IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
MICHAEL WAYNE BLUM,	)	**Supreme Court #SC95595**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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TABLE OF CONTENTS

POINTS RELIED ON

ARGUMENT

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

Procedural History

This matter was heard by a Disciplinary Hearing Panel on November 16, 2015 in Springfield, Missouri. The case was heard on a twenty Count Amended Information. **App. 75-107.** Counts VIII and IX were dismissed at the hearing. Counts I-VII and X-XVII charged Respondent with violating various rules regarding Respondent's trust account. Count XVIII charged Respondent with rule violations while representing a client in a personal injury lawsuit and the resolution of issues after settlement. Count XIX charged the Respondent with failure to provide information to the Informant. Count XX charged Respondent with rule violations when representing a client in a dissolution action.

Respondent denied violating the Rules in all Counts. **App. 108-117.**

The Disciplinary Hearing Panel concluded Respondent violated disciplinary rules in all of the charged Counts except for Count XVII. The panel recommended that Respondent be disbarred. **App. 609-644.**

Disciplinary History

Respondent had a disciplinary history prior to the charges in this case. He received an Admonition in 2006 for violation of Rule 4-1.16(d) by failing to return a file to a client in a timely manner at the end of representation, and so admitted in his answer. **App. 108.** In addition, Respondent received a stayed suspension with probation by this Court on September 1, 2009 in Case No. SC90312. Respondent was found to have

violated Rule 4-1.15(c) by failing to deposit client funds into his client trust account; Rule 4-8.1(c) by failing to respond to a request for information from a disciplinary authority; Rule 4-1.8(c) by providing financial assistance to a client in connection with pending litigation; Rule 4-1.15(c) by commingling his own funds with client funds; Rule 4-1.3 by failing to act diligently; Rule 4-1.4 by failing to adequately communicate with his client; and Rule 4-1.16 by not withdrawing from representation when discharged and failing to return files to a client upon request. **App. 118.**

Respondent successfully completed his term of probation and received an order of successful completion of probation on April 4, 2012. **App. 131.**

While on probation Respondent attended a continuing legal education program called "ethics school" which included training about law practice management, how to control staff and how to manage trust accounts. **App. 64-65 (T. 252-253).** Every year while on probation Respondent attended the Missouri Bar Solo and Small Firm Conference taking classes on law practice management. **App. 65 (T. 253).** Respondent while on probation also had a law practice management consultant to serve as a resource for law practice management issues. **App. 65 (T. 254-255).** While on probation Respondent was required to maintain individual client trust account records, a general ledger, and reconcile client trust account records on a monthly basis. **App. 65 (T. 255-256).**

Work History

Respondent graduated from law school in 1998 and was licensed in 1999. He first worked for the Missouri Department of Social Services and then the Missouri Attorney General. **App. 47 (T. 184).** Respondent opened his own law firm in Columbia, Missouri in 2003. **App. 47 (T. 184).** From 2003-2013 Respondent was a solo practitioner in Columbia. **App. 48 (T. 185).** He moved to St. Robert, Missouri in June 2013 to join the law firm of Lawrence Ray, first as an associate. He became a partner in August 2013. **App. 49 (T. 190).** A client trust account was established in August of 2013 at US Bank entitled Blum and Ray, LLC, Lawyer's Trust Account (IOLTA), Account No. XXXXXXXXXX1904. At the same time in August of 2013 Respondent established an operating account at US Bank entitled Blum and Ray LLC, Account No. XXXXXXXXX1912. **App. 138; 156.**

Witnesses

A. Chelsea Hannigan

Chelsea Hannigan was a paralegal employed by the Blum and Ray Law Firm. She had nine previous years of paralegal experience before being hired by Lawrence Ray in February 2013. **App. 7 (T. 22-23).** She worked for the firm for three months prior to Respondent joining the firm and then left for a position with a different law firm. **App. 8 (T. 26-27).** She came back to the firm, by then known as Blum and Ray, in September of 2013 when Respondent hired her to do bankruptcies cases out of the firm's Rolla office. **App. 8 (T. 28).** Ms. Hannigan had no signatory authority for the trust account. All she

could do was make deposits. **App. 9 (T. 31).** By December 2013 there were cash flow problems at the firm of Blum and Ray causing delays in the ability to cash employee payroll checks. In January 2014 Ms. Hannigan deposited earned fees from a bankruptcy case in the firm's operating account and cashed her payroll check despite Respondent's directive that payroll checks were to be held to a later date. **App. 10-11 (T. 36-37).** Respondent then discharged Ms. Hannigan. She made a complaint to the Informant, including in that complaint a list of bankruptcy clients who had paid for bankruptcy services and whose bankruptcies had not been filed. **App. 374-378.** Her complaint was a key source for the investigation into Respondent's trust account. **App. 26 (T. 98).**

B. Serena Hendrickson

Serena Hendrickson was a paralegal employed by Lawrence Ray in November of 2012 and remained an employee of the firm, later Blum and Ray Law Firm, until Respondent fired her in November of 2014 after accusing her of stealing money from the firm. **App. 593-605.** Ms. Hendrickson denied the accusation, obtained a new job as a paralegal with another firm and made a complaint to the Informant. **App. 454-460.**

C. Matthew Rossignol

Matthew Rossignol hired Respondent in January 2014 for a divorce, making a $740 advance payment. **App. 21; 469 (T. 78).** The dissolution petition was never filed. In September 2014 Mr. Rossignol paid another $300 to Respondent. **App. 22; 469 (T. 81).** A few days later Mr. Rossignol decided to discharge Respondent and asked for the $300 back. **App. 22; 470 (T. 82).** Mr. Rossignol did not receive his $300 refund

until late January 2015 after making a complaint to the Informant. **App. 23; 473-475 (T. 85).**

D. Kelly Dillon

Kelly Dillon is a paralegal and investigative examiner employed at the Office of Chief Disciplinary Counsel since March of 2001**. App. 25 (T. 96).** Prior to that Ms. Dillon spent more than eight years employed in the banking industry. **App. 133.** Her duties at the OCDC include examining trust account and operating account records of lawyers, many generated by trust account overdraft notifications**. App. 25 (T. 96).** Ms. Dillon has a bachelor's degree in paralegal studies from William Woods University, has received ongoing investigative training since that time, and is a certified Fraud Examiner. **App. 25 (T. 96-97).** She is a member of the Association of Certified Fraud Examiners and also a member and past president of the Organization of Bar Investigators. **App. 26 (T. 97).** Ms. Dillon is a frequent speaker at continuing education courses on issues of trust accounting for lawyers and the safekeeping of lawyer property. **App. 26 (T. 97).**

Ms. Dillon became involved with the Respondent's trust account investigation in early 2014 after reviewing a complaint filed by Chelsea Hannigan. **App. 26 (T. 98).** In the course of her investigation she obtained the trust account and operating account information for the Blum and Ray Law Firm from August of 2013 to the fall of 2015. **App. 26-27 (T. 99; 102).** From the bank account information Ms. Dillon prepared spreadsheets on both the trust account and the operating account for all transactions. **App. 27-28 (T. 103-105).** From the spreadsheet information she was able to prepare

individual client ledgers for Counts I-VII and X-XVI of the Information against the Respondent. **App. 28 (T. 105-107).** She compared those client ledgers with the financial information Respondent had submitted to the Bankruptcy Court in many of the bankruptcy cases charged in the Information. **App. 29 (T. 109).** She then was able to testify regarding each of the specific Counts in the Information from I-VII to X-XVI.

