Testimony, Record at 303-04. Because the funds were in dispute, Mr. Raines and Ryan Cox both were holding funds in their trust accounts. *Id.* at 305.

Mistakes in trust account management. After dissolution of the Raines-Ryan Cox law firm, Mr. Raines ran into trust account problems. These problems arose as Mr. Raines struggled to deal with all the cases he had inherited from the Londoff Law Firm; the on-going dispute relating to dissolution of the Londoff Law Firm; and the loss of his bookkeeping assistance after 2010, when Ms. Burlison left Mr. Raines' law practice to care for her grandchild. Raines Hearing Testimony, Record at 222-23.

Mr. Raines' trust account problems came in five forms. First, Mr. Raines had ended his association with attorney Ryan Cox in 2007, but their dispute continued until 2015. This dispute caused Mr. Raines to hold certain attorney fees in his trust account for extended periods, including fees relating to Mr. Raines' and the Londoff Law Firm's representation of Laurie Carroll (Count I of the Information); Michael Lodes (Count II); Ruth Johnson (Count IV); Judy Petersimes (Count V); and Victor Meuser (Count VI).

Second, Mr. Raines inadvertently withdrew funds to pay clients Mark Peasel (Count VII), James Ketchem (Count VIII), and Deborah Range (Count IX), before Mr. Raines had actually deposited the client's payment into his trust account.

Third, Mr. Raines obtained a settlement but never deposited the settlement check for client Walter Klippel, whose wife Rebecca Klippel was substituted as plaintiff after Mr. Klippel's death (Count XI).

Fourth, Mr. Raines failed to timely withdraw a portion of settlements generated by the Lodes matter (Count II) and the Berthold matter (Count X) as his own fees.

Fifth, at one point in March 2012, in a somewhat desperate attempt to resolve the dispute with Ms. Londoff and Ryan Cox, Mr. Raines paid funds out of his trust account. Raines Hearing Testimony, Record at 308-09. Unfortunately, this payment led to an overdraft, causing additional violations referenced in Counts IV, V, and VI. *Id.* at 310.

Finally, and in addition to those five problems, in 2011 the United States asserted a tax levy against Mr. Raines' trust account. Despite Mr. Raines' objection, the bank paid this levy before Mr. Raines could prevent it (Count III).

In addition, Mr. Raines made accounting errors that resulted in funds being left in his trust account, when those funds should have been paid out. With respect to client Michael Lodes, for example, Mr. Raines properly removed 65 percent of a

$206 payment, but Mr. Raines apparently missed that he had also recovered an $894 payment and failed to deduct his fee from that payment. *Id.* at 307.

None of Mr. Raines' trust account errors were done intentionally. Mr. Raines testified that he never deliberately paid out money on a settlement when in fact he had not deposited the check before paying out the funds. *Id.* at 330. And although Mr. Raines admits that he committed trust accounting errors, he also testified that he did not knowingly and deliberately engage in such trust account violations. *Id.* at 308-14, 330.

Furthermore, OCDC Paralegal Kelly Dillon testified during the disciplinary hearing that she was not aware of any deliberate action by Mr. Raines to prevent his client trust account from being set up properly. Testimony of Kelly Dillon, Record at 255. In addition, when asked whether she was aware of any circumstance in which Mr. Raines overpaid himself beyond what he should have received from his client funds, Ms. Dillon said she was not certain of whether such a situation had occurred. *See id.* at 261-62. Although Ms. Dillon did indicate she could not always tell whether Mr. Raines properly allocated money between himself and attorney Ryan Cox, and Ms. Londoff, Ms. Dillon did concede she had no evidence that Mr. Raines had improperly withheld funds from a client or other third party (outside the Raines-Ryan Cox-Londoff dispute). *Id.*

Accusation from Berthold Cox. Although Mr. Raines has accepted and admitted much of the trust-account related misconduct charged in this case, Mr. Raines has challenged the allegations brought against him by client Berthold Cox, allegations Informant apparently intends to use primarily to support imposition of a greater penalty.

Berthold Cox was a former client of Mr. Raines whom Mr. Raines represented on a workers' compensation claim. Berthold Cox claims that Mr. Raines requested a meeting in a Denny's parking lot, asked Berthold Cox to sign something proving they had discussed a settlement offer, and then secretly settled Berthold Cox's claim without Berthold Cox's knowledge and without Berthold Cox receiving any notice of the settlement. *See* Berthold Cox Hearing Testimony, Record at 179-83.

Mr. Raines believes that, whether due to confusion or improper intent, Berthold Cox's testimony is largely inaccurate. Mr. Raines testifies that he did meet Berthold Cox at a Denny's restaurant, but the purpose was to have Berthold Cox sign the actual settlement agreement. Raines Hearing Testimony, Record at 268, 315. Mr. Raines then dismissed Berthold Cox's workers' compensation claim. *Id.*

Mr. Raines further provided uncontroverted testimony that Berthold Cox would have received notices of the settlement and dismissal directly from the

Division of Workers' Compensation. *Id.* at 268, 315. Evidence and testimony also supported that Mr. Raines sent draft settlement agreements to attorney Dane Christianson, who represented Berthold Cox after Mr. Raines. *See* Record at 322-23. Finally, every document in the case that Berthold Cox signed – even documents Mr. Raines never saw until this litigation – bear what appears to be the same signature. *See, e.g.,* Letter from Berthold Cox to attorney Dean Christianson, Record at 962.

Prior discipline. In addition to the charges at issue in this case, Mr. Raines has previously received discipline, yet Mr. Raines contends all these prior instances stem from or follow Mr. Raines' efforts to help Mr. Londoff with his busy personal injury and workers' compensation practice. Specifically, in 2006 and 2008, Mr. Raines received admonitions violations of Rule 4-8.1, failure to respond to disciplinary authority. *Id.* at 192 and 193. As discussed earlier, Mr. Raines stated – and his testimony was not challenged – that these violations were in part caused by Ms. Londoff withholding Mr. Raines' mail. *Id.* at 345.

Also, on January 12, 2011, Mr. Raines' license was suspended for failure to pay state taxes. His license was reinstated on November 27, 2012. Then, on November 28, 2012, Mr. Raines was placed on probation for one year with a stayed six-month suspension, after admitting violations of Rules 4-1.3 (diligence) and 4-8.1 (failure to respond to disciplinary authority). *Id.* at 194. That probation

was revoked on February 24, 2014, and the minimum six-month suspension began, due to failure to name a mentor attorney, make required payments and file required reports, and as a result of an audit of Mr. Raines' trust account. *Id.* at 195; *see also* Record 482. The Information in this case was filed on December 31, 2013. Record at 1.

Hearing Panel Proceeding. The Information in this case was tried before the Hearing Panel on February 12, 2015. Only Mr. Raines, Ms. Dillon, and client Berthold Cox testified.

On March 26, 2015, the Hearing Panel entered its recommendation that Mr. Raines be disbarred. Record at 963. Mr. Raines then gave notice that he was rejecting the Hearing Panel's decision, resulting in this proceeding.

POINTS RELIED ON

1. THE CONDUCT AND EVIDENCE OF MITIGATION SUPPORT IMPOSITION OF ONLY AN INDEFINITE SUSPENSION, NOT DISBARMENT.

In re Charron, 918 S.W.2d 257 (Mo. 1996)

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

In re Littleton, 719 S.W.2d 772 (Mo. 1968)

2. SHOULD THIS COURT IMPOSE DISBARMENT, RESPONDENT SHOULD RECEIVE CREDIT FOR SUSPENSION TIME ALREADY SERVED.

Iowa Supreme Court Atty. Disciplinary Bd. v. Wright, 857 N.W.2d 510 (Iowa 2014)

Matter of Goll, 122 A.D.3d 631, 632 (N.Y. App. Div. 2d Dep't 2014)

Mahoning County Bar Association v. Helbley, 141 Ohio St. 3d 156 (Ohio 2014)

ARGUMENT

Preliminary Statement. The central question in this appeal is whether Mr. Raines should be suspended or disbarred for the misconduct alleged in the Information and stipulated or proven by the Office of Chief Disciplinary Counsel ("OCDC") at the Hearing.