From the information obtained in the bank statements, client ledgers and bankruptcy records, Ms. Dillon compiled an exhibit showing the money that should have been in Respondent's trust account for unpaid filing fees compared to the money actually in that account. **App. 39; 250 (T. 149-151).** By January of 2014 Respondent had received advance fee payments in at least eight cases not yet filed. The advanced filing fees alone would have been over $2,500, yet Respondent had only $347.14 in his trust account. **App. 39; 250 (T. 151).**

Respondent met with Ms. Dillon in person at the Informant's office on September 18, 2014. **App. 27 (T. 101).** Respondent generally was uncooperative in providing materials requested by Ms. Dillon. **App. 26 (T. 99).** He did not provide materials requested before his meeting with Ms. Dillon on September 18, 2014. **App. 27 (T. 101).** After that meeting he failed to provide follow-up materials requested. **App. 27; 251-252 (T. 102).** As late as November 2015 he failed to provide materials to her, even when promising to do so. **App. 39; 253-257 (T. 152-154).**

E. Jacqueline Hendrickson

Jackie Hendrickson began work at the Lawrence Ray law firm in April of 2013. In August of 2013 the firm became Blum and Ray. When she started, there were five employees at the firm plus Lawrence Ray. **App. 47 (T. 182).** As of the November 2015 hearing there were two employees at the firm, herself and an associate attorney, plus Respondent. **App. 47 (T. 182).** She is Respondent's "significant other." They have a child together born in July of 2015 but are not married. **App. 47 (T. 181).**

Ms. Hendrickson testified regarding the organization of the Blum and Ray Law Firm, as well as her memories on specific bankruptcy cases mentioned in the Information. **App. 43-45 (T. 168-173).** She has never had signatory authority on either the trust or operating accounts during the time she has been at the office. **App. 47 (T. 181-182).**

COUNTS

Count I
(Edwards)

Respondent was hired by Blake and Kathryn Edwards in October 2013 to represent them in a bankruptcy proceeding. They gave Respondent a $1,400 cash payment on October 29, 2013. **App. 29: 267 (T. 109).** Of that sum $1,094 was for attorney fees and $306 for the bankruptcy filing fee. **App. 266-267.** The Edwards bankruptcy petition was not filed until July 23, 2014. **App. 260.** In the meantime the Blum and Ray trust account balance fell to $347.14 on January 30, 2014. **App. 29 (T. 109).** Respondent in a September 2014 meeting told Kelly Dillon that he transferred

the Edwards money from the trust account to his operating account on February 19, 2014. **App. 29 (T. 109).**

The Disciplinary Hearing Panel found that Respondent in Count I violated the following Rules:

a) Rule 4-1.15 on safekeeping property by failing to deposit the advance fee payment for Mr. and Mrs. Edwards in his trust account, or, in the alternative, by failing to document the deposit;

b) Rule 4-1.15 on safekeeping property by withdrawing the full payment for Mr. and Mrs. Edwards from his trust account before all work had been completed on the case;

c) Rule 4-1.3 on diligence by failing to file the bankruptcy petition for Mr. and Mrs. Edwards for over eight months after receipt of the advance fee payment;

d) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent's trust account balance fell below that amount represented by Mr. and Mrs. Edwards's advance fee payment.

App. 613-614.

Count II
(Miller)

In September 2013 Respondent was hired by Ronald Miller to file a bankruptcy petition and represent Mr. Miller in the United States Bankruptcy Court for the Eastern District of Missouri **App. 29 (T. 111).** Mr. Miller paid Respondent $1,500 in two

separate payments, one in August of 2013 for $300 and the other in September of 2013 for $1,200. **App. 29; 268 (T. 111).** The payments were for Respondent's attorney fee and the $194 bankruptcy filing fee. Both payments were deposited into Respondent's trust account. **App. 269; 271.**

On November 7, 2013 Respondent transferred $1,500 from his trust account to his operating account, noting that the transfer was for the Miller bankruptcy. **App. 29; 31 (T. 111; 120).**

The Miller bankruptcy never has been filed. **App. 44 (T. 169).** Jackie Hendrickson stated they were waiting for documentation. **App. 44 (T. 169).** Neither Respondent nor Ms. Hendrickson explained why he had transferred the entire $1,500 paid by Mr. and Mrs. Miller to his operating account from his trust account in November of 2013 when no filing has taken place to this date.

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct in Count II as a result of violating Rule 4-1.15 on safekeeping property by withdrawing the full payment for Mr. Miller from his trust account before all work had been completed in the case. The Disciplinary Hearing Panel found in the Respondent did not violate Rule 4-1.3 on diligence because the delays were explained at trial.

App. 615.

Count III
(Finn)

Respondent was hired in September of 2013 by Larry Finn to file a bankruptcy petition and represent Mr. Finn in the United States Bankruptcy Court for the Eastern

District of Missouri. **App. 32 (T. 123).** Mr. Finn paid Respondent $900 in September 2013, which was deposited into his trust account. **App. 32; 273 (T. 123).** Mr. Finn made two additional payments to Respondent in November of 2013, one for $200 and the other for $400. **App. 32; 273 (T. 124).** Those deposits were placed in Respondent's operating account rather than in his trust account. **App. 32; 273 (T. 124).** Respondent never transferred the $600 from his operating account to his trust account.

In January of 2014 the amount of money in Respondent's trust account dropped below the $1,500 that should have been in the account because of Mr. Finn's advance fee and filing fee payments. **App. 32; 138-154 (T. 124).** On several occasions in January of 2014 Respondent's trust account dropped below the $900 level of Mr. Finn's September 2013 trust account deposit that actually had been deposited into Respondent's trust account. **App. 32; 273 (T. 124).**

Respondent on or about May 15, 2014 transferred $1,500 from his client trust account to his operating account with the designation that the transfer was from Mr. Finn's deposit. **App. 33 (T. 126).** Because only $900 of Mr. Finn's payment had been made into Respondent's trust account, a portion of the transfer on May 15, 2013 was from funds belonging to other clients.

Respondent in his trial testimony presented Respondent's Exhibit C showing Mr. Finn received a bankruptcy discharge on January 27, 2015. **App. 480.** However, Respondent's trial testimony did not explain the mishandling of Mr. Finn's funds, inappropriate placement in Respondent's operating account, and inappropriate

withdrawal from Respondent's trust account. Jackie Hendrickson in her testimony stated Mr. Finn had not provided the office updated information, resulting in delays. **App. 44 (T. 169).** No supporting documents or correspondence was provided by Respondent or Ms. Hendrickson to show a reason for the delay.

The Disciplinary Hearing Panel found Respondent guilty of professional misconduct in Count III as a result of violating:

a) Rule 4-1.15 on safekeeping property by failing to deposit a portion of the advance fee payment for Mr. Finn in his trust account, or, in the alternative, by failing to document the deposit;

b) Rule 4-1.15 on safekeeping property by withdrawing the full payment for Mr. Finn from his trust account before all work had been completed on the case;

c) Rule 4-1.3 on diligence by failing to file the Finn bankruptcy petition until October of 2014 despite receiving and transferring all advance fees to Respondent's operating account well before the date of filing;

d) Rule 4-1.15 on safekeeping property by failing to maintain sufficient funds in Respondent's trust account to equal or exceed the value of Mr. Finn's advance fee payments; and

e) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent removed Mr. Finn's full advance fee payment before all work was done on Mr. Finn's case and removed $1,500 from Respondent's

client trust account claiming the withdrawal was for Mr. Finn's fee when Respondent only had deposited $900 into the trust account.

f) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent's trust account balance fell below that amount represented by Mr. Finn's advance fee payment.

App. 616-617.