As set forth in greater detail below, an indefinite suspension with a right to seek reinstatement after a period of twelve to twenty-four months within twelve months, or possibly twenty-four months, of the effective date of the suspension should effect the twin aims of the Missouri lawyer discipline system, which 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). Such a sanction would be appropriate based upon the misconduct proven, that Mr. Raines knew or should have known he was "dealing improperly" with client money and property, but did not "knowingly convert" it.

Further, an indefinite suspension would properly reflect the mitigating circumstances, that Mr. Raines had practiced without incident for seventeen years before an effort to help a dying lawyer friend led to the numerous problems Mr. Raines now admits. An indefinite suspension would also properly reflect that virtually all the misconduct alleged against Mr. Raines in this case arises from a single set of circumstances: Mr. Raines' messy departure from his partnership with

attorney Ryan Cox and working with Joanne Londoff, conduct for which – on information and belief – only Mr. Raines has faced or will face discipline.

Finally, even if this Court disagrees with Mr. Raines that an indefinite suspension would be an adequate sanction, that sanction – or a disbarment with right to reapply for reinstatement in fewer than the regular five years – would allow Mr. Raines credit that he should be due because, although he satisfied all terms from the minimum six-month suspension that commenced in February 2014, Mr. Raines has effectively been barred from seeking reinstatement because of this pending discipline charge.

I. THE CONDUCT AND EVIDENCE OF MITIGATION SUPPORT IMPOSITION ONLY OF AN INDEFINITE SUSPENSION, NOT DISBARMENT.

Suspension and disbarment generally. As mentioned above, the twin goals of lawyer discipline are to "protect the public and maintain the integrity of the legal profession," not to punish the lawyer involved. *Coleman*, 295 S.W.3d at 869.

Under Rule 5.19, this Court may impose a range of lawyer discipline that includes – as the most serious discipline available – an indefinite suspension and disbarment to protect the public and maintain the integrity of the legal profession. Both suspension and disbarment result in a lawyer losing the ability to practice indefinitely, until the lawyer is reinstated by the Missouri Supreme Court. All

lawyer suspensions in Missouri are for an indefinite period. *See, e.g.* Rule 5.16(d)(2); 5.19(e)(1).

All disbarments in Missouri are also indefinite but by Rule not necessarily permanent. Presuming an additional delay does not result for example due to incarceration or probation, a disbarred lawyer may seek reinstatement five years after being disbarred. *See* Rule 5.28.

Whether a lawyer is suspended or disbarred, the process for reinstatement – set forth in Rule 5.28 – is largely the same. The lawyer must file a petition for reinstatement, stating the lawyer has satisfied all conditions in Rule 5.28 as well as any special conditions the Supreme Court imposed. The Office of Chief Disciplinary Counsel reviews the petition for reinstatement, conducts a thorough investigation of the petitioning former lawyer, and makes a recommendation to the Court regarding whether the lawyer should be reinstated. *See* Rule 5.28(h).

This Court then provides a final, independent review and determines whether a suspended lawyer may be reinstated. *See id.* If the Supreme Court denies the petition for reinstatement, the lawyer remains suspended or disbarred indefinitely, until reinstatement occurs. Some lawyers remain suspended or disbarred for decades or longer – perhaps forever – either because a lawyer does not apply for reinstatement or because the Supreme Court (either consistent with or against the OCDC's recommendation) refuses to grant a petition for reinstatement.