Count IV
(Pennington)

On or about March 2014 Respondent was hired by Wesley and Carrie Pennington to prepare a bankruptcy petition and represent them in the United States District Bankruptcy Court for the Eastern District of Missouri. **App. 293-294.** Mr. and Mrs. Pennington paid Respondent $1,400 on March 17-18, 2014. **App. 284-287.** Respondent met with paralegal Kelly Dillon of the OCDC on September 18, 2014 and acknowledged in that meeting he deposited that advance fee payment directly into his operating account. **App. 52 (T. 204).**

The Penningtons' bankruptcy petition was filed on June 24, 2014. **App. 288.** The Penningtons received a discharge on September 23, 2014. **App. 481.**

The Disciplinary Hearing Panel found Respondent guilty of professional misconduct in Count IV as a result of violating: Rule 4-1.15 on safekeeping property by failing to deposit the advance fee payment for Mr. and Mrs. Pennington in his trust account.

App. 617.

Count V
(Nichols)

Respondent was hired by Amber Nichols in November of 2013 to file a bankruptcy petition and represent her in the United States Bankruptcy Court for the Western District of Missouri. **App. 301-302.** Respondent, in his meeting with Kelly Dillon on September 18, 2014, stated that Ms. Nichols paid him $1,400 for attorney fees and the bankruptcy filing fee on November 4, 2013 and that he deposited the money into his trust account. **App. 34; 53 (T. 129; 205).** Respondent's trust account shows several deposits around that date, but none specifically identified as being from Ms. Nichols. **App. 34 (T. 129).**

Respondent stated at the September 18, 2014 meeting that he transferred Ms. Nichols's $1,400 fee payment to his operating account on February 21, 2014. **App. 34 (T. 130).** Respondent's account records that date do show a transfer but the records do not identify the source of the transfer. **App. 34 (T. 130).**

Between January 9, 2014 and February 11, 2014 Respondent's client trust account had a balance of less than $1,400, the amount that should have been in that account for the advance fee payment by Ms. Nichols. **App. 138-154.**

Despite not having filed a bankruptcy petition for Ms. Nichols, and despite transferring the $1,400 to Respondent's operating account on February 21, 2014, the operating account balance fell by March 4, 2014 to $224 and by March 19, 2014 had a negative balance of $134.40. **App. 34 (T. 130).**

Ms. Nichol's bankruptcy petition was not filed until July 11, 2014. **App. 296.** She received a bankruptcy discharge on October 27, 2014. **App. 482.**

Respondent in his trial testimony did not explain why he transferred the full advance fee payment to his operating account before all work had been done and filing fees paid, nor did Respondent explain why it took until July 11, 2014 to file the bankruptcy petition for Ms. Nichols. **App. 52-53 (T. 204; 207).**

Jackie Hendrickson testified that Ms. Nichols had difficulty with updating pay stubs and also saw some medical bills. **App. 44 (T. 170).** No supporting documents or correspondence was provided by Respondent or Ms. Hendrickson to show a reason for the delay.

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct as a result of violating:

a) Rule 4-1.15 on safekeeping property by failing to document the advance fee payment into Respondent's trust account;

b) Rule 4-1.15 on safekeeping property by withdrawing the full payment for Ms. Nichols from his trust account before all work had been completed on the case;

c) Rule 4-1.3 on diligence by failing to file the bankruptcy petition for Ms. Nichols until July of 2014;

d) Rule 4-1.15 on safekeeping property by failing to maintain sufficient funds in Respondent's trust account to equal or exceed the value of Ms. Nichols's advance fee payments;

e) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent removed Ms. Nichols's full advance fee payment before all work was done on Ms. Nichols's case; and

f) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent's trust account balance fell below that amount represented by Ms Nichols's advance fee payment.

g) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent's operating account balance was a negative $134.40 by March 19, 2014 despite not having filed the Nichols bankruptcy petition.

App. 619-620.

Count VI
(McCarthy)

Respondent on or about November of 2013 was hired by Ejay McCarthy to file a bankruptcy petition and represent him in the United States Bankruptcy Court for the Western District of Missouri. **App. 34; 53; 314-315 (T. 132; 205).** Respondent, in his meeting with Kelly Dillon on September 18, 2014, stated that Mr. McCarthy paid Respondent $1,400 for the attorney fee and bankruptcy filing fee on November 6, 2013. **App. 34 (T. 132).** Respondent's trust account records show deposits on or about that

date, but there is nothing identifying any of the deposits being from Mr. McCarthy. **App. 138-154.**

Respondent's operating account records show that on December 3, 2013 there were deposits into Respondent's operating account in the amount of $1,400 with the designation of McCarthy. **App. 303-306.** Those deposits were not from Respondent's trust account.

In early December of 2013 Respondent had extremely low balances in his operating account. December 2, 2013, the date before the "McCarthy" transfers, Respondent's operating account had a negative balance of $1,341.90 with outstanding but not yet cashed checks numbered 1132, 1136, 1137, 1138 and 1140. **App. 35 (T. 133).** On December 3, 2013 the operating balance, after the McCarthy and other deposits, was $1,748.10. **App. 303.** By December 19, 2013, after presentment of the aforesaid checks, the operating balance was $1.43. **App. 303.**

Respondent on September 18, 2014 told Kelly Dillon he transferred Mr. McCarthy's $1,400 from his trust account to his operating count on February 26, 2014. There was a transfer that date, but the source of the transfers is unidentified. **App. 35 (T. 135).**

Between January 9, 2014 and February 11, 2014 the amount of money in Respondent's trust account was less than the amount of the $1,400 advance fee payment by Mr. McCarthy. **App. 138-154.**

Mr. McCarthy's bankruptcy petition was not filed until August 29, 2014. **App. 307.** He received a discharge on July 17, 2015. **App. 483.**

In Respondent's trial testimony he did not explain why Mr. McCarthy's petition was not filed until August 29, 2014, nor did he explain why all of Mr. McCarthy's advance fee payment had been used prior to that date, nor why the initial deposit was made to his operating account. **App. 53 (T. 205; 207).**

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct in Count VI as a result of violating:

a) Rule 4-1.15 on safekeeping property by depositing the advance fee payment for Mr. McCarthy directly into his operating account;

b) Rule 4-1.15 on safekeeping property by withdrawing $1,400 from his trust account on February 16, 2014 before all work had been completed on the case and without any indication that withdrawal was from funds actually placed in the trust account by Mr. McCarthy's payment;

c) Rule 4-1.15 on safekeeping property by failing to maintain sufficient funds in Respondent's trust account to equal or exceed the value of Mr. McCarthy's advance fee payments; and

d) Rule 4-1.3 on diligence by failing to file the bankruptcy petition for Mr. McCarthy until August of 2014;

e) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent deposited Mr. McCarthy's full advance fee payment into

his operating account before all work was done on Mr. McCarthy's case;

f) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent's trust account did not have Mr. McCarthy's advance fee payment.

App. 621-622.

Count VII
(Nash)

Respondent, or Respondent's predecessor Lawrence Ray, was hired by Belinda Nash to file a bankruptcy petition and represent her in the United States Bankruptcy Court for the Eastern District of Missouri. **App. 35; 53 (T. 136; 208).** Ms. Nash paid Respondent $750 on April 1, 2014. **App. 316-318.** By Respondent's testimony Ms. Nash also paid $750 as an advance fee payment to attorney Ray prior to Respondent joining Mr. Ray's firm. **App. 53 (T. 208).**

On or about May 20, 2014 Respondent transferred the second $750 payment (the one he had personally received) to his operating account **App. 35-36 (T. 136-137).**

Ms. Nash's bankruptcy petition still has not been filed. Respondent in his trial testimony explained that Ms. Nash had not provided all information necessary for her bankruptcy filing, was now married, and that her circumstances may have changed. **App. 53-54 (T. 208-209).** Respondent in his trial testimony did not explain why the full advance fee payment for Ms. Nash had been withdrawn before all work had been completed on the case.

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct in Count VII as a result of violating Rule 4-1.15 on safekeeping property by withdrawing the full payment for Ms. Nash from his trust account before all work had been completed on the case. The Disciplinary Hearing Panel found Respondent not guilty of violating Rule 4-1.3 because there was no evidence of a lack of diligence on Respondent's part in not filing the bankruptcy petition for Ms. Nash.