Considering the same basic reinstatement process is used, the substantive differences between a lawyer being suspended and a lawyer being disbarred are somewhat limited. Obviously disbarment causes much greater reputational injury, for it signifies the lawyer's misconduct merits imposition of the greatest possible disciplinary sanction. The Office of Chief Disciplinary Counsel and this Court may also view an effort to obtain reinstatement after disbarment more cautiously than an effort to obtain reinstatement after suspension, although such a difference is not required by any Rule or Missouri Law.

Beyond these two potential differences, however, the impact for a disbarment and indefinite suspension and the process for obtaining reinstatement after a disbarment and indefinite suspension are actually quite similar. In fact, there are only three mandatory, substantive differences imposed by Rule between a suspension and a disbarment. First, the costs taxed for disbarment under Rule 5.19(h) are $2,000, or $1,000 greater than the costs taxed for suspension. Second, a disbarred lawyer must take and pass the Missouri State Bar Examination as well as the Multistate Professional Responsibility Examination (MPRE), while a suspended lawyer need only take and pass the MPRE. *See* Rule 5.28(b) & (c). Third, a disbarred lawyer must wait a minimum of five years prior to seeking reinstatement, while an indefinite suspension is generally shorter. *See* Rule 5.28(e).

Mr. Raines' conduct merits only an indefinite suspension, because Mr. Raines did not knowingly convert funds. The first reason that this Court should impose only an indefinite suspension and not disbarment is that Mr. Raines' substantive misconduct merits only a suspension. In assessing the proper penalty, this Court has stated that the discipline to be imposed must turn on the facts in an individual case, but the 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. banc 2009).

ABA Standards 4.11 and 4.12 establish when a lawyer should be suspended and disbarred for failing to preserve client property. ABA Standard 4.12 states:

> ***Suspension*** is 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.

(Emphasis added) Meanwhile, ABA Standard 4.11 states:

> ***Disbarment*** is generally appropriate when a lawyer ***knowingly converts*** client property and causes injury or potential injury to a client.

(Emphasis added)

Mr. Raines admits there was ample evidence that he should be suspended under Standard 4.12. Mr. Raines dealt improperly with client property. Mr. Raines

concedes he made distributions on funds that he should have deposited into his trust account when, due to inadvertence, Mr. Raines had not yet deposited those funds into his trust account. These are the allegations at issue in Counts VI, VII, VIII, IX, and XI of the Information, which allegations Mr. Raines concedes. In addition, in March 2012 Mr. Raines admits that he drew upon the wrong funds and overdrew his trust account when he unilaterally attempted to resolve his dispute with attorney Ryan Cox and Ms. Londoff, but made the payment from a different trust account. These are the allegations in Counts IV, V, VI, VIII, and X, which allegations Mr. Raines again concedes.

Further, Mr. Raines admits that he should have known that these payments and transactions were improper. Mr. Raines understands and admits that he had an obligation only to draw upon "good funds" from proper deposits previously made into his trust account, and that withdrawals needed to come out of the correct trust account. Such mistakes and misconduct adequately support suspension under Standard 4.12.

Yet there was no evidence of "knowing conversion" in the case, and Mr. Raines did not knowingly convert anyone else's funds. Accordingly, under ABA Standard 4.11, disbarment would be too severe a sanction for this Court to impose on Mr. Raines.

In addition, precedent from this Court including *In re Charron*, 918 S.W.2d 257 (Mo. 1996), support imposition of a suspension, not disbarment. In *Charon*, the Supreme Court imposed a suspension with right to reapply in one year on a lawyer despite the fact the lawyer had misappropriated $20,000 from a probated estate and knowingly converted those funds to himself. Mr. Raines' trust account mistakes are more numerous, but he did not knowingly convert funds.