App. 622-623.

Count X
(Barve)

Respondent was hired in August of 2013 by Larry Barve to file a bankruptcy petition and represent Mr. Barve in the United States Bankruptcy Court for the Eastern District of Missouri. Mr. Barve paid $1,400 for the attorney fee and the bankruptcy filing fee to Respondent in August 2013. The payment was deposited into Respondent's trust account. **App. 36; 319-321 (T. 137).**

No bankruptcy petition has ever been filed on behalf of Mr. Barve. In his trial testimony Respondent entered into evidence Exhibit H, a letter from his office to Mr. Barve dated June 24, 2015 attempting to contact Mr. Barve in an effort to have the bankruptcy matter proceed. **App. 487.**

In January of 2014 the amount of money in Respondent's trust account dropped below the $1,400 that should have been in the account because of Mr. Barve's advance fee payments. **App. 138-154.** The balance in Respondent's trust account fell to as low as $347.14.

There is no record of Respondent withdrawing funds from Respondent's trust account in the name of Mr. Barve. However, by June 9, 2015 the trust account balance fell to $131.32, far below the advanced filing fee, let alone the advanced attorney fees. **App. 138-154.**

The Disciplinary Hearing Panel found Respondent guilty of professional misconduct in Count X as a result of violating:

a) Rule 4-1.15 on safekeeping property by withdrawing most, if not all, of the full payment for Mr. Barve from his trust account before all work had been completed on the case;

b) Rule 4-1.15 on safekeeping property by failing to maintain sufficient funds in Respondent's trust account to equal or exceed the value of Mr. Barve's advance fee payments;

c) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent removed Mr. Barve's advance fee payment before all work was done on Mr. Barve's case;

d) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent's trust account balance fell below that amount represented by Mr. Barve's advance fee payment;

The Disciplinary Hearing Panel found Respondent not guilty of violating Rule 4-1.3 on diligence, there being no evidence that Mr. Barve's bankruptcy petition was ready for filing or that Mr. Barve had provided all necessary information to Respondent.

App. 623-624.

Count XI
(Mathenia)

Respondent was hired in October of 2013 by Shirley Mathenia and Edward Mathenia, Jr. to file a bankruptcy petition and represent Mr. and Mrs. Mathenia in the Bankruptcy Court for the Eastern District of Missouri. Mr. and Mrs. Mathenia paid Respondent $1,400 for the attorney fee and expenses. **App. 36; 330-332 (T. 139).** Only $400 was deposited into Respondent's trust account on October 4, 2013. **App. 324-326.** The disposition of the remaining balance of the $1,400 payment has not been accounted for.

Respondent's designation of payment to Blum & Ray from the Mathenia bankruptcy filing did designate $1,065 in fees and $335 received for the filing fee, all in October of 2013. **App. 330-332.**

In January of 2014 the amount of money in Respondent's trust account dropped below the $400 that should have been in the account based on the October 2013 trust account deposit. **App. 138-154.**

The Mathenia bankruptcy, for Shirley Mathenia only, was not filed until May 29, 2015. **App. 327.** Ms. Mathenia received a bankruptcy discharge on September 1, 2015. **App. 488.**

Jackie Hendrickson testified the bankruptcy was delayed because she did not have a lot of bankruptcy knowledge and was learning how to do them. **App. 44 (T. 172).**

Respondent at trial testified about the Mathenia discharge. However, Respondent did not explain the length of time from the receipt of the advance fee payment in October of 2013 until May 29, 2015 for the bankruptcy petition to be filed, nor did he explain why Respondent's trust account dropped to a level well below the Mathenia advance fee payment, nor did he explain why only $400 of the $1,400 advance fee payment could be accounted for by deposit into Respondent's trust account. **App. 54 (T. 209).**

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct in Count XI as a result of violating:

a) Rule 4-1.3 on diligence by not filing a bankruptcy petition for Shirley Mathenia until May 29, 2015 despite having received the advance fee payment for doing so in October of 2013;

b) Rule 4-1.15 on safekeeping property by failing to maintain sufficient funds in Respondent's trust account to equal or exceed the value of Mr. and Mrs. Mathenia's advance fee payment;

c) Rule 4-1.15 on safekeeping property by failing to deposit the full amount of Mr. and Mrs. Mathenia's advance fee payments into Respondent's trust account;

d) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent utilized Mr. and Mrs. Mathenia's advance fee payment before a bankruptcy petition was filed;

e) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent's trust account balance fell below that amount represented by Mr. and Mrs. Mathenia's advance fee payment.

App. 625-626.

Count XII
(Moyle)

In January of 2013 Respondent's predecessor, Lawrence Ray, was hired by Frank Moyle to prepare a bankruptcy petition and represent Mr. Moyle in the United States Bankruptcy Court for the Eastern District of Missouri. **App. 337.** Mr. Moyle paid Lawrence Ray $1,400 at that time. **App. 337.**

Respondent first became an associate of Mr. Ray's in June of 2013, and by August of 2013 became a partner in the firm of Blum & Ray. **App. 49 (T. 190).**

The Moyle bankruptcy petition was filed on July 23, 2014. **App. 334.** Mr. Moyle was discharged on October 21, 2014. **App. 489.**

Respondent in his trial testimony produced a check showing the payment by Mr. Moyle to Lawrence Ray back in January of 2013. **App. 490.** Respondent in his trial testimony did not explain why it took from January of 2013 to July 23, 2014 to file the bankruptcy petition for Mr. Moyle. **App. 54 (T. 209-210).**

Ms. Hendrickson testified it was a little hard to get updated information from Mr. Moyle. **App. 44 (T. 172).** No supporting documents or correspondence was provided by Respondent or Ms. Hendrickson to show a reason for the delay.

The Disciplinary Hearing Panel found Respondent guilty of professional misconduct in Count XII as a result of violating Rule 4-1.13 on diligence by failing to file Mr. Moyle's bankruptcy petition until July of 2014 despite Mr. Moyle paying the full advance fee to Respondent's predecessor in January of 2013. The Disciplinary Hearing Panel found Respondent not guilty of professional misconduct regarding Rule 4-1.15 on safekeeping property because the full advance fee payment was made to Lawrence Ray prior to Respondent's employment and ultimate partnership in the firm.

App. 627.

Count XIII
(Timm)

In the summer of 2013 Lawrence Ray and/or Respondent was hired by Johnny and Theresa Timm to file a bankruptcy petition and represent them in the United States Bankruptcy Court for the Western District of Missouri. **App. 347-348.** Receipts for the deposit were given in May and July of 2013. **App. 492-493.**

On August 27, 2013 a check in the amount of $4,580 was deposited into Respondent's operating account from the Lawrence Ray trust account. **App. 37; 340-342 (T. 141-142).** Included in that deposit was $750 being credited to Mr. and Mrs. Timm. **App. 341.**

Respondent's bankruptcy filing for Mr. and Mrs. Timm stated that payments were made to the Blum & Ray law firm on September 20, 2013 in the amount of $1,194 for attorney fees and $306 for bankruptcy filing fees. **App. 347-348.** There is no showing in Respondent's trust account for any deposit that date. **App. 338-354.**

The bankruptcy petition of Mr. and Mrs. Timm was not filed until May 27, 2014. **App. 343.**

Respondent in his trial testimony did not explain why money had been transferred to his operating account before the bankruptcy petition was filed. **App. 54 (T. 210).** Nor did Respondent explain why the dollar amount in his trust account dropped to as low as $347.16 on January 30, 2014, well below any Timm advance fee payment. **App. 54 (T. 210).**

Respondent in his trial testimony did not explain why the bankruptcy petition was not filed until May 27, 2014. **App. 54 (T. 210).** Jackie Hendrickson in her trial testimony stated the office had difficulty getting proper documentation for wages. **App. 44 (T. 172).** No supporting documentation or correspondence was provided by Respondent or Ms. Hendrickson to show a reason for the delay.

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct in Count XIII as a result of violating:

a) Rule 4-1.15 on safekeeping property by not depositing and holding the advance fee payment in Respondent's trust account for Mr. and Mrs. Timm until work was done on the bankruptcy case;

b) Rule 4-1.3 on diligence by failing to file the bankruptcy petition of Mr. and Mrs. Timm in a timely fashion.

App. 628.

Count XIV
(Arnold)

Respondent was hired in October of 2013 by Kenneth and Jacqueline Arnold to file a bankruptcy petition and represent Mr. and Mrs. Arnold in the United States Bankruptcy Court for the Eastern District of Missouri. Mr. and Mrs. Arnold paid Respondent $1,400 for fees and expenses, which was deposited into Respondent's trust account on October 21, 2013. **App. 349-351.**

In January of 2014 the amount of money in Respondent's trust account dropped below the $1,400 that should have been in the account because of Mr. and Mrs. Arnolds' advance fee payments, as low as $347.14 on January 30, 2014. **App. 37 (T. 143).**

The Arnolds' bankruptcy petition was filed on March 22, 2014. **App. 352.** The Arnolds were discharged on August 19, 2014. **App. 494.**

Respondent in his trial testimony did not explain of why the dollar amount in his trust account in January 2014 dropped well below the $1,400 advance fee payment of the Arnolds, including dropping as low as $347.14 on January 30, 2014. Nor did Respondent explain why the Arnold fees were paid in full in October of 2013 but their bankruptcy petition was not filed until March 22, 2014. **App. 54 (T. 210).**

The Disciplinary Hearing Panel found Respondent guilty of professional misconduct in Count XIV as a result of violating:

a) Rule 4-1.15 on safekeeping property by withdrawing most, if not all, of the full payment for Mr. and Mrs. Arnold from his trust account before all work had been completed on the case;

b) Rule 4-1.3 on diligence by failing to file the bankruptcy petition for Mr. and Mrs. Arnold for months after receipt of the advance fee payment;

c) Rule 4-1.15 on safekeeping property by failing to maintain sufficient funds in Respondent's trust account to equal or exceed the value of Mr. and Mrs. Arnolds' advance fee payments;

d) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent removed Mr. and Mrs. Arnolds' advance fee payment before all work was done on their bankruptcy case;

e) Rule 4-8.4(c) by engaging in conduct involving fraud or deceit in that Respondent's trust account balance fell below the amount represented by Mr. and Mrs. Arnolds' advance fee payment.

App. 629-630.

Count XV
(Beasley)

Respondent was hired in October of 2013 by Roy and Virginia Beasley to file a bankruptcy petition and represent them in bankruptcy court. **App. 37 (T. 144).** Mr. and Mrs. Beasley paid Respondent $400, which was deposited into Respondent's trust account on October 4, 2013. **App. 360-364.**

In January of 2014 the amount of money in Respondent's trust account dropped below the $400 that should have been in the account because of Mr. and Mrs. Beasleys' advance fee payment. **App. 37 (T. 144).**

Mr. and Mrs. Beasley made additional payments between October of 2013 and May 2014 to advance the full amount of bankruptcy attorney fees and filing fees, the total being $1,400. **App. 360-364.** Only one of the additional payments is shown to have gone into Respondent's trust account, a $300 payment on April 7, 2014. **App. 138-154.**

Mr. and Mrs. Beasleys' bankruptcy petition was not filed until October 14, 2014. **App. 365.** They were discharged on January 26, 2015. **App. 495.**

Respondent in his trial testimony did not explain why all of the Beasley advance fee payments were not placed in Respondent's trust account. **App. 54 (T. 210).** Nor did Respondent explain why the Beasleys completed payment of $1,400 in May of 2014 but their bankruptcy petition was not filed until October 14, 2014. **App. 54 (T. 210).**

The Disciplinary Hearing Panel found Respondent guilty of professional misconduct in Count XV as a result of violating Rule 4-1.15 on safekeeping property by failing to maintain sufficient funds in Respondent's trust account to equal or exceed the value of the Beasley advance fee payments when no work had been done on their case warranting withdrawal of the advance fee.

App. 631.

Count XVI
(Lack)

Respondent was hired in October of 2013 by Kelly Lack to file a bankruptcy petition and represent him in bankruptcy court. **App. 54 (T. 210).** Mr. Lack paid Respondent $774, which was deposited into Respondent's trust account on October 21, 2013. **App. 371-373.**

In January of 2014 the amount of money in Respondent's trust account dropped below the $774 that should have been in the account because of Mr. Lack's advance fee payment, as low as $347.14 on January 30, 2014. **App. 38 (T. 148).**

Kelly Lack's bankruptcy petition has never been filed.

Respondent in his trial testimony explained why the Lack bankruptcy has not been filed, but he failed to explain why the trust account balance dropped below the deposited amount without work being done or a bankruptcy filing. **App. 54 (T. 211-212).**

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct in Count XVI as result of violating Rule 4-1.15 on safekeeping property by failing to maintain sufficient funds in Respondent's trust account to equal or exceed the value of Kelly Lack's advance fee payment when no work had been done on the case warranting withdrawal of the advance fee.

App. 631-632.

Count XVII
(Hanneken)

Chelsea Hanneken was a paralegal employed at different times by Lawrence Ray and later by the Blum & Ray law firm. **App. 8 (T. 25-26; 28).** Ms. Hanneken received a degree in paralegal studies from Meramec Community College in 2004. **App. 7 (T. 22).** From 2004 until February 2013 she was employed as a paralegal for Steve White in Union, Missouri, leaving on good terms. **App. 7 (T. 22-23).**

In February 2013 Ms. Hanneken was employed by attorney Lawrence Ray, serving as a bankruptcy paralegal. **App. 8 (T. 25).** She left the firm after three months

because of concerns about Mr. Ray's declining health situation. **App. 8 (T. 27).** She left to work for the Steve Daniels law firm in Rolla for approximately 3 months. **App. 8 (T. 28).**

Respondent asked her to come back to the law firm, now Blum & Ray, to do bankruptcy work. **App. 8 (T. 28).** She agreed to do so and started in early September of 2013 at the Rolla office. **App. 9 (T. 29).** She was the only employee at the Rolla office. **App. 9 (T. 29).**

At the time Ms. Hanneken started at the Rolla office there were problems with money not being available for filing fees in bankruptcy cases. **App. 9 (T. 30-31).** By December of 2013 there began to be problems with the firm operating account having sufficient funds for checks to clear, resulting in delays in the deposit and clearing of payroll checks. **App. 10 (T. 34).** Problems with operating account cash flow continued for the remaining month of Ms. Hanneken's employment **App. 10 (T. 34-35).**

In December of 2013 Ms. Hanneken received fee payments from three clients named William Lindsey, Charles Burkhart and Robert Burns, in sum totaling $1,160. **App. 379.** These were not advance fee payments because the fees had already been earned in those cases. **App. 10 (T. 35).** Instead of delivering those payments to Respondent, Ms. Hanneken held the payments in the Rolla office until January 2014. **App. 10 (T. 35).**

Ms. Hanneken deposited the $1,160 into the firm's operating account on January 6, 2014. **App. 379; 606.** At the same time she cashed her December employment check,

which before that date could not be cashed because of insufficient funds in the firm's operating account. **App. 10-11 (T. 36-37).**

Upon finding that Miss Hanneken had deposited the $1,160 in the firm operating account, and had then cashed her payroll check, the Respondent terminated her employment. **App. 11 (T. 38).**

Ms. Hanneken made a complaint to the Informant in early February, 2013, including in that complaint a list of bankruptcy clients who had paid funds to the Blum & Ray law firm but for whom bankruptcies had not yet been filed. **App. 374-378.** Her list was the initial source of information that resulted in the charges filed in Counts I - VII and X - XVI of the First Amended Information. **App. 26 (T. 98).** The clients listed in those counts were on her list. **App. 378.**

The OCDC at trial did not provide evidence on the remaining clients from Ms. Hanneken's list who were named in Count XVII of the Information.