Also, in *In re Coleman*, 295 S.W.3d 857 (Mo. 2009), the Court entered an indefinite suspension with right to reapply in one year – and then ***stayed*** the suspension – where the lawyer had commingled personal and client funds and attempted to settle a client's case in direct contravention to the client's instructions. Finally, in *In re Littleton*, 719 S.W.2d 772, 773-74 (Mo. 1968), a lawyer refused to refund monies given to the lawyer to post bond, and also sexually assaulted the client almost immediately upon her release from jail. Yet the Supreme Court imposed only a suspension with right to reapply in six months. *Id.* at 778.

Mr. Raines' conduct would deserve at most a comparable punishment to that meted out in *Charon*, *Coleman*, and *Littleton*, that is an indefinite suspension. Further, in contexts not relating to the handling of client property, the Supreme Court has imposed suspension with right to reapply in only six months including against a lawyer convicted of felony cocaine possession, *In re Shunk*, 847 S.W.2d 789, 791 (Mo. 1993). Thus, an indefinite suspension is appropriate in this case to

protect the public and the integrity of the Bar.

Informant cannot and did not prove all charges against Mr. Raines. A second reason an indefinite suspension is appropriate is that Informant failed to prove many of the charges against Mr. Raines. Four sets of charges fall into this category of unproven claims.

First, Mr. Raines admits that he held funds in his trust account relating to the settlement of the Carroll, Lodes, Johnson, Petersimes, and Meuser matters (Counts I, II, IV, V, and VI). Yet the funds that were retained related to an on-going dispute regarding Mr. Raines, attorney Ryan Cox, and Ms. Londoff regarding the proper allocation of attorney fees.

Thus, under the various versions of Rule 4-1.15 in effect from 2007 through 2015, Mr. Raines was required to hold these funds in trust pending resolution of the dispute – just as attorney Ryan Cox apparently also held disputed funds in trust pending resolution of the dispute. Current Rule 4-1.15(e) states, for example, "When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the lawyer ***shall keep the property separate until the dispute is resolved.***" (emphasis added); *see also* Mo. S. Ct. R. 4-1.15(c)(2005); 4-1.15(j) (2010).

Second, Mr. Raines was charged with violations of his duty of diligence, Rule 4-1.3, also for retaining these funds in his trust account. Such violations were

not proven because, again, he was in fact required to hold the funds in his trust account pending resolution of the dispute.

Third, the Informant charges Mr. Raines with entering a settlement for Berthold Cox, when Berthold Cox did not agree to that settlement. (Count X) Berthold Cox's testimony on such matters has been thoroughly discredited. While Berthold Cox claimed the meeting was so that Mr. Raines could obtain proof indicating he had discussed the settlement with Berthold Cox, Mr. Raines offered a much more plausible explanation for the meeting in Denny's parking lot and testified he saw Mr. Cox sign the settlement, and uncontroverted testimony indicates Berthold Cox would have received notices of the settlement and dismissal from the Division of Workers' Compensation. Raines Hearing Testimony, Record at 268, 315. Every document in the case that Berthold Cox signed – even documents Mr. Raines never saw until this litigation – bear the same signature. *See, e.g.*, Letter from Berthold Cox to Dane Christianson, Record at 962. Further, Mr. Raines offered other evidence that supported his claim and undermined Berthold Cox's, such as draft settlement statements Mr. Raines had prepared and sent to successor counsel, Dean Christiansen. *See* Raines Hearing Testimony, Record at 322-23. Thus, absent testimony from anyone – expert or otherwise – that Mr. Raines had forged Berthold Cox's name or entered an inappropriate

settlement, the allegations regarding an improper settlement in Count X remain unproven.

Fourth and finally, the Informant asserts in Count III that Mr. Raines violated Rules 4-1.15 and 4-8.4 when he allegedly permitted the United States Government to seize trust account funds as an Internal Revenue Service tax levy without opposition. But the testimony consistently and without contravention supports that Mr. Raines attempted, unsuccessfully, to prevent the IRS tax levy, but was unable to do so. *See* Raines Testimony, Record at 222-24. The OCDC failed to prove the charge in Count III. No violation of Rule 4-1.15, and certainly no fraud or dishonesty, was proven.