The Disciplinary Hearing Panel found the Respondent did not violate the Rules of Professional Conduct in Count XVII, the OCDC having provided no information on any clients listed other than ones already included in other Counts.

App. 633.

Count XVIII
(Knehans)

Respondent in 2011 and 2012 represented Mary Knehans in a personal injury lawsuit following an automobile accident. Mary Knehans was the Plaintiff. **App. 404-405.**

The case of Ms. Knehans was settled on or about November 28, 2012 for $32,000. **App. 409-412.** Some medical bills were paid, Respondent received $10,666.67 for his fee, Ms. Knehans received a net settlement amount of $12,221.31, and $8,950.37 was retained by Respondent for payment of a medical lien asserted by Medicare. **App. 448-449.**

That Medicare medical lien of $8,958.37 was never paid. **App. 62; 417 (T. 243).** In 2014 Mary Knehans received notice from the United States Department of the Treasury that a portion of her monthly social security benefits would be used to offset the unpaid Medicare bill. **App. 451.** Up to 15% of her monthly social security benefit payments were withheld from that time forward. The withholdings continued to at least the trial date. **App. 417-418.**

The check for $8,950.37, made payable to Mary Knehans and MSPRC, remained sitting in Respondent's file through the trial date of November 16, 2015. **App. 58 (T. 227.** Mrs. Knehans never had possession of the check. **App. 412-413.**

Mrs. Knehans filed a complaint with the OCDC in October 2014 after withholdings started on her monthly social security checks because of the unpaid Medicare bill. **App. 102; 115.** Her deposition was taken in this case on August 7, 2015.

Between the settlement date of November 28, 2012 and the deposition date of August 7, 2015 the only written communications Respondent had with Medicare were an initial letter of December 1, 2012 to Medicare Secondary Payer Recovery Contractor (MSPRC) and a second communication with MSPRC on August 16, 2014 resending the same 2012 letter. **App. 62-63; 557, 571 (T. 244-245).**

There is no evidence in the information provided by Respondent at trial on Mrs. Knehans (Respondent Exhibit DD) **App. 497-537** that indicates any further formal communication with the MSPRC before August 7, 2015. Respondent testified that he had numerous telephone calls with MSPRC and numerous written communications with them. **App. 59 (T. 229).** There are no notes or any indication in Respondent Exhibit DD of any telephone communications between Respondent and MSPRC between November 28, 2012 and August 7, 2015.

Mrs. Knehans only communicated with Respondent 4-6 times between the settlement on November 28, 2012 and her deposition testimony date of August 7, 2015. **App. 414-415; 419-423.** Respondent failed to provide any evidence of notes or other written documentation of any communications between them. **App. 63 (T. 246).**

Only after Mrs. Knehans' deposition on August 7, 2015 did Respondent undertake further communication on behalf of Ms. Knehans. He sent communications to MSPRC on August 7 **App. 493** and August 11 of 2015 **App. 553**, a letter to Mrs. Knehans on September 2, 2015, **App. 531**, a letter to the Department of the Treasury on September 11, 2015 **App. 519**, and a letter to MSPRC on October 1, 2015. **App. 542.**

MSPRC still was not paid or the matter resolved by the trial date of November 16, 2015. **App. 62 (T. 243).**

The OCDC sent Ms. Knehans' complaint to Respondent on or about December 24, 2014. Respondent received the complaint but never sent a response back to the OCDC. **App. 102; 115.**

Respondent in his trial testimony stated he thought he had an agreement that he did not have to respond to the complaint because an Amended Information would be filed. **App. 66 (T. 260).**

The Disciplinary Hearing Panel found Respondent guilty of professional misconduct in Count XVIII as a result of violating:

a) Rule 4-1.15 on safekeeping property by failing to pay funds to a third-party that had been entrusted to Respondent's care for payment;

b) Rule 4-8.1(c) by failing to respond to a request for information from a disciplinary authority.

App. 636.

Count XIX
(Hendrickson)

The OCDC received a complaint from Serena Hendrickson on or about November 24, 2014 and sent Respondent a letter on or about December 24, 2014 directing him to file a response to Ms. Hendrickson's complaint. **App. 454-460.** Respondent failed to send any response to the Informant. **App. 66 (T. 260).**

At the hearing there was testimony from both Serena Hendrickson and Respondent about the nature of her employment, her firing in late 2014 and the disappearance of money from Respondent's law firm. The factual matters are in dispute, but in any event irrelevant to this Count because the Count only involves Respondent's duty to respond to a request for information from the disciplinary authority.

Respondent in his testimony stated he thought he had an agreement that he did not have to respond to the complaint because an Amended Information would be filed. **App. 66 (T. 260).**

The Disciplinary Hearing Panel found the Respondent guilty of professional misconduct in Count XIX as result of violating Rule 4-8.1(c) by failing to respond to a request for information from a disciplinary authority.

App. 637.

Count XX
(Rossignol)

Respondent was hired in January of 2014 by Matthew Rossignol for representation in a dissolution case. **App. 21 (T. 78).** Respondent advised Mr. Rossignol that the total cost for the "simple" divorce would be $740 and it would take about 90 days. Mr. Rossignol paid Respondent that sum. **App. 21; 469 (T. 79).**

For approximately eight months thereafter Mr. Rossignol contacted Respondent about the status of his case. **App. 21 (T. 79).** Respondent or his support staff each time told Mr. Rossignol that they were doing what they could. **App. 21 (T. 79).**

On September 3, 2014 Mr. Rossignol met again with Respondent, who advised Mr. Rossignol that he would need another $300, $150 to have Mr. Rossignol's wife served and the other $150 to draft new dissolution papers. **App. 21-22 (T. 80-81).** Mr. Rossignol paid Respondent the $300. **App. 469.** Mr. Rossignol found out shortly thereafter that his wife had retained counsel and already had filed for dissolution. **App. 22 (T. 81).**

On September 11, 2014 Mr. Rossignol discharged Respondent from representation and requested a refund of the $300 given earlier that month. **App. 470.** The next few weeks Mr. Rossignol repeatedly called Respondent's office and even went by the office, but Respondent failed to refund the $300. **App. 22 (T. 82-83).**

Mr. Rossignol went by Respondent's office in late October or early November of 2014 when he had not received his refund. At that time office staff gave him a letter dated September 15, 2014, the letter stating that enclosed was a refund check in the amount of $300. There was no check given to Mr. Rossignol at that office visit and he had never seen the letter dated September 15, 2014 before the late October visit to Respondent's office. **App. 22 (T. 83-84).**

Mr. Rossignol later wrote another letter to Respondent on November 13, 2014 demanding the refund of his $300. **App. 472.**

Mr. Rossignol did not receive the $300 refund until on or about February 1, 2015. **App. 23 (T. 85).** Respondent on January 31, 2015 sent Mr. Rossignol a check dated November 20, 2014 and resent his cover letter of September 15, 2014 to accompany the

check. Respondent included a USPS tracking number of 9114 9010 7574 2912 7952 14 on both the cover letter and envelope to Respondent. **App. 59; 62 (T. 231-232; 241-242).** The envelope showed a mailing date of January 31, 2015. **App. 473.**

Mr. Rossignol made a complaint to the OCDC on or about January 7, 2015. On or about February 10, 2015 the OCDC sent a letter to Respondent directing him to send a response to the OCDC by February 24, 2015. **App. 461-468.**

The Respondent failed to send any response to the OCDC regarding Mr. Rossignol's complaint.

The Disciplinary Hearing Panel found that Respondent guilty of professional misconduct in Count XX as a result of violating:

a) Rule 4-1.16 by failing to return property to which a client is entitled upon termination of representation;

b) Rule 4-8.1(c) by failing to respond to a request for information from a disciplinary authority.

App. 639.

POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT BECAUSE:

A. HE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING MISAPPROPRIATION, FAILING TO SAFEKEEP PROPERTY, DECEIT, MISREPRESENTATION AND A LACK OF DILIGENCE IN HANDLING ADVANCE FEE AND EXPENSE PAYMENTS FOR NUMEROUS CLIENTS IN BANKRUPTCY MATTERS; AND

B. HE FAILED TO RETURN CLIENT PROPERTY TO A CLIENT IN A TIMELY MANNER AT TERMINATION OF THE REPRESENTATION; AND

C. HE FAILED TO COOPERATE WITH THE DISCIPLINARY AUTHORITY'S INVESTIGATION.

Rule 4-1.15, Rules of Professional Conduct

Rule 4-8.4(c), Rules of Professional Conduct

Rule 4-1.3, Rules of Professional Conduct

Rule 4-8.1(c), Rules of Professional Conduct

Rule 4-1.16, Rules of Professional Conduct

In re Farris, 472 S.W.3d 549 (Mo. banc 2015)

In re Belz, 258 S.W.3d 38 (Mo. banc 2008)

POINT RELIED ON

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT VIOLATED THE SAFEKEEPING PROPERTY RULES, MISAPPROPRIATED CLIENT FUNDS, FAILED TO COOPERATE WITH THE OCDC IN ITS INVESTIGATION, AND HAD A PRIOR DISCIPLINARY HISTORY INVOLVING THE SAME SORT OF CONDUCT. DISBARMENT IS APPROPRIATE BECAUSE:

A. THE COURT HAS RULED THAT ATTORNEYS WHO FAIL TO SAFEKEEP CLIENT PROPERTY AND APPROPRIATELY HANDLE CLIENT TRUST ACCOUNT MONEY SHOULD BE DISBARRED; AND

B. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION; AND

C. EVEN IF RESPONDENT'S MISCONDUCT OTHERWISE WOULD WARRANT A SUSPENSION, PAST DISCIPLINARY HISTORY AND AGGRAVATING FACTORS WARRANT DISBARMENT.

In re Ehler, 319 S.W.3d 442 (Mo. banc 2010)

In re Farris, 472 S.W.3d 549 (Mo. banc 2015)

In the Matter of Williams, 711 S.W.2d 518 (Mo. banc 1986)

In re Shaeffer, 24 S.W.3d 1 (Mo. banc 1992)

ABA Standards for Imposing Lawyer Sanctions, (1991 ed.)

ARGUMENT

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BY THE SUPREME COURT BECAUSE:

A. HE ENGAGED IN PROFESSIONAL MISCONDUCT INVOLVING MISAPPROPRIATION, FAILING TO SAFEKEEP PROPERTY, DECEIT, MISREPRESENTATION AND A LACK OF DILIGENCE IN HANDLING ADVANCE FEE AND EXPENSE PAYMENTS FOR NUMEROUS CLIENTS IN BANKRUPTCY MATTERS; AND

B. HE FAILED TO RETURN CLIENT PROPERTY TO A CLIENT IN A TIMELY MANNER AT TERMINATION OF THE REPRESENTATION; AND

C. HE FAILED TO COOPERATE WITH THE DISCIPLINARY AUTHORITY'S INVESTIGATION.

Respondent became a partner in the firm of Blum and Ray in August of 2013. Trust and operating accounts were set up for the firm at that time. Only Respondent and attorney Lawrence Ray had signatory authority on those accounts. Respondent presented no evidence of Mr. Ray's involvement at the office or with the trust account other than one $300 cash withdrawal on September 3, 2013. Indeed, the evidence showed Mr. Ray

was ill and rarely at the office in August 2013 or any time after. Respondent was the attorney managing the office from August 2013 forward.

The evidence showed that the firm routinely received advance payments for fees and expenses in bankruptcy cases. In most cases the advance payment was $1,400, which was to be $1,094 toward attorney fees and $306 toward bankruptcy filing fees. In a few of the charged Counts in the Information the advance payment amount slightly differed. In any event, Respondent routinely deposited the money into his trust account and then withdrew the entire amount (including the advanced filing fees) weeks or months prior to the filing of a bankruptcy petition. In some instances the bankruptcy petitions have not been filed to this date. In Counts I-VII and X-XVI money was withdrawn each time before work completed.

Neither Respondent nor his current assistant, Jacqueline Henderson, testified about why these fees were withdrawn prior to bankruptcy petitions being filed, let alone prior to completion of all bankruptcy work. Respondent attempts to argue that he was not in complete control of his trust account. Respondent cannot claim lack of control as defense. It is a non-delegable duty of an attorney. Rule 4-1.15; *In re Farris*, 472 S.W.3d 549, 560 (Mo. banc 2015).

As this Court has stated many times, the recommendations of the Disciplinary Hearing Panel are advisory in nature. *In re Belz*, 258 S.W.3d 38, 41 (Mo. banc 2008). In this case, the Disciplinary Hearing Panel found a violation of Rule 4-1.15 on safekeeping property in fourteen different Counts, namely I-VII, X-XI, XIII-XVI and XVIII. The

Panel found violations of Rule 4-1.3 for a lack of diligence in completing work for Respondent's clients in eight different Counts, namely I, III, V-VI and XI-XIV. Significantly, the Panel found the Respondent violated Rule 4-8.4(c) on conduct involving dishonesty, fraud, deceit or misrepresentation in seven different Counts, namely I, III, V-VI, X-XI and XIV. The Panel found the Respondent failed to cooperate with the disciplinary counsel in violation of Rule 4-8.1(c) in Counts XVIII-XX. Finally, the Panel found the Respondent violated Rule 4-1.16 by failing to return property to Matthew Rossignol in a timely fashion after Mr. Rossignol discharged the Respondent (Count XX).

Respondent's lack of cooperation with the Informant was not limited to the charges in Counts XVIII-XX. Kelly Dillon testified about the Respondent's failure to provide information requested by the Informant at numerous times during the investigation and before trial.

The Record evidence overwhelmingly supports the Panel's findings and conclusions that Respondent violated the above referenced Rules and should be subject to discipline by this Court.

ARGUMENT

II.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT VIOLATED THE SAFEKEEPING PROPERTY RULES, MISAPPROPRIATED CLIENT FUNDS, FAILED TO COOPERATE WITH THE OCDC IN ITS INVESTIGATION, AND HAD A PRIOR DISCIPLINARY HISTORY INVOLVING THE SAME SORT OF CONDUCT. DISBARMENT IS APPROPRIATE BECAUSE:

A. THE COURT HAS RULED THAT ATTORNEYS WHO FAIL TO SAFEKEEP CLIENT PROPERTY AND APPROPRIATELY HANDLE CLIENT TRUST ACCOUNT MONEY SHOULD BE DISBARRED; AND

B. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION; AND

C. EVEN IF RESPONDENT'S MISCONDUCT OTHERWISE WOULD WARRANT A SUSPENSION, PAST DISCIPLINARY HISTORY AND AGGRAVATING FACTORS WARRANT DISBARMENT.