Proper evaluation of mitigating factors support imposition of suspension only. Under the ABA Standards, it is also appropriate for this Court to consider mitigating and aggravating factors when assessing what penalty to impose. Proper consideration of the mitigating evidence supports imposition of a suspension only.

Mr. Raines' problems all arose after he tried to help a lawyer dying of cancer. Mr. Raines had a clean disciplinary record practicing for almost 16 years until 2005, when he attempted to help lawyer friend Michael Londoff, who it turned out was dying of cancer. *See* Raines Testimony, Record at 329 (no disciplinary issues until 2005); *see also* ABA Standard 9.32(a) (absence of prior discipline a mitigating factor). Only after attempting to help Mr. Londoff did Mr.

Raines find himself overwhelmed by the work and impeded by Ryan Cox and Mr. Londoff's widow and heir JoAnn Londoff, such that Mr. Raines started failing to attend to business matters like paying taxes; made errors in handling trust account funds; and engaged in other activities that constitute violations of the applicable ethics rules. *See, e.g.*, Raines Hearing Testimony, Record at 222-23, 307-08, 310, 345.

This common origin should also cut against using Mr. Raines' prior disciplinary history as an aggravating factor. The earlier charges all arose after Mr. Raines' ill-fated attempt to help Mr. Londoff, largely because of the problems that resulted from such efforts. The prior violations should be seen as part of the same circumstances. This is particularly true in light of Mr. Raines' current interim suspension and inability to apply for readmission from his February 2014 suspension due to the charges brought in the immediate Information.

Absence of selfish motive. No testimony suggests that Mr. Raines had a selfish motive. In fact, as discussed earlier, many of Mr. Raines' problems arose because he paid funds to the Londoff Trust prematurely, seeking a resolution of his dispute regarding fees generated on cases originated by the Londoff firm. As mentioned earlier, Ms. Dillon was unable to identify a particular instance where Mr. Raines overpaid himself beyond what he should have received from his client

funds. *See* Dillon Testimony, Record at 261. Absence of selfish motive should therefore be a mitigating factor, as provided in ABA Standard 9.32(b).

Personal and emotional problems. The Record demonstrates the physical and emotional problems that Mr. Raines has endured, largely after being overwhelmed in his effort to assist Mr. Londoff. Such emotional issues constitute evidence in mitigation under ABA Standard 9.32(c). *See, e.g.* Raines Hearing Testimony, Record at 329 (Mr. Raines did not have the resources he needed to handle the nearly 400 workers' compensation cases from the Londoff Law Firm); *see also id.* at 91 (discussing Mr. Raines' suicidal thoughts and treatment for depression two years earlier).

Full and free disclosure of information. Mr. Raines was fully candid with the Hearing Panel and cooperated with the Office of Chief Disciplinary Counsel as much as his resources and emotional state allowed. This should constitute mitigating evidence under ABA Standard 9.32(e).

Character and reputation. Mr. Raines submitted letters to the Hearing Panel that demonstrated his good character and reputation. *See* Record at 942-45. Such evidence remains uncontroverted, and should be mitigating evidence under ABA Standard 9.32(g).

Other discipline for the same conduct. In February 2014, Mr. Raines had his probation revoked and was required to serve a minimum six-month suspension by

this Court. Ordinarily Mr. Raines could have sought reinstatement from that suspension in August 2014. The pendency of this Information, however, caused the Office of Chief Disciplinary Counsel to indicate they would not consider an application from Mr. Raines at that time, and this Court entered an interim suspension under Rule 5.23(c) against Mr. Raines on September 30, 2014, again arising from Mr. Raines' claim of mental infirmity immediately prior to an earlier Hearing Panel adjudication of the charges in this Information.

Had Mr. Raines not suffered these collateral consequences of this Information, he could have sought reinstatement in August 2014. Mr. Raines has effectively been suspended for the charges brought in this Information for more than a year, since he should have been eligible for reinstatement from his February 2014 suspension in August 2014. This constitutes mitigating evidence under ABA Standard 9.32(k).

Remorse. Finally, the Record demonstrates that Mr. Raines was candid and showed serious remorse during the Hearing. This is mitigating evidence under ABA Standard 9.32(l).

These mitigating factors support that Mr. Raines should receive an indefinite suspension, not disbarment. Such penalty should be adequate to protect the public and the integrity of the Bar, particularly since both this Court and the Office of Chief Disciplinary Counsel would have full opportunity to assess Mr. Raines'

readiness to return to practice should he pursue reinstatement.

II. RESPONDENT SHOULD RECEIVE CREDIT FOR SUSPENSION TIME ALREADY SERVED.

Finally, Rule 5.28(e) permits this Court to permit application for reinstatement in shorter than the regular period "for good cause shown." Should this Court determine – contrary to Mr. Raines' arguments in support of his first Point Relied – that disbarment is appropriate, Mr. Raines asks that this Court find "good cause" now and indicate in its order that Mr. Raines may seek readmission earlier because the charges in the Information have already delayed his ability to seek reinstatement to practice law for more than a year.

As noted above, in February 2014, the Office of Chief Disciplinary Counsel requested and this Court agreed to revoke Mr. Raines' probation, activating a minimum six-month suspension. Under ordinary circumstances, Mr. Raines should have been able to seek reinstatement from that suspension of his license a year ago, in August 2014.

Due to the pendency of this proceeding, however, the Office of Chief Disciplinary Counsel indicated that it would not entertain Mr. Raines' petition for reinstatement at this time. Moreover, on September 30, 2014, this Court entered an order of interim suspension under Rule 5.23(c) also relating to the misconduct charged in this Information. Record at 73. This effectively added approximately a

year to Mr. Raines' earlier suspension.

Although there is no precedent in Missouri, high courts in other jurisdictions often effectively grant lawyers credit for time served on a pre-hearing suspension. *See, e.g.*, *Iowa Supreme Court Atty. Disciplinary Bd. v. Wright*, 857 N.W.2d 510, 518 (Iowa 2014); *Matter of Goll*, 122 A.D.3d 631, 632 (N.Y. App. Div. 2d Dep't 2014); *Mahoning County Bar Association v. Helbley*, 141 Ohio St. 3d 156, 159 (Ohio 2014) (credit for time spent on interim suspension); *In re Durante*, 87 A.D.3d 112, 116 (N.Y. App. Div. 2d Dep't 2011) (credit for time served under interim order of suspension); *Disciplinary Counsel v. Bennett*, 921 N.E.2d 1064, 1068 (Ohio 2010) (credit for time spent on interim suspension pending criminal conviction).

Mr. Raines should receive credit – at minimum from August 2014, if not earlier – for the time that he has already been suspended arising from the same charges as are brought in the Information. Such credit could and should be noted in any order of disbarment, as provided in Rule 5.28(e).

CONCLUSION

An indefinite suspension with right to reapply after one or two years is adequate to protect the public and the integrity of the Bar in the present case. Mr. Raines therefore asks that the Court take into consideration the time that Mr. Raines has already served in his interim suspension, and recommend an indefinite

suspension for Mr. Raines with right to reapply after one (additional) year of suspension.

REQUEST FOR ORAL ARGUMENT

Mr. Raines believes that oral argument is appropriate for this case. The standard setting for a lawyer discipline case, allowing fifteen minutes of argument per side, should be sufficient.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 27th day of August, 2015, a true and correct copy of the foregoing was served via the Court's electronic filing system on:

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/s/ Michael P. Downey

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 14-point font, which includes serifs. The brief complies with Rule 84.06(b) in that it contains 6365 words and 623 lines.

/s/ Michael P. Downey