Respondent has committed multiple violations in Counts I-VII, X-XVI, and XVIII-XX. Failing to safekeep client property (Rule 4-1.15), and engaging in conduct involving fraud, deceit or misrepresentation (Rule 4-8.4(c) are the most serious. His conduct involved a duty owed to clients in that he misused client funds advanced to him for fees and expenses in numerous bankruptcy cases. It was Respondent's duty to properly manage his client trust account, assure the proper allocation of money to it, and upon receipt of full payment complete client work in a timely manner. Respondent failed in all respects on numerous occasions.

When determining an appropriate sanction, Missouri case law is always the first source for analysis. Misappropriation of client property always is a disbarrable offense. *In re Shaeffer*, 24 S.W.3d 1, 5 (Mo. banc 1992); *In the Matter of Williams*, 711 S.W.2d 518, 521 (Mo. banc 1986). In *Williams* the Respondent was disbarred over an insufficient funds check of $4,513.36.

In particular relevance to this case, the *Williams* Respondent tried to claim the errors in his trust account were not his fault but were because of his wife, who was an employee of his firm. The Court found the *Williams* Respondent could not delegate his trust account obligation to a non-attorney and claim non-responsibility. In this case, the amount of money Mr. Blum improperly transferred (or never placed) in his trust account exceeded the *Williams* misappropriation. Respondent cannot avoid responsibility by claiming somehow he was not in total control of what was going on in his trust account.

An even more analogous case to the current situation is *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010). Like this Respondent, Ms. Ehler had a prior disciplinary history that included a stayed suspension with probation. Like this Respondent, Ms. Ehler had attended special classes on ethics, law practice management and the proper use of a client trust account during that probation term. Like this Respondent, Ms. Ehler misappropriated money from her client trust account and had insufficient funds in that account to cover remaining obligations to clients. In Ms. Ehler's case, the amount was $2,104.82. 319 S.W.3d at 447. Ms. Ehler repeatedly converted client funds for her own personal use. Ms. Ehler was disbarred.

Respondent Blum repeatedly transferred funds held in trust into his operating account before fees had been earned and before bankruptcy cases with the necessary filing fees had been prepared. Respondent Blum's operating account on numerous occasions had such a low balance that he transferred trust account funds to the operating account to pay ongoing personal and business expenses. The person benefiting from Mr. Blum's monetary mismanagement was himself. Thus, like Ms. Ehler, Respondent demonstrated a dishonest and selfish motive.

Our Supreme Court has recently clarified beyond any doubt that the operation of the client trust account is a non-delegable duty. In the case of *In re Farris*, 472 S.W.3d 549 (Mo. banc 2015), that Respondent attorney once again claimed that trust account problems were caused by actions of his wife (ex-wife by the time of the disciplinary hearing) and he should not be held responsible. In response, the court stated:

> Farris is not insulated from discipline so long as he authorizes someone else to make the improper transfers and expenditures instead of doing them himself. Nor is Farris insulated as long as he stays ignorant of the improper nature of each transfer or expenditure at the precise moment it occurs. Under Rule 4-1.15, Farris is accountable for the misappropriation of client funds whether he physically makes the transfers or expenditures himself or his wife makes them with his authorization and for his benefit. **The duty to safeguard and properly distribute client account funds is non-delegable.** If an attorney relies on a non-lawyer fulfilling this duty, the lawyer bears the risk of the other's non-performance. *In re Farris*, 472 S.W.2d at 560. (Emphasis added).

Mr. Farris was disbarred.

In making discipline and sanction analysis, the Supreme Court often looks to the ABA Standards for Imposing Lawyer Sanctions for guidance when imposing discipline, but considers the Standards advisory. See *In re Ehler*, 319 S.W.3d at 442. In this case the ABA Standards also show disbarment is warranted.

The ABA Standards for Imposing Lawyer Sanctions (1991 Ed.) (hereinafter "ABA Standards") provide a standard for the violation of a particular rule. Page six of the ABA Standards states in part:

> "The Standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for

> the most serious instance of misconduct among a number of violations; it may well be and generally should be greater than the sanction for the most serious violation."

In this case the Panel found Respondent guilty of multiple violations of numerous Rules. Among those include eight counts of Rule 4-1.3 on diligence, fourteen counts of Rule 4-1.15 on safekeeping client property and seven counts of Rule 4-8.4(c) on conduct involving deceit, fraud or dishonesty. Of those, Informant suggests the most significant are the multiple violations of Rule 4-1.15 on safekeeping client property and 4-8.4(c) on conduct involving fraud, deceit or misrepresentation.

The sanction standard for violation of Rule 4-1.15 on safekeeping client property is Standard 4.1 entitled "Failure to preserve the client's property."

ABA Standard 4.11 states:

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

ABA Standard 4.12 states:

> 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.

Informant asserts the applicable Standard in this instance is 4.11 on disbarment. It is hard to believe that Respondent did not knowingly act when he repeatedly withdrew money from his trust account prior to work being completed and bankruptcy filing fees

paid, to the point that by January 30, 2014 the balance in Respondent's trust account was only $347.14. Respondent cannot claim "ignorance of the law" or general incompetence to avoid an applicable sanction, particularly given his past probation and training in record keeping.

Even if the 4.12 suspension Standard were to otherwise seem applicable, there were numerous violations of the trust account rules and Rule 4-1.15. As previously stated, each individual ABA Standard does not account for multiple charges of misconduct. In this case the sanction should be disbarment, greater than the sanction of suspension that arguably could be considered for one violation.

The other most serious rule violation is Rule 4-8.4(c). The applicable sanction Standard for that Rule is Standard 5.1 entitled "Failure to maintain personal integrity." Standard 5.11 states:

Disbarment is generally appropriate when:

a) A lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

b) A lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously adversely reflects on the lawyer's **fitness to practice**. (Emphasis added).

Sanction Standard 5.12 states:

> Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects in the lawyer's **fitness to practice**. (Emphasis added).

Respondent's conduct clearly warrants a great concern about his fitness to practice. His incompetence and mishandling of his trust account is shown throughout the twenty count Information. Arguably this particular ABA Standard could suggest suspension would be as appropriate as disbarment. However, the multiple acts of misconduct warrant a greater sanction. In addition, the *Ehler* case stated that disbarment is the generally appropriate ABA Sanction Standard in misappropriation cases. *In re Ehler*, 319 S.W.3d at 451.

Once a basic sanction standard has been determined, the ABA Standards also suggest that the base sanction can be either raised or lowered depending on certain aggravating and mitigating factors. The aggravating and mitigating factors are found in ABA Sanction 9.22 (aggravation) and Sanction 9.32 (mitigation).

There are a number of aggravating factors in this case. Respondent has a significant disciplinary history, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law; his bankruptcy clients were vulnerable, in dire financial straits, and became his victims. There are far fewer mitigating factors. Respondent has expressed remorse in the handling of his trust account, but remorse after the initiation of the disciplinary investigation should be given little credence. There simply are no other applicable mitigating factors. Even if the panel finds suspension to be an appropriate baseline sanction, the many aggravating factors so outweigh the few (if any) mitigating factors that the sanction should be raised to disbarment. Suspension is inadequate to protect the public, and would not help maintain the integrity of the profession.

Missouri case law suggests that Respondent should be disbarred. The ABA Standards also suggest that Respondent be disbarred, particularly when considering the serious multiple offenses and the many aggravating factors.

CONCLUSION

Respondent engaged in professional misconduct involving diligence, safekeeping property, deceit and misrepresentation in his handling of his client trust account. Each violation occurred in multiple counts. And, he failed to cooperate with the disciplinary authority. The totality of the conduct, plus a prior disciplinary history and aggravating factors, require disbarment.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2016, a true and correct copy of the Informant's foregoing Brief was served on Respondent via the Missouri Supreme Court electronic filing system pursuant to Rule 103.08:

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Carl Schaeperkoetter

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 11,540 words, according to Microsoft Word, which is the word processing system used to prepare this brief.

Carl Schaeperkoetter